

Transfer of Youth to Adult Criminal Court Youth in Adult Jails and Prisons

Talking Points

OVERVIEW:

An estimated 250,000 youth are prosecuted in the adult criminal justice system every year, and nearly 10,000 youth are locked in adult jails or prisons on any given day.

IMPACT:

Youth prosecuted in adult criminal court may be placed in adult jails, pre-trial, before they are even convicted.

- If detained pre-trial, 2/3 of youth transferred to adult court are held in adult jails.
- More than half of youth transferred to adult court spend at least one month in adult jail, and are subsequently either sent back to juvenile court or not convicted.
- 1/5 of youth transferred to adult court spend over six months in adult jail.
- The majority of youth sentenced to probation or given a juvenile sanction were held pre-trial in adult jail.

Youth in adult jails and prisons are subject to greater risks of violence and sexual assault.

- Although less than 1% of the adult jail population, according to a Bureau of Justice Statistics study in 2005 and 2006, youth represented 21% and 13%, respectively, of victims of inmate-on-inmate sexual violence.
- Fearing for personal safety and emotional trauma after being abused or threatened, many times the only place youth feel safe is in complete isolation.
- Victims of sexual abuse are at risk for sexually transmitted diseases and are likely to suffer from severe psychological stress, hindering their ability to successfully integrate into society upon release.
- The majority of prison staff does not receive specialized training on the prevention, reporting, or treatment of victims of sexual abuse.
- Recidivism increases for youth who have been victims of brutal physical and sexual assault, and do not receive adequate therapy.
- Youth in adult prisons and jails learn to legitimate domination and retaliation, and are exposed to an inmate subculture that teaches criminal motivation as well as techniques for committing crimes and avoiding detention.

Youth sent to adult jails and prisons face greater risks of exacerbated emotional and mental health problems, including greater risks of suicide.

- Youth are 36 times more likely to commit suicide in adult jail than in a juvenile detention facility.
- The CDC estimated that for every suicide committed by young people aged 15-24 there are over 100 suicide attempts.
- When youth are segregated in adult jails, they are often placed in conditions that mimic isolation or solitary confinement conditions in “super-max” facilities, reserved for the most hardened adult offenders.
- Youth can be locked down 23 or 24 hours a day in small cells with no natural light, no view outside their cell, and no contact with other prisoners.
- Research has shown that these periods of segregation are harmful, and isolation makes it more difficult to treat incarcerated individuals successfully.
- A survey of educational programs in adult jails found that 40% provided no educational services at all, only 11% provided special education classes, and 7% provided vocational training.

Youth of color are disproportionately impacted by state transfer laws.

- African American youth represent 16% of the adolescent population but 40% of incarcerated youth.
- African American youth make up 62% of youth prosecuted in the adult criminal justice system, and are 9 times more likely to receive an adult prison sentence than white youth.
- According to a study of 40 large urban jurisdictions, a higher proportion of white youth are released pretrial (60%) than any other racial or ethnic category.
- Most (54%) Latino youth prosecuted in the adult system were detained pretrial; of the Latino youth detained pretrial, 72% were held in adult jails.
- Latino youth are 43% more likely to be waived into the adult system and 40% more likely to be admitted to adult prison than white youth.

Youth prosecuted in adult criminal court are subject to the same sentencing guidelines as adults, and may be subject to mandatory minimum sentences or life without parole.

- The only consequence that youth may not receive when prosecuted in adult criminal court is the death penalty.
- Mandatory sentences, by their nature, are intended to prohibit consideration of individual circumstances relating to the offense or the offender.
- Mandatory sentences essentially tie the hands of judges who recognize that harsh, lengthy sentences in adult facilities are inappropriate for youth offenders.

The consequences of an adult criminal conviction for youth are serious, negative, life-long, and severely impair youth chances at future success.

Youth tried in adult criminal courts can lose access to student financial aid and their right to vote; making it even more difficult for youth to achieve positive outcomes by obtaining an education, gainful employment, and participating in the democratic process.

- All but two states place restrictions on voting rights for people with adult criminal convictions.
- Many public housing authorities deny eligibility for federal housing assistance based on arrests, regardless of whether it led to a conviction.
- Most states allow employers to deny jobs to people with adult criminal records, regardless of the age at conviction or how minor the offense.

These consequences are especially disproportionate to crimes committed considering that the majority of youth prosecuted in adult court are charged with non-violent crimes and are thus likely to be released in a short period of time, but retain adult convictions for the rest of their lives.

WHAT THE RESEARCH SHOWS:

Studies across the nation have consistently concluded that juvenile transfer laws are ineffective at deterring crime and reducing recidivism.

In recent years, there has been a steady stream of research demonstrating unequivocally that trying and sentencing children in adult court does not reduce crime; and instead, does just the opposite.

- The Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a recent report highlighting the ineffectiveness of juvenile transfer laws at providing a deterrent for juvenile delinquency and decreasing recidivism.
- Research has shown that prosecuting youth in adult criminal court substantially increases recidivism.
- A 2007 CDC report on youth transfer policies indicated that transfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among juveniles who were transferred compared with those retained in the juvenile justice system. To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good.

The adult criminal justice system is not set up to adequately manage youth offenders.

- Developmental studies have shown that youth are ill-prepared to actively participate in adult court proceedings, and are unable to adequately recognize the long-term consequences of their legal decisions.
- The adult criminal justice system does not require that correctional officers in jails or prisons receive appropriate training to deal with youth populations.
- Adult jails and prisons generally offer no training on the social, emotional, or psychological needs of children, and provide for no adjustments to physical techniques used to control larger adult inmates.
- Judges and attorneys in adult criminal court often have little to no experience with young offenders, and once convicted, judges and probation officers may not be familiar with age appropriate programs and resources to help children.

The public strongly supports investing in rehabilitative approaches to help youth—not prosecuting youth in adult court or placing youth in adult jails and prisons.

Amid the ongoing public debate over the effectiveness and consequences of this current approach to youth crime, a new national survey released in October, 2011 conducted on behalf of the Campaign for Youth Justice reveals that Americans are squarely on the side of reforming our youth justice system— with a greater focus on rigorous rehabilitation over incarceration, and against placing youth in adult jails and prisons.

Key Survey Findings:

- Public strongly favors rehabilitation and treatment approaches, such as counseling, education, treatment, restitution, and community service (89%);
- Public rejects placement of youth in adult jails and prisons (69%);
- Americans strongly favor involving the youth's families in treatment (86%), keeping youth close to home (77%), and ensuring youth are connected with their families (86%);
- Public strongly favors individualized determinations on a case-by-case basis by juvenile court judges in the juvenile justice system than automatic prosecution in adult criminal court (76%);
- Americans support requiring the juvenile justice system to reduce racial and ethnic disparities (66%);

Effective treatment programs reduce recidivism and in turn, fewer tax dollars are spent sending youth back into the system.

- The juvenile justice system, by providing rehabilitative services, requires higher front-end costs than confining youth in large adult institutions, but in the long-term, the consequences of prosecuting youth in the adult system are far greater, including: higher rates of recidivism, further increases in societal harm, and

repeated expenses from paying for offenders to continue cycling through the criminal justice system.

- Many youth incarcerated in adult prisons and jails will be placed in high-security settings for their own protection, at exceptional costs (in addition to the base adult costs per day).
- According to a senior researcher at the Urban Institute, returning youth to juvenile court jurisdiction will result in a \$3 savings benefit for every \$1 spent.
- Effective treatment programs have resulted in a 40% reduction in recidivism rates, saving on tax dollars spent sending youth back into the system.

THE SOLUTIONS:

States have started to take action to remove youth from the adult criminal justice system and from adult jails and prisons; More states should follow suit.

An April, 2011 report, *State Trends: Legislative Changes from 2005 to 2010 Removing Youth from the Adult Criminal Justice System*, authored by Neelum Arya, Research and Policy Director, shows that 15 states during the last 5 years enacted policy reforms:

- Trend 1: Four states (Colorado, Maine, Virginia and Pennsylvania) have passed laws limiting the ability to house youth in adult jails and prisons.
- Trend 2: Three states (Connecticut, Illinois and Mississippi) have expanded their juvenile court jurisdiction so that older youth who previously would be automatically tried as adults are not prosecuted in adult criminal court.
- Trend 3: Ten states (Arizona, Colorado, Connecticut Delaware, Illinois, Indiana, Nevada, Utah, Virginia and Washington) have changed their transfer laws making it more likely that youth will stay in the juvenile justice system.
- Trend 4: Four states (Colorado, Georgia, Texas and Washington) have changed their mandatory minimum sentencing laws to take into account the developmental differences between youth and adults.

The U.S. DOJ has an opportunity now to end the placement of youth in adult jails and prisons through the regulations on the Prison Rape Elimination Act (PREA).

Congress passed the Prison Rape Elimination Act (PREA) in 2003 to stop sexual violence behind bars, and one of its main concerns was the risk youth face when housed in adult jails and prisons. The US Department of Justice (DOJ) recently released the preliminary regulations for public comment in 2011. Unfortunately, the proposed rules do not protect youth in adult facilities. In response to the call for public comment, thousands of individuals, and groups in every state across the country, and national organizations and professional associations of every type are urging the Attorney General to protect youth in the justice system by banning the placement of youth in

adult jails and prisons, and requesting that Congress exercise its oversight responsibilities to ensure the Attorney General protects our young people.

Congress could also take action by amending the Juvenile Justice and Delinquency Prevention Act.

For over 30 years, the JJDPA has protected youth involved in the juvenile justice system by ensuring that States receiving federal juvenile justice money are meeting certain federal protections, called the core requirements. The JJDPA should be reauthorized by Congress and strengthened to remove youth from adult facilities.

CONCLUSION:

The Juvenile Justice system was created to divert young offenders, thought to have an increased capacity to change, into a system that provides proper rehabilitative services to transform youth into productive members of society. This purpose is precluded when juveniles are transferred to the adult criminal justice system, where risks of danger increases, chances of recidivating are greater, and future success is significantly impaired.

Given the overwhelming evidence indicating that we can better protect our youth and keep our communities safe by keeping youthful offenders under juvenile court jurisdiction, now is the time to change state policies and reduce the prosecution of youth in adult criminal court and eliminate the placement of youth in adult jails and prisons.

Contact the Campaign for Youth Justice to find out what you can do to take action on this issue. Website: www.campaignforyouthjustice.org.