

Juvenile Detention Reform

Summary:

- ▶ An alarmingly high number of children accused of crimes are jailed before trial.
- ▶ The statutory purpose of pretrial detention—to hold only youths who are a danger to the community or at risk of flight—is largely ignored.
- ▶ Most youths in pretrial detention centers are nonviolent, relatively minor offenders; they do not need to be there.
- ▶ Current detention practices disproportionately affect young people of color.
- ▶ In most cases, locking up young offenders only exacerbates the problem.
- ▶ Detention reform cuts recidivism rates.
- ▶ Detention reform saves tax dollars and redirects resources toward more cost-effective home- and community-based alternatives to confinement.
- ▶ States are adopting detention reforms.

An alarmingly high number of children accused of crimes are jailed before trial.

On an average day, more than 27,000 youths are estimated to reside in locked pre-trial detention centers—a number that has grown by 72 percent since the early 1990s—despite a steady decline in juveniles committing crimes during the same time period.¹ Each year, more than 600,000 children and teens cycle through secure detention facilities in the United States.²

The statutory purpose of pretrial detention—to hold only youths who are a danger to the community or at risk of flight—is largely ignored.

In far too many cases, locked detention has become an easy place to “park” bothersome and troubled young people who have been accused, but not convicted of offenses.³

Most youths in pretrial detention centers are nonviolent, relatively minor offenders; they do not need to be there.

Nearly 70 percent of youths in pre-trial detention are held for nonviolent offenses. Most of them are not the older, violent offenders that the public assumes are under lock and key. More than half are aged 15 or younger, and a third are aged 14 or younger.⁴ And fully one-third of juveniles in detention are status offenders; their offenses would not be considered to be crimes if committed by adults.⁵ In almost half of these status cases, the most serious offense is running away from home.⁶

Current detention practices disproportionately affect young people of color.

Between 1983 and 1997, juvenile detention rates for minorities grew 76 percent, while rates for whites actually declined. Throughout this period, as the detention population grew, four of every five newly detained youths were minorities.⁷

In most cases, locking up young offenders only exacerbates the problem.

Pretrial detention is appropriate for those who present a danger to themselves or others, or who will likely not show up for trial. But for most youths, detention makes their situation worse. By putting young, nonviolent children in close contact with more hardened offenders, detention provides a higher education in criminal methods for some, and a physical or emotional threat for others. Experts have found that detention increases long-range recidivism rates.⁸ Detention also increases the likelihood that children will be placed out of their homes in the future—even when controlling for offense, prior history, and other factors.⁹ And detention leads to more suicide attempts, stress-related illnesses, and psychiatric problems.¹⁰

Detention reform cuts recidivism rates.

In communities across the country, reformers have found that keeping juveniles out of secure detention helps both young people and their communities.¹¹ For example, in a San Francisco study of 1,500 high-risk youths placed in an alternative-to-detention program, upon completion of the program participants were 26 percent less likely to be re-arrested

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than similar youths released from secure detention facilities.¹² One reason for lower recidivism is that youths in alternative pre-trial programs benefit from better mental health assessments and treatment, and stronger connections with family, school, religious and community supports.

Detention reform saves tax dollars and redirects resources toward more cost-effective home- and community-based alternatives to confinement.

Detention is very expensive: One detention bed costs \$1.25-\$1.5 million dollars over 20 years.¹³ Detention alternatives have proven to save money. In Cook County, Illinois, for example, a combination of accelerated case processing, use of a model objective risk assessment instrument, and a network of community-run reporting centers has saved millions of dollars.¹⁴

States are adopting detention reforms.

New Mexico changed the criteria for juvenile detention to prohibit detention unless an objective assessment demonstrates substantial risk of harm to self or others, or that a youth is at risk of leaving the court's jurisdiction.¹⁵ North Dakota developed a system where youths are held in short-term community sites throughout the state, receiving one-on-one attention from trained adult advocates, including social workers, teachers, clergy and volunteers. The results of such detention reforms have been positive—community safety is preserved, youths are held in the least restrictive setting for the shortest amount of time, youths are held as close to home as possible, and valuable resources are freed up.

This policy summary relies in large part on information from the Coalition for Juvenile Justice.

Endnotes

- 1 Annie E. Casey Foundation, "The JDAI Story: Building a Better Juvenile Detention System," *Pathways to Juvenile Detention Reform*, Volume #1, 1998.
- 2 Annie E. Casey Foundation, "Kids Count 2004 Date Book Online," 2004; National Juvenile Detention Association and Youth Law Center, "Crowding in Juvenile Detention Facilities: A Problem-Solving Manual," 1998.

- 3 Coalition for Juvenile Justice, "Unlocking the Future: Detention Reform in the Juvenile Justice System," January 2004.
- 4 Howard Snyder and Melissa Sickmund, National Center for Juvenile Justice, "Juvenile Offenders and Victims, 1999 Report," 1999.
- 5 Deborah Busch, "By the Numbers: the role of data and information in detention reform," Annie E. Casey Foundation, *Pathways to Juvenile Justice Reform* series, 1999.
- 6 "Juvenile Offenders and Victims, 1999 Report."
- 7 Annie E. Casey Foundation, "The JDAI Story: Reducing Racial Disparities in Juvenile Detention," *Pathways to Juvenile Detention Reform*, Volume #8, 2002.
- 8 Coalition for Juvenile Justice, "Unlocking the Future: Detention Reform in the Juvenile Justice System," January 2004.
- 9 Annie E. Casey Foundation, "Juvenile Jailhouse Rocked: Reforming Detention in Chicago, Portland and Sacramento," *AdvoCasey: Documenting Programs that Work for Kids and Families*, Fall/Winter 1999.
- 10 National Juvenile Detention Association and Youth Law Center, "Crowding in Juvenile Detention Facilities: A Problem-Solving Manual," 1998.
- 11 Beneficial results of detention reform have been reported in such diverse jurisdictions as Bernalillo County/Albuquerque (NM), Tarrant County (TX), and Santa Cruz (CA), and the states of Illinois (starting with Chicago/Cook County) and North Dakota. See: Coalition for Juvenile Justice, "Unlocking the Future: Detention Reform in the Juvenile Justice System," January 2004.
- 12 Center on Juvenile Crime and Criminal Justice, "Detention Diversion Advocacy Project Evaluation," September 1999.
- 13 American Youth Policy Forum, "Less Cost, More Safety," 2001
- 14 Richard Mendel, "And the Walls Keep Tumbling Down: A Demonstration Project has Come and Gone but Detention Reform Continues to Gather Steam," Annie E. Casey Foundation, Spring 2003.
- 15 New Mexico Children's Code, Revised, §32A: 2.1 et seq., effective July 2003..

Juvenile Detention Reform

Juvenile Detention Reform Act

SECTION 1. SHORT TITLE

This Act shall be called the "Juvenile Detention Reform Act."

SECTION 2. JUVENILE DETENTION REFORM

After section XXX, the following new section XXX shall be inserted:

(A) STANDARD FOR APPROVING DETENTION

1. A child taken into custody for an alleged criminal act shall not be placed in pretrial detention unless a detention risk assessment instrument is completed and a determination is made that the child:
 - a. Poses a substantial risk of harm to himself or herself;
 - b. Poses a substantial risk of harm to others; or
 - c. Has demonstrated that there is a substantial risk that he or she may leave the jurisdiction of the court.
2. If a juvenile is placed into pretrial detention, a judge of the [Juvenile Court] shall, within 24 hours after the placement, consider the risk assessment instrument and review the appropriateness of pretrial detention. The Court shall not approve a placement in pretrial detention unless the state has proven by a preponderance of the evidence that:
 - a. The child poses a substantial risk of harm to himself or herself;
 - b. The child poses a substantial risk of harm to others; or
 - c. The child has demonstrated that there is a substantial risk that he or she may leave the jurisdiction of the court.
 - d. No lesser custodial restrictions would serve as an effective alternative to pretrial detention.
3. If the Court approves a placement in pretrial detention, the placement decision shall be reviewed by the Court at any pretrial conference.
4. The Department [of Juvenile Justice] shall develop and implement a detention risk assessment instrument. The instrument will be designed to reflect input from the child's family, community, social workers, law enforcement personnel, and the Department's staff and advisors.

(B) CONDITIONS OF DETENTION

1. Pretrial detention shall not take place at any long-term facility for adjudicated delinquents.
2. A person older than 18 shall not be detained in a juvenile detention facility.
3. Publicly-funded counsel shall be available to the juvenile and the juvenile's family upon completion of the risk assessment instrument and before the point at which any detention hearing is held.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2005.



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Model Legislation: Juvenile Protection Act
 Hate Crime Prevention Act



Juvenile Transfer Reform

Summary:

- ▶ Because of fairly recent changes in state law, more than 200,000 children are prosecuted in adult courts each year.
- ▶ Many of the young people transferred to adult court are non-violent offenders who pose little threat to public safety.
- ▶ African American and Latino youths are transferred to the adult system in disproportionate numbers.
- ▶ When children are handled by the adult judicial system, they tend to become more serious criminals.
- ▶ Children held in adult prisons are much more likely to be physically or sexually abused, or to commit suicide.
- ▶ Juveniles transferred to adult courts often receive unnecessarily harsh sentences.
- ▶ Transferring young people to adult courts decreases public safety by straining the resources of correctional facilities and courts.
- ▶ Judges are in the best position to decide whether to transfer youths to adult courts.

Because of fairly recent changes in state law, more than 200,000 children are prosecuted in adult courts each year.¹

From 1992-95, 40 states passed laws making it easier to try juveniles as adults.² Eighteen states further expanded juvenile transfer laws between 1998 and 2002.³ The result is a flood of young people being handled by the adult criminal system, and, in many cases, being placed in adult prisons.

Many of the young people transferred to adult court are non-violent offenders who pose little threat to public safety.

The U.S. Department of Justice reports that nearly 40 percent of juveniles incarcerated in adult prisons committed nonviolent offenses, generally drug or property crimes.⁴

African American and Latino youths are transferred to the adult criminal system in disproportionate numbers.

Every year from 1990 to 1999, more black youths were transferred to adult court than children of any other racial group.⁵ Today, 67 percent of juvenile defendants in adult court are African-American, and 77 percent of juveniles sent to adult prison are racial minorities.⁶

When children are handled by the adult judicial system, they tend to become more serious criminals.

There is convincing evidence that juvenile transfers lead to greater recidivism. For example, a Florida study found that 49 percent of youths transferred to adult courts were arrested for future crimes, compared to 37 percent of those retained in the juvenile justice system. Nearly twice as many transferred youths were rearrested for more serious offenses.⁷ Studies in New York and New Jersey generated similar results, and also found that, on average, transferred youths were rearrested sooner after release.⁸

Children held in adult prisons are much more likely to be physically or sexually abused, or to commit suicide.

Youths held in adult jails are eight times more likely to commit suicide; five times more likely to be sexually assaulted; twice as likely to be beaten by staff; and 50 percent more likely to be assaulted with a weapon, than youth in juvenile facilities.⁹ Subjecting children to these conditions not only jeopardizes their safety, but it makes their rehabilitation almost impossible.

JUVENILE TRANSFER REFORM POLICY SUMMARY

Juveniles transferred to adult courts often receive unnecessarily harsh sentences.

One study found that juveniles in adult courts are given sentences that are 83 percent more severe than in similar cases involving adults, concluding that “judges may assign greater levels of culpability and dangerousness to transferred juveniles than to young adult offenders.”¹⁰

Transferring young people to adult courts decreases public safety by straining the resources of correctional facilities and courts.

The Office of Juvenile Justice and Delinquency Prevention found that the increased transfer of juveniles to the adult corrections system aggravated already overburdened criminal courts and jails by increasing processing times for cases. Sending juveniles to adult prisons also creates costly logistical, programming and security concerns for corrections administrators.

Judges are in the best position to decide whether to transfer youths to adult courts.

The American Bar Association (ABA) recommends that a judge make the decision to transfer a youth to adult court only after finding probable cause to believe the juvenile has committed the offense, and that the juvenile cannot be properly handled by a juvenile court. But only five states (HI, KS, ME, MO, NH) follow the ABA standard. 14 states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. 29 states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. And three states (CT, NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16 or 17-year-olds to adult courts.¹¹

This policy summary relies in large part on information from the American Bar Association Juvenile Justice Center and the National Juvenile Defender Center.

Endnotes

- 1 Patricia Allard and Malcolm Young, “Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners,” 2002.
- 2 Patrick Griffin, Patricia Torbet and Linda Szymanski, “Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions,” Office of Juvenile Justice and Delinquency Prevention, 1998.
- 3 Patrick Griffin, “National Overviews,” National Center for Juvenile Justice, 2003.
- 4 J. Steven Smith, “Adult Prisons: No Place for Kids,” USA Today (Magazine), July 2002.
- 5 Office of Juvenile Justice and Delinquency Prevention, *Juvenile Court Statistics*, 1999.
- 6 Bureau of Justice Statistics, “Juvenile Felony Defendants in Criminal Courts,” 1998, quoted in Malcolm Young and Jenni Gainsborough, “Prosecuting Juveniles in Adult Court, An Assessment of Trends and Consequences,” January 2000.
- 7 Florida Department of Juvenile Justice, “Trends in Transfer of Juveniles to Adult Criminal Court,” Management Report No. 02-03, January 2002.
- 8 Building Blocks for Youth, “Children in Adult Jails,” 2000.
- 9 Jeffrey Fagan, M. Frost & T.S. Vivona, “Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy,” 1989.
- 10 Megan Kurlychek and Brian Johnson, “The Juvenile Penalty: A Comparison of Juvenile and Young Adult Sentencing Outcomes in Criminal Court,” 2004.
- 11 Patrick Griffin, “Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws,” National Center for Juvenile Justice, October 2003.

Juvenile Transfer Reform

Juvenile Transfer Reform Act

SECTION 1. SHORT TITLE

This Act shall be called the “Juvenile Transfer Reform Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Each year in [state], more than [insert number] children are prosecuted in adult courts.
2. Many of these youths are non-violent offenders.
3. When children are handled in adult courts, they are more likely to become long-term criminals.
4. Children held in adult prisons are much more likely to be physically or sexually abused, or to commit suicide.
5. Judges are in the best position to decide whether a youth should be tried in adult courts.

(B) PURPOSE—This law is enacted to promote public safety, reduce recidivism, and improve the handling of children in the criminal justice system.

SECTION 3. JUVENILE TRANSFERS

After section XXX, the following new section XXX shall be inserted:

(A) When a juvenile is charged with committing an act which would be a [Class A, B or C/serious felony] if committed by an adult, upon request of the prosecuting attorney, the court shall hold a hearing to determine whether the case should be transferred from the jurisdiction of Juvenile Court to the [Superior/adult] Court.

(B) The court shall advise the juvenile and his or her parents, guardian or legal custodian of the possible consequences of a transfer, the right to be represented by counsel, and other constitutional and legal rights.

(C) The court shall transfer the case from the jurisdiction of the Juvenile Court to the [Superior/adult] Court if it finds that the State has established by a preponderance of the evidence that such transfer is appropriate, based upon consideration of the following factors:

1. **Seriousness of the crime**—the nature and seriousness of the offense, with greater weight being given to offenses against a person than against property; whether the offense was committed in an aggressive, violent, premeditated or intentional manner.
2. **Characteristics of the juvenile**—the record and previous history of the juvenile; the age of the juvenile; the juvenile’s emotional attitude and pattern of living.
3. **Public safety**—whether the protection of the community requires commitment of the juvenile for a period longer than the greatest commitment authorized by juvenile criminal law; whether the protection of the community requires commitment of the juvenile to a facility that is more secure than any available in the juvenile correctional system.
4. **Rehabilitation**—whether future criminal conduct by the juvenile is more likely to be deterred by programs and services available in the juvenile correctional system or in the adult correctional system.

JUVENILE TRANSFER REFORM MODEL LEGISLATION

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2005.



Juvenile Waiver of Counsel

Summary:

- ▶ Thousands of young people charged with crimes waive their right to counsel without understanding the consequences.
- ▶ Without the protection of counsel, young people are more likely to be placed in detention and prison.
- ▶ States can protect the right to counsel by prohibiting waiver of counsel for youths, or alternatively, by mandating that youths consult with an attorney before waiving counsel.
- ▶ In 2004, Louisiana, Maryland and Virginia amended their statutes to protect children's right to counsel.
- ▶ States should meet national professional standards for the protection of children's right to counsel.

Thousands of young people charged with crimes waive their right to counsel without understanding the consequences.

Across America, children who are not old enough to vote, drink, buy cigarettes, or, in most cases, sign a binding contract, nevertheless may routinely waive their constitutional right to counsel. In some jurisdictions, more than half of youths in court appear without any representation.¹ Juveniles obviously lack the knowledge and decision-making capabilities of adults; they simply do not have the legal knowledge to understand the consequences of waiving their constitutional right to counsel. One study showed that nearly 80 percent of juveniles do not fully understand the concepts entailed within the Miranda rights, particularly the right to consult with an attorney.²

Without the protection of counsel, young people are more likely to be placed in detention and prison.

A national study observed that juveniles who lack legal assistance tend to enter admissions of guilt without offering any defense or mitigating evidence.³ Judges are more likely, therefore, to regard these youths as in need of detention or incarceration.⁴ Studies show that youths placed in detention and corrections are more vulnerable to assault, suicide and sexual abuse, and are more likely to commit further crimes after their release.⁵

States can protect the right to counsel by prohibiting waiver of counsel for youths, or alternatively, by mandating that youths consult with an attorney before waiving counsel.

The Institute of Judicial Administration and American Bar Association Juvenile Justice Standards hold that "A juvenile's right to counsel may not be waived."⁶ Iowa follows this rule; it does not allow youths of any age to waive counsel at any delinquency-related court proceeding.⁷ Eight other states (KS, MA, MT, NJ, NM, NC, OK, WV) also prohibit juveniles from waiving their right to counsel, although states apply this rule differently depending on youths' ages. Fourteen other states (CO, CT, IN, KS, LA, MA, MD, MT, NJ, NC, OK, VT, VA, WY) offer weaker protection of juveniles' right to counsel by creating specific requirements for waiver.⁸ New Jersey's statute, for example, does not allow a child to waive counsel if s/he does not do so "in the presence of, and after consultation with counsel."⁹

In 2004, Louisiana, Maryland and Virginia amended their statutes to protect children's right to counsel.

Though these states did not eliminate waiver of counsel by juveniles altogether, they each created significant protection for the right to counsel, with bills that passed with overwhelming bipartisan support in both legislative houses.

JUVENILE WAIVER OF COUNSEL POLICY SUMMARY

States should meet national professional standards for the protection of children's right to counsel.

The Child Waiver of Counsel Prohibition Act complies with the Institute for Judicial Administration and American Bar Association Juvenile Justice Standards by prohibiting waiver of counsel by juveniles. The Fairness for Accused Children Act only satisfies the requirements of ABA policy regarding youths in the adult criminal system.¹⁰ This Act:

- ▷ Prevents juveniles from waiving counsel without prior consultation with an appointed counsel.
- ▷ Requires that if the right to counsel is waived, a full inquiry be made by the court into the youth's comprehension of that right and his or her capacity to make the choice knowingly and intelligently.
- ▷ Mandates that all waivers be submitted in writing and in open court.
- ▷ Mandates that the offer of counsel be renewed at each later stage of court proceedings at which the youth appears without counsel.
- ▷ Requires that if the right to counsel is waived, stand-by counsel be appointed.

Endnotes

- 1 American Bar Association Juvenile Justice Center, "Maryland: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings," 2003.
- 2 Thomas Grisso and Carolyn Pomicter, "Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver," 1 *Law and Human Behavior* 321, 1977.
- 3 American Bar Association Juvenile Justice Center, "A Call for Justice," 1995.
- 4 Texas Appleseed, "Selling Justice Short: Juvenile Indigent Defense in Texas," 2000.
- 5 Coalition for Juvenile Justice, "Unlocking the Future: Detention Reform in the Juvenile Justice System," 2003.
- 6 Institute for Judicial Administration/American Bar Association, "Juvenile Justice Standards Relating to Pretrial Court Proceedings," Standard 6.1, 1979.
- 7 "The child's right to be represented by counsel [at a detention, waiver, adjudicatory, dispositional, or post-dispositional hearing] shall not be waived by a child of any age," Iowa Code Ann. § 232.11.
- 8 Linda Szymanski, "Waiver of Miranda Rights," NCJJ Snapshot 7, National Center for Juvenile Justice, 2002.
- 9 N.J. Stat. Ann. § 2A:4A-39.
- 10 American Bar Association Criminal Justice Section Standards, "Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners," 2001.

Juvenile Waiver of Counsel

Child Waiver of Counsel Prohibition Act

Summary: This act protects accused children in court proceedings by ensuring that they do not waive their constitutional right to counsel.

SECTION 1. SHORT TITLE

This Act shall be called the “Child Waiver of Counsel Prohibition Act”

SECTION 2. CHILD WAIVER OF COUNSEL PROHIBITED

After section XXX, the following new section XXX shall be inserted:

Waiver of Right to Counsel—A juvenile’s right to counsel may not be waived at any court proceeding.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2005.

