

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.

