

NATIONAL JUVENILE JUSTICE NETWORK

Policy Platform

YOUTH IN THE ADULT SYSTEM

AUGUST 2013

An estimated 250,000 children and youth under the age of 18 are transferred to adult courts every year, many of whom are punished in adult prisons or probation systems.¹ Many of these youth are sent to adult courts through transfer and waiver laws.² Others arrive there because of statutes that set the age of original adult court jurisdiction—the youngest age at which youth are automatically sent to adult court—at 16 or 17.³ Many states send even very young children—sometimes as young as eight years old—to adult courts.⁴

- Adult court processing and incarceration in adult facilities (both before and after trial) is harmful to youth and public safety. The adult system lacks a basic understanding of what middle and high school youth need to become responsible citizens (such as education, age-appropriate treatment, and family support).⁵ Additionally, young people held in adult facilities are extremely vulnerable to rape and sexual assault and have much higher rates of suicide.⁶ These failings have a direct impact on public safety, as research shows that adult system processing and incarceration actually increase recidivism among teens.⁷
- Adult sanctions for youth also do not account for fundamental differences in culpability. Several recent U.S. Supreme Court decisions have cited these differences between youth and adults as necessary considerations when it comes to imposing extreme adult sentences and evaluating police custody.⁸ These decisions rely on both scientific evidence related to the psychology and development of children and youth, as well as a more general understanding that children possess a broad capacity for rehabilitation and positive change.
- The negative impacts of “adultification” of youth in the justice system are substantial and often life-long, affecting individual youth, their families, and communities.⁹ Youth with adult criminal records will likely have difficulty finding employment and may suffer from other collateral consequences such as restrictions on voting rights, access to higher education, joining the military, or living in public housing. Further, as in other areas and stages of the justice system, transfer to the adult system disproportionately impacts youth of color.¹⁰

The National Juvenile Justice Network Recommends:

Court Processing for Youth Under 18: A Model Approach

- Based on the fact that public safety and youth rehabilitation are best served through the juvenile justice system, the cases of all youth who are under age 18 at the time of the alleged offense should be processed in juvenile court, regardless of the type of offense.
- Rather than automatically sending older youth into the adult system, states should allow youth who enter the system prior to turning 18 to remain in the juvenile justice system into their early twenties.¹¹

Limitations on Adult System Treatment

If states do not adhere to the above model approach to court processing of youth, the National Juvenile Justice Network urges states to incorporate the following important limitations on trying youth in adult court.

- Treat all youth under age 18 as juveniles. States should reform laws that automatically treat all youth aged 16 or 17 as “adults” for criminal law purposes, setting 18 as the age at which adult court jurisdiction begins.
- Consider age as a mitigating factor at all times. At all stages of potential or actual transfer to the adult system—e.g., grand jury indictment, judicial review, jury selection and instruction, court processing and handling, sentencing, etc.—relevant mitigating factors should be considered. Such factors include, but are not limited to, the age, developmental maturity, physical condition/maturity, mental health (including history of trauma), school record/educational background, and competency of the youth, as well as whether the youth presents a true threat to public safety, as identified through the use of a validated, objective risk assessment instrument.
- Assess any disparate impact of transfer. Courts should engage in regular racial impact assessments of transfer decisions in order to reduce and eliminate racial and ethnic disparities in the numbers of youth transferred to adult court.
- Advocate for revision of the JJDP. The provisions and protections of the Juvenile Justice Delinquency and Prevention Act (JJDP) should apply to all youth under age 18, regardless of whether their cases are processed in juvenile or adult court.
- Gather and analyze data. States should implement systems to collect, evaluate, and make public thorough non-identifying statistical data on youth who are charged, tried or sentenced as adults and/or held in adult facilities. Data should include the age, race, ethnicity, and gender of youth; crimes committed/allegedly committed by youth; sentences received; and recidivism rates/outcomes.

Mechanisms for Transfer

- All juvenile cases should begin with a presumption against transfer to the adult system.
- States should eliminate prosecutors' ability to directly file a youth's case in adult court.
- States should eliminate statutory direct file, through which youth are automatically sent to adult court based on the alleged offense or other statutory parameters.
- States should eliminate "once an adult, always an adult" laws, through which all youth who have previously been tried or convicted as adults are automatically prosecuted as adults in the future.
 - All cases involving potential transfer to adult court should be subject to judicial review in juvenile court.
 - All youth whose cases are sent to adult court should have the opportunity to petition or appeal for a return to juvenile court. When reviewing such petitions, judges should consider all relevant mitigating factors, including, but not limited to, the age, developmental maturity, physical condition/maturity, mental health (including history of trauma), school record/educational background, and competency of the youth.

Sentencing

- States must end the use of life without parole and other extreme or "virtual life" sentences for crimes committed by youth under age 18.¹²
- Youth convicted as adults should have the right to individualized sentencing hearings at which their age and other mitigating factors are considered.
- The sentences of all youth convicted as adults should be subject to regular, periodic, and meaningful review in order to assess whether the youth has been rehabilitated and can safely return to his or her community. Youth should have a right to counsel at all sentencing review hearings.

Holding Youth with Adults

- No youth under the age of 18—even those charged as adults—should be held in any adult facility prior to conviction. The JJDP Act should be revised to mandate that states hold youth who are transferred into the adult system in juvenile detention facilities—rather than adult jails—prior to conviction.
- States must comply with the requirements of the Prison Rape Elimination Act (PREA), which mandates that states house youth under 18 separately from adults. States should not use isolation, solitary confinement, or protective custody as the primary means of housing youth separately from adults.

- States should advocate that the JJDPa be revised to allow jurisdictions the flexibility to confine youth convicted as adults in juvenile facilities when appropriate.
- Youth who are held in adult facilities must be provided with developmentally-appropriate programming and services, including education, special education services, mental health services, substance abuse treatment, regular access to family members, and job training.

For More Information:

- Campaign for Youth Justice – www.campaignforyouthjustice.org
- Campaign for the Fair Sentencing of Youth – www.fairsentencingofyouth.org
- Human Rights Watch, “Letter to Inter-American Commission on Human Rights: Examine Incarceration of Youth in US Adult Prisons and Jails,” March 11, 2013 - http://njjn.org/uploads/digital-library/Incarceration-of-Youth-in-Adult-Prison_Human-Rights-Watch_2013.pdf
- Richard E. Redding, “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?,” *Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin* (June 2010), accessed May 9, 2013 at <https://www.ncjrs.gov/pdffiles1/ojdp/220595.pdf>.

¹ While there are no national data on the total number of youth sent to the adult system, and while the reliability and availability of state data varies, 250,000 is a generally accepted estimate of the number of youth tried in adult criminal court. See, e.g., Campaign for Youth Justice, “State Trends: Legislative Victories from 2005 to 2010 Removing Youth from the Adult Criminal Justice System,” (April 2011): 7, accessed July 30, 2013 at www.campaignforyouthjustice.org/.../CFYJ_State_Trends_Report.pdf.

² For a comprehensive review of transfer laws throughout the country, see Patrick Griffin, et al., Office of Juvenile Justice and Delinquency Prevention, “Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting” (Juvenile Offenders and Victims National Report Series, September 2011): 4, accessed March 20, 2013 at <https://www.ncjrs.gov/pdffiles1/ojdp/232434.pdf>.

³ Office of Juvenile Justice and Delinquency Prevention, “Statistical Briefing Book,” (2011), accessed March 20, 2013 at http://www.ojdp.gov/ojstatbb/structure_process/qa04101.asp. Note that since 2011, Connecticut has ceased automatically trying all 17-year-olds as adults; only youth charged with A and B felonies are automatically transferred to adult court. Additionally, all youth in Illinois under 18 charged with misdemeanor offenses are now under the original jurisdiction of the juvenile court; as of January 1, 2014, all youth under 18 charged with felonies will also come under the original jurisdiction of the juvenile court, with some exceptions. As of August 29, 2013, Massachusetts is also on the brink of raising its age of original juvenile court jurisdiction to include 17-year-olds.

⁴ Many states set a minimum age for transfer to the adult system, ranging from 10 to 16, depending on the state and the offense. Sixteen states have no minimum age for transfer for certain offenses. For a nationwide chart on minimum ages for transfer, see Griffin, et al., “Trying Juveniles as Adults,” 4.

⁵ “Key Facts: Children in Adult Jails and Prisons,” *Campaign for Youth Justice*, accessed April 4, 2013 at <http://www.campaignforyouthjustice.org/documents/KeyFactsonYouthinAdultJailsandPrisons.pdf>.

⁶ Campaign for Youth Justice, “Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America” (November 2007): 11-13, accessed April 4, 2013 at <http://www.campaignforyouthjustice.org/key-research/national-reports.html#jailingjuveniles> and James Austin, et al., “Juveniles in Adult Prisons and Jails: A National Assessment” (Bureau of Justice Assistance, October 2000): 7-8, accessed April 4, 2013 at <https://www.ncjrs.gov/pdffiles1/bja/182503.pdf>.

⁷ “Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services” (Centers for Disease Control and Prevention, April 2007): 6-8 accessed April 4, 2013 at www.cdc.gov/mmwr/pdf/rr/rr5609.pdf.

⁸ See, e.g., *Roper v. Simmons*, 543 U.S. 551 (2005) (eliminates the death penalty for crimes committed while youth are under age 18), accessed April 16, 2013 at <http://www.njjn.org/uploads/digital-library/Roper%20v.%20Simmons,%203.1.05.pdf>; *Graham v. Florida*, 130 S.Ct. 2011 (2010) (bans life without parole sentences for youth under age 18 convicted of non-homicide offenses), accessed April 16, 2013 at [http://www.njjn.org/uploads/digital-library/Life-Without-Parole-Graham-v.-Florida-560-U.S.--\(2010\).pdf](http://www.njjn.org/uploads/digital-library/Life-Without-Parole-Graham-v.-Florida-560-U.S.--(2010).pdf); *Miller v. Alabama* and *Jackson v. Hobbs*, 567 U.S. ____ (2012) (ban mandatory life without parole sentences for youth 17 and under), accessed May 2, 2013 at <http://njjn.org/uploads/digital-library/Miller-v-Alabama-2012.pdf>; and *J.D.B. v. North Carolina*, 564 U.S. ____ (2011) (holds that age is relevant factor to consider when determining whether a child is in police custody for *Miranda* purposes), accessed April 16, 2013 at <http://njjn.org/uploads/digital-library/JDB%20v.%20NC,%20Supreme%20Court,%206.16.11.pdf>.

⁹ See, e.g., Campaign for Youth Justice, “The Consequences Aren’t Minor: The Impact of Trying Youth as Adults and Strategies for Reform” (March 2007), accessed April 11, 2013 at http://njjn.org/uploads/digital-library/CFYJNR_ConsequencesMinor.pdf.

¹⁰ National Council on Crime and Delinquency, “And Justice for Some: Differential Treatment of Youth of Color in the Justice System,” (January 2007), accessed April 16, 2013 at http://www.njjn.org/uploads/digital-library/resource_459.pdf. One study revealed that nearly 83 percent of cases filed in adult court involved youth of color. Jolanta Juskiewicz, “To Punish a Few: Too Many Youth Caught in the Net of Adult Prosecution” (Campaign for Youth Justice, October 2007): 38, accessed May 7, 2013 at http://www.campaignforyouthjustice.org/documents/to_punish_a_few_final.pdf.

¹¹ This recommendation is consistent with scientific research finding that adolescents’ brains continue to develop into their mid-twenties. See, e.g., Jay N. Giedd, et al., “Brain Development During Childhood and Adolescence: A Longitudinal MRI Study,” *Nature Neuroscience* 2, no. 10 (1999): 861, accessed May 21, 2013 at http://www.nature.com/neuro/journal/v2/n10/abs/nn1099_861.html; Jay N. Giedd, “Structural Magnetic Resonance Imaging of the Adolescent Brain,” *Annals of the New York Academy of Sciences*, Vol. 1021 (2004), accessed May 21, 2013 at <http://www.ncbi.nlm.nih.gov/pubmed/15251877>; Nitin Gogtay, et al., “Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood,” *Proceedings of the National Academy of Science* 101 (2004): 8174, accessed April 16, 2013 at <http://www.pnas.org/content/101/21/8174.long>; Arthur W. Toga, Paul M. Thompson, and Elizabeth R. Sowell, “Mapping Brain Maturation,” *Trends in Neurosciences* 29, no. 3

(March 2006): 148-59; online publication, Feb. 10, 2006, accessed April 16, 2013 at www.psychiatryonline.org/data/Journals/FOCUS/2639/378.pdf.

¹² U.S. Supreme Court has recently limited the extreme sentencing of youth; see footnote 8.