



R E - D I R E C T I N G J U S T I C E

**The Consequences of Prosecuting Youth as Adults
and the Need to Restore Judicial Oversight**

**EXECUTIVE
SUMMARY**

QUICK DIRECT FILE FACTS

85% OF DIRECT FILE CASES INVOLVE MIDDLE-TO-LOW LEVEL FELONIES

15% OF DIRECT FILE CASES ARE HOMICIDES

5% OF DIRECT FILE CASES ARE FIRST DEGREE MURDER

22% OF DIRECT FILE CASES ARE DISMISSED

75% OF DISMISSED CASES INVOLVE WHITE YOUTH

25% OF DIRECT FILE CASES RESULT IN PROBATION OR DEFERRED SENTENCES

28% OF DIRECT FILE CASES ARE CONVICTED AS CHARGED

95% OF DIRECT FILE CASES ARE PLEA BARGAINED

82% OF YOS ADMISSIONS ARE BLACK & HISPANIC YOUTH

EXECUTIVE SUMMARY

Nearly 20 years ago Colorado altered the course of juvenile justice policy by sidetracking youth and resources to the adult criminal system. It was 1993 when over-publicized crime led to a five-day special legislative session that created the Youthful Offender System and made it easier to convict children as adults. A quarter of a billion dollars later, it's time to take a look at how we got to this point, how these laws have affected children and public safety, and what policymakers can do to stay on track to achieve meaningful reform.

Statistics show that “direct filing,” prosecuting youth as adults, has cast too wide of a net. The law was contemplated for the most serious cases and repeat offenders who exhausted chances in the juvenile system. Yet research indicates that prosecutors are more often direct filing mid-level felony cases against teenagers who’ve often had no previous experience locked up in the juvenile system. The direct-file law has been used to try thousands of Colorado youth as adults, inappropriately incarcerate them in adult jails and prisons, and mark them with lifelong felony convictions.

The direct-file law also is ineffective. Contrary to what lawmakers intended, the direct-file law has done little to deter juvenile crime. A large body of research shows that prosecuting children as adults makes it **less** likely they’ll be rehabilitated and become productive members of society. The departure from juvenile treatment is damaging kids, creating redundancies in state services, and jeopardizing community safety.

In recent years, Colorado’s Legislature has taken important first steps toward reconsidering these policies but more work needs to be done. Research-based reforms, not half-measures, are necessary to bring balance back to the state. Colorado needs solutions that guarantee constitutional due process for children facing adult prosecution, as well as opportunities to be rehabilitated with programs proven to prevent recidivism in the juvenile system.

The Colorado Juvenile Defender Coalition spent the last year weighing the early 1990s rationale for prosecuting youth as adults against state data and current research that raise serious questions about the cost and consequences of our laws. This executive summary provides an overview of the full report presents fact-based findings and recommends urgent reform.

Children Need a Separate System of Justice

The law in Colorado long has acknowledged differences between children and adults. The state has age-based policies that prevent anyone under 18 from voting, sitting on a jury, buying cigarettes, buying a lottery ticket, entering a contract, marrying without parental consent or operating a motor vehicle without restrictions. These laws recognize that youth in their formative years—even 17-year-old high school seniors—have incomplete appreciation of risk and consequence and need guidance from their parents in decision-making.

Due to teenagers' stage of development, research shows that they act out for different reasons than adults, have less control over their environment and generally are more impulsive. Research also shows that adolescents are likely to grow out of their immature behavior. For the same reasons children are less culpable than adults, they're also much more likely to respond to rehabilitative efforts. The U.S. Supreme Court has recognized these findings in recent decisions. More than a century ago, Denver Juvenile Judge Ben Lindsey drew from these principles when, in 1903, he created one of the first court systems in the nation designed specifically for children.

Colorado's juvenile system—including the Department of Human Services' Division of Youth Corrections (DYC)—includes punishment. It seeks to hold youths accountable for their crimes by meting out a range of increasingly serious consequences, including sentences of up to seven years in juvenile commitment facilities. In contrast with the state's Youthful Offender System (YOS), DYC has vast experience treating serious juvenile offenders with treatment and facilities that craft individualized and localized plans for each child and family.

The juvenile system operates under the "Children's Code" that involves parents or guardians in cases against children 10 to 17 years old. The parents or guardians sit next to their teen in court and can be included in case dispositions that call for counseling or increased supervision. They have the right to participate in the proceedings, discuss possible outcomes with the judge or treatment team, and certify they believe the resolution of the case is in the best interest of their child.

When the state made it easier to charge youth as adults in 1993, juveniles suddenly became subject to previously enacted adult sentencing laws—prison terms that weren't meant for kids. By choosing to direct file, prosecutors in effect took over life-altering decisions about children's fates.

The U.S. Supreme Court has recognized the severity of moving an adolescent from juvenile court to an adult criminal court in which the protections of juvenile laws

no longer apply. From a constitutional perspective, due process is denied when district attorneys—who have a stake in the outcome of their prosecutions—decide whether a teenager is tried as an adult. Direct-file policies circumvent the involvement of impartial juvenile court judges who are able to weigh evidence presented by both sides.

Direct filing also fails to engage families. In adult criminal courts, the parent or guardian isn't allowed to sit next to their child during proceedings and isn't required to approve plea agreements. If the juvenile is held in an adult jail, the parent or guardian cannot visit in the same room, and can only communicate over a television screen or telephone. The parent and child may have no physical contact during the months—or possibly years—the case is pending in criminal court. These policies and procedures ignore the vulnerabilities of youth and unnecessarily strain families who already are in crisis.

Pathways for Children to Adult Criminal Court

While most children charged with crimes in Colorado are handled in the juvenile court system, a significant number are prosecuted every year in adult courts. There are two ways this plays out.

The first way is through a process known as “judicial transfer.” Colorado has a law allowing juvenile court judges to move a case to adult criminal court. Under judicial transfer, the prosecutor initiates the transfer request; the judge sets a hearing where the prosecution and the child's defense counsel can present evidence. In these cases the judge considers the child's unique circumstances, risk, needs and determines which system is appropriate.

The second way is by “direct file”—the law that was expanded in 1993 to give prosecutors greater discretion to file adult charges if the case meets basic age and offense characteristics. In some cases, prosecutors have to provide notice that they are considering direct filing a case in adult court. Yet in no cases does the juvenile have a right to judicial review of the prosecutor's choice to direct file. The law also gives prosecutors sole discretion whether a direct-filed youth should be held in an adult jail or a juvenile detention facility.

The cases analyzed for this report include both judicial transfer cases and direct file cases. Since the 1993 expansion of the direct file statute, the vast majority of juvenile criminal court cases are a result of prosecutorial direct file. Many organizations—including the National Council of Family and Juvenile Court Judges,

the Federal Advisory Committee on Juvenile Justice and the Centers for Disease Control's Task Force on Community Preventive Services—caution against direct filing and recommend that every child considered for adult court have a transfer hearing decided by a judge.

In recent years, Colorado has made progress in reconsidering the prosecution of children as adults. In 2006, the state passed legislation that abolished the sentence of life without parole for juveniles. In 2009, it modified laws related to holding youth in adult jails. And in 2010, it made modest changes to the direct file statute. These are significant steps. Yet they stop short of accomplishing the improvements needed to fully address the needs of youth and, ultimately, to protect the safety of a state in which children are coming of age with felony convictions in adult prisons.

In hindsight, it's clear that well-intentioned lawmakers acted hastily during the five-day special session in 1993 when, responding to headlines hyping the "Summer of Violence," they dismantled many of Judge Ben Lindsey's historic reforms. Colorado's overly broad direct-file laws have had serious implications not only for the teenagers and families directly impacted, but also for the general public. Today, policymakers have more information about the research and expert recommendations regarding the prosecution of kids as adults. Now is the time to restore balance to the juvenile justice system that Judge Lindsey pioneered here in our state.



Key Findings

1. Trying youth as adults doesn't make Colorado safer, but increases the likelihood a teenager will re-offend.

While supporters of Colorado's direct file law may tout a decline in youth crime as evidence of the law's success, prominent researchers debunk this theory by showing that crime decreased for youth and adults, even in states that didn't pass laws to direct file. In fact, multiple research studies have come to the conclusion that prosecuting youth in the adult system increases the risk of re-offending and decreases public safety.

An analysis of Colorado's crime rates by county and judicial district fails to show a relationship between direct file practices and juvenile arrest rates. Research published by the Centers for Disease Control and the Office of Juvenile Justice Delinquency and Prevention show prosecuting youth as adults does not deter crime.

2. The vast majority of youth impacted by direct file are not the most serious offenders, and the law disproportionately impacts black and Hispanic youth.

The common assumption during the height of the 1993 special session was that there had emerged a new kind of juvenile offender who was beyond the control and rehabilitation of the juvenile justice system. But lacking hard data and statistics lawmakers cast the net too wide. Today, some 85 percent youth prosecuted in the adult system are not accused of killing another person, and only 5 percent all direct file cases filed are for first-degree murder.

Direct file practices disproportionately affect children of color, particularly when it comes to how cases are resolved. From 2009 to 2010, for example, 82% of juveniles admitted to the Youthful Offender System were black and Hispanic. In contrast, 75% of dismissed cases involved white youth.

One of the main indicators that direct file has been overused is the fact that 22% of such cases are dismissed. Some 75% of these cases have been filed for Class 3, middle-level felonies or lower. Data also shows

that 25% of direct file cases result in probation or deferred sentences. This type of less serious case warrants juvenile court consideration that looks beyond the offense charged and sees the whole child and family.

3. Most youth who enter the adult system as a result of Direct File do not see their case reviewed by a judge or jury, and are convicted of a lower level offense than their original charge.

While prosecutors have always had the power to choose which offenses to charge, direct file inappropriately gives them discretion about whether to file those charges in a juvenile or adult court. What's more 95 percent of all cases are being resolved by plea bargain agreements where district attorneys are deciding the sentence as well. That means the child's case is not reviewed by a judge or jury. Direct file gives prosecutors too much unchecked authority.

Direct file is commonly being used for medium and lower level offenses. Of the juveniles who end up in adult criminal court, only 28 percent are convicted of the highest crimes they were originally accused of committing.

What this means, in practice, is that prosecutors can leverage direct-file to subject juveniles to adult sentencing in the Corrections Department's Youthful Offender System. The lack of due process also circumvents the role of judges. Judges can listen to both sides and weigh the evidence to make an individualized determination for the child, the victim, and the community.

4. The juvenile justice system already is equipped to manage and serve the kind of youth ending up in the adult system.

Lawmakers in 1993 intended direct-file to be "a second last chance" for youth too difficult to manage in the juvenile system. Yet the law is being used against kids who haven't been given a first last chance. YOS previously reported 80% of direct-filed youth incarcerated in the adult Department of Corrections' Youthful Offender System had **never** previously been sentenced to the Department of Human Services' Division of Youth Corrections (DYC).

DYC has developed a sophisticated process that considers the needs and risk level of youth. It has experience shaping safety strategies for

serious offenders with a collaborative approach that uses evidence-based practices, medical and psychological services, and counseling that includes the whole family. DYC has an established statewide network of facilities so programming can be localized to promote family engagement and include victims. Its staff is specifically trained to work with juveniles.

5. Most youth prosecuted in adult courts await trial in adult jails, which are dangerously unequipped for youth.

Direct filing leaves children awaiting trial in adult jails, which do not have separate areas for juveniles and cannot provide appropriate family visitation or adequate recreational and educational services. Although the law was changed in 2010 to require four hours of high school education a week, only one-third of jailed youth actually received any educational services.

The alternative also is grim. For their protection, juveniles often are held in isolation cells for 23 hours a day. Solitary confinement is known to be very damaging for developing adolescents. Two teenagers have committed suicide in Colorado's adult jails since 2008.

Current law inappropriately gives prosecutors discretion to have children transferred to adult jails that cannot serve their needs. That decision ought to be made by judges. Colorado is actively taking steps in the right direction. A pending 2012 bill will require all direct-filed youth remain in juvenile detention facilities unless the facility asks a judge to transfer the child to jail.

6. Convicting youth as adults can expose them to all of the risks youth face in adult prisons, and carry long-term consequences that make it difficult to reintegrate into society.

Although most children prosecuted as adults go to YOS, the second largest group of teens is going straight into a regular adult prison. Adult prison is traumatizing for juveniles and increases the likelihood they will grow up to be adult criminals. Youth held in adult facilities are at the greatest risk of sexual victimization. The National Prison Rape Elimination Commission found that "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse."

Under direct file, juveniles are receiving adult criminal convictions. They can never petition for the court to seal their record or convert their record to a juvenile adjudication. All youth who complete the Youthful Offender System have permanent felony convictions that make it difficult to get a job, go to college and find a place to live. These barriers make it tough for direct-filed youth to earn enough money to live independently, pay restitution to the victim, cover court costs and go on to live crime-free lives.

7. The Youthful Offender System has not been shown to be an effective intervention program, is costly, and its services and outcomes need to be better scrutinized.

Colorado has spent a quarter of a billion dollars on the Youthful Offender System. When the program was created, legislators were promised aggressive evaluations of its effectiveness. The YOS statute requires independent evaluations every two years. No evaluation has been conducted since 2004.

Prior evaluations of YOS raised significant concerns about the lack of mental health care and evidence-based interventions, the absence of gender appropriate programming for girls and the abandonment of assurances that staffers would have experience working with juveniles.

YOS uses a recidivism measure that is less rigorous than the Division of Youthful Corrections' measure which many inappropriately use to claim YOS outcomes are better. But in calculating re-offense rates the Corrections' Department only counts YOS graduates who return to prison on a new crime. DYC counts all youth who pick up as new misdemeanor or felony filing, regardless of whether they are convicted or sentenced. No study has been conducted comparing the outcomes of youth in the two programs.

Recommendations

Nearly all direct-filed children will one day be released back into Colorado's communities. We know far more today than we did in 1993 about what helps young people move beyond their bad decisions and transition into adulthood.

Now is the time for Colorado to reassess policies that are trying and incarcerating juveniles in the adult system. Restoring opportunities for youth to be adjudicated in juvenile court leads to greater opportunities for future success and, thus enhances public safety for all of us. Key recommendations to consider that would help the system embrace data-driven research-based best practices follow:

1. Restore authority over whether a youth should be tried in criminal court to juvenile court judges to ensure constitutional due process and better outcomes for kids and families.

Juvenile court judges are best qualified to make critical decisions about whether a teenager should be transferred to the adult system. These judges are the most knowledgeable about adolescent development, rehabilitation and punishment in the juvenile system, and are best positioned to consider evidence from all sources before making life-altering decisions. Returning authority to neutral fact-finders will insure that more information is available for consideration and that determinations are transparent and reviewable.

Every child should receive a constitutional due process hearing before being prosecuted as an adult.

2. If direct file laws are maintained, raise the age limit to 16 and over, restrict criteria to the most serious cases and provide juveniles an opportunity to request transfer back to juvenile court.

Juveniles under the age of 16 are too young to begin their case in adult court. Studies show children under the age of 16 are less likely to understand court proceedings, effectively cooperate with their attorneys, and make sensible decisions. If policy makers choose to maintain prosecutorial discretion to charge juveniles as adults, the age limit should be 16 and over, so all younger children can be evaluated by a juvenile court judge through transfer hearings.

Direct filing was enacted to address the most serious offenses and should be restricted to extreme circumstances such as first-degree or second-degree murder. Even in those cases, children should not be defined by the offense charged, and should have the ability to ask the adult court judge to transfer the case back to juvenile court based upon their individual circumstances and ability to be managed and safely treated within the juvenile court system.

3. Create a separate sentencing scheme for juveniles in adult court.

Colorado's criminal court sentencing laws were designed for adults and include long mandatory sentences that deprive judges of discretion to impose individualized sentences for juveniles. Adult mandatory sentencing laws should not apply to children convicted as adults. A separate, flexible sentencing grid should be enacted that provides more options for adolescents.

4. Keep youth out of adult jails.

It is incumbent on Colorado to keep children—even those accused of serious crimes—as physically and psychologically safe as possible. Juveniles should have opportunities for pre-trial community supervision. Those who need to be locked up should be detained in juvenile facilities, which are better equipped with trained staff to manage an adolescent population.

5. Provide opportunities for youth convicted as adults to earn the ability to seal criminal convictions.

Adults who had been direct filed and convicted as youth, who pay restitution and successfully reintegrate into society should have the ability to seal their criminal convictions. One alternative is to provide a method of converting adult convictions into juvenile adjudications. Colorado should recognize the redemption of former youth who despite all odds make amends and succeed.

6. Improve data collection. Provide comprehensive reports on the impact, cost and effectiveness of prosecuting children as adults.

Due to high cost and low prior performance, there is an urgent need evaluate the effectiveness of the Youthful Offender System (YOS) to

ensure Colorado isn't wasting taxpayer dollars on a corrections model program for youth that's not effective. The state should ensure the statutorily required independent evaluation of YOS is completed every two years. It also should take immediate inventory of whether YOS is adequately meeting the needs of girls and mentally ill youth. Thorough accountability will require YOS to measure recidivism rigorously; include information on the prior record of juveniles admitted to YOS; and ensure that YOS staff has experience working with kids.

Examine the racial and ethnic disparities among children prosecuted and sentenced in the adult criminal justice system. Engage national experts to reduce disproportionate rates of minority youth being prosecuted as adults.

Collect comprehensive data on juveniles prosecuted in the adult system, including whether they were involved in the child welfare system, and have prior juvenile adjudications or sentences to the Division of Youth Corrections.



Methodology

The Colorado Juvenile Defender Coalition requested data from the Office of the State Court Administrator on cases in which juveniles under the age of 18 were prosecuted in adult criminal courts. This information is not maintained separately from adult criminal cases, but can be extracted electronically by searching for the age of defendants.

Though the intent was to gather cases dating back to 1985, 1999 is the earliest year criminal court information could be provided electronically by age. The data includes more than 1,800 cases filed against juveniles in adult criminal court from 1999 to 2010. This data was sent directly to the OMNI Institute, a reputable social science research and data analysis firm in Denver that created tables, graphs and maps that are part of this analysis. More recent data from fiscal year 2010-2011 cases was obtained from www.cocourts.com. The appendix to the full report contains a detailed description of the data and methodologies for this study.

The appendix to the full report also includes “Judicial District Snapshots” with information on the prosecution of youth as adults specific to each of Colorado’s 22 judicial districts.

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The **Colorado Juvenile Defender Coalition** is a non-profit organization dedicated to excellence in juvenile defense and advocacy, and justice for all children and youth in Colorado. CJDC seeks to protect the rights and improve the treatment of children and youth in the juvenile justice system by engaging in collaborative reform efforts, coalition building, and non-partisan research and legislative advocacy. CJDC also strives to elevate and support the practice of juvenile defense by providing continuing legal education seminars and resources for juvenile defense attorneys and advocates.

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Question	Findings	Recommendations
How do kids end up in criminal court?	Direct File gives prosecutors sole discretion to file a case against a youth in adult criminal court based upon age and offense charged	Ensure the right to a hearing before a judge on the issue of whether the case should be in adult or juvenile court
Are direct file cases confined to the most serious offenses?	85% of direct file cases are not homicide cases Only 5% of direct file homicide cases are for first degree murder	Restrict direct file eligibility to the most serious offenses; let judges review the youth's circumstances and all of the options for treatment
Are direct file cases convicted as charged?	28% of direct file cases are convicted as charged 95% of direct file cases are plea bargained	Balance the power of the original charge that gets the case into adult court with a hearing to assess the youth's culpability and risk
Where are direct-filed youth held pending trial?	Most direct-filed youth who are not convicted spend time in an isolation cell in an adult county jail and do not receive educational services	Keep youth out of adult jails. If a child is detained pending trial, keep the child in a juvenile detention facility where there is programming
What are the characteristics of direct-filed youth?	Direct file unduly affects black and Hispanic youth 82% of youth admitted to YOS are black and Hispanic 75% of direct file dismissals are white youth	Collect better data on ethnicity. Engage experts to study the overrepresentation of youth of color in the adult system and recommend policy and practice reforms
What is the effectiveness of the Youthful Offender System (YOS) as an intervention program?	We don't know. YOS has cost a quarter of a billion dollars and has not been evaluated since 2004. YOS had two poor evaluations noting a lack programs for girls and mentally ill youth	Evaluate YOS' effectiveness as required every two years. Use a rigorous definition of recidivism. Take inventory of whether YOS can serve girls and youth with mental illness
What are the long-term consequences for youth?	Convicted direct-file youth receive a permanent felony conviction that makes it difficult to re-enter society	Provide opportunities for formerly direct filed youth to convert a felony conviction to a juvenile adjudication
What is missing in the data?	Information on prior juvenile delinquency or child welfare history was not readily accessible	Improve data collection systems and provide regular reports on the impact of prosecuting youth as adults

