

CHILDHOOD ON TRIAL:

The Failure of Trying and Sentencing
Youth in Adult Criminal Court



Building Safe
Communities
One Child at a Time

REPORT OVERVIEW

Who are the Youth in Adult Criminal Court?

During the late 1980s and 1990s, major policy changes in virtually every state re-categorized many juvenile offenses as adult crimes and juvenile offenders as adult criminals. The idea of youth serving “adult time for adult crime” swept the nation in reaction to the drug and firearm violence that peaked in those years. And, such policies appeared to be in the best interest of public safety. Yet, hindsight of the past decade has shown that “adult time” policy has failed its public safety mandate.

Now, approximately a quarter of a million teens under the age of 18—enough to populate a city the size of Louisville (KY) or St. Paul (MN)—are sent into the adult criminal justice system each year. Typically, the juvenile offenders who are tried and sentenced in adult court, rather than juvenile court, are not the serious, violent, chronic offenders that might have been subject to the death penalty, prior to the recent *Roper vs. Simmons* ruling by the U.S. Supreme Court. In fact, more than half of the cases of youth in adult criminal court have been charged with nonviolent drug or property offenses. Some youth transferred to adult court have been as young as age 12-or-13. Moreover, a disproportionately high number of the youth sent into the adult criminal justice system are youth of color.

More than half of the youth sent into the adult system had no prior offenses and, therefore, had never received any juvenile court services. Many had serious abuse and neglect in their backgrounds.

—*Report of the Cook County (IL) Public Defender's Office*

How are Youth Sent into the Adult Criminal Justice System?

Since the founding of the juvenile court more than 100 years ago, it has been possible for a juvenile court judge to conduct an assessment of a youth’s circumstances, offense record and potential for rehabilitation and, when necessary, transfer a chronic, violent teen offender to the adult criminal court. However, judicial oversight has been stripped away in many states and replaced by new, broad-based laws that require automatic transfers of juvenile offenders into adult court—without any individualized assessment; simply based on the type of offense or age of the offender. In many states, prosecutors are required to file certain juvenile cases in adult court—at times against their better judgment. Most astounding, nearly 90% of youth sent into the adult criminal justice system, nationwide, are affected by a lowered age of adulthood—set below age 18 in the criminal code—in 13 states. In these states, any youth accused of an offense who is age 17 (or 16 in the case of three of the 13 states) will be sent into the adult criminal justice system for any offense, whether serious or not.

There are also civil rights concerns associated with the practice of trying and sentencing youth in adult criminal court, given that youth of color are disproportionately represented in cases sent to adult court—as evidenced by data from 18 of the largest court jurisdictions where 82% of juvenile cases filed in adult court involved youth of color.

Does “Adult Time for Adult Crime” Protect the Public’s Safety?

Facts reveal that trying and sentencing youth in adult criminal court is harmful rather than helpful to community safety. Research from several states with large numbers of youth in adult corrections, such as Florida, New York, and Georgia, demonstrates that prosecuting juveniles in the adult criminal system increases rather than decreases the likelihood that juveniles will re-offend and, upon re-offense, commit more serious crimes, as compared with handling the same types of offenders in the juvenile system. Moreover, youth who have been sentenced in the adult system often are released on adult probation—without age-appropriate services and supports to help them to become productive. For youth under age 18 when admitted to state prison, more than 75 percent are released before the age of 22; more than 90 percent will have served their minimum sentences before reaching the age of 28. After incarceration, they return to their communities while still young, but hardened, angry, and with an increased number of criminal skills.

The toxic effects of transfer and waiver on youth development are most pronounced for those who are sent into the adult criminal system with no prior criminal history or record.

—Jeffrey Fagan, professor of law and public health, Columbia University

What Happens to Youth in the Adult Criminal System?

Despite efforts to improve services in response to the influx of teens coming into adult corrections, the services generally available in the adult criminal justice system do not meet the educational, emotional, physical and social needs of teenagers. The rehabilitative focus of the juvenile system is simply not required in the adult system.

Many youth come into the justice system with undiagnosed and untreated mental health disorders that become exacerbated by the stress of being confined—especially with adults. They are especially vulnerable to the adult criminal population and are often taken under the wings of especially powerful inmates, resulting in a “negative mentoring” process.

Teenagers in adult institutions are five times more likely to be sexually assaulted than those held in a juvenile facility, three times more likely to be beaten by prison staff than youth in a juvenile facility, and 50 percent more likely to be assaulted with a weapon than youth confined to a juveniles-only institution. In addition, the suicide rate for youth incarcerated with adults is five times higher than the rate of the general adult inmate population and eight times the rate for adolescents held in juvenile facilities.

The Need for Reform:

Several states have advanced legislation seeking changes that are consistent with best practices in juvenile justice, and which define the boundary between childhood and adulthood as age 18. Many states are responding, as well, to public safety concerns.

In New England, the states of Connecticut, New Hampshire and Vermont are leading the nation in their efforts to address the appropriate age of adult criminal jurisdiction. In New Hampshire, the concern that led to a lower age of adulthood was that 17-year-olds seemed to be easy to recruit as interstate drug couriers, because they did not fear prosecution or, if adjudicated, thought they would be released from custody within a short period of time. Therefore, the state began treating all 17-year-old offenders as adult criminals. Within a few years, however, the day-to-day repercussions of the policy—on the youth, on the systems and on the communities—sounded alarms. The new law had disturbing unintended results. Youth were falling between the cracks of the juvenile and adult systems, receiving neither help nor appropriate sanctions. The adult system often failed to manage the largest share of the population: low-level juvenile offenders. Now, a bipartisan group of New Hampshire legislators and child advocates are working to restore the age of adulthood to age 18.

In Illinois, in 1989, the legislature enacted automatic transfer to adult court for anyone 15 years or older charged with selling drugs within 1,000 feet of a public housing project or a school. Almost immediately, the law had an inequitable impact on African American youth who, in Illinois, frequently live in urban areas, nearby schools and public housing. More than half of the youth sent into the adult system had no prior offenses and, therefore, had never received any juvenile court services. Many had serious abuse and neglect in their backgrounds. So, in 2000, with the help of law-and-order advocates, Illinois passed a reverse waiver bill to allow juveniles that were transferred into adult court under the drug law to petition to be sent back to juvenile court. Since the law went into effect, data have shown that 30-40 percent of the juvenile drug cases transferred to adult court get probation, because they are not seen as serious; and another 15 percent are sent back into the juvenile system. This led to questions about the purpose of sending youth into the adult system in the first place. New legislation in Illinois will look into such questions and strive to scale back the large number of crimes that would cause youth to be sent into adult court, streamline the state's cumbersome patchwork of transfer and waiver procedures, and extend the use of reverse waiver to all automatic transfer cases, not just those related to drug cases.

Recommendations for Change:

Children sometimes make mistakes—serious and dangerous mistakes; children sometimes break the law and cause harm to others. With this in mind, it is a principal responsibility of our justice system to provide young offenders with opportunities to make positive changes and to set things right, whenever possible. It is also the role of the justice system to mete out justice with accountability and punishment in a fair manner. One way to do so, is to ensure that juvenile offenders are provided with the rehabilitative services and resources generally available in the juvenile justice system—and to reserve the use of adult sanctions for those older, chronic juvenile offenders for whom the juvenile court's resources have been exercised and exhausted.

Therefore, the Coalition for Juvenile Justice makes the following recommendations for change, among others:

- All organizations and individuals invested in child and family health, and community well being, should adopt a formal position calling on policy makers to re-visit and reform state laws that inappropriately send far too many youth under age 18, including first-time and nonviolent offenders, into the adult criminal justice system. National organizations that represent state and local constituents are urged to sign-on to the National Resolution on Trying and Sentencing Youth in Adult Criminal Court (see below).
- States must re-examine their practices related to youth sent into the adult criminal court in order to gain a clear portrait of the circumstances and characteristics of youth who are treated as if they are adults: Are they nonviolent and/or first-time offenders? Are they young teens? Are they disproportionately low-income youth and youth of color? Are they youth for whom the resources and rehabilitation potential of the juvenile system have been exhausted?
- Policy makers, law enforcement and justice officials need to take a hard look at whether “adult time” policies in their jurisdictions truly fulfill the public safety mandate—or conversely, like most jurisdictions throughout the nation, is there no deterrent value or crime prevention outcome—and, is public safety placed at greater risk as a result of trying and sentencing large numbers of youth in adult court?
- Policy makers and justice administrators cannot continue to use cost-savings as the principal rationale for continuing the practice of trying and sentencing youth in adult criminal court, rather than juvenile court. How can short-term monetary savings outweigh the human costs to youth, families and society when we throw away young lives and allow them to join the ranks of career criminals? The long-term costs and savings must be carefully weighed.
- Policy makers and juvenile justice professionals should call for changes in state and federal laws to restore the authority of the juvenile court judge in making an assessment of a juvenile’s fitness for adult court and to hold the boundary between childhood and adulthood at age 18.

For More Information:

To obtain a copy of *Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court* and the *National Resolution on Trying and Sentencing Youth in Adult Criminal Court*, please contact the Coalition for Juvenile Justice, 1710 Rhode Island Ave., NW, 10th Floor, Washington, DC 20036, tel: 202-467-0864, fax: 202-887-0738, info@juvjustice.org.

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The Coalition for Juvenile Justice (CJJ) thanks the John D. and Catherine T. MacArthur Foundation of Chicago (IL) for its support of the report, *Childhood on Trial*, as well as the report overview and resource guide.

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