

Case Examples: Jurisdictions That Have Removed Youth under the Age of 18 from Adult Jails

Introduction:

Over the past twenty years, both federal and state legislators have passed legislation in recognition that the placement of youth in adult facilities is dangerous and can result in poor outcomes for youth. Research shows that youth in adult jails and prisons are at a higher risk of physical, sexual, and emotional abuse than their peers in the juvenile justice system.

According to the Bureau of Justice Statistics, 75.5% of youthful inmates aged 16 and 17 who reported sexual abuse were victimized more than once by staff and 65.5% of those youth were victimized more than once by other inmates.¹ 79% of youth reported experiencing physical force or threat of force while in an adult facility.² A recent study by the American Academy of Pediatrics found that “cumulative incarceration duration during adolescence and early adulthood is independently associated with worse physical and mental health later in adulthood.”³

Incarceration of youth in adult facilities not only negatively impacts outcomes for the youth, but also for their community. According to a study by the U.S. Centers for Disease Control and Prevention, youth transferred to the adult criminal system are 34% more likely than youth retained in the juvenile system to be re-arrested for violent or other crimes.⁴ Since most youth in adult jails and prisons do not have access to appropriate education, mental health treatment, or other rehabilitative services as their peers in the juvenile system, this poor outcome is to be expected.

As a result of federal and state legislation as well as declining juvenile crime rates, we have seen a decline of youth held in adult jails. According to the Bureau of Justice Statistics 2014 Mid-Year Jail Report, the most recently available report of its kind, in 2000, 6,126 youth were held as adults in adult jails, meaning they were tried or awaiting trial as adults. In 2014, that number was 3,700.⁵

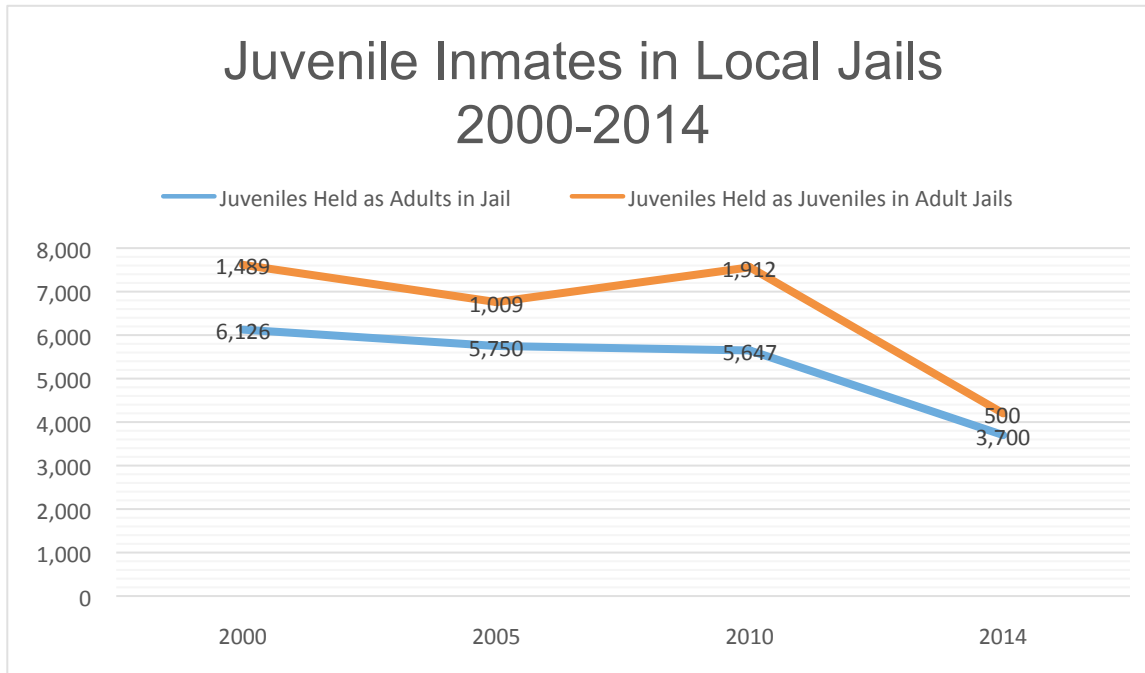
¹ Beck, A. (2013). *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011 – 12*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

² Id.

³ Elizabeth S. Barnert, Rebecca Dudovitz, et. al. *How Does Incarcerating Young People Affect Their Health Outcomes?* American Academy of Pediatrics (Jan. 2017)
http://pediatrics.aappublications.org/content/early/2017/01/19/peds.2016-2624?sso=1&sso_redirect_count=1&nfstatus=401&nftoken=00000000-0000-0000-0000-000000000000&nfstatusdescription=ERROR%3a+No+local+token

⁴ Center for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to Adult Justice System* (2007).

⁵ Todd D. Minton and Zhen Zeng, Ph.D., *Jail Inmates at Midyear 2014*, Bureau of Justice Statistics, June 2015, <https://www.bjs.gov/content/pub/pdf/jim14.pdf>



Source: Todd D. Minton and Zhen Zeng, Ph.D, *Jail Inmates at Midyear 2014*, Bureau of Justice Statistics Table 2, Page 3 (June 2015).

The federal Juvenile Justice and Delinquency Prevention Act (JJDP) includes jail removal and sight and sound separation of youth in adult facilities as two of its core requirements for states to receive federal funding from the Act.

While the JJDP already requires states to keep youth in the juvenile justice system out of adult jails and lock-ups, bills to reauthorize the JJDP require states to move youth under the age of 18 awaiting trial in the adult criminal justice system from adult jails and lock-ups to juvenile facilities unless a judge determines that it is “in the interest of justice” for a particular youth to be held in an adult jail or lock-up. This provision was included in H.B. 5963⁶, which passed the U.S. House of Representatives in September 2016. A similar bill including the provision will likely be considered again in 2017. In addition to the JJDP, the Prison Rape Elimination Act’s (PREA) Youthful Inmate Standard which also requires sight and sound separation of youth in adult facilities and recommends removal of youth from adult facilities as one way to implement the standard.⁷

This document highlights two approaches jurisdictions across the United States have taken to successfully remove pre-trial youth in the adult criminal justice system from adult jails and lock-ups and into juvenile facilities.

⁶ H.R. 5963 “Supporting Youth Opportunity and Preventing Delinquency Act of 2016”

<https://www.gpo.gov/fdsys/pkg/BILLS-114hr5963ih/pdf/BILLS-114hr5963ih.pdf>

⁷ *Youthful Inmate Implementation*, National PREA Resource Center, <https://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/youthful-inmate-implementation> (last visited Jan. 23, 2017).

Cost-Effective, Research-Based Approaches - Multnomah and Los Angeles Counties:

In recent years, jurisdictions that have successfully removed youth from adult jails have undertaken collaborative efforts to place these youth in more appropriate juvenile facilities. Instead of building new facilities, these jurisdictions have identified bed space in existing facilities or undertaken system-wide reforms to house these youth in appropriate settings.

Multnomah County, Oregon — Collaborative County-Driven Reform:

Although Oregon law allows youth prosecuted as adults to be held in adult jails⁸, Multnomah County – the state’s most populous county that includes the state’s largest city, Portland – has nearly eliminated the practice of holding transferred youth in adult jails. In December 2008, the Multnomah Board of County Commissioners unanimously passed a resolution creating a presumption that youth detained pre-trial should be held in the juvenile system.⁹ In Multnomah, youth can only be held in adult facilities upon a joint determination by the Sheriff and the head of the Department of Community Justice (DCJ), the agency responsible for the juvenile justice system, or their designee. Under this system, the only youth who might be transferred to the jail are those believed to pose a serious threat to public safety or to other youth.

Several factors contributed to the passage of the resolution.

First, in 1994, the number of youth held in adult jails in Oregon increased significantly due to a change in the state’s transfer law that required all youth 15 and older charged with certain felonies to be prosecuted in adult court.

Second, Commissioner Lisa Naito and the County Commissioners were concerned about research consensus showing that youth held in adult jails face extremely dangerous conditions, including a high risk of physical and sexual abuse and a greatly increased suicide risk.

Third, the County had worked with the Juvenile Detention Alternatives Initiative (JDAI)¹⁰ to create community-based alternatives to detention – a day reporting center, shelter care, and home detention – and to reduce its juvenile detention population through an objective and culturally sensitive risk assessment tool. These alternatives reduced the need for detention beds and helped the county reduce its average daily population at the juvenile detention facility from 96 to 21.

Fourth, Commissioner Naito facilitated ongoing collaboration among stakeholders, including the Sheriff, District Attorney, Chief of Police, and the Department of Community Justice (DCJ), which manages the juvenile detention center. Finally, DCJ engaged its counterparts in the District Attorney and

⁸ Or. Rev. Stat. Ann. § 419C.130(b).

⁹ Resolution No. 08-166, available at www.jdaihelpdesk.org/Docs/Documents/08-166.pdf.

¹⁰ JDAI is an initiative to reduce the unnecessary detention of youth in the juvenile justice system run by the Annie E. Casey Foundation. More information on JDAI is available at www.jdaihelpdesk.org.



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Sheriff's offices, conducted an assessment of available bed space at the detention center, determined the detention center had enough space for adult-charged youth, and created a back-up plan in case the number of detained juveniles unexpectedly rose.

Since the resolution's passage, the vast majority of youth have been held in the juvenile detention facility despite the closing of some beds at the detention facility due to budget restrictions. Some youth charged as adults have been released on a pretrial supervision program with electronic monitoring. As a result, no more than one youth has been held in the jail at any given time.

Los Angeles County, California — Finding an Effective Solution:

California jurisdictions typically hold youth prosecuted as adults in juvenile facilities, although state law allows adult jails to hold youth who have had discipline problems in juvenile detention facilities. However, in the early 2000s, the Los Angeles County Probation Department – which runs juvenile detention for the county – contracted with the Sheriff's Department to house up to 44 youth (about a third of the total number of youth facing adult charges) in the county jail. Although these youth were held in a separate juvenile module inside the jail with no contact with adult offenders, they spent over 23 hours per day in their cells and received minimal education, mental health care, and other programming.

These conditions led to several advocacy groups raising awareness about the inhumane conditions of confinement, including beginning investigations to bring litigation against the facility. These efforts were redoubled in June 2003 when suicide attempts by two boys in the jail heightened public concerns about conditions of confinement for youth held there and led a group of community activists, attorneys, elected leaders, and the press to collaborate to make the removal of these youth a priority. After a large public awareness campaign, the Los Angeles County Board of Supervisors voted unanimously later that month to remove these youth from the adult jail.

A broad range of county officials, including the Chief Administrative Officer, Sheriff, Probation Department, and State Board of Corrections, collaborated and within two weeks identified alternatives to detaining these youth in the jail. Upon their recommendation, the youth were moved in November 2003 - just 5 months after the passage of the resolution - to a facility operated by the California Youth Authority (CYA),¹¹ which mainly housed youth following disposition or conviction. In this new setting, the youth were able to attend classes in a group, eat meals together, use recreational facilities, and participate in regular religious services.

Expensive Endeavors in Overbuilding Facilities - Kentucky and West Virginia:

Kentucky and West Virginia also removed youth from adult jails, but took a very different approach from Los Angeles and Multnomah Counties' strategies - they built new detention centers across their States. Both of these jurisdictions have much in common. First, both States had very few detention centers

¹¹ In 2005, the CYA became the Division of Juvenile Justice (DJJ) within the Department of Corrections and Rehabilitation. See http://www.cdcr.ca.gov/Divisions_Boards/DJJ/ for an overview of DJJ.



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before building new facilities. Second, both West Virginia and Kentucky built these facilities in the late 1990s and early 2000s during a time when the Department of Justice (DOJ) made funds available to States specifically for building new facilities. Third, both States seem to have overestimated - and overbuilt - the number of new detention beds needed.

Kentucky — Responding to Litigation:

Over the past 15 years, Kentucky has gone from being out of compliance with the JJDPA's jail removal requirement to completely removing all youth from adult jails and prisons.

In the early 1990s, Kentucky had only two juvenile detention centers in the entire State, resulting in many youth being held in adult jails, often on the same floor as adults. During this time, advocates in Kentucky filed two lawsuits - one filed after a suicide in an adult jail - based on violations of JJDPA and the youth's constitutional rights to safe conditions of confinement. The claims included inadequate personnel, fire safety violations, and insufficient education, medical and mental health care, recreation, and religious programming for youth. As a result of these lawsuits and other investigations, including an investigation of the juvenile facilities by the Department of Justice Civil Rights Division, Kentucky chose to forgo federal funds and not comply with the JJDPA from 1992-1996, rejoining the Act in 1997 after a settlement agreement was reached.

From 1997 to 2005, Kentucky closed its juvenile holding facilities in adult jails and built nine regional juvenile detention centers across the State so that there is now a facility within an hour of each county. The transition was coordinated by the Department of Juvenile Justice (DJJ), which held meetings with stakeholders at each site, including area judges, law enforcement officials, jailers, and other stakeholders, to coordinate the closing of their jails' juvenile sections.

Now all youth under 18 – including those charged as adults – are held at the regional juvenile detention centers, which have 50 beds each. Although data on the number of youth detained in Kentucky are not available, data from OJJDP indicate that no residential facilities are over capacity, and 38 of 49 facilities are operating under capacity. Additionally, youth who are convicted in the adult criminal system cannot be housed in an adult prison. Youth convicted as adults remain in the juvenile facilities until age 18 at which point they can be released, held in a juvenile facility for up to six months, or transferred to the adult system.

West Virginia — Going Above and Beyond JJDPA Requirements:

West Virginia ended the practice of holding the vast majority of youth in adult jails in the early 1980s when the JJDPA's original jail removal and sight and sound separation requirements came into law. In 1997, West Virginia changed its law to prohibit the placement of youth transferred to adult court in adult jails.¹²

The Supreme Court of Appeals and a Juvenile Facilities Review Panel were key players in implementing the jail removal changes in West Virginia. Although the Panel was already inspecting juvenile facilities, the Panel began overseeing youth held in adult jails after Justice Darrell McGraw of the Supreme Court

¹² W. Va. Code Ann. § 49-5-16(a) (as amended 1997).



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of Appeals attempted to visit a jail to personally investigate the suicide of a 17-year-old boy who had been illegally confined there. However, after arriving at the facility, Justice McGraw was forcibly prevented from accessing the facility and he was arrested.

After this incident, the panel conducted unannounced inspections of jails to ensure they were not holding any youth and shared this information with judges, legislators, state agencies, and other facilities. The State provided technical assistance to facilities not in compliance and required all facilities to report on remediation of any noncompliance.

Until the late 1990s, West Virginia had five juvenile detention centers throughout the state. Between 1998 and 2005, the state built nine new regional juvenile detention centers with 23-24 beds each, including three staff-secure facilities that hold mostly status offenders. Although building these new facilities lessened geographic distance to any facility, West Virginia now has more detention beds than it needs. Of the 200+ beds available, the average daily detention population in those facilities was 77.5 in 1999 and 79.3 in 2003. These numbers indicate that West Virginia built its system without undertaking the detailed assessment necessary to determine its actual need.

Additional Moves Toward Removing Youth from Adult Jails

In addition to the case examples outlined above, other states and localities have taken steps to create a presumption or requirement that youth will be held in juvenile facilities.

- Virginia's General Assembly passed SB 259¹³, which creates a presumption that youth who are being tried as adults are held in juvenile detention centers. Youth will only be placed in adult jail if they are found by a judge to be a security or safety threat.
- Colorado's legislature passed HB 1139¹⁴ which prohibits detaining youth who are being tried as an adult in an adult jail or pretrial facility unless the district court find that an adult jail or facility is the appropriate place of confinement for the youth after an evidentiary hearing.
- Ohio's legislature passed SB 337¹⁵, which creates a presumption that youth who are in the process of being tried as an adult or who are 18-21, but still under the jurisdiction of the juvenile court to be kept in juvenile detention centers.
- Georgia's legislature passed HB 242 to require youth to remain in juvenile detention centers both before and after they have been transferred to adult court until they reach 17 years of age. Note that Georgia's upper age of juvenile court jurisdiction is 16-years old, so 17-year olds are automatically treated as adults in the criminal justice context.
- New Jersey's statute states in 2A:4A-36 that it is presumed that a waived juvenile remains in

¹³ SB 259 <http://lis.virginia.gov/cgi-bin/legp604.exe?101+ful+SB259+pdf>

¹⁴ HB 1139 http://www.leg.state.co.us/CLICS/CLICS2012A/csl.nsf/fsbillcont3/ECE1A34EBB8CDFA187257981007F1A26?Open&file=1139_enr.pdf

¹⁵ SB 337 http://archives.legislature.state.oh.us/BillText129/129_SB_337_EN_N.html



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a juvenile facility unless good cause is shown to do otherwise.¹⁶

- In Maryland, District Courts shall order a youth to a juvenile detention center pending a decision to transfer the youth back to juvenile court. The Court does not have to make the order if the youth poses a safety risk to others in the juvenile detention center, if the detention center is full, or if the child is released on bail. If the Court makes a finding that the youth poses a risk of harm it must state the reason for the finding on the record.¹⁷
- New Orleans City Council passed an ordinance in June 2015 establishing their juvenile detention center, the Youth Study Center, as the appropriate facility for the pre-trial detention of all children who are charged as adults in local courts.¹⁸

Several other states allow youth charged or tried as adults to be held in juvenile detention centers, but there is no presumption or requirement that they are held in juvenile detention centers.¹⁹

Conclusion

The examples above show that jurisdictions moving youth prosecuted as adults into the juvenile system have two options for accommodating these youth: 1) building additional facilities or 2) accommodating youth cost-effectively in existing juvenile facilities by engaging in detention reform. As jurisdictions consider how to accommodate youth prosecuted as adults, the following lessons learned from these case examples should be considered:

Completing a detailed needs assessment of bed space for both youth in the juvenile justice system and youth prosecuted as adults: Before making any decisions regarding where to move youth, jurisdictions should conduct a detailed analysis of the number of youth prosecuted as adults who will need to be moved into juvenile facilities as well as the current space available in juvenile detention facilities and the demographics and charges of youth currently being detained in the juvenile justice system. This type of assessment was invaluable in Los Angeles and Multnomah, which realized they could transition youth from the adult system to the juvenile system without building new beds. However, Kentucky and West Virginia overestimated their needs, leaving many open beds in juvenile facilities at a high cost.

Examining your jurisdiction's detention and jail systems and alternatives to detention and jail: After collecting information on youth in juvenile detention centers, jurisdictions should examine whether all these youth need to be detained or if they can be safely placed in alternatives to detention. One initiative that currently exists to assist jurisdictions in this analysis is the Juvenile Detention

¹⁶ NJ Rev Stat Section 2A:4A-36 - <http://law.justia.com/codes/new-jersey/2013/title-2a/section-2a-4a-36>

¹⁷ HB 618 (2015) <http://mgaleg.maryland.gov/2015RS/bills/hb/hb0618e.pdf>

¹⁸ City Council June 18, 2015 Regular Meeting News Summary, <http://nolacitycouncil.com/news/meetingsummary.asp?id={6AE88FEE-9432-4BFD-B2A3-6E62629946C8}>

¹⁹ Idaho Statute 20-518 (1) <https://legislature.idaho.gov/statutesrules/idstat/Title20/T20CH5/SECT20-518/>; see also RCW 13.04.033 (4) <http://app.leg.wa.gov/RCW/default.aspx?cite=13.04.030>; see also Utah Code 78A-6-7-702 (7) https://le.utah.gov/xcode/Title78A/Chapter6/78A-6-S702.html?v=C78A-6-S702_2015051220150512

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Alternatives Initiative of the Annie E. Casey Foundation, which is being implemented in over 100 jurisdictions nationwide.²⁰ Under JDAI, jurisdictions have reduced juvenile detention populations by an average of 35%, improved public safety outcomes, allowed more cost-effective use of juvenile justice funding with the closure of nearly 1,000 detention beds and the reinvestment of these funds in alternatives to detention, and created an average 22% reduction in racial and ethnic disparities. JDAI analysis was particularly useful in Multnomah County, which used JDAI to reduce its juvenile detention population in order to accommodate youth prosecuted as adults in juvenile detention facilities. Additionally, jurisdictions should see if youth prosecuted as adults can be safely monitored in their communities, such as through electronic monitoring, rather than being placed in the jail.

- A comprehensive cost assessment of available options: After completing a needs assessment, jurisdictions should engage in a cost-effectiveness evaluation taking into consideration:

The cost of detention and detention alternatives: Detaining youth in the juvenile justice system is expensive – the American Correctional Association’s average costs for youth incarceration is \$240.99 a day compared to community-based wraparound services that average \$75 a day.²¹ In the report, *Safely Home*, the Youth Advocate Programs, Inc. highlights several communities effectively using alternatives to detention to successfully serve youth. The report spotlights communities across the country that have reduced their detention numbers and reduce their recidivism by moving away from a detention-focused model. For example, in Lucas County, Ohio from 2009 to 2014, their community-based programs help to reduce their average daily population in the local detention center by 71% for black youth.²² Similarly, in Middlesex, New Jersey, the number of youth living in their community rose from 66% to 85% as a result of the community-based alternative there and 87% of the youth participants remained arrests free 12 months after leaving the program.²³

A lack of funds to build additional new facilities: Although Kentucky and West Virginia were able to build new facilities to accommodate youth prosecuted as adults, these facilities were built at a time when Department of Justice funds were available funds for this purpose. This funding is currently unavailable from Department of Justice and indeed many States are moving the opposite direction and closing bed space or wings in detention facilities to save money.

The potential litigation costs associated with detaining youth in large facilities: Three of the four case examples mentioned above - Los Angeles, Kentucky, and West Virginia - all faced expensive litigation when youth were held in dangerous conditions in adult jails or in large juvenile detention facilities. When faced with these lawsuits, these jurisdictions moved these youth to more appropriate placements. In various jurisdictions across the country, litigation has revealed the harms and costs associated with housing youth in adult jails and in large juvenile facilities.

²⁰ More information on JDAI is available at www.jdaihelpdesk.org.

²¹ Fazal, S. (2014) *Safely Home: Reducing youth incarceration and achieving positive youth outcomes for high and complex need youth through effective community-based programs*, Washington, DC. Youth Advocate Programs Policy and Advocacy Center, 5,

(<http://safelyhomecampaign.org/Portals/0/Documents/Safely%20Home%20Preview/safelyhome.pdf?ver=2.0>)

²² Id. at 14.

²³ Id. at 32.

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In conclusion, current best practices and the efforts of several jurisdictions show that youth prosecuted as adults can be accommodated in the juvenile justice system, typically without the costly construction of new facilities. Jurisdictions should do a careful analysis and evaluation of their current system and make creating costly new bed space a last resort.