

CAMPAIGN FOR
YOUTH JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR

**Transfer of Youth to Adult Criminal Court
Youth in Adult Jails and Prisons**
Talking Points

Updated 12/10/14

OVERVIEW:

An estimated 200,000 youth are in the adult criminal justice system every year, and nearly 6,300 youth are locked up in adult jails or prisons on any given day.

IMPACT:

Youth prosecuted in adult criminal court may be placed in adult jails, pretrial, before they are even convicted.

- Currently 38 states permit or require youth charged as adults to be held in adult jail pre-trial.
- As many as one half of youth detained in adult jail pretrial will be sent back to the juvenile system or not convicted. But, most of these youth will spend at least one month in adult jail.
- 1/5 of youth transferred to adult court spend over six months in adult jail.
- Most youth prosecuted in adult court are charged with non-violent offenses.

Youth in adult jails and prisons are subject to greater risks of violence and sexual assault.

- Of youth ages 16 and 17 who report being sexually victimized while incarcerated, 65.5% report that they were victimized more than once. Although less than 1% of the adult jail population, according to a Bureau of Justice Statistics study in 2005 and 2006, youth represented 21% and 13%, respectively, of victims of inmate-on-inmate sexual violence.
- The National Prison Rape Elimination Commission determined that incarcerated youth are at the highest risk of sexual abuse.
- Fearing for personal safety and emotional trauma after being abused or threatened, many times the only place youth feel safe is in complete isolation.
- Victims of sexual abuse are likely to suffer from severe psychological stress, hindering their ability to successfully integrate into society upon release.

- The majority of prison staff does not receive specialized training on the prevention, reporting, or treatment of victims of sexual abuse.
- Recidivism increases for youth who have been victims of brutal physical and sexual assault, and do not receive adequate therapy.

Youth sent to adult jails and prisons face greater risks of exacerbated emotional and mental health problems, including greater risks of suicide.

- Youth are 36 times more likely to commit suicide in adult jail than in a juvenile detention facility.
- The CDC estimated that for every suicide committed by young people aged 15-24 there are over 100 suicide attempts.
- When youth are segregated in adult jails, they are often placed in conditions that mimic isolation or solitary confinement conditions in “super-max” facilities, reserved for the most hardened adult offenders.
- Youth can be locked down 23 or 24 hours a day in small cells with no natural light, no view outside their cell, and no contact with other prisoners.
- Research has shown that these periods of segregation are harmful. They can cause anxiety and paranoia.
- A survey of educational programs in adult jails found that 40% provided no educational services at all and only 11% provided special education classes.

Youth of color are disproportionately impacted by state transfer laws.

- African American youth represent 17% of the adolescent population but 30% of youth arrested.
- African American youth make up 62% of youth prosecuted in the adult criminal justice system, and are 9 times more likely to receive an adult prison sentence than white youth.
- According to a study of 40 large urban jurisdictions, of Latino youth detained pretrial, 72% are held in adult jails. Latino youth are 43% more likely to be waived into the adult system and 40% more likely to be admitted to adult prison than white youth.

Youth prosecuted in adult criminal court are subject to the same sentencing guidelines as adults, and may be subject to mandatory minimum sentences or life without parole.

- The only consequence that youth may not receive when prosecuted in adult criminal court is the death penalty.
- Mandatory sentences, by their nature, are intended to prohibit consideration of individual circumstances relating to the offense or the offender.
- Mandatory sentences essentially tie the hands of judges who recognize that harsh, lengthy sentences in adult facilities are inappropriate for youth offenders.

The consequences of an adult criminal conviction for youth are serious, negative, life-long, and severely impair youth chances at future success.

Youth tried in adult criminal courts can lose access to student financial aid and their right to vote; making it even more difficult for youth to achieve positive outcomes by obtaining an education, gainful employment, and participating in the democratic process.

- Several states revoke a person's right to vote if convicted of a felony.
- Many public housing authorities deny eligibility for federal housing assistance based on arrests, regardless of whether it led to a conviction.
- Most states allow employers to deny jobs to people with adult criminal records, regardless of the age at conviction or how minor the offense.

These consequences are especially disproportionate to crimes committed considering that the majority of youth prosecuted in adult court are charged with non-violent crimes and are thus likely to be released in a short period of time, but retain adult convictions for the rest of their lives.

WHAT THE RESEARCH SHOWS:

Studies across the nation have consistently concluded that juvenile transfer laws are ineffective at deterring crime and reducing recidivism.

In recent years, there has been a steady stream of research demonstrating unequivocally that trying and sentencing children in adult court does not reduce crime; and instead, does just the opposite.

- The Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a recent report highlighting the ineffectiveness of juvenile transfer laws at providing a deterrent for juvenile delinquency and decreasing recidivism.
- Research has shown that prosecuting youth in adult criminal court substantially increases recidivism.
- A 2007 CDC report on youth transfer policies indicated that transfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among juveniles who were transferred compared with those retained in the juvenile justice system. To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good.

Recent research has also shown that a juvenile's brain does not fully develop until the early 20s.

- Youth between 13 and 17 are more sensitive to rewards and thus more likely to make the wrong decisions believing they will benefit from their action; after 17 however this declines.

The adult criminal justice system is not set up to adequately manage youth offenders.

- Developmental studies have shown that youth are ill-prepared to actively participate in adult court proceedings, and are unable to adequately recognize the long-term consequences of their legal decisions.
- The adult criminal justice system does not require that correctional officers in jails or prisons receive appropriate training to deal with youth populations.
- Adult jails and prisons generally offer no training on the social, emotional, or psychological needs of children, and provide for no adjustments to physical techniques used to control larger adult inmates.
- Judges and attorneys in adult criminal court often have little to no experience with young offenders, and once convicted, judges and probation officers may not be familiar with age appropriate programs and resources to help children.

The public strongly supports investing in rehabilitative approaches to help youth-not prosecuting youth in adult court or placing youth in adult jails and prisons.

Amid the ongoing public debate over the effectiveness and consequences of this current approach to youth crime, a new national survey released in October, 2011 conducted on behalf of the Campaign for Youth Justice reveals that Americans are squarely on the side of reforming our youth justice system— with a greater focus on rigorous rehabilitation over incarceration, and against placing youth in adult jails and prisons.

Key Survey Findings:

- Public strongly favors rehabilitation and treatment approaches, such as counseling, education, treatment, restitution, and community service (89%);
- Public rejects placement of youth in adult jails and prisons (69%);
- Americans strongly favor involving the youth's families in treatment (86%), keeping youth close to home (77%), and ensuring youth are connected with their families (86%);
- Public strongly favors individualized determinations on a case-by-case basis by juvenile court judges in the juvenile justice system than automatic prosecution in adult criminal court (76%);
- Americans support requiring the juvenile justice system to reduce racial and ethnic disparities (66%);

Effective treatment programs reduce recidivism and in turn, fewer tax dollars are spent sending youth back into the system.

- The juvenile justice system, by providing rehabilitative services, requires higher front-end costs than confining youth in large adult institutions, but in the long-term, the consequences of prosecuting youth in the adult system are far greater, including: higher rates of recidivism, further increases in societal harm, and repeated expenses from paying for offenders to continue cycling through the criminal justice system.

- Many youth incarcerated in adult prisons and jails will be placed in high-security settings for their own protection, at exceptional costs (in addition to the base adult costs per day).
- According to a senior researcher at the Urban Institute, returning youth to juvenile court jurisdiction will result in a \$3 savings benefit for every \$1 spent.
- Effective treatment programs have resulted in a 40% reduction in recidivism rates, saving on tax dollars spent sending youth back into the system.
- States report spending an average of \$7.1 million per day to lock youth up in adult facilities.

THE SOLUTIONS:

States have started to take action to remove youth from the adult criminal justice system and from adult jails and prisons; More states should follow suit.

An October 2014 report, *State Trends Legislative Victories from 2013-2014 Removing Youth from the Adult Criminal Justice System*, authored by Carmen Daugherty, Policy Director, shows that 28 states during the last 9 years enacted policy reforms:

- **Trend 1:** Eleven states (Colorado, Idaho, Indiana, Maine, Nevada, Hawaii, Virginia, Pennsylvania, Texas, Oregon and Ohio) have passed laws limiting states' authority to house youth in adult jails and prisons.
- **Trend 2:** Five states (Connecticut, Illinois, Mississippi, New Hampshire, and Massachusetts) have expanded their juvenile court jurisdiction so that older youth who previously would be automatically tried as adults are not prosecuted in adult criminal court.
- **Trend 3:** Eleven states (Arizona, Colorado, Connecticut, Delaware, Illinois, Nevada, Utah, Virginia, Washington, Ohio, and Maryland) have changed their transfer laws making it more likely that youth will stay in the juvenile justice system.
- **Trend 4:** Eight states (California, Colorado, Georgia, Indiana, Texas, Missouri, Ohio, and Washington) have changed their mandatory minimum sentencing laws to take into account the developmental differences between youth and adults, allow for post-sentence review for youth facing juvenile life without parole or other sentencing reform for youth sentenced as adults.

The U.S. DOJ has an opportunity now to end the placement of youth in adult jails and prisons through the regulations on the Prison Rape Elimination Act (PREA).

The Prison Rape Elimination Act (PREA), unanimously passed by Congress in 2003, is a federal statute focused on sexual assault and victimization in juvenile facilities, prisons, jail, lockups, and other detention facilities. The statute aims to prevent, detect, and respond to sexual abuse in detention facilities and the regulations state, "as a matter of

policy, the Department [of Justice] supports strong limitations on the confinement of adults with juveniles.”

The National Prison Rape Elimination Commission, created by PREA, found that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.” Thus, the Youthful Inmate Standard of PREA exists to protect youth in adult facilities. Specifically, the PREA Youthful Inmate Standard requires that:

- No youth under 18 can be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters.
- Outside of housing units, agencies must either maintain “sight and sound separation”—*i.e.*, preventing adult inmates from seeing or communicating with youth—or provide direct staff supervision when the two are together.
- Agencies must avoid placing youth in isolation and absent exigent circumstances, must afford youth daily large-muscle exercise and any legally required special education services, and must provide them access to other programs and work opportunities to the extent possible.

Congress could also take action by amending the Juvenile Justice and Delinquency Prevention Act (JJDP A).

For over 30 years, the JJDP A has protected youth involved in the juvenile justice system by ensuring that States receiving federal juvenile justice money are meeting certain federal protections, called the core requirements. The JJDP A should be reauthorized by Congress and strengthened to remove youth from adult facilities.

CONCLUSION:

The juvenile justice system was created to divert young offenders, thought to have an increased capacity to change, into a system that provides proper rehabilitative services to transform youth into productive members of society. This purpose is precluded when youth are transferred to the adult criminal justice system, where risks of danger increases, chances of recidivating are greater, and future success is significantly impaired.

Given the overwhelming evidence indicating that we can better protect our youth and keep our communities safe by keeping youthful offenders under juvenile court jurisdiction, now is the time to change state policies and reduce the prosecution of youth in adult criminal court and eliminate the placement of youth in adult jails and prisons.

Contact the **Campaign for Youth Justice** to find out what you can do to take action on this issue: www.campaignforyouthjustice.org