



POLICY BRIEF

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YOUTH TRANSFERRED TO ADULT COURT
RACIAL DISPARITIES

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YOUTH TRANSFERRED TO ADULT COURT: RACIAL DISPARITIES

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INTRODUCTION

Many contemporary criminal justice policies in the United States are characterized by a punitive approach to crime control in the name of “getting tough” on crime. This orientation, which took root in the 1970s and flourished in the late eighties and early nineties, grew “as society became disenchanted with the ability of the criminal justice system to reduce and prevent crime” (Steiner & Hemmens, 2003, p. 1). Similarly, this perceived need to “crack down” on crime extended to youth crime as well, as evidenced by the drastic rise in arrests for violent juvenile offenders in the 1980s and 1990s (Podkopacz & Feld, 2001). Echoing concerns over adult crime, public fear of juvenile crime – coupled with politicians’ desire to appear “tough” on crime – led to the adoption of punitive juvenile justice policies, including laws that facilitate the trial of juvenile offenders in adult criminal court (Podkopacz & Feld, 2001)¹. Over the last twenty years substantial empirical research on transfer of youthful offenders has been conducted, the consensus of which suggests myriad problems with this practice (see Bishop, 2000; Bishop & Frazier, 2000; Bishop, Frazier, Lanza-Kaduce, & Winner, 1996; Podkopacz & Feld, 1996). The goal of this report is to examine one of the many problematic outcomes of transfer laws: the extent to which these laws are disproportionately applied to youth of color.

This report is divided into four sections. First, we provide an overview of transfer issues, including an explanation of the various types of transfer as well as estimates of

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“In sum, data on the national level and for specific jurisdictions throughout the country demonstrate conclusively that youth of color are transferred to adult courts far in excess of their proportion in the population and in excess of their proportion of the overall cases processed by juvenile justice systems.”

(BORTNER, ZATZ, & HAWKINS, 2000, P. 289)

the total number of youth who are tried in adult court each year. Second, we summarize findings from the academic literature that point to considerable negative outcomes of this practice for all youth, regardless of race/ethnicity. Third, we examine the negative outcomes of transfer for youth of color in particular, to whom transfer appears to be disproportionately applied. Fourth, we suggest directions for future research on racial disparities among youth tried as adults, as well as for future juvenile justice policy-making.

OVERVIEW OF TRANSFER ISSUES

Juvenile transfer laws establish guidelines under which youthful defendants can be tried as adults in criminal court. Although the juvenile justice system originally was established for the very purpose of separating young offenders from adult criminals, laws facilitating the transfer of juveniles to adult court were enacted, and later expanded, in an effort to curtail a perceived escalation in serious, violent juvenile crime (see Bishop, 2000; Feld, 1999)². Indeed, “the transformation of transfer policy has been quick and dramatic” (Bishop, 2000, p. 84). Specifically, between 1979 and 2003, there have been many and varied modifications to broaden states’ transfer laws, including lowering (or eliminating altogether) the minimum age requirement, increasing the number of eligible offenses, or some combination of the two (Steiner & Hemmens, 2003; see also Bishop, 2000). Although in recent years some states (including Indiana and Texas) have narrowed their waiver laws, public support for this

practice remains high (Steiner & Hemmens, 2003).

There are three primary means by which youth can be transferred to adult court. Under *judicial waiver*, the juvenile court judge makes the determination at a waiver hearing whether to remand the youthful defendant to adult court. In contrast, *prosecutorial transfer* (or direct file) occurs when the prosecuting attorney exercises his or her discretion to file directly in adult court cases that meet certain offense or offender criteria. Finally, *statutory exclusion* expressly prohibits certain offenses from being heard in juvenile courts, thus ensuring that offenders charged with these crimes will be tried as adults (see Snyder, Sickmund, & Poe-Yamagata, 2000, for a more thorough review of these mechanisms).

National estimates of the number of youth who are tried as adults in the U.S. are not readily available for a variety of reasons. First, whereas statistics have long been available for judicially waived cases, “data collection efforts have not kept pace” with statutory changes authorizing transfer via direct file and statutory exclusion, so “there is as yet no national reporting program on cases removed by exclusion or prosecutorial waiver” (Bishop & Frazier, 2000, p. 229). Second, states have no uniform reporting system to record the number of juveniles tried as adults, because definitions of “juvenile” defendants vary across states and because state statutes that define juvenile court jurisdiction change frequently (Strom, Smith, & Snyder, 1998). For example, in 1998, it was estimated that (a) 12,000 juveniles were convicted as felons in state criminal court; (b) 27,000 youth were “proceeded against” in criminal court by prosecutors’ offices; (c) 7,163 youth were

transferred to criminal court via judicial waiver in the nation's 75 largest counties; and (d) 1,778 youth statutorily defined as juvenile offenders were processed in state criminal courts in the nation's 75 largest counties (Strom et al., 1998). As these varied estimates reveal, there is no clear consensus as to the number of youth tried each year as adults. Still, a recent estimate from the U.S. Department of Justice suggests that in the year 1999, U.S. courts formally processed 962,000 delinquency cases. For every 1,000 of those cases, 8 were transferred to criminal court (Puzzanchera, 2003).

NEGATIVE CONSEQUENCES OF TRANSFER FOR ALL YOUTH

Academic research on youth tried as adults first appeared in the 1970s, not long after the U.S. Supreme Court established guidelines for transfer laws (*Kent v. United States*, 1966). Since that time, empirical evidence suggests that myriad negative consequences accompany the practice of trying juveniles as adults.

First, although such policies were intended to “get tough” on youth crime, there is little evidence to suggest that transfer laws achieve specific deterrence, as youth who are tried as adults do not appear to experience a reduction in recidivism (Bishop, 2000; Bishop & Frazier, 2000; Bishop et al., 1996; Myers, 2003; Podkopacz & Feld, 1996). In fact, one study of transferred youth in Florida found that being tried in adult court may even increase the likelihood of re-arrest for some offenders (Bishop et al., 1996). Although it has been suggested that heightened recidivism is observed because high-risk youth

are more likely than their low-risk counterparts to be transferred in the first place, research that controls for such selection bias still reveals elevated recidivism rates among transferred youth (Myers, 2003). Thus, the argument that transfer is an effective means of reducing recidivism appears to be unfounded.

Second, the transfer of youth to adult court does not appear to achieve general deterrence either, as such policies have had no appreciable effect on the reduction of youth crime overall (Bishop, 2000; Bishop & Frazier, 2000; Jensen & Metsger, 1994; Singer & McDowall, 1988). Although proponents of juvenile transfer may view it as an effective means of “getting tough” on youth crime, empirical research has not supported this conclusion. Specifically, transfer laws have failed to demonstrate effectiveness at reducing juvenile crime (e.g., Jensen & Metsger, 1994; Singer & McDowall, 1988) or increasing public safety (Bishop et al., 1996). In one study, youth who were transferred to criminal court were found to re-offend at a higher rate than other youth and later were more likely to perpetrate a felony offense, contradicting any public safety gains (Bishop et al., 1996). Therefore, the transfer of youth to adult court does not appear to have any general deterrent value.

Third, for convicted youth, time spent in an adult correctional facility can increase exposure to criminogenic surroundings, thereby offering youth opportunities to gain criminal “training” from incarcerated adults (Myers, 2003; Podkopacz & Feld, 1996). In fact, scholars have speculated that the exposure to criminogenic surroundings may help explain why transferred youth often display higher

rates of recidivism than their non-transferred counterparts (Myers, 2003; Podkopacz & Feld, 1996). Thus, the transfer of youth to the adult system may actually promote the very behavior it aims to eliminate (Myers, 2003).

Fourth, youth who are tried and convicted as adults may experience problems associated with criminal conviction (Bishop, 2000; Bishop et al., 1996; Gaarder & Belknap, 2002). For example, criminal conviction may have undesirable psychological consequences, as youth experience a “status transformation from ‘redeemable youth’ to ‘unsalvageable adult’” (Bishop et al., 1996, p. 184). Indeed, such stigmatization also may explain higher recidivism rates among transferred youth (Bishop, 2000; Myers, 2003; Paternoster & Iovanni, 1989). In addition, convicted youth may face civil sanctions including voter disenfranchisement, the inability to hold public office or serve on a jury, and reduced opportunities for legal employment (Bishop & Frazier, 2000; Schindler & Arditti, 2001).

The issue of voter disenfranchisement is a particularly important consequence of transfer. According to The Sentencing Project (2006), 48 states and the District of Columbia prohibit inmates from voting while serving a felony sentence, 36 states prohibit felons from voting while on parole, and three states (i.e., Florida, Kentucky, and Virginia) disenfranchise *all* ex-offenders after they complete their sentences. Although disenfranchisement will not immediately affect convicted youth under the age of 18, it may impact youth who reach the legal voting age while still on parole. Moreover, underage offenders convicted in states that remove the right to vote from all ex-felons face a future of civic and political disenfranchise-

ment, as they are permanently barred from voting.

Finally, it remains uncertain whether the adult correctional system has the means or resources at its disposal to properly treat youthful offenders. For example, some researchers argue that youth who serve time in adult prisons are deprived of opportunities for rehabilitation that exist in juvenile facilities (Gaarder & Belknap, 2002; Podkopacz & Feld, 1996), and that they receive fewer mental health services than they otherwise would in a juvenile facility (Schindler & Arditti, 2001).³

Yet, as serious as these problems are for transferred youth in general, there are especially deleterious consequences for minority youth. As Bishop (2000) observes, “recent [transfer] reforms disproportionately affect minority youth, producing racial disparities that are likely to grow if current trends continue” (p. 85). These racial disparities are the subject of the following section.

NEGATIVE CONSEQUENCES OF TRANSFER FOR YOUTH OF COLOR

The idea that transfer to adult court is disproportionately experienced by minority youth should not be surprising given the amount of research documenting racial disparities in the juvenile justice system. Indeed, substantial evidence points to the existence of racial disparities at multiple stages of the juvenile justice process (Bishop, 2006; Bishop & Frazier, 1988, 1996; Engen, Steen, & Bridges, 2002; Fagan, Slaughter, & Hartstone, 1987; Hsia, Bridges, & McHale, 2004; McGarrell, 1993; Poe-Yamagata & Jones, 2000; Pope & Feyerherm, 1990a, 1990b), including intake

(Bishop & Frazier, 1996; Frazier, Bishop, & Henretta, 1992), detention (McGarrell, 1993), referral and disposition (DeJong & Jackson, 1998; McGarrell, 1993), and sentencing (Bishop, 2000; Juskiewicz, 2000).⁴ In their comprehensive review of the research concerning minorities in the juvenile justice system, Pope and Feyerherm (1995) conclude that “much of the research suggests both direct and indirect race effects or a mixed pattern – racial effects are present at some stages and not at others” (p. 2). More recently, discussing the results of their meta-analysis, Engen et al. (2002) write that “the evidence, collectively, suggests that racial disparities are a reality in juvenile justice processing” (p. 208).

Despite the fact that racial disparities are frequently studied, several decades of research still leave unanswered questions about precisely how and to what extent minority defendants receive disparate treatment. Not all investigations of juvenile justice processing find a race effect (e.g., see Fagan & Deschenes, 1990; Poulos & Orchowsky, 1994). Still, although some studies fail to uncover significant race effects, these results may be a product of the particular type of methodology used (Engen et al., 2002). Specifically, studies examining only one stage of the decision-making process may miss disparities that occur at various other stages (Bishop & Frazier, 1996; DeJong & Jackson, 1998; Pope & Feyerherm, 1995). Moreover, race effects are not always direct; they may be mediated or modified by other variables, such as family status (DeJong & Jackson, 1998), offense charge (Fagan, Forst, & Vivona, 1987), and other seemingly “race-neutral” characteristics. Thus, although not unanimous, the overwhelming majority of the evidence suggests that “race does matter” in

juvenile justice processing (Engen et al., 2002, p. 213).

With regard to racial disparities in transfer in particular, empirical studies are “sparse” (Bortner, Zatz, & Hawkins, 2000, p. 282). Still, given the racial disparities in the juvenile system overall, it is unsurprising that the few existing studies of transfer also reveal that minority youth are over-represented (Bishop, 2000; Clement, 1997; Fagan, Slaughter, & Hartstone, 1987; Juskiewicz, 2000; Males & Macallair, 2000; Podkopacz & Feld, 1996). Although at least one study found no race effect in transfer decisions (e.g., Poulous & Orchowsky, 1994), others reveal that race has both a direct and indirect effect on transfer decision-making.

For example, data from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) suggest that for the years 1985-1995, Black youth were more likely than their white counterparts to be transferred to criminal court, and that this finding holds for all offense types, all age categories, and all years (Bishop, 2000). In particular, Black males charged with drug offenses were substantially more likely than their white counterparts to be tried as adults, suggesting that racial disparities are particularly great among youth charged with drug crimes (Bishop, 2000; Ziedenberg, 2001). Examining data from transferred youth in Minnesota, Podkopacz and Feld (1996) found that Black youth were arrested for and charged with more serious (e.g., violent) crimes than white youth. Consequently, as prosecutors “increasingly emphasized violent crime in their charging decisions, the proportion of white juveniles facing waiver decisions declined and that of African-American juveniles enlarged” (Podkopacz &

Feld, 1996, p. 171).

It is not only Black youth who are more often transferred to adult court. Latino/a youth also are incarcerated in adult facilities at rates greater than their white peers (Villarruel & Walker, 2002). There are far fewer data on minority youth from other racial/ethnic backgrounds, so it is unclear to what extent transfer is applied to these youth. The issue of ethnicity is particularly important here. First, most of the empirical research is limited to racial comparisons between whites and African Americans, limiting our knowledge about transfer decisions for Latino/a, American Indian, and Asian American youth (Bortner et al., 2000; Villarruel & Walker, 2002). Second, data sets (including those used to generate national statistics) often fail to include measures for ethnicity, so Latino/a youth often are coded as “white,” and in turn are compared against Black youth (Bortner et al., 2000, Villarruel & Walker, 2002). “These practices would underestimate the number of youth who are processed or sanctioned, making the problem of racial/ethnic disproportionality seem smaller than it really is” (Bortner et al., 2000, p. 283). Thus, there is still much that is unknown about transfer among youth from diverse minority racial/ethnic groups.

Disproportionate rates of transfer for minorities may be explained in several ways, including: (a) minority youths’ disproportionate involvement in offenses that precipitate waiver; (b) differential treatment or overt bias/discrimination toward minority youth; and (c) structural components of the justice system that make minority youth more likely to be at the receiving end of harsher punishments (Engen et al., 2002; Pope & Feyerherm, 1995).⁵

Structural disadvantage is perhaps the most tenable explanation, though there has been limited support for the differential involvement hypothesis (Engen et al., 2002).

One way that structural disadvantage for youth of color may be manifested is in laws designed to crack down on violent crime. Evidence suggests that “laws that target violent crimes have the effect of exposing greater proportions of minority offenders – particularly young minority offenders – to criminal prosecution” (Bishop, 2000, p. 111). For example, Fagan, Forst, and Vivona (1987) found that minority youth in their sample were more likely to be charged with murder, and that youth charged with murder were more likely to be transferred to adult court. This finding is borne out by 1991 FBI Uniform Crime Report data, which indicate that minority youth are substantially more likely to be arrested for crimes of violence, and particularly homicide, than are white youth (Podkopacz & Feld, 1996). Similarly, a study of transfers in California found that minority youth were more likely to be arrested for a violent felony, and in turn then were more likely to be transferred to adult court and sentenced to confinement in adult prison (Males & Mallacair, 2000). Other structural explanations suppose that racial disparities in transfer processing are an outgrowth of tougher laws targeting drug, gun, and gang crime (Bishop, 2000; Bortner et al., 2000; Feld, 2003; Ziedenberg, 2001), or other crime-control policies biased against youth of color, such as those that increase penalties for offenses occurring at or near schools or public housing units (Bishop, 2000; Ziedenberg, 2001). Alternatively, other studies have suggested that differences in juvenile officers’ attri-

butions about the causes of crime mediate the relationship between race and sentencing recommendations (Bridges & Steen, 1998). Although it is heartening that very little evidence exists pointing to overt bias toward minority youth, racial disparities nonetheless exist and are both serious and troubling.

It is important to remember that transfer is not a uniquely male experience. According to a 2006 estimate, girls account for approximately 4% of youth under age 18 incarcerated in adult prisons (Hartney, 2006). Although there has been little evidence to date of gender bias in transfer decisions, at least one study has examined the consequences of transfer for young women. Gaarder and Belknap (2002) conducted in-depth interviews with 22 girls who were transferred to adult court, and found that many of them had never “been given a chance to succeed in the juvenile justice system before being subject to adult sanctioning” (p. 509). Though there is no evidence that race had a direct effect in the transfer decision for these young women, the authors note that their research “raises serious questions about the discretion and politics involved in transferring the cases of juvenile girls to adult criminal court” (Gaarder & Belknap, 2002, p. 509). Moreover, highlighting the need to explore the intersection of race and gender in studies of transfer, a recent analysis found that the effect of race on juvenile justice decision making varies by gender (Guevara, Herz, & Spohn, 2006).

Finally, unfavorable consequences resulting from racial disparities in the transfer process are not limited to youth of color but also extend to their families and communities.

Indeed, incarceration affects youths’ families by altering family dynamics and reducing opportunities for financial support and leisure activities (e.g., Carlson & Cervera, 1992; Philbrick, 2001; Schindler & Arditti, 2001). Unfortunately, little research has been carried out to examine the specific challenges faced by the families of incarcerated youth (Schindler & Arditti, 2001). Still, scholars have found that incarceration is a stressful event for family systems (Carlson & Cervera, 1992). Research suggests that families face stigmatization from having a member incarcerated, and that they often are burdened both emotionally and financially (Carlson & Cervera, 1992). In addition, siblings of incarcerated youth may be specifically penalized. Philbrick (2001) describes how a child’s life changes after the conviction of a sibling, and how siblings may experience a host of negative reactions including anger, fear, loss of social status, and stigmatization at school and in the larger community. Therefore, it is logical that disproportionately referring youth of color to adult court will also disproportionately expose families of color to these negative consequences.

Furthermore, communities of color may suffer as incarceration has a detrimental impact not only on a youth’s family relationships but also on his or her standing in society (e.g., Bishop, 2000; Schindler & Arditti, 2001). As mentioned previously, research indicates that being transferred to adult court may increase recidivism (Bishop et al., 1996), suggesting that further crime may occur in the communities to which transferred youth return after adjudication. Additionally, youth who are convicted in adult court may lose their right to vote and may experience a

reduction in their potential earnings and employment opportunities (Bishop & Frazier, 2000; Schindler & Arditti, 2001).

Though the issue of disenfranchisement is important for all transferred youth, it has particular implications for minority youth as “state disenfranchisement laws have a dramatically disproportionate racial impact” (Fellner & Mauer, 1998, p. 8). It is estimated that 1.4 million African American men are subject to felony disenfranchisement, reflecting a rate that is roughly seven times the national average (Fellner & Mauer, 1998; The Sentencing Project, 2006). Similarly, Latino/as also are more likely to be disenfranchised than the general population (Demeo & Ochoa, 2003). Thus, communities of color may experience reduced political power via the disproportionate disenfranchisement of their members.

Lastly, due to stricter federal guidelines established in the 1996 Welfare Reform Act, youth convicted of a felony drug offense face a lifetime prohibition from receiving cash assistance and food stamps (Allard, 2002). Like many other “get tough” policies, these welfare restrictions disproportionately disadvantage people of color – especially women and children (Allard, 2002). Taken together, the consequences of lessened political power, reduced economic support, social marginalization, and the potential for increased crime seem likely to weaken communities of incarcerated youth, and communities of color in particular.

Table 1. Guidelines for Future Research on Racial Disparities in Transfer

1. Improve data collection and analysis:
 - Attend to the reporting limitations inherent in the aggregation and disaggregation of data^{a,c}
 - Consider organizational characteristics^a
 - Collect and include data about youths’ family background^a
 - Incorporate data regarding youths’ demographics, offense history, past sentencing, incarceration location conditions, and disparate effects of new laws^b
 - Collect data across geographic areas^c
 - Examine intersections of race, class, and gender in transfer decision-making^c
2. Expand research designs:
 - Utilize qualitative as well as quantitative approaches^{a,c,e}
 - Employ multivariate models more sensitive to indirect effects^a
 - Include youth from multiple racial/ethnic groups^{a,c,e}
 - Investigate differences at the jurisdictional level^a
 - Account for sample selection bias^a
 - Examine how attitude, background, and social variables of youth may interact with race to affect justice outcomes^c
 - Explore the impact of social contexts and how these affect decision-making^{d,e}
3. Identify the mechanisms that perpetuate discrimination^d
4. Evaluate existing efforts to reduce certain racial disparities^c
5. Examine how formal methods of social control differ by race/ethnicity and include these differences in future research^d
6. Design research to investigate alternatives to secure confinement^c
7. Improve research on racial disparities in the entire juvenile justice system:
 - Examine the impact of race/ethnicity at multiple decision points^{a,d,e}
 - Consider the procedural structure of the justice system and the cumulative effects of race across stages and over time^d
 - Expand research areas to increase study of police interactions and correctional processing^{a,c}

^a Pope & Feyerherm (1995) ^b Schindler & Arditti (2001) ^c Pope, Lovell, & Hsia (2002)

^d Engen, Steen, & Bridges (2002) ^e Bortner, Zatz, & Hawkins (2000)

IMPLICATIONS

As the foregoing discussion reveals, racial disparities are an unfortunate reality in the juvenile justice system, particularly for youthful offenders tried in adult court. The disproportionate application of transfer to youth of color has implications both for future research as well as for policy-making.

With regard to future research, several decades' worth of academic study has resulted in the articulation of guidelines for further investigation of racial disparities. These guidelines are summarized in Table 1.

Of particular importance is the need to examine the cumulative effects of racial disparities over time by evaluating decision-making at various points in the processing of youthful offenders (Bortner et al., 2000; Engen et al., 2002; Pope & Feyerherm, 1995). Indeed, decision points including arrest, charging, referral, intake, detention, adjudication, sentencing, and placement offer many opportunities for youth of color to be treated differently than their white counterparts (e.g, see Bishop, 2006). Studies that investigate racial disparities at only one of these decision points may miss differential treatment that occurs at other points. Similarly, studies should examine multiple decision points to evaluate the cumulative effects of race as youth progress through the system (Bortner et al., 2000; Engen et al., 2002). In addition, future research should utilize multivariate models that are more sensitive to the indirect effects of race, as well as qualitative and mixed-methods approaches (Bortner et al., 2000; Pope & Feyerherm, 1995; Pope, Lovell, & Hsia, 2002). Finally,

Table 2. Guidelines for Transfer Policy-Making

1. Address the need for the juvenile justice system to reconsider the variables it uses in the decision-making process, and the implications of using those variables^a
2. Establish guidelines for waiving only the most severe youth to criminal court^b
3. Inform policy-makers about the detrimental consequences of placing youth in adult facilities^b
4. Allocate facilities for transferred youth that are distinct from adult facilities^b
5. Bolster needed services (e.g., mental health, education) in the juvenile justice system and decrease the number of transfers^b
6. Facilitate collaboration between needed service providers and correctional facilities to serve youth placed in adult institutions^b
7. Advocate for appropriate standards of care in facilities where youth are placed^b
8. Educate communities and juvenile justice programs about the issue of racial disparities^a
9. Develop assessment and monitoring procedures^a
10. Implement programs to eliminate racial bias where it is found to exist:
 - Train justice system staff to become sensitive to issues of race/ethnicity^a
 - Increase the representation of minority staff in the juvenile justice system^a
 - Promote dialogue and assessment regarding decision-making with regard to youth of color^a
 - Design a system incorporating checks and balances in the decision-making process^a
 - Evaluate the criteria used to make judicial decisions at each stage of the process^a
11. Promote policy establishing a comprehensive national research strategy^c
12. Emphasize funding for understudied minority groups^c
13. Focus policy at the local level^c
14. Make long-term investments in related research^c
15. Encourage a national symposium to facilitate dialogue and collaboration about racial disparities^c
16. Support joint efforts between researchers and practitioners^c

^a Pope & Feyerherm (1995) ^b Schindler & Arditti (2001)

^c Pope, Lovell, & Hsia (2002)

studies need to move beyond simple Black/white comparisons to include data on youth from multiple racial/ethnic backgrounds, as well as to consider intersections of race, class, and gender in transfer decision-making (Bortner, Zatz, & Hawkins, 2000).

Given these suggestions for future research, the next step in addressing racial disparities in transfer is to reform policies that govern this practice. Policy recommendations grounded in the academic research are summarized in Table 2.

Not surprisingly, several of these recommendations involve increasing policy-makers' awareness of the academic research documenting the existence of racial disparities in juvenile justice processing (Pope et al., 2002; Schindler & Arditti, 2001). Although "get tough" policies such as those that facilitate the trial of youth in adult court presumably are well-intentioned, as highlighted in this report, substantial empirical evidence reveals negative consequences of transfer both for youth in general and for youth of color in particular. Therefore, policies uninformed by academic research can have deleterious real-life consequences. Moreover, policy-makers also must examine the variables that are used in juvenile justice decision-making (Pope & Feyerherm, 1995), and pursue ways to improve service provision to those youth who are transferred to adult court (Schindler & Arditti, 2001).

CONCLUSION

This report has documented the negative consequences that accompany the practice of trying youthful offenders

as adults, both for youth in general and for youth of color in particular. Stemming from the "get tough" approach to crime control that characterized the 1980s and 1990s, transfer to adult court has many problematic outcomes. Indeed, overwhelming empirical evidence points to racial disparities in transfer, indicating that transfer is disproportionately applied to youth of color. This finding, coupled with the apparent failure of transfer to achieve either general or specific deterrence, suggests that changes are in order where transfer policy is concerned. Consequently, this report offers suggestions both for future research on racial disparities in transfer, as well as for transfer policy-making. Perhaps after the completion of more systematic research into the effects of race/ethnicity on transfer decision-making, and after the creation and adoption of more informed juvenile justice policies, in the coming years fewer youth will face the negative consequences of transfer to adult court.

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National Resolution on Trying & Sentencing Youth as Adults

¹ SEE FELD (1999) FOR A MORE STRUCTURAL EXPLANATION OF THE SHIFT TOWARD PUNITIVE POLICIES IN THE JUVENILE JUSTICE SYSTEM.

² FOR A THOROUGH OVERVIEW OF THE TRANSFORMATION OF THE JUVENILE COURT'S ORIENTATION FROM REHABILITATIVE TO PUNITIVE, READERS ARE ENCOURAGED TO SEE FELD (1993).

³ RESEARCH ALSO SUGGESTS THAT THE YOUTH WHO ARE TRANSFERRED TO ADULT COURT OFTEN ARE NOT SERIOUS, VIOLENT OFFENDERS (I.E., THE "WORST OF THE WORST") AS ONE MIGHT EXPECT (LANZA-KADUCE, FRAZIER, & BISHOP, 1999). SIMILARLY, THESE YOUTH ARE NOT NECESSARILY CONVICTED MORE FREQUENTLY THAN THEIR NON-TRANSFERRED PEERS, FURTHER SUGGESTING THAT TRANSFER IS NOT RESERVED FOR THE MOST EGREGIOUS OFFENDERS (JUSKIEWICZ, 2000). ALTHOUGH A DISCUSSION OF THESE ISSUES IS BEYOND THE SCOPE OF THIS REPORT, READERS ARE ENCOURAGED TO SEE BISHOP (2000), LANZA-KADUCE, FRAZIER, & BISHOP (1999), AND JUSKIEWICZ (2000) FOR MORE INFORMATION.

⁴ SEE BISHOP (2006) FOR A VERY RECENT REVIEW OF THE VARIOUS STAGES AT WHICH RACIAL DISPARITIES OCCUR.

⁵ A THOROUGH DISCUSSION OF THESE COMPETING EXPLANATIONS IS BEYOND THE SCOPE OF THIS REPORT. FOR MORE INFORMATION, INTERESTED READERS SHOULD REVIEW ENGEN, STEEN, AND BRIDGES (2002).

WHEREAS policies and practices providing "adult time for adult crime" are often harmful-rather than helpful-to community safety, as evidenced by research demonstrating that prosecuting juveniles in the adult criminal system increases rather decreases the likelihood that they will re-offend, as compared with handling them in the juvenile justice system;

WHEREAS, 75% of youth under age 18 sent to adult facilities will be released by the age of 22 and most will have been denied adequate education, mental health treatment, drug treatment and employment skills training;

WHEREAS trying and sentencing youth in adult court is not reserved for the most serious, chronic and violent juvenile offenders, but inappropriately includes more than half of the cases involving only nonviolent drug and property crimes;

WHEREAS there exist serious human rights concerns, as well as physical and emotional health concerns, when youth held in adult facilities are sexually assaulted five times more often, commit suicide eight times more often, and are assaulted with a weapon 50% more often than youth held in juvenile facilities;

WHEREAS there exist serious civil rights concerns given that youth of color are disproportionately represented in cases sent to adult court-as shown in 18 of the largest court jurisdictions where 82% of juvenile cases filed in adult court involved youth of color;

WHEREAS research continues to establish and reaffirm that the adolescent brain-particularly the part that makes judgments, reins in impulsive behavior and engages in moral and ethical reasoning-is not fully developed until age 19 or 20, laying the foundation for laws that prohibit youth under age 18 from taking on major adult responsibilities such as voting, jury duty and military service;

WHEREAS the use of statutes or procedures that automatically exclude youth from the juvenile court without an assessment of individual circumstances deny them basic fairness;

WHEREAS more than 250,000 offenders under the age of 18 are sent each year to adult criminal courts across the United States, including an estimated 218,000 excluded from juvenile court jurisdiction, not because of the severity of their crimes, nor because they are habitual violent offenders, but because states have lowered the age of adulthood in the criminal code;

BE IT RESOLVED that the Campaign 4 Youth Justice and signers of this resolution will work to build broad acceptance for reform, as well as to create reform, in state policies and practices, so as to significantly reduce the number of youth sent to adult criminal court and to ensure that young offenders are appropriately adjudicated in ways that enhance community safety and vitality.

To sign on to this resolution or for more information about the campaign please contact the Campaign 4 Youth Justice at info@campaign4youthjustice.org



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CAMPAIGN FOR

YOUTH  JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR