

Stemming the Flow of Youth Into Adult Systems

Antoinette Davis, Angela Irvine, and Jason Ziedenberg

“We are not looking to move our older youth out of our system. We think we can provide the services and supervision they need to keep them out of the adult system.”

—Barry Holman, former Deputy Director, Department of Youth Rehabilitation Services

As the “tough-on-crime” wave swept the country, nearly every US state changed its laws to make it easier to try young people as adults. States developed judicial waivers, expanded prosecutorial discretion, and changed sentencing guidelines leading to automatic or statutory transfers from juvenile to adult court.

The subsequent research that emerged showed that young people tried as adults are more likely to reoffendⁱ; if they end up in the adult rather than the juvenile justice system, they are more likely to experience physical and emotional harm.ⁱⁱ Moreover,

youth of color are more likely to be transferred and subsequently incarcerated in adult facilities than their white peers.ⁱⁱⁱ

Alarm bells went off in the juvenile justice field when California experienced a spike in the number of youth transferred by prosecutors to the adult system as the Division of Juvenile Justice began downsizing in 1997—a California trend that has not yet abated. When Texas saw a similar spike in youth being transferred and legislators tried to move older youth to adult prisons, a serious question was raised for the field: Can juvenile justice systems reduce incarceration while avoiding juveniles being tried as adults?

The National Council on Crime and Delinquency (NCCD) recently completed a set of interviews, focus groups, and meetings with juvenile justice stakeholders across the country.^{iv} Among the 140 individuals who were part of the review—including 95 juvenile department heads, prosecutors, judges, and public defenders—virtually no one supported transferring youth to the adult corrections system as a means to solve their juvenile correctional challenges.

Through these conversations, NCCD learned the following information.



Some States Are Reducing Youth Incarceration and Seeing Fewer Youth Transferred

Stakeholders from Connecticut, Illinois, Massachusetts, Mississippi, Oregon, Ohio, and Texas reported overall fewer young people in juvenile facilities and fewer youth entering the adult system.

Disparities in the Use of Transfers Exist Among Counties

In the states where transfers may have surged, wide variations were shown among counties. Small communities transferred far more youth to the adult system than communities several times as large, and neighboring counties with similar characteristics reported a dramatic increase in the number of youth transferred to the adult system. In California, Los Angeles County, which is seven times the size of Sacramento County, sent fewer youth to the adult system than Sacramento.^v In Texas, Hidalgo County transferred one youth to the adult system via the certification process. Neighboring Cameron County—about half the size of Hidalgo and representing less than 2% of the population of Texas—certified 30 youth, or nearly 20% of the youth certified in the entire state in 2011.^{vi} The preferences of local courts or court actors (such as district attorneys and judges) were reported as driving the trends in certain parts of the country.

Transferred Youth Can Be Served in Existing Probation and Juvenile Justice Systems

Some of the youth who were tried in the adult system were ultimately sentenced only to probation, raising questions about whether young people's cases were serious enough to warrant being transferred in the first place. Those youth who were transferred and incarcerated in the adult system had characteristics similar to youth who could have been served by juvenile departments. These juvenile justice systems have the capacity, skill, and knowledge to house youth with longer sentences. In a majority of the states, juvenile departments can have youth under their custody past age 20, and five states can have young people in their custody until age 23 or older.^{vii} The Oregon Youth Authority and the Department of Youth Rehabilitation Services in Washington, DC, are examples of two juvenile justice systems that serve young adults well into their 20s and have reported good outcomes serving these populations.

Systems Can Raise Juvenile Court Jurisdiction Age While Keeping Number of Transfers to Adult Court Low

Several states automatically transfer young people to the adult system at the age of 16 or 17. During the study period, Illinois and Massachusetts raised the age of juvenile court jurisdiction to 18, thereby limiting the number of youth served by the adult courts, jails, and prisons. Both states also integrated reforms to their juvenile justice systems as they curbed transfer. When the Illinois Juvenile Justice Commission recommended closing more juvenile facilities and raising the age of juvenile court jurisdiction to include 18-year-olds, the state body said, “the overall reduction in juvenile crime and increased diversion options have created a smaller and more resilient juvenile justice system. Appropriately resourced, it will be able to absorb the second phase of raising the age while increasing public safety.”^{viii}

During the interviews, focus groups, and meetings, NCCD heard the following specific recommendations to keep youth out of the adult system.

Narrow Transfer Statutes to Apply Only to Youth Who Engage in the Most Serious Behavior

In rare cases, young people may be convicted by a court set on retribution. However, these few cases should not drive system design. During the study period, Ohio and Colorado took significant steps to narrow their transfer statutes to focus on youth engaged in the most serious behavior. States should follow the lead of the US Department of Justice Defending Childhood initiative recommendation: “Whenever possible, prosecute young offenders in the juvenile justice system instead of transferring their cases to adult courts. No juvenile offender should be viewed or treated as an adult.”



Develop Fiscal Incentives—or Disincentives—to Discourage Transfer of Youth to Adult System

In a number of states, NCCD heard interest in developing fiscal incentives or disincentives to drive reductions in youth transfers to the adult courts. In California, the Legislative Analyst’s Office, a state body responsible for developing policy recommendations, suggested “that the legislature establish an incentive program to reward counties who successfully prevent an increase in the number of juveniles sent to state prison. . . . Our proposal would award counties a share of the state’s savings for each juvenile offender it successfully diverts from state prison.”^{ix} While these incentives have not yet been put in place, advocates continue to promote them.

Track and Review Local Juvenile Outcomes With Local Stakeholders

RECLAIM Ohio counties and Wayne County, Michigan, were able to successfully promote their juvenile justice system reforms and prevent transfers to the adult court. These local juvenile departments tracked the outcomes of youth they served, shared the outcomes with judges and district attorneys involved in the transfer decision, and built support to use existing juvenile system options.

This publication is part of an eight-part series of information sheets and reports developed from a national study on deincarceration conducted by the National Council on Crime and Delinquency. The complete series can be found [here](#).