

CHILDHOOD ON TRIAL

The Failure of Trying & Sentencing
Youth in Adult Criminal Court

Coalition for Juvenile Justice

This report and its release have been supported by a grant from the John D. and Catherine T. MacArthur Foundation.

© Copyright 2005 by Coalition for Juvenile Justice, Washington, DC

All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system without permission in writing from the publisher.

Dedication

With heartfelt remembrance and in gratitude for her inspiring work on behalf of children and families, the Coalition for Juvenile Justice dedicates this report to Jacque Steiner (1929-2003).

Acknowledgments

The Coalition for Juvenile Justice, its National Steering Committee and its member State Advisory Groups would like to thank the many individuals who contributed to this report. First and foremost among them are the many practitioners, court professionals and advocates, youth and families, researchers and journalists from all across the United States, who opened their homes and lives to us, who have raised tough questions and who have sparked active concern about our nation's widespread practice of sending young offenders into the adult criminal court. And, who have not given up hope.

The dedication and guidance of the report's advisory panel—setting the work in motion, meeting long distance by telephone, as well as reviewing and providing feedback on numerous drafts—was instrumental in shaping the work and in highlighting both the need for reform and examples of current reforms underway. The advisors were: Rodney Cook, Chair, and Lael Chester, Betsy Clarke, John Dewese, Mark Ferrante, Janet Garcia, Paul Kiltinen, Kathryn Landreth, Patricia Puritz and Marc Schindler.

The report was also enhanced by the review and commentary of expert researchers: Donna Bishop, Professor in the College of Criminal Justice at Northeastern University, Jeffrey A. Butts, Director of the Program on Youth Justice at the Urban Institute and Jeffrey Fagan, Professor of Law and Public Health at Columbia University.

Special recognition and thanks are given to Laurie Garduque, Program Director for Research at the John D. and Catherine T. MacArthur Foundation, for her ongoing support of critical analysis and discussion of juvenile justice policy and practice among researchers, advocates and stakeholders. This report would not have been possible without the generous support of the MacArthur Foundation.

Our principal author, Jill Wolfson, accomplished a tremendous amount in a relatively brief and engaging document—filled with poignant examples, well-informed analyses and a comprehensive survey of facts and statistics. We are indebted to her for such tremendous work. The report cover, as well as the text and inside graphics, were artfully designed by Michael A. Hurlocker. Nancy Gannon Hornberger was pleased to serve as the project director and editor. We also thank the other staff of the Coalition for Juvenile Justice for their invaluable assistance.

The conclusions reached are exclusively those of the Coalition for Juvenile Justice.

A Letter from CJJ Leaders

Dear Governors, state policy makers, justice professionals, youth advocates and fellow concerned citizens:

Today, following a decade of sweeping change in state laws regarding whether juvenile offenders shall be tried and sentenced in juvenile versus adult criminal court, there is a growing body of evidence pointing to the clear failure of “adult time for adult crime” policies and practices.

Turning the clock back to the 1970s and 80s, traditionally, a juvenile court judge would have made the life-altering decision to send a youth offender to adult court, after rehabilitative and public safety measures had been exhausted and following a full assessment of the young offender’s circumstances and history. However, such judicial oversight has been dramatically stripped away in most states.

Each year now, a quarter million youth under the age of 18 years are tried and sentenced in adult criminal court—few of whom receive any individualized assessment before the decision is made to treat them as if they are adults. Some of them will be acquitted, many will languish without educational and counseling services, most will be subjected to harsh treatment and cruel conditions of confinement, and almost all will see their future prospects for school, employment and productive contributions to society completely squandered.

Thirteen states have discarded the traditional age of 18 as the beginning of adulthood and the end of juvenile court jurisdiction. In these states, approximately 218,000 youth under the age of 18 are charged as adults for any offense, even the most minor. In addition, youth are automatically excluded from juvenile court jurisdiction for certain crimes in 29 states. In 15 states, prosecutors hold sole discretion to move juvenile cases directly into adult court.

While intending to be “tough” on juvenile crime, these states have forgotten to be “smart” in their approach. Mounting evidence shows that public safety is harmed rather than helped by the widespread practice of sending teens into adult court. In fact, research—as cited in this report—demonstrates that prosecuting juveniles in the adult criminal system increases rather than decreases the likelihood that they will re-

offend, as compared with handling these same offenders in the juvenile system.

It is with great hope for change that we submit to you the Coalition for Juvenile Justice's report: *Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court*. We strongly encourage you to examine this report, to use it to inform others and to strive for changes in state policies and practices regarding teens in adult court—so that a decade from now we will have significantly reduced the number of youth sent to adult criminal court, at the same time ensuring that young offenders are appropriately adjudicated in ways that enhance community safety and vitality.

Respectfully,



Rodney Cook, Chair, Report Advisory Panel



Ken Schatz, 2004 National Chair



Vicki Blankenship, 2005 National Chair

CJJ National Steering Committee (2004-2005)

Vicki Blankenship

2005 National Chair
Fairbanks, Alaska

Ken Schatz

2004 National Chair
2005 Immediate Past Chair
Burlington, Vermont

John Dewese

2004 Immediate Past Chair
Lancaster, South Carolina

Paul Lawrence

2004 Northeast Regional Chair
2005 Vice-Chair/Chair-Elect
Goffstown, New Hampshire

Anne Christensen

2004 Treasurer/Secretary
Madelia, Minnesota

Michael Mahoney

2005 Treasurer/Secretary
Chicago, Illinois

LaLita Ashley

Ethnic and Cultural Diversity
Chair
Aiken, South Carolina

Nicole Young

Youth Representative
Reno, Nevada

Michael Mayer

Midwest Regional Chair
Eagan, Minnesota

Susan Kamp

2005 Northeast Regional Chair
South Burlington, Vermont

Robin Jenkins

Southern Regional Chair
Fayetteville, North Carolina

David Schmidt

Western Regional Chair
Albuquerque, New Mexico

David Doi

Executive Director
Washington, District of
Columbia

Panel of Advisors

Rodney Cook

Chair of the Advisory Panel
 Past CJJ Chair (2002)
 Director, Office for Children and
 Families
 Oregon City, Oregon

Lael E. H. Chester

Executive Director
 Citizens for Juvenile Justice
 Boston, Massachusetts

Betsy Clarke

President
 The Juvenile Justice Initiative
 Evanston, Illinois

John Dewese

Past CJJ Chair (2003)
 Area Supervisor III, South
 Carolina Vocational Rehabilitation
 Department
 West Columbia, South Carolina

Mark J. Ferrante

Juvenile Justice Specialist
 New Jersey Juvenile Justice
 Commission
 Trenton, New Jersey

Janet Garcia

Executive Director
 Tumbleweed Center for Youth
 Development
 Phoenix, Arizona

Paul J. Kiltinen

Dodge County Attorney
 Dodge County Courthouse
 Mantorville, Minnesota

Kathryn Landreth

Attorney
 Former United States Attorney,
 District of Nevada
 Las Vegas, Nevada

Patricia Puritz

Executive Director
 National Juvenile Defender
 Center
 Washington, District of
 Columbia

Marc Schindler

Staff Attorney
 Youth Law Center
 Washington, District of
 Columbia

Please note: Places of employment are listed for identification purposes only and are not meant as endorsements of this report or the Coalition for Juvenile Justice.

The Coalition for Juvenile Justice

The Coalition for Juvenile Justice (CJJ) is a national nonprofit association comprising governor-appointed advisory groups on juvenile justice from the U.S. states, territories and the District of Columbia. CJJ is based in Washington, D.C., yet has nationwide reach. Beginning in 2005, CJJ is also the proud host and sponsor of the growing National Network of State Juvenile Justice Collaborations.

CJJ's principal mission is to **build safe communities one child at a time** by ensuring that all children and families are treated fairly and given the resources and support to be positive and productive contributors to society.

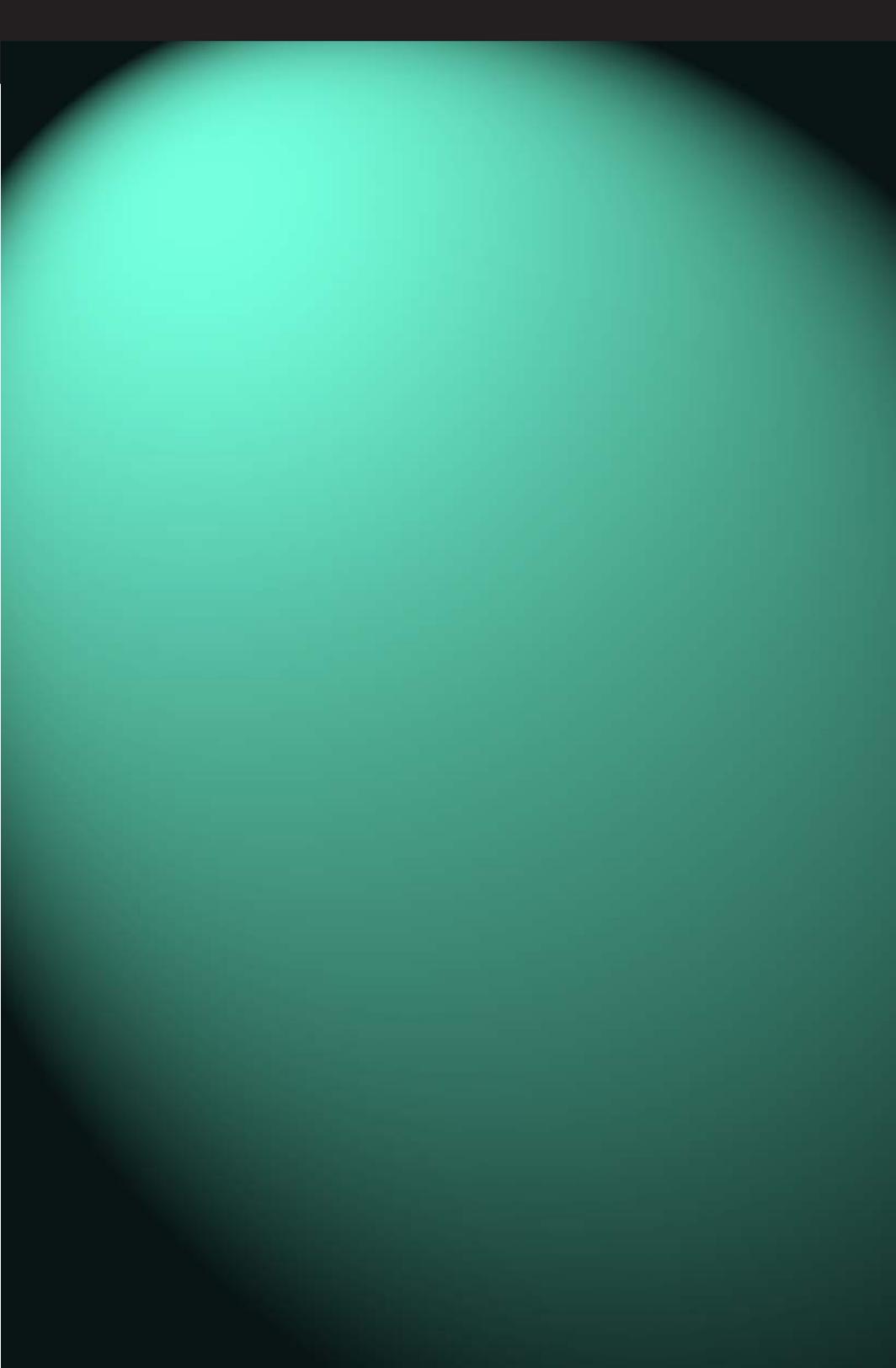
- Promoting the best policies and practices in delinquency reduction and prevention.
- Educating the public and advising policy makers on urgent issues in juvenile justice.
- Assisting U.S. states and territories to meet the core requirements of the Federal Juvenile Justice and Delinquency Prevention Act.
- Instituting effective and needed system reforms to improve the quality, cultural sensitivity and scope of community- and court-based services for children, youth and families.
- Linking national, state and local advocates and organizations together, across many disciplines and circumstances, to pursue a common mission.

Table of Contents

Introduction: One Teen’s Story	1
Chapter 1: The Changing Justice System	5
The Historical Perspective	7
Chapter 2: Pathways to Adult Court: A Legal Primer	13
The Traditional Route: Judicial Waiver	13
Power to the Prosecutor: Direct File	14
Eliminating Individualized Justice: Statutory Exclusion	17
Chapter 3: The Impact on Society	23
Are our Neighborhoods Safer?	23
Are the Worst of the Worst in Adult Court?	28
Is it Cost-effective?	28
Are Youth Treated Fairly?	31
The Impact on One Youth	34
Factoring in Adolescent Development	36
Chapter 4: Attempts at Reform	41
Blended Sentencing	42
Juvenile Services in Adult Facilities	45
Chapter 5: Lessons in Reform	49
The Legislative Route	50
Connecticut	50
New Hampshire	50
Reforming Ineffective, Unjust, and Dangerous Policies	54
Illinois	54
Wisconsin	57
District of Columbia	59
Florida	59
Vermont	60

Table of Contents

Gathering the Stakeholders.....	61
Arizona	61
Georgia	62
Michigan	63
Advocates as Watchdogs	64
California	64
Maryland	65
Rebuilding the Juvenile Justice System	66
Pennsylvania	66
New York	67
Conclusion	71
Endnotes	75
Bibliography	85
Reports from the Coalition for Juvenile Justice	91
The Writer	95



INTRODUCTION: ONE TEEN'S STORY

Across the United States, headlines are made when youth are charged with murder and have their cases filed in the adult criminal court—leaving the public with the impression that most youth who are certified for trial in adult court are hardened and homicidal. Yet, in reality, the typical case is quite different: more than half the cases of youth sent into the adult criminal court are charged with nonviolent drug or property offenses.¹

The story of Daniel Carter involves a death and is, therefore, not typical. Yet, it accentuates wrongful action taken against a teen and family already struggling to make sense of a violent act and tremendous loss, along with the long term ramifications of such injustice.

At age 15 and suffering from attention deficit hyperactivity disorder, Daniel Carter had been getting into scrapes that would test any mother's patience, especially a single mom who worked long hours as a respiratory therapist. Everything had become an issue between them: his poor grades, his staying out too late, his attitude and his friends. His mother, Cindy, was especially concerned when she discovered that Daniel and a friend were planning to sell marijuana. One night, exasperated with the boy's behavior and feeling like she was losing control over him, Cindy phoned her brother Jack and asked for help in disciplining the boy.

It was a call that would forever shatter life in the Carter home in Beulah, a rural area of the Florida panhandle.

Exactly what happened next will never be known for sure, but everyone seems to agree on some basic facts. On a Tuesday night, Daniel's uncle, Jack Carter, a six-foot tall bodybuilder and black belt in Kung fu, possibly inebriated, charged into the boy's bedroom. There was shouting and the crash of objects being hurled to the floor. Cindy said that she could hear a couple of slaps and "my brother was shouting at him very loudly, as brutal a tongue-lashing as I have ever heard." As Cindy approached the bedroom door, she heard her brother threaten to castrate Daniel, some scuffling and then a scream. It was Daniel's voice: "Mommy, mommy, Uncle Jack's dying."

Cindy Carter rushed into the bedroom and tried to stop the flow of blood coming from a four-inch knife wound in her brother's neck, but her hospital experience told her that the gash was fatal. Whispering comforting words to her brother, she held him as he bled to death.

Later, when Daniel Carter was arrested, he told police that he had picked up the antique knife to defend himself against a man in a rage. "I just wanted him to stop, but he kept coming."

The prosecutor painted a different picture. He argued that the troubled teenager had planned to attack his uncle as soon as he had showed up at the home. And even if Daniel had initially picked up the knife to protect himself, he had taken his right of self-defense too far.

"He did not need to inflict that fatal blow," said assistant state attorney, David Rimmer. "After he had cuts on his arms and blood dripping down his face, Jack Carter was a vanquished foe. He was at the mercy of Daniel."²

In Florida, if a 15-year-old is charged with murder, the prosecutor can send him automatically into the adult system without judicial review. Rimmer had been involved previously in a highly publicized case when he prosecuted two other Panhandle boys, Alex and Derek King, for the murder of their father.³ Now, he was going to prosecute Daniel Carter on the most serious charge possible: premeditated murder. According to Florida law, if convicted, the lanky, sandy-haired boy would receive a mandatory sentence of life without parole.

That devastating night, Cindy Carter lost her brother and was in danger of also losing her son. She discovered what so many other parents and youth have discovered: In America's justice system, a 15-year-

old can be a boy on Tuesday and suddenly, on Wednesday, be considered a fully grown man.

Instead of celebrating a court that endeavors to protect our communities by rehabilitating youth, a wave of legislative change has threatened to dismantle it.

CHAPTER

1

THE CHANGING JUSTICE SYSTEM

A little more than 100 years ago, the country's first juvenile court was created in Chicago. It represented an historic change: a judiciary based on the premise that public safety is best served by an emphasis on rehabilitation, rather than punishment and incarceration. The juvenile court recognized that youth are not finished products and could benefit greatly from education, health and mental health treatment, vocational direction and other pro-social interventions. It recognized that children and teens are malleable and easily influenced. As a result, the court developed youth-only facilities where youngsters would not mingle with adult prisoners.

A century later, instead of celebrating a court that endeavors to protect our communities by rehabilitating youth, a wave of legislative change has threatened to dismantle it. Since 1991, almost every state has eliminated important gateways that youth have had to pass through before being deemed adults in the eyes of the law.⁴ The laws have different names: Georgia's SB440, California's Proposition 21, New York's Juvenile Offender Law, Oregon's Ballot Measure 11 and Massachusetts' Juvenile Justice Reform Act. Each law works in a slightly different way, yet the end result is essentially the same.

These laws redefine the boundary between childhood and adulthood in ways that have little parallel in other parts of international,

federal, state or local law. Around the world, age 18 is the most frequently drawn line of demarcation between child and adult.⁵ Across the country, youth must be 18 to vote; in many states, they cannot

The pathways from the juvenile justice system to the adult criminal justice system have become wider, shorter and more prevalent.

drive until they are 16 and they must be 21 to purchase alcohol. Yet, legislation allows youth who are too young to drive, get married or join the military—as young as age ten in some cases—to be tried, convicted, sentenced and imprisoned as if they are adults.

Daniel Carter is just one example of the burgeoning number of youth experiencing the impact. The public has become increasingly more familiar with the most shocking and dramatic of the stories, where someone has unfortunately been killed. The media closely followed the case of 12-year-old Lionel Tate who was sentenced to life in prison without parole for killing another child. The country read about Nathaniel Brazill who was 13 years old when he fatally shot a teacher and was sentenced as an adult to spend the next 28 years in prison. But while highly-publicized and memorable, these cases only hint at the astounding frequency and myriad lesser crimes for which youth are being swept, without appropriate judicial review and individualized assessment, into the adult criminal justice system—youth that the public hears little or nothing about.

In Michigan, a 14-year-old girl named Christie Eve Clore, with braces on her teeth, was sentenced to a year in prison, surrounded by adult criminals, for setting a neighborhood fire in which no one was physically hurt.⁶ In California, a 16-year-old named Michael Duc Ta—whose only previous contact with police was as a protective measure when he had suffered a beating by his father—is serving a sentence of 35 years to life for driving a car from which shots were fired, even though no one was hurt; this is a stiffer sentence than an adult might get for premeditated murder.⁷

Even more egregious, in New York, Vermont and other states, thousands upon thousands of 16 and 17-year-olds are being prosecuted in the adult system, not just for violent crimes like murder and rape, but also for nonviolent crimes, such as burglary and drug offenses. In these states, even a misdemeanor, such as possession of a small amount of marijuana, can mean that a youth winds up in adult court. Across the country, nearly one in five offenders under age 18—the vast majority of whom have committed nonviolent offenses—is prosecuted as an adult.⁸

- Each year, as many as 218,000 youth under age 18 are automatically excluded from the juvenile justice system—not because of the severity of their crimes and not because they are violent and habitual offenders—but solely because of their age.⁹ Thirteen states have discarded the traditional age of 18 and established a lower age of adulthood for youth who commit *any* crime, major or minor, significant or insignificant.¹⁰ The majorities of these 16- or 17-year-olds have committed nothing more serious than minor property or drug offenses, but are sent into the adult system simply because they are legally defined as adults under state law.
- Twenty-nine states automatically exclude certain youth and certain crimes (ranging from serious violent crimes to lesser offenses, such as drug charges) from juvenile court jurisdiction. Twenty-two states require or allow adult prosecution of juveniles accused of property offenses, such as burglary.¹¹
- As in Florida, 15 states have *direct file*¹² laws, which give the prosecutor discretion to bypass the juvenile court judge and move juvenile cases directly into adult court.¹³
- Thirty-four states have enacted “*once an adult, always an adult*” statutes, meaning that a youth who is convicted in adult court will typically remain in adult court, no matter how small and insignificant the subsequent offense.¹⁴

THE HISTORICAL PERSPECTIVE

Daniel Carter, like so many other youth in the adult court, came to the attention of the law during a period of time when the pathways from the juvenile justice system to the adult criminal justice system have become wider, shorter and more prevalent. Several factors brought about this movement. Between 1984 and 1994, arrest rates for juve-

niles charged with violent offenses jumped 78 percent.¹⁵ Particularly alarming to the public was a spike in two of the most heinous crimes: murder and aggravated assault. Media images of shocking offenses and seemingly unrepentant teenagers, along with alarming predictions by criminologists, convinced the public that violent juvenile crime would soon spiral out of control, infecting not just urban areas but small towns and suburbs.

Politicians—some motivated by elections and others genuinely concerned about preventing crime—acted promptly, introducing a raft of “*adult time for adult crime*” legislation. Some legislators promoted their bills by denouncing the rehabilitation in the juvenile court and deeming it a waste of resources on the new breed of *super predators* that were beyond help and hope.¹⁶ Others faulted the juvenile system as being too lenient, lacking the legal muscle to hold teenagers accountable and unable to apply appropriately harsh sentences.

As it happened, the warnings about *super predators* were overstated. Between 1994 and 2000, the overall juvenile arrest rate declined 13 percent with even larger decreases in violent offenses. By 2000, murder

Youth in the Adult System: the Numbers

- An estimated 7,500 cases are judicially waived to criminal court each year.*
- 27,000 are sent by direct file by a prosecutor.**
- 218,000 completely bypass the juvenile system and are sent via legislation that sets a lower age of adulthood than age 18.***

*Source: Adapted from Puzanchera, C., Stahl A., Finnegan T., Tierney, N. and Snyder H., Juvenile Court Statistics 1999. Washington DC: Office of Juvenile Justice and Delinquency Prevention, 2003 <http://ncjj.servehttp.com/NCJJWebsite/faq/transfertocourt.htm>

**Source: H. Snyder and M. Sickmund, Juvenile Offenders and Victims: 1999 National Report. Pittsburgh, PA: National Center for Juvenile Justice, 1999

***Source: H. Snyder and M. Sickmund, Juvenile Offenders and Victims: 1999 National Report. Pittsburgh, PA: National Center for Juvenile Justice, 1999

and robbery arrest rates for juveniles reached their lowest levels in 20 years.¹⁷ Based on FBI statistics, 88 percent of U.S. counties reported no juvenile murderers in 1997; more than 25 percent of homicides by juveniles took place in just eight counties, mainly large urban areas.¹⁸

As criminologist, Alfred Blumstein, and others have pointed out, the large sudden spike in juvenile violence in the mid-1980s can be attributed to the development of drug markets, especially crack cocaine, in a handful of urban areas. At the same time, as more guns came onto the streets, the number of deaths soared.¹⁹ The decline in youth violence has been frequently attributed to a combination of interwoven social forces and policy innovations: the influence of a stronger economy; growing intolerance for violent behavior; a declining illicit drug market, the growth of community policing and a concerted effort to keep guns out of the hands of juveniles; and the leadership of community groups that provide mediation between battling gangs.²⁰

Despite these encouraging crime statistics, there has been little impact on legislation, policy and the treatment of young offenders across the country. Currently, more than 4,000 youth under the age of 18 are serving sentences in adult state prisons.²¹ If the founders of the Juvenile Court were around today, what would they conclude about the system that they helped usher in?

They would hear this description of an adult jail where up to two dozen youth are housed every day:

For large parts of the day, youths are kept in their 6-foot by 9-foot cells or are confined to the cellblock and a small, dreary room... For a period, out of sheer desperation for attention, juveniles were nicking their wrists with the appearance of attempted suicide.²²

They would listen to the words of a community activist:

People think there must be some kind of education for these kids in prison. But the only thing they learn is how to fight, how to get raped, how to curse and use dope, how to spend time in isolation for talking back, how to lose their humanity, how to get more and more angry.²³

And hear the lament of Daniel Carter's mother:

He has been beaten by other inmates, and refused medical and dental care. If he expresses the desire to die, he is strapped to a chair with a lead apron. Why is this happening to a child who hasn't even been convicted of any crime?

Hearing this choir of voices, we have to conclude that, in 21st Century America, the line that was established 100 years ago between youth who commit crimes and hardened adult criminals; between youth who can be pointed in the direction of becoming law-abiding citizens and youth that society has given up on, has become seriously blurred.

“Not every jurisdiction is filled with enlightened decision makers and prosecutors who have enough experience to know which youth are truly unfit for juvenile court.”

—Kurt Kumli, deputy district attorney and head of the juvenile division in Santa Clara County (CA)

CHAPTER 2

PATHWAYS TO ADULT COURT: A LEGAL PRIMER

There are three fundamental ways in which a youth can wind up in the adult legal system: judicial waiver; direct file, and statutory exclusion.

THE TRADITIONAL ROUTE: JUDICIAL WAIVER

There have always been legal provisions to send youth into adult court. Traditionally, this power has rested with the juvenile court judge who typically reserves the decision for the oldest and most hardened teenagers. A hearing is set to determine if the case warrants such a move. Bound by a Supreme Court ruling,²⁴ the judge takes many complex, interwoven issues into consideration: How old is the youth? What is the youth's previous record and history with the court? What is the juvenile's mental and physical maturity? How serious was the offense? Was it committed in an aggressive, violent, premeditated or willful manner? What current public safety risk does the youth present? What have been the previous attempts at rehabilitation and how did the youth respond? Is there a program or facility available that could assure public safety while also offering treatment?²⁵

Types of Judicial Waiver

Discretionary Waiver: A juvenile court judge may waive jurisdiction and transfer the case to criminal court, typically based on factors outlined in the *Kent v. United States* 1996 Supreme Court decision.

Mandatory Waiver: A juvenile court judge must waive jurisdiction for the case to the adult criminal court if probable cause exists that the juvenile committed the alleged offense.

Presumptive Waiver: The burden of proof concerning a transfer decision is shifted from the state to the juvenile. This form of waiver requires that certain categories of juvenile offenders be waived to criminal court, unless they can prove that they are suited to juvenile rehabilitation.

Source: [State Legislative Responses to Violent Juvenile Crime: 1996-97 Update](http://www.ojjdp.ncjrs.org/jjbulletin/9811/jurisdictional.html). www.ojjdp.ncjrs.org/jjbulletin/9811/jurisdictional.html

Media accounts and tough-on-crime legislators have often charged that juvenile court judges are legally unable and resistant to sending youth into the adult system. However, this is not the case. Forty-six states allow judicial waiver of youth—as young as ten in some cases.²⁶ Prominent studies from South Carolina and Utah indicate that juvenile court judges do not reject appropriate requests, but rather approve eight of every ten transfer requests made by prosecutors.²⁷

What has changed is that now the vast majority of youth who come into the adult system have been sent there *without* individualized judicial review and oversight. More often than not, legislation restricts or, in some cases, eliminates the role of the judge. An estimated 7,500 cases are judicially waived to criminal court each year,²⁸ representing only 15 percent of all decisions made to prosecute juveniles as adults.²⁹

POWER TO THE PROSECUTOR RATHER THAN THE JUDGE: DIRECT FILE

In 1981, direct file legislation was initiated in Florida. Following in that state's footsteps, today in 15 states, the prosecutor—rather than the judge—has the primary power to decide whether a case will be

heard in juvenile or adult court.³⁰ In 1996, an estimated 27,000 juveniles, such as Daniel Carter, were proceeded against as adults as a result of prosecutors' decisions.³¹ At its peak in 1995, Florida alone reported 5,350 such transfers, more than half of them for property offenses that involved no violence.³² In 1999-2000, the number declined to 3,297 youth, but Florida still tries more juveniles as if they are adults than most other states with direct file.³³ Currently, there are numerous 17-year-olds serving upwards of two years in the state's adult correctional facilities for nonviolent crimes, such as selling marijuana and possession of cocaine.³⁴

Under direct file, prosecutors generally are not required to follow the process and procedures called for in *Kent v. United States*. Proponents say that automatically sending certain youth into the adult system expedites justice by eliminating costly and time-consuming judicial hearings. Another rationale for bypassing the juvenile judge has been to ensure that serious, habitual offenders are given lengthier terms and more severe punishment than assumed to be available in the juvenile system. Some have argued that eliminating a lengthy hearing process can save both time and limited juvenile court resources—resources that could be better put to use for low-level and first-time offenders who stand a better chance of being rehabilitated.

A range of organizations, such as the National District Attorneys Association (NDAA), law enforcement and crime victims' groups, has supported relatively broad use of direct file.

However, critics, such as Human Rights Watch, caution that prosecutors can potentially misuse their power in order to portray themselves as servants of the public good by overcharging youth in order to secure automatic transfers to criminal court.³⁵ In one Texas study, for example, district attorneys in Harris County, where Houston is located, sent youth into the adult system in far greater numbers than any other urban county in the state.³⁶

Even some prosecutors take heed. Deputy district attorney, Kurt Kumli, head of the juvenile division in Santa Clara County, California, agrees that the use of direct file can be a powerful mechanism to cut down on what he calls "the cottage industry" of attorneys, expert witnesses and psychologists that frequently surround hearings to determine if a youth is fit for transfer to adult court. This is especially true in jurisdictions where prosecutors and judges have an established history of concurring about which youth should be tried in adult court.

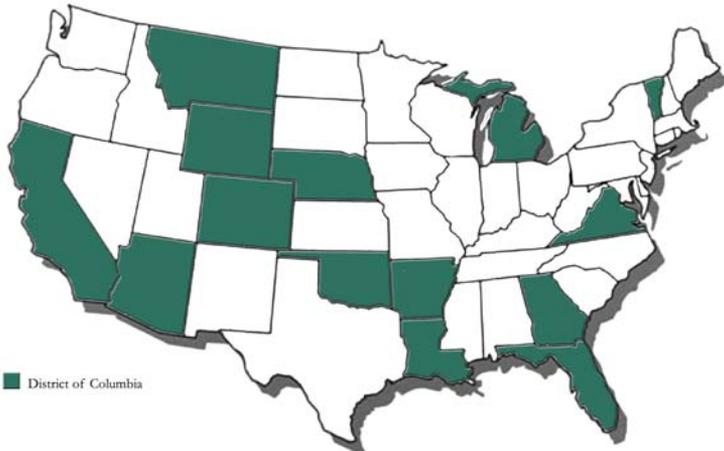
Yet, Kumli noted, the process is also fraught with potential for abuse, both unintended and intended. “Not every jurisdiction is filled with enlightened decision makers and prosecutors who have enough experience to know which youth are truly unfit for juvenile court,” Kumli warned. “Direct file is very subject to political whim and overuse.”

In Vermont, for example, statutes allow the state to direct file 16 and 17 year-olds on adult criminal charges, regardless of whether the alleged act is a misdemeanor or felony. In practice, approximately 80 percent of Vermont youth, aged 16 and older, have their cases charged and disposed of in adult courts. Vermont also employs a “reverse waiver” option that allows the court to transfer a criminal charge brought against a juvenile from the adult court’s jurisdiction to that of the juvenile court. This occurs rarely—only about three percent of the time.³⁷

“Under the juvenile system, a 16-year-old would have a ticket to services—a social worker, mental health treatment, a foster home, a range of home, school and community-based services,” explained Chris-

States with Direct File Provisions

Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Louisiana, Michigan, Montana, Nebraska, Oklahoma, Vermont, Virginia and Wyoming.



Source: Griffin, Patrick, *Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws*. Pittsburgh, PA: National Center for Juvenile Justice, Oct. 2003

tine Johnson of Vermont’s newly created Juvenile Justice Commission. “In the adult system, this same 16-year-old gets sentenced to probation and becomes part of a 100-to-200 person caseload. Essentially, he or she may fall through the cracks, in an adult system not entirely equipped to meet the multi-faceted needs of 16-17 year olds.”

Without objective oversight coupled with specialized training and guidelines, a prosecutor’s decision to move a youth into adult court can be arbitrary and inconsistent within and across states, and even within individual counties. Yet only about one-third of prosecutors’ offices report having a specialized unit or designated attorneys to handle juvenile transfer cases.³⁸ Fewer than 12 percent of prosecutors’ offices report having written guidelines about proceeding against juveniles in adult criminal court.³⁹

ELIMINATING INDIVIDUALIZED JUSTICE: STATUTORY EXCLUSION

Over the past decade, almost every state has enacted legislative provisions to require that certain youth are sent into adult court; and, if convicted, to have them serve mandatory sentences. These laws have different scopes and means of being enacted. However, they have one major point in common: individualized justice—based on the ability of a judge, jury and the prosecutor to consider the unique circumstances of a crime and tailor a sentence to the individual—is essentially eliminated.

Statutory exclusion laws⁴⁰ are by far most responsible for sending the largest number of youth into the adult system. According to a report by the National Center for Juvenile Justice, “When the effects of statutory exclusion and mandatory waiver provisions are considered together with those brought about by lowering the age of adult criminal responsibility, it becomes clear that state legislators are ‘transferring’ far more young people to criminal courts than either judges or prosecutors.”⁴¹

Statutory exclusion laws fall into three basic categories:

- 1) Those that exclude youth from juvenile court, because the age of adulthood in the criminal code is set below age 18;
- 2) Laws that exclude juveniles based on categories of crimes; and
- 3) “Once an adult, always an adult” provisions.

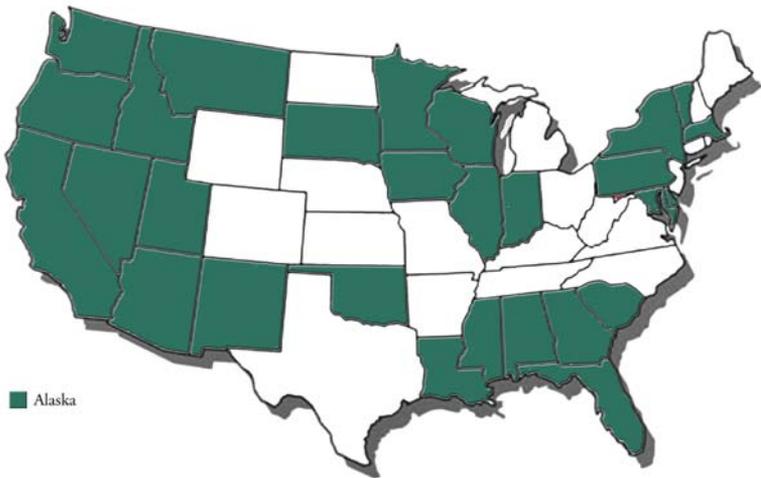
Each state can have one or a combination of these provisions.

In 13 states, youth who are charged with *any* act of delinquency—approximately 218,000 each year—find themselves in the adult system because legislation has set the age of adulthood at age 17 or even 16. For example, in New York State, at age 16, a youth who commits either a misdemeanor or a felony is prosecuted in the adult system. In the mid-1990s, in response to a highly publicized murder committed by a teenager, the New Hampshire legislature lowered the age from 18 to 17 years for a teen to be considered an adult in the eyes of the law.

However, if the purpose of sending youth into the adult system is to ensure stiffer sentences, the goal may not be met in the majority of juvenile cases transferred due to age exclusion laws. Adult court judges

States with Statutory Exclusion Provisions

Alabama, Alaska, Arizona, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Washington, Wisconsin.

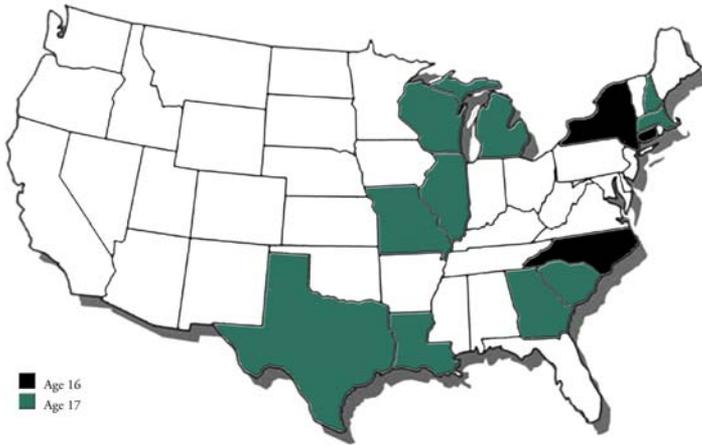


Source: Griffin, Patrick, [Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws](#). Pittsburgh, PA: National Center for Juvenile Justice, Oct. 2003

States with Under 18 as the Age of Adulthood

Age 16: Connecticut, New York and North Carolina

Age 17: Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, Wisconsin



Source: Bozynski, Melanie and Szymanski, Linda, National Overview: State Juvenile Justice Profiles. Pittsburgh, PA: National Center for Juvenile Justice, 2004. <http://www.ncjj.org/stateprofiles/>

receive many more juvenile cases for low-level crimes than for capital crimes, and when comparing first-time, nonviolent juvenile offenders with the hardened adult criminals appearing before them, typically hand out light sentences of probation. Probation officers, burdened with overwhelmingly large caseloads, also do not regard such youth as serious offenders who need stringent supervision.

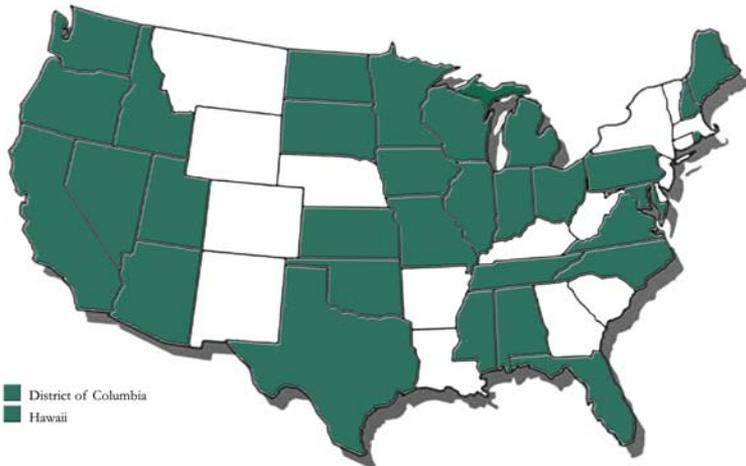
New Hampshire youth workers say that they repeatedly see the repercussions. In one case that rings familiar, a young man was becoming increasingly disruptive in his community. At home, he beat up his brother and put his fist through the walls of his room. At school, he assaulted a fellow student. Yet, those who knew the boy recognized that he was far from incorrigible. Rather, he suffered from mental health issues that needed attention before they got even worse. However, because he was age 17, he was sent to adult county jail for two weeks before being

released on probation. As a juvenile, this young man would have been eligible for counseling and medical treatment. But the adult system does not provide such help, and adult courts often cannot give attention to first-time and lower-level offenses. Cases are too often dismissed or the offenders receive minor sanctions.

The situation had the opposite of the desired effect. The boy “got the overkill of being with the adult population, and then he goes home with no accountability,” says Emily Hacker, a case manager with New Hampshire’s Child and Family Services. “It makes it really unhealthy for him, the family and the community. It makes the community unsafe.”⁴²

States with “Once an Adult/Always an Adult” Provisions

Alabama, Arizona, California, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin.



Source: Griffin, Patrick, *Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws*. Pittsburgh, PA: National Center for Juvenile Justice, Oct. 2003

Using another form of statutory exclusion, 29 states have enacted laws that exclude certain crimes and offenders from juvenile court jurisdiction. For example, in Georgia, the law passed under Senate Bill 440 (SB440) requires that youth as young as 13 who are accused of one of the “seven deadly sins”—murder, voluntary manslaughter, rape, armed robbery, aggravated sodomy, aggravated child molestation and aggravated sexual battery—be charged, tried and sentenced as adults. If convicted, they serve a mandatory ten years in prison without the possibility of parole. No one is sure exactly how many youth across the country these laws impact each year.

Another statutory exclusion category has been created in 34 states for youth who have been prosecuted as adults and are subsequently accused of new offenses.⁴³ These “once an adult, always an adult” provisions frequently mean that a youth prosecuted in adult court will be excluded from future juvenile court jurisdiction, no matter how minor the subsequent offense.

Youth prosecuted in the adult system are more likely to re-offend—and to re-offend more quickly and by committing more serious offenses—than youth who are prosecuted through the juvenile system.

CHAPTER 3

THE IMPACT ON SOCIETY

Now that more youth and younger youth are entering adult courts, jails and prisons, it is imperative to analyze the repercussions. Many studies from around the country have emerged and are beginning to answer critical questions.

DOES THE PRACTICE OF PROSECUTING YOUTH AS ADULTS TRULY MAKE OUR NEIGHBORHOODS SAFER?

Studies indicate that sending youth into the adult system has little or no deterrent effect on juvenile crime. In fact, paradoxically, the policy puts the public at greater risk. An increasing body of research concludes that youth prosecuted in the adult system are more likely to re-offend—and to re-offend more quickly and by committing more serious offenses—than youth who are prosecuted through the juvenile system.

“It’s counterintuitive to say that punishment backfires. It’s hard to get the public to understand,” said Jeffrey Fagan, professor of law and public health at Columbia University who has conducted several studies.⁴⁴

This high re-offense rate has many intertwined explanations.⁴⁵ The adult system lacks the juvenile system’s emphasis on individu-

alized and rehabilitative treatment, such as schooling, vocational training and mental health treatment. Without such supports, a youth is likely to return to the community uneducated and unskilled, and without a solid means to earn a living and become a productive member of society.

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

Vincent Cortez can speak from experience. At age 16, he was sent to an Arizona prison for getting high on carburetor cleaner. Because he already had two juvenile felony convictions—both of them for nonviolent offenses—his transfer into the adult system was automatic. When he was released, the young man, angry and hateful towards authority, was returned to society with no job skills and the same eighth-grade education with which he entered the system. As Cortez told a reporter for the *Arizona Republic* newspaper, “I tried to get a job, but when you’ve been locked up, there ain’t nothing you can put down there,” referring to a job application asking for past employment. Groomed for a life of crime, he lasted only two months in the community before committing an armed robbery. Now, at age 20, Cortez is serving a sentence of seven and a half years.⁴⁶

Moreover, the social labeling and legal stigma of being tried in adult court—including losing the future right to vote and to serve on a jury—can cause youth to feel isolated from mainstream society. It can also weaken ties to family and support systems, such as teachers, community leaders and other positive role models. For a teenager in the adult justice system, “adult mentoring” can backfire. Rather than providing a positive model, an adult criminal may pass on “tricks of the trade” to a vulnerable youth. Researcher Donna Bishop, a professor of criminology at Northeastern University, interviewed youth in adult facilities in Florida and noted that they “spent much of their time talking to more

skilled and experienced offenders who taught them new techniques of committing crime and methods of avoiding detection.”⁴⁷ 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.⁴⁸

Josh B. is a 16-year-old Californian who addressed this issue on the most personal level. Incarcerated on drug and burglary charges, he admits his guilt and agrees that he deserves some punishment. But, he also wonders why someone who did not commit a violent crime and who is ready and eager to address his drug problems, is at risk of being incarcerated with adult career criminals. “I have to admit it. I’m scared.

A Boon to Public Safety?

Across the United States, research indicates that prosecuting youth in the adult system has little or no deterrent effect on the juvenile crime rate, and is harmful, rather than helpful, to public safety.

FLORIDA

Researchers in Florida looked at matched pairs of offenders. Youth transferred into the adult system were more likely than the juvenile cases to have indications of felony re-offending after the age of 18. When both the transferred and juvenile cases in a matched pair re-offended, the transferred youth was more likely to commit a more serious crime.

Source: Lanza-Kaduce, Lonn, Frazier, Charles E., Lane, Jodi and Bishop, Donna. Juvenile Transfer to Criminal Court Study: Final Report. Florida Department of Juvenile Justice, Office of Juvenile Justice and Delinquency Prevention, January 2002

In a comparable study, the *Miami Herald* matched teens with similar criminal records of the same age and race. One group was tried in Florida’s adult courts; juvenile court judges sent the other group into various juvenile rehabilitative programs. The *Herald* found that “[s]ending a juvenile to prison increased by 35 percent the odds he’ll re-offend within a year of release.”

Source: Greene, Ronnie and Doughery, Geoff. “Kids in Prison: Tried as adults, they find trouble instead of help and rehabilitation,” *Miami Herald*. 18 March 2001

Continued on next page

A Boon to Public Safety? *continued*

NEW JERSEY AND NEW YORK

A study compared 800 youth charged with burglary and robbery in New York, where all 15 and 16-year-olds were tried in adult court, with a similar group in New Jersey that went into juvenile court. There was not much difference in the re-offense rate of the nonviolent offenders. But, among the robbers—the more serious offenders—those sent to juvenile court were far less likely to commit a new crime, and when they did it was after a significantly longer period of time.

Source: Fagan, Jeffrey, “The Comparative Advantage of Juvenile Versus Criminal Sanctions on Recidivism Among Adolescent Felony Offenders,” Law and Policy, Vol. 18, 1996, cited in The Changing Borders of Juvenile Justice: Transfer of Adolescents to Criminal Court, edited by Jeffrey Fagan and Franklin E. Zimring. University of Chicago Press, 2000.

PENNSYLVANIA

A criminology professor at Indiana University of Pennsylvania compared the recidivism of 557 Pennsylvania teens matched for age, past criminal record, type of weapon, type of weapon used in the crime and other pertinent factors. He found the re-offense rate to be consistently and substantially worse among the youth whose cases were tried in adult court. They were more likely to be re-arrested and more likely to be charged with violent felonies.

Source: Mayers, David L., Adult Crime, Adult Time: Punishing Violent Youth in the Adult Criminal Justice System, Sage Publications (2003), www.sagepub.com. Also Stack, Barbara White, “Is This Justice? Punishment backfires under “adult time,” *Pittsburgh Post-Gazette*, 20 March 2001.

MINNESOTA

In a Minnesota study, 24 months after being released, transferred youth were found more likely than non-transferred youth to re-offend: 58 percent versus 42 percent.

Source: Podkopacz, Marcy R. and Feld, Barry C., “The End of the Line: An empirical study of judicial waiver,” Journal of Criminal Law and Criminology, 86 cited in Butts, Jeffrey A. and Mitchell, Ojmarrh, “Brick by brick: Dismantling the border between juvenile and adult justice.” Criminal Justice 2000, Volume 2. Washington, DC: National Institute of Justice, U.S. Department of Justice, 2000.

GEORGIA AND IDAHO

According to researchers at the Urban Institute, a study in Georgia also failed to detect a significant difference in the rate of juvenile offending following the enactment of expanded transfer provisions. The same conclusion was reached by a research team who compared changes in juvenile violence in Idaho, which had recently expanded its transfer laws, to crime in Montana, which had not changed its laws.

Source: Butts, Jeffrey A. and Mitchell, Ojmarrh, "Brick by brick: Dismantling the border between juvenile and adult justice." Criminal Justice 2000, Volume 2. Washington, DC: National Institute of Justice, U.S. Department of Justice, 2000.

In a study of Idaho's mandatory transfer statute introduced in 1981, the arrest rates for the five-year period prior to the new law were compared to the rate five years following its implementation. Researchers found no evidence of general deterrent effects. Instead, arrests increased in Idaho, as compared to two comparison states without mandatory transfer.

Source: Jensen, Eric L. and Metsger, Linda K., "A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime," cited in The Changing Borders of Juvenile Justice: Transfer of Adolescents to Criminal Court, edited by Jeffrey Fagan and Franklin E. Zimring. University of Chicago Press, 2000.

I've heard how they jump you and teach you to steal and fight. I'm not a fighter. I've never hurt anyone in my life. So why are they doing this? In my opinion, if you send massive amounts of kids to prison and let the adult criminals be their teachers, it's going to come back to haunt everybody."⁴⁹

John J. DiIulio, the Princeton University professor who coined the term *super predator*, has spoken out on the long-range repercussions of exposing youth to adult offenders. He told the *New York Times*, "Most juvenile offenders are not guilty of repeated or random acts of serious violence. Most kids who get into serious trouble with the law need adult guidance. And they won't find suitable role models in prison. Jailing youths with adult felons under Spartan conditions will merely produce more street gladiators."⁵⁰

DO ONLY THE “WORST OF THE WORST” WIND UP IN ADULT COURT?

“Adult time for adult crime” legislation was originally enacted to address perceived increases in hard-core juvenile violence. The targets were to be youth who have committed violent crimes and repeat offenders who may have exhausted the resources of the juvenile system. Yet, the vast majority of youth under age 18 in the adult system are nonviolent property and drug offenders, many of them first-time offenders. This is particularly true in the 13 states that have lowered the age at which youth exit juvenile court jurisdiction.

In addition, statutory exclusion laws in at least 20 states authorize or mandate adult prosecution of juveniles accused of drug offenses. Twenty states require or allow adult prosecution of juveniles accused of property offenses, such as arson or burglary. Youth in 11 states who are charged with nonviolent crimes, such as soliciting a minor to join a street gang, perjury and treason, can also wind up in adult court.⁵¹ One important study notes that more than half the cases in adult court were nonviolent drug or property offenses: 43 percent were person offenses; 37 percent property offenses; 14 percent drug offenses and six percent public order offenses.⁵²

IS IT COST EFFECTIVE TO SEND YOUTH INTO THE ADULT CRIMINAL COURT?

Like most legislation drafted in response to fear, new transfer mechanisms were frequently hastily drafted and implemented. In many states, putting the mechanisms into practice has proven chaotic and costly. For example, in California, ballot measure Proposition 21 requires youth as young as 14 to be tried as adults for certain crimes and gives prosecutors expanded powers. The California Legislative Analyst’s Office estimates that this measure, which is similar to other measures around the country, could cost the state’s taxpayers \$100 million per year in added operating costs, plus \$200-\$300 million for new jail construction.⁵³ In total, the estimate is that Proposition 21 could cost taxpayers about \$5 billion over a ten-year period, with no evidence that it would enhance public safety.⁵⁴ But, such figures only hint at enormous long-term economic repercussions.

While it is true that providing treatment to youth in the juvenile justice system generates more immediate expense—whether it be for

out-of-home placement or home and community based services and supports—such up-front costs are less expensive in the end than the burdensome financial and public safety costs created by ineffective management of youth within the adult criminal justice system. The majority of youth in the adult system return to their communities within a short period of time. For youth under age 18 when admitted to state prison, eight percent are released before their 18th birthday; more than

The Worst of the Worst?

- The majority of youth convicted between 1995 and 1999 in Florida's adult courts committed nonviolent crimes such as burglary, theft and drug charges. Homicides comprise just two of every 100 of Florida's youthful adult court convictions.

Source: Greene, Ronnie and Doughery, Geoff. "Kids in Prison: Tried as adults, they find trouble instead of help and rehabilitation," *Miami Herald*. 18 March 2001

- Nearly a third (32 percent) of all youth tried as adults in Florida had no prior convictions, and nearly half (49 percent) had just one or no-prior convictions. In the majority of cases, teens were sent into Florida's adult system without first being admitted to the state's most intensive juvenile programs, such as locked facilities.

Source: Greene, Ronnie and Doughery, Geoff. "Kids in Prison: Tried as adults, they find trouble instead of help and rehabilitation," *Miami Herald*. 18 March 2001

- A comprehensive study of transfer prepared by the Pretrial Services Resource Center, entitled "Youth Crime, Adult Time," examined 2,584 cases in 18 jurisdictions across the country and concluded that a great many youth who come into the adult system via statutory exclusion have cases that are eventually dismissed, resolved without conviction, or transferred back to the juvenile system, because they are not significantly serious or strong.

Source: Juskiewicz, Jolanta, *Youth Crime/Adult Time: Is Justice Served?* Washington, DC: Building Blocks for Youth and Youth Law Center, 2000, www.buildingblocksforyouth.org/ycat/ycat.html

75 percent are released before the age of 22; overall, 93 percent of offenders will have served their minimum sentence before reaching age 28.⁵⁵ In another study, 40 percent of juveniles tried in adult court were released on probation—receiving neither the sanctions necessary for public safety, nor the rehabilitative support available in the juvenile system.⁵⁶

Youth that have spent time incarcerated in the adult system are still in the prime of life—many still in their teens—when they return to their communities. Without a high school diploma, adequate vocational skills, medical and mental health treatment, these youth will likely join the ranks of the unemployed.⁵⁷ It is estimated that each year's class of high school dropouts alone costs the country more than \$200 billion in future lost earnings.⁵⁸

Having an adult criminal record—as opposed to a juvenile record, confidentially held, outside of public scrutiny—further compounds the difficulty of entering the job market. Research recently published in the *American Journal of Sociology* cites that people who have a criminal record are only one-half to one-third as likely as non-offenders to be considered by employers, suggesting that a criminal record does indeed present “a major barrier to employment.”⁵⁹

Josh B., a young man awaiting trial on drug and burglary charges, explains: “If I’m tried as an adult, it won’t matter if I never use drugs

**The way corrections supervises
teens—the way they counsel,
educate, and teach skills—will have a
long term effect on their behavior.”**

—Marsha Levick, legal director, Juvenile Law Center

again. It won’t matter if I never commit another crime. I’ll still have adult charges on my record, which means that a lot of my options will be terminated. All my life, I’ve had this dream to be a park ranger. I love being outdoors and the idea of helping other people appreciate nature. But, forget it!”⁶⁰

Adolescence is the time when juvenile justice interventions like substance abuse and mental health treatment, education, vocational training and anger management are most likely to make an impact. Studies indicate that the influence of a mentor—even just one consistent and caring adult—can be the difference between a teenager who succumbs to drugs and gangs and a teenager who avoids such negative influences.

In previous annual reports, the Coalition for Juvenile Justice has highlighted a variety of cost-effective programs and initiatives that have rehabilitative impact with all levels of offenders, while continuing to maintain and enhance public safety. For example, for a broad range of young offenders whose principal needs center around mental and behavioral health issues, family-strengthening approaches to treatment, conducted in home, community and residential settings, demonstrate positive impacts by stabilizing the pro-social behavior of youth and re-integrating them back into family, school and community life. Some treatment efforts specifically demonstrate long-term reductions, ranging from declines of 25 to 75 percent in the rates of re-arrest, for juveniles identified as being in need of mental health services.⁶¹ Within an institutional setting, the Texas Youth Commission (TYC) operates specialized treatment programs for serious violent offenders, sex offenders, chemically dependent youth and youth with severe emotional disturbances. And, again, the overall re-offense rate is consistently low.⁶²

As Marsha Levick, legal director of the Juvenile Law Center, noted: “Strong rehabilitative programs will bear more fruit during adolescence than later in life. Thus, the way corrections supervises teens—the way they counsel, educate, and teach skills—will have a long term effect on their behavior.”⁶³

ARE YOUTH TREATED FAIRLY, WITHOUT DISCRIMINATION BASED ON RACE, CULTURE, OR ECONOMIC STANDING, WHEN SENT TO ADULT COURT?

When Georgia parent, Billie Ross, was asked if she believes that race was an issue in sending her son into the adult system, she said, “I hesitate to say it, but, yes. People see black males and they lump them together. They make assumptions. Because he’s black, they never gave him the benefit of the doubt.”⁶⁴

Such personal anecdotes, coupled with an abundance of statistical

research, raise serious questions about the impartiality of the justice system. Within the juvenile system, disproportionately high numbers of youth of color are more often confined, receive harsher sentences, and are more frequently transferred from juvenile to adult court jurisdiction. Some claim that racial bias is not a factor, but rather the inevitable result of youth of color committing more crimes, and more serious crimes, than white youth. However, myriad studies indicate that differential, negative responses, based on race, take place at all stages of the juvenile justice process, and in particular when it comes to deciding which youth will be transferred to adult court.

As Daniel Macallair, executive director of the Center on Juvenile and Criminal Justice and co-author of a report on juvenile offenders of color,

Fair and Equal Treatment?

- Minority youth are more likely than white youth, who commit comparable crimes, to be referred to adult court, to be detained, to face trial as adults and to be jailed with adults.

Source: Poe-Yamagata, E., et al. [And Justice for Some](#) Washington, DC: National Council on Crime and Delinquency, 2000

- Three out of four of youth admitted to state prisons are racial/ethnic minority youth.

Source: Poe-Yamagata, E., et al. [And Justice for Some](#) Washington, DC: National Council on Crime and Delinquency, 2000

- The National Household Survey on Drug Abuse reports that white youth are more than a third more likely to have sold drugs than African American youth. The National Institute of Drug Abuse Survey of high school seniors found that white students use cocaine at a rate that is seven to eight times higher than the rate for African American students, and heroin at seven times the rate of African American students. Yet, more than 99 percent of the youth prosecuted as adults for drug offenses in Cook County (IL) were minority youth.”

Source: Ziedenberg, Jason, [Drugs and Disparity: The Racial Impact of Illinois' Practice of Transferring Young Adult Offenders to Adult Court](#) Washington, DC: Building Blocks for Youth, 2002. www.buildingblocksforyouth.org/Illinois/Illinois.html) Editor's Note: For a full picture of the Illinois state reform movement, see page 54.

has noted: “Discrimination against kids of color skyrockets when juveniles are tried as adults. There’s a double standard: throw kids of color behind bars, but rehabilitate white kids who commit comparable crimes.”⁶⁵

Building Blocks for Youth, a project led by an alliance of children’s advocates, researchers and law enforcement organizations, has studied the impact of transfer and exclusion statutes on youth across the country.⁶⁶ Among the findings:

- 82 percent of cases filed in adult court involved minority youth.
- In nine of the ten studied jurisdictions, minority youth were disproportionately charged in adult court. One dramatic example is an Alabama county where African American youth accounted for three out of ten felony arrests, but represented 80 percent of the felony cases filed in adult court.
- African American youth were overrepresented especially in non-violent drug and public order cases sent to adult court.
- African American and Latino youth were more likely than white

- Compared with white youth, minority youth in California were nearly three times more likely to be arrested for violent crimes, more than six times more likely to be tried in adult court and seven times more likely to be sentenced to adult prison.

Source: Males, M. and Macallair, D. [The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California](#). Washington, DC: Building Blocks for Youth, 2000

- A study of the racial impact of Oregon’s Ballot Measure 11 (BM11) which gave discretion to prosecutors to try juveniles as adults, and created automatic transfers in certain cases, found an over-representation of African American youth. While there has been a decrease in recent years, African American youth comprised more than one-quarter of BM11 cases, despite representing only ten percent of the youth population in the state’s largest county, Multnomah County.

Source: Nguyen, T., et al., [Multnomah County Department of Community Justice Ballot Measure 11 Report, 1995-1999](#) April, 2000. www.co.multnomah.or.us/dcj/Bm11Report_final_all.doc

youth to receive a sentence of adult incarceration (as opposed to adult probation or other lesser sentences).

- White youth were twice as likely to be represented by private counsel as African American youth. Youth represented by private attorneys are less likely to be convicted and more likely to be transferred back to juvenile court.

THE IMPACT ON ONE YOUTH

Along with statistics and studies, it is valuable to consider the stories of those most impacted by the policy and practice of prosecuting youth in adult court. The case of Daniel Carter, the Florida boy accused of killing his uncle, is an unusual one in that the vast majority of youth in the adult system have not been accused of violent crimes. Yet, his story is an important one and serves as a warning. What happened to Daniel illustrates the long-term physical, mental and emotional damage of sending a youth into the adult system—a youth who has not even been convicted of any crime.

Immediately after arrest, Daniel was sent to a nearby juvenile detention facility, where he attended the on-site school and received age-appropriate medical and mental health services. But then, like many youth awaiting trial as adults, Daniel was moved into the local county jail. Around the country, one-third of youth in adult jails are confined with the general adult inmate population.⁶⁷ This is particularly disturbing since many of these youth have committed only minor offenses and will eventually receive probation or be transferred back to juvenile court.

Cindy Carter described the cell in which her son slept and was frequently locked down for days at a time. The tiny room was infested with ants and the ceiling leaked on his bed, perhaps from a toilet on the floor above. Instead of the six hours a day of schooling that Daniel had been getting in the juvenile facility, he received only one hour. But, even that proved worthless since Daniel was given so much medication for depression, anxiety, sleep deprivation, and paranoia that he could barely concentrate. There were mornings when Daniel said that he awoke with bloody knuckles from hitting the concrete wall in his sleep.

In one particularly unnerving episode, he was being moved between units. Daniel recalled that correctional officers had mistaken him as being older and ordered him to remove all of his clothes for a search.

The public disrobing took place in front of more than 50 taunting and jeering adult inmates. Such episodes are among the reasons why groups as diverse in purpose as the American Civil Liberties Union and the American Jail Association (AJA)⁶⁸ advocate against incarcerating youth in adult facilities. 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.⁶⁹

There were times during Daniel's incarceration when he expressed the hope that he would die, not a surprising or uncommon occurrence for a youngster living in such traumatic circumstances. Many youth come into the justice system with undiagnosed and untreated mental health disorders that become exacerbated by the stress of being confined.⁷⁰ Even youth who enter the system with a relatively stable mental health status quickly become at risk, especially those housed in adult institutions. As one long-time adult correctional officer noted: "Children don't belong here. Adult criminals don't see children. They see fresh food for the sharks."⁷¹ Given these conditions, it is understandable that the suicide rate for youth held in adult jails is five times the rate of the general jail population and eight times the rate for adolescents held in juvenile facilities.⁷²

"Children don't belong here. Adult criminals don't see children. They see fresh food for the sharks."

—Adult corrections official, quoted in the *Detroit Free Press*, July 2000.

"The first time I met Daniel, he was a zombie," recalled Patrece Cashwell, the defense attorney who came on the case after Daniel had been jailed for a year. "It was like he was feeling invisible. This can happen to adults in jail, but it's especially true for teens that are just starting to find themselves. The staff didn't have any training about adolescence. They didn't have a clue about how to help him. So what did they do? They pumped him full of psychotropic drugs, some of which were not even medically approved for adolescents."

As his attorney and advocate, Cashwell's first step was to help Daniel wean himself off of all medication except for an appropriate and regulated dose of antidepressants. She began bringing in a multivitamin because the jail food did not satisfy the nutritional needs of a still-growing boy. Her next step was to involve Daniel in his own defense. She had to spend a lot of time visiting and talking with him, much more than she would have to spend with an adult client. For the first two months, she spent ten to 15 hours a week, not only building a bond of trust with a traumatized teenager, but helping him to fully comprehend the nuances of his complicated legal situation.

"Adults can organize their thoughts and tell their story. They know what's important and can help their attorney mount a defense, but that's not true with kids," said Cashwell. Prior to becoming an attorney, she taught in a high school for at-risk youth. "Also, a teenager might know in his heart of hearts that he's innocent or acted in self-defense, but he also sees that he's in jail. He feels people treating him like he's guilty and that's the way Daniel came to see himself: guilty. Like most kids, he saw things in black and white. He didn't understand that in the law, there are many shades of gray."

FACTORING IN ADOLESCENT DEVELOPMENT

A large and important body of emerging research confirms what Cashwell observed in defending Daniel and other youth. Adolescents are not miniature grown-ups. They differ from adults in critical physiological and psychological ways. Certain parts of the brain—particularly the frontal lobe and the cable of nerves connecting both sides of the brain—are often not fully formed, which can limit cognitive ability. This is also the part of the brain that has to do with making good judgments, moral and ethical decisions, and reining in impulsive behavior.⁷³ New research increasingly demonstrates such differences. For instance, the way in which a common mental illness, depression, manifests in the brains of teenagers is entirely different from the way in which it manifests in adults, because throughout adolescence young people are developing new neurons and adults are not. The implications are legion—and include evidence that adult medications for depression may actually be harmful to youth, rather than helpful.⁷⁴

Acknowledging this biological difference is not meant to excuse criminal behavior or to suggest that youth should not be held accountable

for their crimes. However, it means that youth can sometimes be considered less morally, ethically and cognitively developed in the same way that offenders with developmental delays and brain damage are sometimes seen by the court as less legally responsible for their actions. Researchers from the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice recently concluded that a

A significant number of young offenders do not possess the intellectual and emotional maturity to understand the judicial process and to contribute effectively to their own defense.

significant number of young offenders do not possess the intellectual and emotional maturity to understand the judicial process and to contribute effectively to their own defense. While every state allows youth under 16 to be tried as adults, many of these teens are no more able to grasp their legal situation than adults who have been ruled mentally incompetent to go to court.⁷⁵ The situation is compounded for youth of below-average intelligence.⁷⁶

Lawrence Steinberg, director of the MacArthur Network and professor of psychology at Temple University, stated that these findings should cause policy makers to re-examine the age at which it is permissible to try juveniles as adults. Developmental differences, research indicates, can put youth at a distinct disadvantage at every step of the legal process. Youth lack an adult's sense of time and are sometimes unable to construct coherent narratives of the crime. When questioned by police, many adolescents misconstrue the "right to remain silent" as meaning that they should remain silent until they are told to talk.⁷⁷ At trial, youth have been known to ignore their own legal repercussions while trying to protect family members and other authority figures. Since their language is typically not fully developed, teens can have difficulty understanding legal terms and can become easily confused.

“These are kids who are often asked to accept or reject plea bargains that have very long-term consequences and no one else is allowed to make the decision for them,” noted Thomas Grisso, a clinical psychologist and professor of Psychiatry at the University of Massachusetts Medical School, who directed the MacArthur Foundation research. “What we found wouldn’t surprise any parent of a 13- or 14-year old. At that age, they are frequently not as equipped as the average adult to grasp the consequences of legal decisions that will seal their fate for the rest of their lives.”

When Daniel Carter was offered a plea bargain—a promise of a prison term of no more than 12 years in return for a plea of manslaughter—there was a lot of expectation that he would accept it. Research by Grisso and others notes that youth can be quick to accept the deal that will get them home the most quickly, rather than weighing all of the long-term legal considerations, such as the negative impact that having an adult record can have on future employment.

“The attorney in any case has such power to convince a person to take a plea or go to trial. But it’s ten times easier to manipulate a child,” said Cashwell. “I tried hard not to push Daniel one way or another. It was a terrifying decision and I didn’t want to be responsible for putting a 16-year-old behind bars for the rest of his life. But Daniel was determined to go to trial. He was a very brave boy.”

After 19 months of incarceration, Daniel’s case came to trial. Those who knew him when he was first arrested recall that he had the appearance of a handsome and healthy all-American boy. In the courtroom, they were shocked by the change. The months had made him taller and larger, but the bulk was all weight and no muscle tone. His eyes had a sunken look and his complexion was gray. According to his attorney, “People said he looked like the light had been sucked out of him.”

Cashwell knew that the trial was going to be a big challenge. With any jury, the members make a decision based on the facts, but facts that are strongly colored by their perception of the defendant. With Daniel as her client and claiming self-defense, she had to counteract what she calls “The Children of the Corn” perception.

“The public image of teenage boys is that they are rowdy, out of control, that we’re growing a nation of Children of the Corn,” she explained. “I had to address that in many ways, from jury selection to what Daniel wore. For example, I recommended that he not be dressed in a suit and tie because the public already thinks of teenage boys as

mini-adults. One thing we did have going for us is that Daniel is white. It's even harder to defend black teenagers—who are perceived not as children at all, but as smaller, dangerous adults.”

During the trial, the jury was given standard instructions to base their verdict on the “reasonable man standard,” a mainstay of self-defense law. While deliberating, they should ask themselves: Would a reasonable man, in the same circumstances, think his life was in danger and try to defend himself? Cashwell, drawing on contemporary research about the adolescent brain, pointed out to the jury that at age 15, Daniel was not a reasonable *man* when his uncle stormed into his bedroom. He was a boy and therefore should be judged under the reasonable *kid* standard. Would a *kid* think his life was in danger?

After three days of testimony, the six people on the jury deliberated for nearly three hours and reached a verdict. Daniel Carter was acquitted of first-degree murder and sent home.⁷⁸ In response, the prosecutor said that he respected the jury's decision and understood its reservations about the case.⁷⁹ Cashwell hypothesized on what was running through the minds of the jurors, “I think they were thinking: This is a valuable kid who doesn't need to be thrown away.”

Since his release, Daniel has been trying to make up for lost time, time that might have been better spent in the juvenile system, going to school and getting other pro-social, age-appropriate interventions. As it is, Daniel is several years behind in his education and his social skills have really suffered. When he went to work part-time in Cashwell's law office, she had to “deprogram him from talking like a thug and walking that prison walk,” she said. In jail, his physical and mental survival meant that he often had to fight back. Now, he has to relearn how to turn the other cheek.

“The jury found Daniel innocent, but because he was prosecuted as an adult, he received little education, improper nutrition, inadequate medical and mental health treatment for almost two years. That's a big chunk of time in the life of a teenager,” Cashwell pointed out. “I'm just praying that the damage isn't irreversible.”

CHAPTER 4

ATTEMPTS AT REFORM

Firsthand accounts such as Daniel's, reinforce the findings of a large and increasing body of research, which indicates that sending more youth and younger youth into the adult justice system has not fulfilled its public safety intentions. Such policies are costly in economic terms and dangerous in terms of community well being. In addition, there are serious questions of basic fairness, because the impact of adult court policies is felt disproportionately by youth of color and youth who have committed only minor violations. Sending youth into adult criminal court can result in long-term physical and emotional trauma to youth that have not been convicted of any crime.

In response, a growing number of people from across the political spectrum—youth advocates, correctional personnel, judges, families, lawmakers, and others—have begun to reconsider and revamp some of the toughest “adult time for adult crime” measures.

However, some of these remedial efforts, while enacted in the spirit of reform, should also be viewed with serious reservations.

BLENDING SENTENCING: INCARCERATION AS A LONG TERM SOLUTION

Currently, 32 states have enacted some form of *blended sentencing*.⁸⁰ This legal procedure allows judges faced with the task of sanctioning juvenile offenders to choose between juvenile and adult correctional sanctions—or sometimes to impose both at the same time—rather than restricting youth solely to one system or the other.⁸¹ Blended sentencing has a variety of names and shades of meaning. In some states, the juvenile court can impose an adult sentence that is binding, just as if the youth had been transferred into the adult system. In other states, a judge can render an adult sentence that is suspended pending successful completion of a juvenile sentence. Or, a judge can sentence a youth who has committed an offense to a juvenile facility until he or she reaches

Questioning Voices

Florida Governor, Jeb Bush:

“There is a different standard for children. There should be sensitivity to the fact that a 14-year-old is not a little adult.”

—Alan Elsner, “Tough Juvenile Sentencing Getting a Second Look,” *Reuters*, May 18, 2001

Representative William Black, Deputy Republican leader of the Illinois House, who spoke in favor of a bill to raise the age of juvenile court jurisdiction from age 17 back to 18:

“For the life of me, I don’t understand why anybody would be opposed to the bill. I think it’s a good sense measure...I intend to vote ‘Aye’ and hope you will, as well.”

Ric Nesbit, member of the North Texas chapter of Parents of Murdered Children, who participates in victim impact panels in Texas Youth Commission facilities:

“If we have an opportunity to reach kids when they are still kids, to keep them away from hardened career criminals, it makes sense to do it to best of our ability with everything we can muster. Because they *are* going to get out. Remember that. And I’d a lot sooner have someone who has been treated with respect and dignity move in next to me than a 26-year-old ex-con who has spent ten years in the general population of a hardcore prison.”

the age of 19 or 21, when the youth is then transferred to an adult prison.

The results of blended sentencing in terms of rehabilitation and public study are little studied and little understood. Barry Feld, a University of Minnesota law professor, conducted a study of one county and found that prosecutors filed motions to transfer youth into adult court about three times more often after the state passed a blended sentencing provision into law in 1995. That year, Minnesota established Extended Juvenile Jurisdiction (EJJ), which functions as a kind of middle ground between the two systems. EJJ uses a stayed prison sentence as an incentive for teens to follow court rules.

Feld found that prosecutors use adult certifications as plea-bargaining chips. “[The blended sentencing law] was being used to impose heavier sanctions on juveniles, who previously the system would have treated as ordinary juveniles.”⁸²

Georgia Judge Peggy Walker:

“I understand these crimes are terrible for the victim, for the community, but we have to be realistic that we are, in fact, dealing with children. We cannot expect to hold children to adult standards.”

Shay Bilchik, President and CEO, Child Welfare League of America, and former Administrator of the federal Office of Juvenile Justice and Delinquency Prevention:

“The implementation of transfer/waiver statutes and policies that lead to the prosecution of large numbers of juveniles as adult offenders are not best practice, do not reflect the best interest of the offenders or their rehabilitation, and do not improve public safety.”

Florida State Senator, Walter Campbell, Jr.:

“Some people can’t be swayed from the Biblical notion: *An eye for an eye* – no matter how young that eye is. I prefer another passage: *Forgive us our trespasses, as we forgive those who trespass against us.*”

Ken Kerle, Editor, *American Jails* magazine:

“I don’t think we’re doing the country any good by going back to square one, and chucking the whole idea of a separate system for juveniles...put ‘em in adult facilities, and they come out worse than when they went in.”

The verdict is still out about the effects of blended sentencing. Under a blended sentence, far too many teenagers—whose lives could be turned around—can still be written off as unreachable, unredeemable and be sentenced to years in prison. Michigan Judge Eugene Moore, a three-decade veteran of the juvenile court, spoke to this issue when sentencing 14-year-old Nathaniel Abraham for a crime the boy committed when he was 11. At the time, the judge had the power to impose a blended sentence that included sending Nathaniel to juvenile corrections until he was 21 and then holding a hearing to determine whether the young man was ready to be freed or should be moved to adult prison. Instead, he chose to send Abraham only to a juvenile facility.

In doing so, Moore called on society to support a justice system designed for youth. As he told the press, “If we were to impose a delayed sentence, we take everyone off the hook. The safety net of a delayed sentence removes too much of an urgency. We can’t continue to see incarceration as a long-term solution.”⁸³

Blended sentencing is not the answer for the majority of offenders. As studies show:

- There is mounting evidence that youth who violate their juvenile sentences and in turn get sent to adult prison are being tripped up by small things, like smoking marijuana, quitting a job or not showing up for appointments.⁸⁴
- There is the high potential for plea-bargain abuse by prosecutors. A report issued by OJJDP found that in some locations it is common practice “for prosecutors to file a motion for criminal certification [transfer] and then ‘bargain down’ to a blended sentence.” As a result, first-time offenders in some states, “most of who were unlikely to be sent to adult court, are now being designated as EJJ [blended sentence] cases.”⁸⁵
- In another study, it was shown that the use of blended sentencing has not made a dent in the disproportionately high number of African American and Hispanic youth who receive extended jurisdiction designations (blended sentences) or who are subject to motions for criminal sanctions.⁸⁶

JUVENILE SERVICES IN ADULT FACILITIES: A COSTLY AND INEFFECTIVE REPLICATION

In a few states, youth with adult sentences are housed in juvenile facilities unless they present a danger to the staff or other youth. However, that situation is relatively unique. Around the country, offenders younger than 18 years old are often sent to adult jails and prisons, where corrections officials find themselves ill prepared to deal with unique adolescent issues and behavior.

Youth in adult facilities are particularly vulnerable to depression, sexual exploitation and physical assault. By exposing them to older criminals, they are being taught how to be better criminals. There are also the more commonplace distinctions: Teenagers have different nutritional, sleep and exercise needs than adults. Experience has prompted the 135-year-old American Correctional Association, the largest national organization representing prison staff, to issue a resolution that favors strict limits on the transfer of juveniles to adult courts and faults lawmakers for not doing enough to prepare adult prisons for the arrival of these young offenders.⁸⁷ The volatility of youth, the lack of staff training and the high rate of assault and suicide create multiple problems for the youth and the staff. As one state director of corrections told a reporter for the *New York Times*, “Who wants to put a 14- 15- or 16-year-old into an adult population? It’s not good for the juvenile or for the population.”⁸⁸

In response, a number of corrections officials around the country have begun to create special provisions for the teenagers under their roofs. In Nevada, for example, inmates aged 16 to 21 that have been convicted of mostly robbery and drug-related offenses occupy a separate building at the state prison.⁸⁹ At the Racine (Wisconsin) Youthful Offender Correctional facility, staff are trained regularly to enhance their communication skills with young offenders.⁹⁰ In Prince George’s County, Maryland, a program has been implemented for youth in adult corrections that targets adolescent healthcare and rehabilitative needs, along with a nutritional program that goes beyond public school standards. Specially trained officers are assigned to the juvenile unit. Said Barry Stanton, director of the county’s Department of Corrections: “It improved discipline. It improved control. It improved respect.”⁹¹

Morality, economics and long-term public safety all demand that

youth incarcerated in adult facilities be provided with a safe and rehabilitative environment. Unfortunately, the reality is that the vast majority of youth who wind up in the adult system do not need to be there. Both public safety and the youth themselves would be better served in a system specifically designed for youth. However well intended, the attempt to duplicate juvenile justice-type settings and programs in adult institutions is all too often haphazard, uncoordinated, expensive and ineffective.

For example, an adult facility may take concrete steps to house teenage inmates in a separate wing. Yet, given the crowded conditions and day-to-day chaos that govern most jails and prisons, encounters like the humiliation and taunting of adult inmates experienced by Daniel Carter are often inevitable during meals, in the recreation yard, at the library. At a Georgia facility, because of chronic staffing shortages, some adult inmates are given the job of patrolling catwalks lined with cells housing juveniles. These young prisoners have described incidents where adult prisoners reach through their cell bars to grab them, throw things on them and spit or toss mop water onto their food before handing it over.⁹²

Isolation is another practice commonly used to protect a teenage prisoner from the harm and influence of older criminals. Elijio H. is a 17-year-old who is awaiting trial for armed robbery in a California county jail. To protect him from the adult population, he spends 23 out of 24 hours a day in his small cell. Isolation, which experts say is particularly stressful to adolescents, can worsen a youth's mental state, along with denying him or her constitutional protections and access to programs and services.⁹³

Before being transferred into the adult system, Elijio served time in the local juvenile hall, where he went to school six hours a day and was involved in a variety of programs. "I didn't appreciate it then, but at the Hall, there were all sorts of things," he said in hindsight. "I was close to getting my GED. There was a writing program and even yoga, which gave me a lot of calmness. People helped us work on our drug problems. I'd like to go back and tell all the guys in 'juvie' to really take advantage of that stuff, because here in County, they have nothing. All I do all day is sit in my cell."⁹⁴

There will probably always be some youth—the older and most chronic, violent offenders—who are going to be incarcerated in an adult setting. Facilities should do their utmost to keep these youth safe and

to meet their physical, emotional and educational needs in an age appropriate way. Yet, most youth do not need to be in the adult system and would benefit greatly from measures to bolster and expand the rehabilitative resources already available within the juvenile system.

“People don’t disagree in philosophy with the policy of raising the age back to 18. The problem is that they take the narrow fiscal view that it’s more expensive to give kids services when they are in the juvenile system than when they go into adult court.”

— New Hampshire Judge, Paul Lawrence

CHAPTER 5

LESSONS IN REFORM

Around the country, reform is taking many shapes. In some cases, advocates have banded together to work directly toward legislative, judicial and institutional change. In other cases, reformers are gathering data and conducting research to look at specific repercussions of transfer and waiver policies in individual states. Some advocates are taking an educational approach, to generate greater media coverage and public awareness of declining juvenile crime rates and the latest studies on adolescent development that show the need for youth to be treated differently from adults.

Reform can be seen emerging from the top down and the bottom up, as researchers, court system professionals, families, child and juvenile justice advocates, policy makers and youth join forces to build an effective movement for change. Sometimes, reform means beginning at the very core, as advocates work to rebuild the effectiveness and credibility of the juvenile system so that it may serve as a viable, positive alternative for youth, in comparison with the adult criminal justice system.

In this section, we take a look at what is happening around the country to advocate for reform of policies and practices that send youth to adult criminal court. Each story is unique; each has important lessons to convey.

THE LEGISLATIVE ROUTE: REDEFINING THE APPROPRIATE AGE OF ADULTHOOD

By far, the largest numbers of youth who are prosecuted in the adult system are there because they live in a state where juvenile court jurisdiction ends at age 16 or 17, rather than the traditional age of 18—a more appropriate age considering legal precedent and the most up-to-date research on the teenage brain. Across the country, advocates are taking steps—and having slow but steady success—at beginning to raise the age of adulthood back to the age of 18. The goal is to guarantee that youth most in need of support are not denied the safety, rehabilitative promise and age appropriate services of the juvenile justice system.

CONNECTICUT

In Connecticut, one of three states where adult court jurisdiction begins at age 16, legislation was introduced to raise the age to 18 years. It passed the judiciary committee “on principle.” But, after the fiscal committee gave it a \$70-\$80 million price tag, the notion died on the House floor. “That’s been the pattern. No one says they are opposed to raising the age, but it’s a question of money,” said Fernando Muñoz, executive director of the Connecticut Juvenile Justice Alliance. “Right now, we’re looking at our barriers to data collection and addressing the fiscal concerns. The idea is to get folks to see that when you factor in the savings to the adult system, it will be at least a wash.”

Connecticut has several youth advocacy groups, which can sometimes work at cross-purposes with each other. The new strategy, said Muñoz, is coordination. “Rather than putting seven, eight, nine, ten bills before the legislature and maybe getting one hearing, we’re going to pull all the groups together and introduce one or two bills.” There are also plans for a pilot program in Hartford that keeps 16 and 17-year-olds within juvenile court jurisdiction.

NEW HAMPSHIRE

Like other states tightening their juvenile laws in the mid-1990s, New Hampshire lowered the age to 17 when a teen would be considered an adult. The reasons were all familiar ones: a highly-publicized murder committed by one teenager gave the impression that teens were out of control; the adult system was seen as the only way to impose adequate sanctions and ensure protection for citizens. At the time, there

was a crime spree along the New Hampshire and Massachusetts border, where New Hampshire 17-year-olds were being used by adults as drug couriers and car thieves who delivered their goods in Massachusetts. According to Joseph Diament, former director of New Hampshire's Division for Juvenile Justice Services (DJJS), the concern was that these 17-year-olds were easy to recruit because they did not fear prosecution under New Hampshire's less harsh legal system. Even if they were adjudicated delinquent, the youth figured they would be released from DJJS custody within a short period of time.⁹⁵

For these reasons, New Hampshire began treating 17-year-olds who broke the law as adult criminals. Within a few years, however, those who witnessed the day-to-day repercussions of the policy—on the youth, on the systems and on the communities—were issuing 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 low-level offenders. Such cases were dismissed or the offender received a minor sanction.

The largest numbers of youth who are prosecuted in the adult system are there because they live in a state where juvenile court jurisdiction ends at age 16 or 17, rather than the traditional age of 18.

Peter Favreau, a retired police chief in Manchester and former commissioner of the New Hampshire Department of Youth Development Services, originally supported lowering the age, but then changed his stance. "I'm not a liberal. I'm a conservative kind of guy. I don't believe in molly-coddling these kids," he said. "But you had kids who are in adult jails but can't get medical attention without their parent's permission. They have no rights at all except to be prosecuted. It's a dichotomy that just doesn't work."

Youth workers and advocates began to see a distressing and recurring problem. There were many 16-year-olds who were being held in the state's juvenile facility on minor charges, like drug offenses. On midnight of their 17th birthday, law mandated that these youth be removed from juvenile confinement. "Many of them had no family, no one who was responsible for them. They were literally being dropped off on the street with nowhere to go in the middle of the night. Even if they had money, which they didn't, they weren't of age to sign a contract for a car or a lease for an apartment," explained Claire Ebel, director of the New Hampshire chapter of the American Civil Liberties Union. "We were seeing horror stories. Real horror stories of disposable children."

Faced with an increasing collection of anecdotal evidence, legislators began considering the possibility of reversing the law and putting 17-year-olds back under juvenile court jurisdiction. If they did so, it would make conservative New Hampshire the first state in more than ten years to buck the national trend. "There was definitely increasing interest. People started coming forward and telling our committee, 'This just doesn't work,'" stated Representative David Bickford, a Republican legislator from New Durham. In the 2001-2002 session, he sponsored a House bill to raise the age of majority back to age 18. "We were hearing stories of kids—high school juniors—sleeping under bridges. They weren't getting schooling. They were dropping out."

Peter Favreau tried to lobby support for the bill from his fellow police officers who were resisting the change. As a 32-year veteran of the force, he said that he understood their reluctance, but his perspective changed as he came to understand the importance of treatment, rather than "putting a kid in an adult jail where he sits at a table watching TV, playing cards and learning from the big guys." As Favreau explained to police organizations: "If you find a youth guilty at 16, then at 17, he's just back on the streets again. But if we change the law to 18, you get to keep him longer. He's off the streets *and* he's getting treatment. It's a win-win situation."

The bill passed in the House of the Representatives, only to become bogged down in the Senate, due primarily to resistance from a coalition of police, a county prosecutor and some county governments that were concerned about fiscal impact. There were administrative questions about how the juvenile system would be able to handle a sudden influx of 17-year-olds.

“People don’t disagree in philosophy with the policy of raising the age back to 18,” stated New Hampshire Judge, Paul Lawrence. “The problem is that they take the narrow fiscal view that it’s more expensive to give kids services when they are in the juvenile system than when they go into adult court.”

While the age of majority has not been raised in New Hampshire, those who pushed for change do not consider their hard work to be a failure. A compromise version of the bill passed during that legislative session. Rather than being abandoned to the streets, youth who are in the care and custody of the state’s Division of Juvenile Justice Services may now remain there until their 18th birthday, if so deemed by the juvenile court.

In addition, a task force—made up of legislators, judges, prosecutors, public defenders, police department representatives—was formed to study the issues and potential repercussions. Many are optimistic that complete success is just a matter of time.

“Every year, the interest keeps growing,” said Rep. Bickford, who plans to file the bill again during the upcoming legislative session. “Each time, we gain a little ground. We’re educating the opposition and gaining new converts. There’s just tremendous support from all arenas—health and human resources, the judges, youth advocates, the women’s lobby. From everywhere!”

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

REFORMING INEFFECTIVE, UNJUST AND DANGEROUS POLICIES

ILLINOIS

In 1989, the Illinois legislature enacted automatic transfer measures for anyone 15 years or older charged with selling drugs within 1,000 feet of a public housing project or a school. Almost immediately, families and youth advocates began to see an inequitable impact on African American youth who, in Illinois, frequently live in urban areas, nearby schools and public housing. There is a track record to consider. The first legislative proposal to change the law was attempted more than a decade ago, but did not make it out of committee. Yet, steadily over the years, research that went beyond the anecdotal began opening more eyes.

The Cook County Public Defender's Office put together a report with shocking findings.⁹⁶ More than half of the youth who were being 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. The report also noted that the vast majority of the cases involved only minor amounts of drugs and were either thrown out of adult court or settled by a sentence of probation. The State's Attorney could not refute the findings.

Another body of research—also viewed as extremely credible—took a hard look at the racial disparities brought about by the automatic transfer of youth involved in drug cases.⁹⁷ Such findings gained national attention and put the state under an uncomfortable spotlight. “There was a lot of fanfare with the media calling the law the most racially biased youth drug law in the nation. It was really an embarrassment for Illinois,” stated Betsy Clarke, president of the Illinois Juvenile Justice Initiative, one of the groups that pushed for a change in the law. “All that attention helped our cause enormously.”

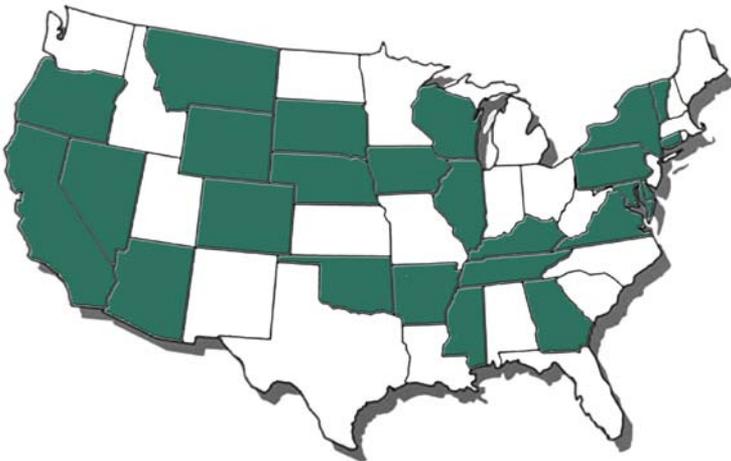
The next step was what Clarke described as “an insider's game.” As the initial publicity died down, a large coalition of activists, youth advocates and law school representatives continued their largely behind-the-scenes push. Critical to their success, the coalition had the strong backing of the Illinois State Bar Association. At first, the coalition set out to lobby for repeal of the entire drug law, but decided against that strategy. “We reached a compromise on reverse waiver (designed to al-

low the adult court discretion to send youth back into the juvenile system) and it sailed out of the House,” Clarke said. “I think there was a sense of relief among legislators. Compared to a complete rollback, this looked very moderate. They were asking themselves, ‘How could I *not* vote for this?’”

To rally support in the Senate, the Illinois State Bar went to an unexpected source: one of the toughest law-and-order advocates in the state, Republican Senator Ed Petka, a former Will County State’s Attorney who, according to an article in the *Chicago Sun-Times*, boasts of his record of placing the most men on death row of any prosecutor in Illinois history.⁹⁸ Petka examined the studies and statistics and came away convinced of the inequities. He accepted the challenge of taking the bill before the Senate. In his testimony, the senator explained the nuances of reverse waiver: certain juveniles who have been transferred to

States with Reverse Waiver Provisions

Arizona, Arkansas, California, Colorado,* Connecticut, Delaware, Georgia, Illinois, Iowa, Kentucky, Maryland, Mississippi, Montana, Nebraska, Nevada, New York, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Wisconsin and Wyoming.



Source: Griffin, Patrick, *Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws*. Pittsburgh, PA: National Center for Juvenile Justice, Oct. 2003 *Note: Colorado only allows for reverse waiver in the case of a judicial transfer, but not in the case of direct file.

Pros and Cons on the Use of Reverse Transfer

Reverse transfer procedure offers an opportunity to mitigate injustices created by policies that inappropriately send thousands of youth into the adult system. However, blanket use of reverse waiver—in lieu of genuine policy change that stems the flow—is unsound.

For the youth themselves, most of them with limited economic and legal resources, the process can be boggling. The youth, typically represented by a public defender, must petition for a hearing within a strict timeframe or lose the right to petition. The youth, not the prosecutor, now has the difficult burden of establishing “clear and convincing” evidence that he or she should be transferred back to juvenile court.

As the American Civil Liberties Union strongly cautions, “Given that the child will have fewer resources than the government, placing the burden of proof on the child to prove why he or she should be prosecuted in juvenile court is very difficult. This is especially true if the child is not adequately represented by counsel, which sometimes happens, especially to poor children.”

adult court under the drug law may petition for a hearing to be sent back to juvenile court. During the hearing, the judge would make a finding based upon several factors, including the age of the youth, previous criminal history and/or whether a deadly weapon was involved.

When Petka finished his testimony, he said, “I’ll answer any questions that you may have.” There were no questions and no discussion was held, only silence and then a call for a vote. The bill passed 43 to 11.

“For such a huge, polarizing issue, it was amazing that it just sailed through,” said Clarke. “I attribute that to a combination of factors: the credible research, the compromise legislation, having the State Bar Association leading the charge and the fact that the toughest law and order legislator was sponsoring it.” A few days after the bill passed, the *Chicago Tribune* praised lawmakers for doing “something unusual and remarkable. They corrected a mistake...Kudos to all for recognizing a stinker [law] when they see one, and for expending the political capital

needed to correct a mistake that has created its share of injustice.”⁹⁹

Flush with success, Illinois’ advocates saw this achievement as an opening for future reform. Since the law went into effect, data have been gathered about the use of reverse waiver for drug cases. Elizabeth Kooy, of the Illinois Juvenile Justice Initiative, has said that in Cook County approximately 30-40 percent of the drug cases that are transferred to adult court get probation, because the cases are not seen as serious; and another 15 percent are sent back into the juvenile system. Given these figures, Kooy asked, “Since so many cases get dropped or are sent back, the question is: ‘What’s the purpose of sending these kids into the adult system in the first place?’”

A task force, established by a new Senate bill, will look into this question and other issues surrounding transfer and waiver and report its findings to legislators. Advocates hope to make progress in several areas: scaling back the large number of crimes that fall under statutory exclusion provisions, streamlining the state’s cumbersome patchwork of transfer and waiver procedures, and extending the ability to use reverse waiver on all automatic transfer cases, not just those related to drug cases.

While there may be setbacks ahead, advocates have also been able to get a bill passed in the House to raise the upper age of juvenile court jurisdiction from 17 to 18. Currently, the bill is in the Senate, so Kooy and others are working to address the fiscal and bureaucratic concerns of such a move. “Getting the data was the turning point,” said Kooy. “People could see that the vast majority of youth are not in the adult system for violence. People can see it in their own children. They accept that kids can get into some trouble; they can wind up at the wrong party. Why should that mean they have a record that follows them for the rest of their life?”

WISCONSIN

In Wisconsin, legislative reform is being approached through the growing wealth of information about adolescent brain development. The Wisconsin Council for Children and Families had previously conducted research and promoted public education on brain development in children from newborns to three-year-olds. “We got a lot of positive feedback and media attention on that,” said Council executive director Charity Eleson. Now, the Council was ready to bring new brain development science to bear on discussions about adolescence, as well. “Given all the new science around the adolescent brain, it’s a logical progres-

sion to try and bring science-based policy to all areas of children's services. That's our signature issue."

Mark Wehrly, the Wisconsin Council's former senior policy analyst, indicated that fiscal issues are proving to be a stumbling block, particularly because Wisconsin has a decentralized, county-based system of

"Given all the new science around the adolescent brain, it's a logical progression to try and bring science-based policy to all areas of children's services."

— Charity Eleson, executive director of the Wisconsin Council for
Children and Families

services. Counties typically oppose any change that puts a burden on them that is not adequately funded. The costs associated with youth waived into the adult system as 17-year-olds, including both treatment and incarceration, are borne by the state. The costs for youth who remain in the juvenile system are borne by counties. For a decade, state funding for community-based services has fallen further behind county costs. Changing the law to keep more youth in the juvenile system without changing the financing would be unacceptable to counties, as they would be unable to raise the millions of dollars necessary to finance the change, except through property taxes or cuts in other county services. Therefore any such change must include financing reform, as well.

"Our plan is to be prepared with a strong fiscal analysis and alternatives to address those concerns," said Eleson. She remains optimistic because of the timing. "When the get-tough legislation was enacted a decade ago, juvenile crime as an issue was front and center. Now, it's not such an issue with the public, so we have an opportunity to approach it in a different framework. We don't have to ask, 'What do we do with these *bad* kids?' We can ask, 'What does science tell us about what works for youth?'"

DISTRICT OF COLUMBIA

In 2003, a four-part series in the *Washington Post* raised major issues about the Washington, D.C.'s inadequate and unsafe juvenile justice services and programming. In its wake, the District's Mayor, Anthony Williams, and some of the city council members, drafted legislation to make it much easier for prosecutors to charge juveniles—as young as age 15—as adults, and using other punitive approaches to juvenile crime. Such proposals had been specifically rejected by the Mayor's own "Blue Ribbon Commission on Youth Violence and Juvenile Justice Reform."

Organizations such as Justice 4 DC Youth and the Youth Law Center helped to organize advocates and community members to rally against the punitive legislation and to call for support of more progressive approaches. Testimony was presented by national experts, local advocates, young people and parents with more than 100 people attending and rallying outside of City Hall. In response, the D.C. Council rejected the Mayor's proposal, and months later a larger victory followed when Mayor Williams reversed his position on increasing transfers into adult court for young offenders and signed the "Omnibus Juvenile Justice Act of 2004."

The bill will make dozens of changes throughout the city's juvenile justice system, including provisions to prohibit the locking up of truant and runaway children with delinquent youth, to require judges to determine within 90 days whether a juvenile may be transferred to adult court—a process that now takes as long as two years—and to close the District's troubled youth detention center within four years.

FLORIDA

In a previous legislative session, State Senator Walter G. Campbell, Jr., sponsored a bill that would revise the age at which an offender who is a minor may be prosecuted and sentenced as an adult. The bill, if passed, would require that an offender 16 years or younger who commits an offense punishable by death or imprisonment for life be committed to the Department of Juvenile Justice or to a maximum-risk juvenile facility until the age of 21, when another hearing would be held. While the bill did not progress far through the legislative process, it became a rallying point for a variety of grassroots groups, composed of attorneys, parents and clergy, who continue to organize, hold rallies and lobby for reform. One such group—Justice4Kids.org, Inc.—has

the stated purpose of “helping parents work with Florida’s Department of Juvenile Justice to rescue troubled teens and children.”

“The first time, the chairman of the committee refused to hear it and that was that,” said Sen. Campbell. “But there was a lot of good press and editorial endorsements. Recently, the chair told me that if I file it again this year, he’ll give it a hearing, so that’s what I plan to do.”

VERMONT

Current Vermont statutes allow the state to file a delinquency petition in juvenile court or a criminal charge in adult court, for 16 and 17-year-olds, for both misdemeanors and felonies. Dick Smith, chair of the Vermont State Advisory Group on Juvenile Justice, also known as the Vermont Children and Family Council for Prevention Programs, said that approximately 80 percent of these youth wind up in adult court and on probation within a department that primarily serves adults and is not best equipped to serve youth. They will also shoulder adult convictions for the rest of their lives.

Advocacy is emerging from two sources. The state agencies—the Department of Corrections and the Department of Children’s and Family Services—are exploring an administrative approach to move toward treating 16 and 17-year-olds as juveniles. The Vermont Bar Association has also established a subcommittee to begin addressing the issue, legislatively. According to committee member Bob Sheil, who is also on the board of the advocacy group, Vermont’s Children’s Forum, “We are contemplating approaching the legislature this year to amend the statute; to have all cases (except for a set of 12 serious crimes, such as murder) for this age group begin by petition in juvenile court and place the burden on the state to convince the court why the case should be transferred up to adult court.”

In its preliminary work, the subcommittee has targeted two legislators who are willing to provide support and a couple of judges sympathetic to the cause. Sheil anticipates that the biggest challenge will come from the prosecutors in individual counties. The game plan, he says, “is to try and pinpoint one or two prosecutors who may be willing to go on the record that they aren’t adamantly opposed, but are at least willing to look into the issue.”

GATHERING THE STAKEHOLDERS

The public frequently refers to the “justice system” as if it is a single, nationwide entity. This is not the case. Rather, each jurisdiction has its own assortment of judges, attorneys, community organizations, probation officers, youth advocates and legislators that comprise the “system.” At times, this collection of government agencies, nonprofit organizations, system professionals and interested citizens can work at cross-purposes. To bring about effective change, it is critical to gather the stakeholders as a united voice for reform.

In one example—on the national level—the Coalition for Juvenile Justice recently set forth a resolution to work toward significantly reducing the number of youth that are sent to adult criminal court and to ensure that young offenders are appropriately adjudicated, in ways that enhance community safety and vitality. A wide range of national organizations with diverse philosophies and purposes—among them, the American Probation and Parole Association, the Children’s Defense Fund, Church Women United, the National Mental Health Association, Physicians for Human Rights, and the Society for Adolescent Medicine—have added their support, attesting to the growing broad-based call for effective reform. (For the text of the National Resolution and a full list of the many signatory organizations, please see the supplement to this report: “Childhood on Trial: Resources for Raising Awareness”(CJJ, 2005).

ARIZONA

Five years after the Arizona state legislature expanded the number of crimes that automatically send a youth into the adult system, the Children’s Action Alliance (CAA), a nonprofit advocacy organization, convened a statewide Juvenile Justice Advisory Committee. This group of stakeholders, including attorneys, probation officers, judges, child advocates, community leaders and administrators, set out to identify key issues surrounding the treatment of juvenile offenders as adults and to help set priorities for advocacy efforts.

A report was issued that summarized information about transfer and cited relevant state research and statistics. The committee explored the pros and cons of several options for future action, such as allowing reverse waiver and blended sentencing, improving transition services for youth under the age of 18 when leaving jails and prisons, and providing

statewide training to defense attorneys and prosecutors related to transfer issues. Several recommendations were made, such as to “study the criminal sentencing ranges and allow more flexibility to judges when sentencing juveniles convicted as adults” and “encouraging state and county authorities to improve the uniform tracking of the number of cases of juveniles prosecuted in the adult system, the sentences imposed and served and outcomes for youth.”¹⁰⁰

After this promising groundwork, the agenda shifted when the U.S. Department of Justice released a scathing report about conditions in Arizona’s juvenile justice system. “The report was more negative than we had ever expected,” said Beth Rosenberg, CAA’s senior program associate. Because it unearthed serious concerns, she states that now, “We need to concentrate our efforts now on cleaning up the juvenile system before pushing for reform on waiver and transfer. Otherwise, it’s hard to argue that the juvenile system is a viable alternative.” CAA seeks to make the case for keeping youth in the juvenile justice system, by ensuring that an array of age appropriate services are in place to keep youth safe from harm and to treat them with dignity and respect—while holding them accountable for their wrongdoing.

The cleaning up is being done while also recognizing that it can be convenient to point to the shortcomings of the juvenile system—yet, youth in general stand a better chance at becoming law abiding and productive members of society following time in juvenile rehabilitation, as compared with the results of inadequate education, counseling, security, nutrition, health care, and the threat of abuse, generally suffered in adult corrections.

GEORGIA

In Georgia, as a result of legislation passed in 1994 (SB 440) youth as young as 13 who are accused of one of the “seven deadly sins”—murder, voluntary manslaughter, rape, armed robbery, aggravated sodomy, aggravated child molestation and aggravated sexual battery—are automatically charged, tried and sentenced as adults. If convicted under SB 440, youth serve a mandatory minimum of ten years in prison without possibility of parole. This year, as the first class of “graduates” are about to be released from prison, several human and civil rights groups are working to educate the public and policy makers in order to challenge and repeal the law.

The Georgia Public Defender Standards Council is collecting SB440 data, including arrest and dispositional information, such as whether a case went to trial, whether the case was a plea, etc. The Justice for Youth Coalition, composed of lawyers and other system professionals, and the grassroots Youth Task Force are advocating for rollbacks in the law. In addition, Mothers Advocating Juvenile Justice (MAJJ) was started by a small group of women whose children had been sentenced under SB440. They continue to lobby and to solicit public and media support.

“When you have a child in prison, you go through so many emotions,” said Billie Ross, one of the founding members of MAJJ. “But once you get through the pain, hurt and embarrassment, you start feeling angry, talking and opening up about it. As more parents talk, more people are beginning to listen. It helps to be able to put names and faces to what has been a forgotten group of children.”

MICHIGAN

The advocacy work in Michigan began by gathering data to demonstrate how a lot of youth, in particular youth of color from just a few geographic areas, were being sent into adult institutions for low-level crimes. When this came to light, advocates called for reform and a conservative senator seemed willing to hold hearings to rethink the state’s transfer policies. Unfortunately, there was a setback when the senator changed his mind. Nevertheless, Elizabeth Arnovits of the Michigan Collaboration for Juvenile Justice Reform used the publicity to good advantage. “I knew that people’s hearts were in the right place. I said, this isn’t happening, legislatively, right now. So maybe we should hop on it, administratively.”

As a result, representatives of the state’s Department of Corrections and Juvenile Justice—two agencies that do not have a track record of collaborating—will be coming together for a series of meetings to look into the issue of why so many Michigan youth are winding up in adult facilities for relatively minor offenses, and what can be done about it. “It’s the first time that anything like this has happened,” Arnovits said. “We’re lucky right now to have an administration that is letting people do what they’ve been wanting to do for a long time.”

The group will tackle the tough issues, such as determining which youth are winding up in adult prisons and how economics play a part in such decisions. “For the counties, it costs them nothing to send a kid to prison. It costs them hundreds of dollars a day to keep them in a

juvenile training school. We don't know the answer yet, but together we want to figure out a way to level the economic playing field."

ADVOCATES AS WATCHDOGS

In the most recent years, while a few state legislatures have continued to expand the reach of transfer laws, for the most part the pace of punitive change has slowed considerably.¹⁰¹ Some of that can be attributed to a natural reflection of the lowering crime rate. But a lot of credit must go to a wide and dedicated network of advocates who are doing their best to prevent even more punitive policies from becoming law. These reformers are also trying to ensure that legislation, which is already in place, is not used arbitrarily, for political gain, or in any other manner for which it is was not intended.

CALIFORNIA

When Ballot Proposition No. 21 (Prop. 21) passed in California, opponents issued predictions that a flood of youth would come inappropriately into the adult system. Four years later, some public defenders are complaining that under Prop. 21's direct file provisions, the charging authority of prosecutors lacks uniformity and that youth may be treated as either juveniles or adults "depending on whim."¹⁰²

However, for the most part, proponents and critics agree that the provisions have been used only sparingly, keeping steady the number of youth being prosecuted as adults. Several reasons have been credited for this so-far better than expected, including falling youth crime rates and difficulty initiating new bureaucratic procedures. In some counties, including Los Angeles, San Francisco, Alameda and San Diego, it has been business as usual, with judges typically making the decisions about which youth should be transferred. Los Angeles County District Attorney, Steve Cooley, said that he has chosen to use his charging authority with discretion, allowing judges to make most of the determinations with input from probation officers, prosecutors and defense attorneys.¹⁰³

Kurt Kumli, a California prosecutor, credits ongoing media scrutiny and the diligence of gatekeepers within the system, for the restrained use of direct file. Still, he expressed caution. "We aren't at the place yet where the long-term repercussions of Prop. 21 have been felt," he warned. "The test will come when there's a horrendous youth crime and someone wants to make political hay out of it. At some point, the gatekeepers

will no longer be around, but the law will still be there to be used.”

Advocates acknowledge a recent set-back in another area when California Governor, Arnold Schwarzenegger, vetoed Senate Bill 1151, which sought to clarify for judges how to evaluate the circumstances and gravity of a crime before transferring a youth to adult court. Schwarzenegger said the bill would compromise public safety. Senator Sheila Kuehl, who sponsored the bill, was disappointed because her measure, which had extensive support, was designed to guide judges and to eliminate ambiguity in the law.¹⁰⁴

MARYLAND

As in other states in the early 1990s, Maryland greatly expanded its transfer and waiver laws through legislation. Since then, the Maryland Juvenile Justice Coalition (MJJC), made up of more than 100 organizational partners and 400 individual members, has been working toward reducing the number of minors tried in adult court. “We set lofty goals,” said Heather Ford, formerly of Advocates for Children and Youth, which staffs MJJC. “We don’t think that anyone under 18 should be in adult court.”

MJJC accomplishments include analyzing state data regarding which youth are most impacted by adult court legislation; spearheading an extensive informational campaign to publicize national data about the negative impact on youth who are incarcerated with adults; and drafting strong policy statements against the transfer of youth into the adult system. MJJC supported the introduction of state bills in the House and Senate from 2000-2001, aimed at restoring the juvenile court to its status before sweeping exclusionary offenses were added in 1993, as well as to encourage the adult court to consider use of reverse waiver to juvenile court. Both of these bills were reintroduced in 2002, 2003 and 2004.

In 2002, as one step, legislation passed both the House and the Senate to authorize the Criminal Justice Information System Central Repository, when a juvenile has been charged as an adult, to disseminate to the Maryland Justice Analysis Center unique identifiers relating to the child (except those prohibited by State law).

Ford acknowledged that it is unlikely that legislators will restore the juvenile court to its pre-1993 status, but she has strong belief that in 2005-2006, the Maryland General Assembly, will continue to re-evaluate

issues related to trying youth as if they are adults.

“We feel like we’ve reversed the tide away from *get tough* legislation,” she noted. “Through an aggressive advocacy campaign that included national experts from Human Rights Watch, the Sentencing Project, the Youth Law Center, Columbia University and others, Maryland has seen a reduction in the number of bills being introduced to transfer authority to the adult court.”

REBUILDING THE JUVENILE JUSTICE SYSTEM

The key argument for keeping youth in the juvenile system is that it is designed to meet their developmental needs and provide them with a safe environment, rehabilitative services and age-appropriate medical, mental health and educational support, so that youth may return to society as productive, law-abiding citizens. However, juvenile justice agencies have come under scrutiny in many states. Criticism and legal sanctions have been levied for a wide-range of serious and dangerous infractions. Often, advocates must work to improve conditions within juvenile facilities and to expand home and community-based alternatives to incarceration and confinement, so that the juvenile justice system can serve as a truly meaningful, educational and individualized alternative to the more chaotic and punishment-based adult criminal justice system.

PENNSYLVANIA

When the Juvenile Law Center issued a report that examined the state’s juvenile justice system, it was found that excessive caseloads were preventing defenders from having meaningful contact with their clients. Legal representation was absent in 11 percent of all delinquency dispositions involving hearings, including some of the most critical proceedings affecting a child’s liberty. In addition, youth were unrepresented or under-represented during judicial waiver hearings, where the juvenile court judge, after hearing evidence, transferred youth from a juvenile to adult criminal court.¹⁰⁵

“This practice is particularly alarming because it can result in youths’ criminal incarceration in the most restrictive circumstances—adult jails and prisons,” explained Sandra Simpkins of the Northeast Juvenile Defender Center. The report proved to be an effective advocacy tool, since

“after the report came out, we saw a decrease in that practice. There’s no way to know for sure, but I think it made people feel ashamed that this would be going on.” The report also provided a push for more statewide training for public defenders.

In Philadelphia, there is a separate unit of public defenders who work solely on transfer cases. “They approach like it’s a death penalty case, a special category,” said Simpkins. “The attorneys really dig. They keep statistics. They visit the kids in custody and work with social workers. It’s proven successful, with a 70 percent success rate in keeping kids in juvenile court.”

NEW YORK

In this state, which has both a low age of adult court jurisdiction (age 16) and broad statutory exclusion legislation, there has not been a lot of direct reform work around the issue of transfer and waiver. Youth, ages 13 to 15, charged with certain serious crimes are automatically tried as an adult under the state’s Juvenile Offender Law. Although they are tried in adult court, juvenile offenders are sentenced to juvenile facilities rather than adult facilities.

Advocates say that their focus on retaining youth in the juvenile system, and reducing transfers to the adult system, is indirect, as they

Legal representation was absent in 11 percent of all delinquency dispositions involving hearings, including some of the most critical proceedings affecting a child’s liberty.

— Juvenile Law Center, 2003

strive to make the juvenile system a highly effective alternative. “Honestly, our juvenile justice system is so dysfunctional that we have to fix

that before we can advocate to send more youth into this system,” said Mishi Faruqee of the Correctional Association of New York. “Lawyers representing youth in adult court often don’t advocate to remove a case to Family Court, because a young person often fares better in adult court, where judges are more willing to send a young person to an alternative-to-incarceration program.” She explained that there are so many mandates that youth involved in the juvenile system must follow—go to school, get a job—but, there are very few services and supports to help that happen. Over the past year, there were more youth incarcerated in state placement facilities for misdemeanors than for felonies. “The juvenile system in New York is like quicksand,” she noted. “Once you’re in, you get pulled in deeper and deeper.”

One major goal is to reduce pre-adjudicatory juvenile detention, as well as state placements, for youth under 16. As Faruqee explained, “The question always is, ‘If we take 16 and 17-year-olds out of the adult system, where will they go if a judge remands them to a secure facility? We certainly don’t want to build more youth jails and prisons. If we can reduce the juvenile detention rate, if we can divert more youth charged with nonviolent crimes out of juvenile jails and prisons to effective community-based alternatives, then there would be more capacity for kids over 16 to remain in the JJ system.”

This ill-conceived shift has taken place
at a time when the juvenile crime rate
has steadily fallen.

CONCLUSION

Past predictions from criminologists and the media were that juvenile crime would soon be running amuck. The assumption was that the juvenile court, with its emphasis on rehabilitation, did not impose strong enough sanctions and, therefore, a new breed of young criminals would emerge and be beyond redemption. The rationale followed that offering them services would be throwing money into a black hole.

In response, during the 1990s, almost every state rushed to toughen its laws to make it easier to place young offenders into the more punitive adult criminal justice system. Since 1992, state after state has expanded the types of offenses that mandate or make youth eligible for transfer to adult court; many states have taken the decision to transfer youth to adult criminal court away from the juvenile court judge and have handed it to the prosecutor who often proceeds with few guidelines and limited formal or public review of decisions.

Most dramatic of all are the more than 218,000 youth ages 16 and 17-year-olds enter the adult criminal justice system each year—not because of the severity of their crimes or because they are violent and repeat offenders, or have exhausted the resources of the juvenile system, but solely because they happen to live in a state that has set a lower age of adulthood in the criminal code.

Ironically, this ill-conceived shift has taken place at a time when

the juvenile crime rate has steadily fallen. And, the shift continues despite evidence that such measures are extremely costly, often implemented in unsystematic fashion, have a disproportionately negative impact on youth of color, and have little or no effect on making our communities safer. In fact, the flood of youth who enter the adult system soon emerge back into society as young adults facing enormous barriers to becoming productive, law-abiding citizens.

Research also knocks down the notion that the juvenile court cannot impose adequate sanctions. Juvenile court judges have long had the ability to transfer youth with the most chronic criminal histories and those who commit the most egregious crimes into the adult system. They also have the ability to impose adequate sanctions within the juvenile system itself, sanctions that in many cases will exceed the sentences doled out by adult court judges.

An impressive body of research also discounts the notion that today's breed of young offenders are immune to rehabilitation. The teen years are a crucial time when a young person is most amenable to support. In fact, positive mentoring and programs that are well designed, properly implemented and carefully monitored *can and do* make a tremendous difference, even with serious and chronic offenders.

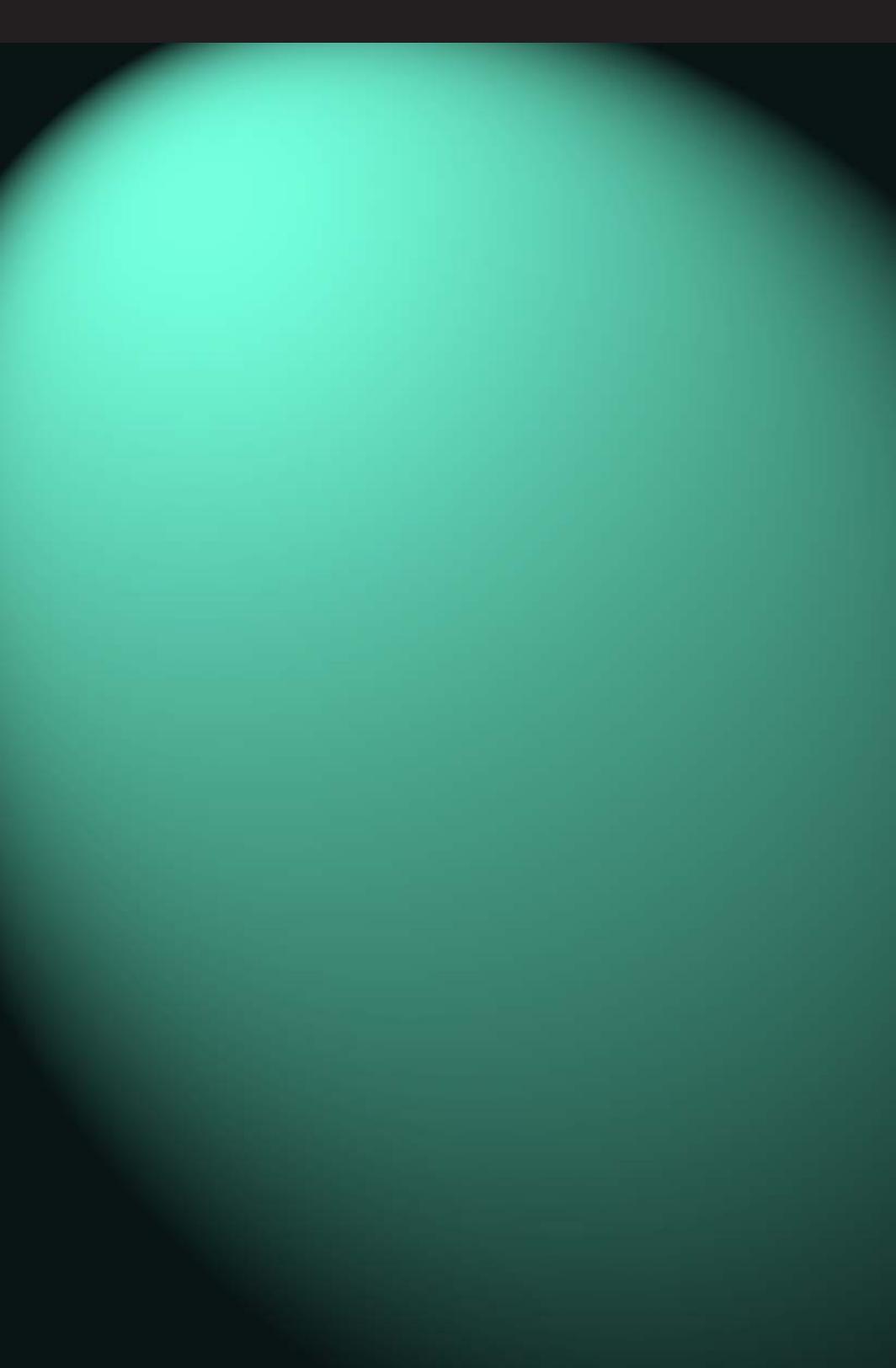
In his book "The Cycle of Juvenile Justice," Thomas J. Bernard, professor of criminal justice at Pennsylvania State University, describes the juvenile system as being in a continuous cyclical pattern, where it is seen as either too lenient or too harsh.¹⁰⁶ It moves in the direction of increased penalties and severe punishment when the public and policy makers are convinced that crime is higher than ever and can swing in the other direction when reformers attempt to "cure" juvenile delinquency with a Band-aid approach; a splattering of uncoordinated services and quick environmental fixes. Bernard stresses the importance of breaking this cycle of extremes and working toward stable juvenile justice policy.

As we look around the country, we see growing support for a shift toward middle ground as advocates work to reform ineffective policies. Except in the rare case of an older, chronic and violent offender, it makes no sense to try and sentence youth in adult criminal court. As we take notice of the failures and inequities of sending teenagers into the adult system, of denying them meaningful sanctions and treatment, we as a society face a set of important choices:

We can continue to react in fear. Or, we can take to heart overwhelming evidence and begin to act on it.

We can continue on the same, self-defeating path. Or, we can take a lesson from Michigan Judge Eugene Moore. As he went against the tide in declining to sentence a teenager to adult prison, he issued both a caution and a challenge:

“If we don’t want to throw the baby out with the bath water and return to the days of the Industrial Revolution, we must do better with the thousands of juveniles we see every day in our courts.”¹⁰⁷



ENDNOTES

¹ Stahl, Anne et al., Juvenile Court Statistics 1996. Pittsburgh, PA: National Center for Juvenile Justice: July 1999.

² Bollman, Amber, "Teen Acquitted in Uncle's Death," *Pensacola News Journal*, 6 March 2004.

³ Author's Note: In the King case, a jury rejected first-degree murder charges, but found the boys guilty of second-degree murder. A judge threw out the convictions and the boys pleaded guilty to third-degree murder. CNN.com Law Center, 14 November 2002. <http://archives.cnn.com/2002/LAW/11/14/king.ruling/>

⁴ American Bar Association, "Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners," 2004. www.abanet.org/crimjust/pubs/reports/introduction.html

⁵ "United Nations Division of Social Policy and Development," 2004. www.un.org/events/youth2000/def2.htm

⁶ Audi, Tamara, "Prison at 14: Teenage Girls Serve Time with Adult Inmates," *Detroit Free Press*, 10 July 2000.

⁷ Krikorian, Greg, "Dispute Grows Over Tough Gang-Related Sentencing by Courts," *Los Angeles Times*, 9 April 2001.

⁸ Lanza-Kaduce, L; Frazier, CE; Lane, J; Bishop, D, Juvenile Transfer to Criminal Court Study: Final Report. Florida Department of Juvenile Justice, 2002. www.djj.state.fl.us/statsnresearch/contractreports/juveniletransfers.pdf

⁹ Author's Note: Figure is based on an analysis of 1996 data and statement made in Juvenile Offenders and Victims, 1999 National Report, along with personal communication with Melissa Sickmund. "If the 1.8 million 16 and 17-year-olds in the 13 states with lower upper ages of juvenile jurisdiction are referred to criminal court at the same rate that 16-and 17-year olds are referred to juvenile court in other states, then as many as 218,000 cases involving youth under the age of 18 could have faced trial in criminal court in 1996, because the offenders were defined as adults under state law."

¹⁰ Bozynski, Melanie; Szymanski, Linda, "National Overviews." *State Juvenile Justice Profiles*. Pittsburgh, PA: National Center for Juvenile Justice. 2004. <http://www.ncjj.org/stateprofiles/>

¹¹ Griffin, Patrick, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws. Pittsburgh, PA: National Center for Juvenile Justice, 2003.

¹² Author's Note: Also known as prosecutorial discretion or concurrent jurisdiction.

¹³ Griffin, Patrick, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws. Pittsburgh, PA: National Center for Juvenile Justice, 2003.

¹⁴ Griffin, Patrick, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws. Pittsburgh, PA: National Center for Juvenile Justice, 2003.

¹⁵ Bureau of Justice Statistics (BJS), 1998 Sourcebook of Criminal Justice Statistics. Washington, DC: US Department of Justice, BJS, 1999.

¹⁶ Dilulio, John J, "The Coming of Super-Predators," *Weekly Standard*. 27 November 1995.

¹⁷ Butts, Jeffrey; Travis, Jeremy, The Rise and Fall of American Youth Violence: 1980 to 2000. Washington DC: The Urban Institute, 2002.

¹⁸ Bureau of Justice Statistics (BJS), 1998 Sourcebook of Criminal Justice Statistics. Washington, DC: US Department of Justice, BJS, 1999.

¹⁹ Blumstein, Alfred, "Violence Certainly is the Problem—Especially with handguns." University of Colorado Law Review, 1998. www.saf.org/lawreviews/Blumstein2.htm

²⁰ Blumstein, Alfred; Rosenfeld, Richard, "Assessing Recent Ups and Downs in US Homicide Rates," The National Consortium on Violence Research, 1998. Also, Lang Golub, Andrew; Johnson, BD, "Crack's Decline: Some Surprises Across US Cities," National Institute of Justice, 1997, as cited in Young, Malcolm; Gainsborough, Jenni, "Prosecuting

Juveniles in Adult Court: An Assessment of Trends and Consequences,” Washington, DC: The Sentencing Project, 2004. www.sentencingproject.org/pdfs/juvenile.pdf

²¹ Stephan, James J.; Karlberg, JC, Prison and Jail Inmates at Midyear 2003. Washington DC: US Department of Justice, Bureau of Justice Statistics, 2003.

²² Coalition for Juvenile Justice (CJJ), Ain't No Place Anybody Would Want to Be: Conditions of Confinement for Youth. Washington, DC: CJJ, 1999.

²³ Author's Note: Interview with community activist Elaine Brown.

²⁴ 1966 US Supreme Court decision *Kent v. United States*.

²⁵ 1966 US Supreme Court decision *Kent v. United States*.

²⁶ Griffin, Patrick, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws. Pittsburgh, PA: National Center for Juvenile Justice, 2003. Author's Note: Four states—Massachusetts, Nebraska, New Mexico and New York—do not have a judicial waiver process.

²⁷ Snyder, Howard; Sickmund, Melissa, Juvenile Offenders and Victims: 1999 National Report. Pittsburgh, PA: National Center for Juvenile Justice, 1999.

²⁸ Author's Note: Adapted from Puzzanchera, C., Stahl A., Finnegan T., Tierney N.; Snyder H., Juvenile Court Statistics 1999. Washington DC: US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 2003. <http://ncjj.servehttp.com/NCJJWebsite/faq/transfertocourt.htm>

²⁹ Juskiewicz, Jolanta, “Youth Crime/Adult Time: Is Justice Served?” Washington, DC: Building Blocks for Youth, 2002. www.buildingblocksforyouth.org/ycat/ycat.html

³⁰ Office of Juvenile Justice and Delinquency Prevention (OJJDP), OJJDP Statistical Briefing Book. Washington DC: US Department of Justice, Office of Justice Programs, OJJDP, April 2002. <http://ojjdp.ncjrs.org/ojstatbb/html/qa087.html.25>

³¹ Snyder, Howard; Sickmund, Melissa, Juvenile Offenders and Victims: 1999 National Report. Pittsburgh, PA: National Center for Juvenile Justice, 1999.

³² Schiraldi, Vincent; Ziedenberg, Jason, “The Florida Experiment: An Analysis of the Practice of Sending Kids to Adult Court,” San Francisco, CA: Center on Juvenile and Criminal Justice, 2000.

³³ Florida Department of Juvenile Justice, “Key Juvenile Crime Trends and Conditions.” Tallahassee, FL: Florida Department of Juvenile Justice, 2002. www.djj.state.fl.us/djj/research/statsnresearch/keytrends.html

³⁴ Author’s Note: There are two examples: Aaron Coleman received a sentence of 2 ½ years for marijuana trafficking and Zollie Reddick is currently imprisoned for 2 years-4 months for possession of cocaine. See: www.dc.state.fl.us/activeInmates, October 2004.

³⁵ Human Rights Watch (HRW), No Minor Matter: Children in Maryland’s Jails. New York, NY: HRW, 1999.

³⁶ Texas Youth Commission (TYC), “Juveniles Certified as Adults by Major County,” Austin, TX: TYC, 2001. www.tyc.state.tx.us

³⁷ Author’s Note: Interview with Vermont Juvenile Justice Specialist, Theresa Lay-Sleeper, Agency of Human Services, Waterbury, VT, 2004.

³⁸ Snyder, Howard; Sickmund, Melissa, Juvenile Offenders and Victims: 1999 National Report. Pittsburgh, PA: National Center for Juvenile Justice, 1999.

³⁹ Snyder, Howard; Sickmund, Melissa, Juvenile Offenders and Victims: 1999 National Report. Pittsburgh, PA: National Center for Juvenile Justice, 1999.

⁴⁰ Author’s Note: Also referred to as mandatory waiver.

⁴¹ Torbet, Patricia et al., Juveniles Facing Criminal Sanctions: Three States that Changed the Rules. Washington DC: US Department of Justice, Office of Justice Programs, OJJDP, 2000.

⁴² Ferdinand, Pamela, “Seventeen an Awkward Age, N.H. Juvenile Justice finds,” *Washington Post*, 27 March 2002.

⁴³ National Center for Juvenile Justice (NCJJ), State Juvenile Justice Profiles. Pittsburgh, PA: NCJJ, 2004. www.cjj.org/stateprofiles/overviews/transfer7.asp

⁴⁴ White Stack, Barbara, “Is this Justice? Punishment backfires under ‘adult time.’” *Pittsburgh Post-Gazette*, 20 March 2001.

⁴⁵ Redding, Richard E, Recidivism Rates in Juvenile versus Criminal Court. Charlottesville, VA: Juvenile Forensic Evaluation Resource Center, 2000.

⁴⁶ Villa, Judi, “Adult Prisons Harden Teens: Young offenders groomed for a life of crime.” *Arizona Republic*, 14 November 2004.

⁴⁷ Talbot, Margaret, “Maximum Security Adolescent,” *New York Times Magazine*, 10 September 2000.

- ⁴⁸ Author's Note: Interview with Jeffrey Fagan, Professor of Law and Public Health, Columbia University, New York, NY.
- ⁴⁹ Author's Note: Interview with Josh B., Santa Cruz County (CA) Juvenile Hall, 2002.
- ⁵⁰ DiIulio, JJ, "Stop Crime where it Starts," *New York Times*, 31 July 1996.
- ⁵¹ National Center for Juvenile Justice (NCJJ), State Juvenile Justice Profiles. Pittsburgh, PA: NCJJ, 2004. www.cjj.org/stateprofiles/overviews/transfer8.asp
- ⁵² Stahl, Anne et al., Juvenile Court Statistics 1996. Pittsburgh, PA: National Center for Juvenile Justice: July 1999.
- ⁵³ Mendel, Richard, Less Hype, More Help: Reducing Juvenile Crime, What Works and What Doesn't Work. Washington, DC: American Youth Policy Forum, 2000.
- ⁵⁴ Editorial staff, "No Youth Crime Remedy," *Los Angeles Times*, 22 February 2000.
- ⁵⁵ Strom, Kevin J, "Profile of State Prisoners Under Age 18, 1985-97." Washington DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, February 2000.
- ⁵⁶ Greene, Ronnie; Doughery, Geoff, "Kids in Prison: Tried as Adults, They Find Trouble Instead of Help and Rehabilitation," *Miami Herald*, 18 March 2001.
- ⁵⁷ National Center for Education Statistics (NCES), Youth Indicators/Trends in the Well-being of American Youth. Washington, DC: US Department of Education, NCES, 2000.
- ⁵⁸ Catterall, JS, On the Social Costs of Dropping Out of School. Stanford, CA: Center for Education Research, 1985.
- ⁵⁹ Pager, Devah, "The Mark of a Criminal Record," American Journal of Sociology, 108(5): 937-975, Chicago, IL: University of Chicago Press, March 2003.
- ⁶⁰ Author's Note: Personal interview with Josh B., Santa Cruz County (CA) Juvenile Hall, 2002.
- ⁶¹ Coalition for Juvenile Justice (CJJ), Handle with Care: Serving the Mental Health Needs of Young Offenders, Washington DC: CJJ, 2000.
- ⁶² Coalition for Juvenile Justice (CJJ), Ain't No Place Anybody Would Want to Be: Conditions of Confinement for Youth, Washington DC: CJJ, 1999.

- ⁶³ Levick, Marsha, "Testimony on the Proposed Standards on the Confinement of Youthful Offenders in Adult Correctional Facilities," Juvenile Law Center, 2002. www.jlc.org/home/JLC@WORK/juvenilejustice/ACA%20Testimony.html
- ⁶⁴ Author's Note: Personal interview with parent Billie Ross, 2002.
- ⁶⁵ Author's Note: Personal interview with Daniel Macallair, 2002.
- ⁶⁶ Juskiewicz, Jolanta, "Youth Crime/Adult Time: Is Justice Served?" Washington, DC: Building Blocks for Youth, 2002. www.buildingblocksforyouth.org/ycat/ycat.html
- ⁶⁷ Juskiewicz, Jolanta, "Youth Crime/Adult Time: Is Justice Served?" Washington, DC: Building Blocks for Youth, 2002. www.buildingblocksforyouth.org/ycat/ycat.html
- ⁶⁸ American Jail Association, Resolutions, 2004. www.corrections.com/aja/about/resolutions.shtml#JUVENILES_IN_JAILS.
- ⁶⁹ Fagan, Jeffrey, et al., "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," Juvenile and Family Court Journal. Reno, NV: National Council of Juvenile and Family Court Judges, 1989.
- ⁷⁰ Coalition for Juvenile Justice (CJJ), Handle with Care: Serving the Mental Health Needs of Young Offenders, Washington DC: CJJ, 2000.
- ⁷¹ Audi, Tamara, "Prison at 14: Teenage Girls Serve Time with Adult Inmates," *Detroit Free Press*, 10 July 2000.
- ⁷² Fagan, Jeffrey, et al., "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," Juvenile and Family Court Journal. Reno, NV: National Council of Juvenile and Family Court Judges, 1989.
- ⁷³ Trestrail, Joanne, "Science Explains Teenage Brain," *Chicago Tribune*, 16 September 2001.
- ⁷⁴ Begley, S, "Why Depression Looks Different in a Kid's Brain," *Wall Street Journal*, 15 October 2004. Also, Grisso, Thomas; Schwartz, RG, Eds., Youth on Trial: A Developmental Perspective on Juvenile Justice. Chicago, IL: John D. and Catherine T. MacArthur Foundation Series on Mental Health and Development, University of Chicago Press, 2003.
- ⁷⁵ Salant, Jonathan, "Youths Shouldn't be Tried as Adults, Study says," The Associated Press, 3 March 2003.
- ⁷⁶ John D. and Catherine T. MacArthur Foundation, "MacArthur Juvenile Adjudicative Competence Study," Chicago, IL: MacArthur Foundation. <http://www.mac-adoldev-juvjustice.org/page23.html>

⁷⁷ Grisso, Thomas; Schwartz, RG, Eds., Youth on Trial: A Developmental Perspective on Juvenile Justice. Chicago, IL: John D. and Catherine T. MacArthur Foundation Series on Mental Health and Development, University of Chicago Press, 2003.

⁷⁸ Author's Note: Daniel Carter still faces charges for trying to escape from a juvenile facility two weeks after his arrest and before he was moved to the county jail. See: Kaczor, Bill, "Panhandle teen acquitted of murdering uncle," *The Associated Press*, 6 March 2004.

⁷⁹ Bollman, Amber, "Teen Acquitted in Uncle's Death," *Pensacola News Journal*, 6 March 2004.

⁸⁰ Griffin, Patrick, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws. Pittsburgh, PA: National Center for Juvenile Justice, 2003.

⁸¹ Torbet, Patricia, et al., Juveniles Facing Criminal Sanctions: Three States that Changed the Rules. Washington DC: US Department of Justice, Office of Justice Programs(OJJDP), 2000.

⁸² Stawicki, Elizabeth, "What to do when children commit adult crimes?" Minnesota Public Radio, 4 November 2003.

⁸³ Editorial staff, "Judge Backs Up his Belief in Redemption of Children," *San Francisco Chronicle*, 15 January 2000.

⁸⁴ Belluck, Pam, "Fighting Youth Crime, Some State Blend Adult and Juvenile Justice," *New York Times*, 11 February 1998.

⁸⁵ Torbet, Patricia et al., Juveniles Facing Criminal Sanctions: Three States that Changed the Rules. Washington DC: US Department of Justice, Office of Justice Programs, OJJDP 2000.

⁸⁶ Torbet, Patricia et al., Juveniles Facing Criminal Sanctions: Three States that Changed the Rules. Washington DC: US Department of Justice, Office of Justice Programs, OJJDP, 2000.

⁸⁷ American Correctional Association, "Resolution on the Children's Confinement Improvement Act." 2002. www.aca.org

⁸⁸ Rimer, Sara, "States Adjust Adult Prisons to Needs of Youth Inmates," *New York Times*, 25 July 2001.

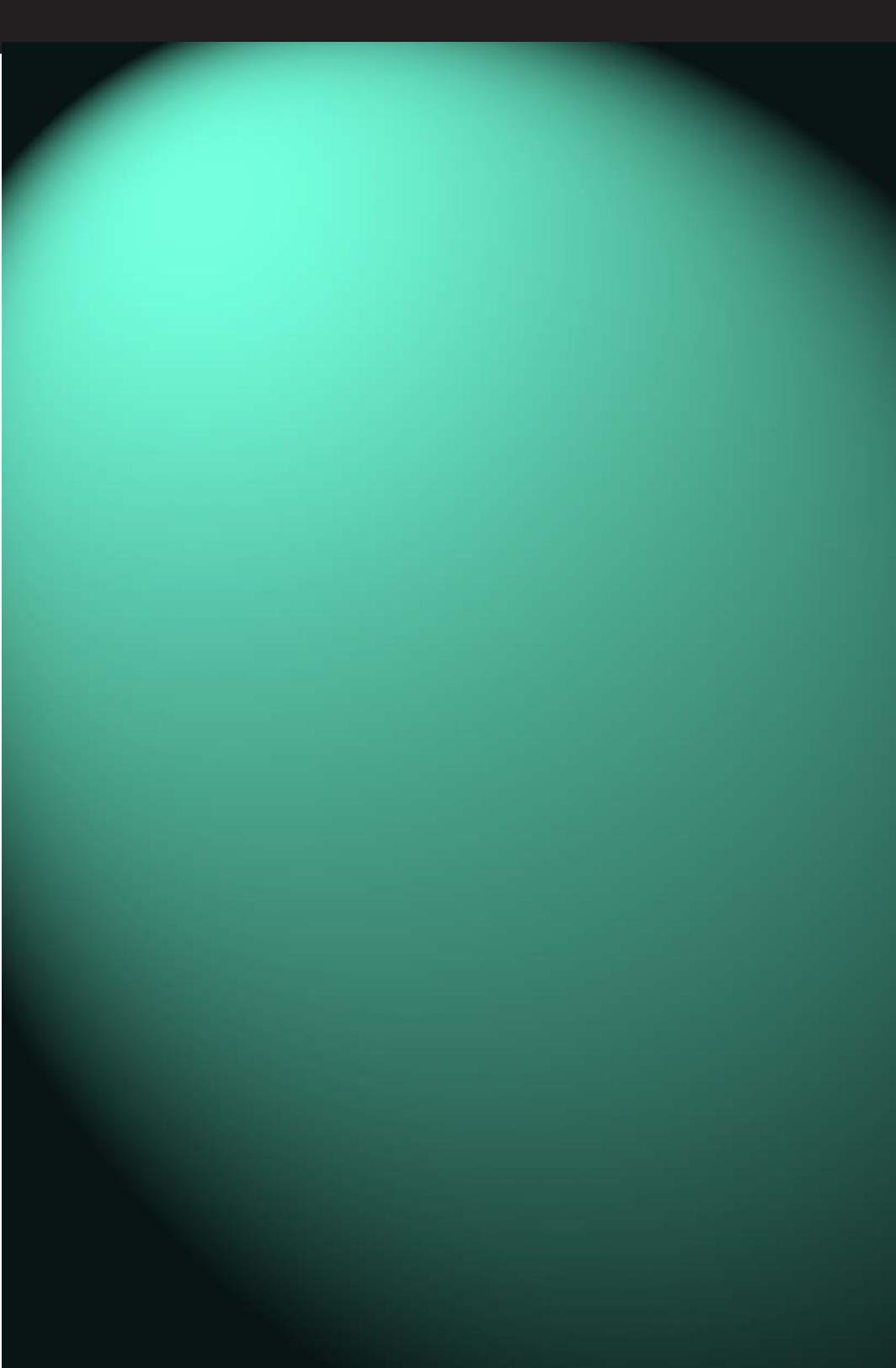
⁸⁹ Rimer, Sara, "States Adjust Adult Prisons to Needs of Youth Inmates," *New York Times*, 25 July 2001.

⁹⁰ Gaseau, Michelle; Mandeville, M, "Jailing Juveniles: Managing a Special Population," *Corrections Connection* Quincy, MA, 2002.

- ⁹¹ Gaseau, Michelle; Mandeville, M, "Jailing Juveniles: Managing a Special Population," *Corrections Connection* Quincy, MA, 2002.
- ⁹² Susman, Tina "Growing Up in Jail: Law Requires Juveniles to Face Adult Penalties and Prison," *Newsday*, 20 August 2000.
- ⁹³ J. Austin, et al., "Juveniles in Adult Prisons and Jails: A National Assessment." Washington DC: Bureau of Justice Statistics, US Department of Justice, 2000.
- ⁹⁴ Author's Note: Personal interview with Elijio H.
- ⁹⁵ Diament, Joseph, "New Hampshire Raises the Age of Majority in Juvenile/Criminal Statutes," *Corrections Today*, Lanham, MD: American Correctional Association, Oct. 2002.
- ⁹⁶ Kooy, Elizabeth, Attacking the Automatic Transfers at the Case Level and Policy Level. Cook County Public Defenders Office, Fall 2000.
- ⁹⁷ Ziedenberg, Jason, Drugs and Disparity: The Racial Impact of Illinois' Practice of Transferring Young Adult Offenders to Adult Court, Washington DC: Building Blocks for Youth, 2002. www.buildingblocksforyouth.org/Illinois/Illinois.html
- ⁹⁸ Sneed, Michael, *Chicago Sun-Times*, 7 December 2000.
- ⁹⁹ Editorial staff, "Fixing Errors and Helping Youth," *Chicago Tribune*, 10 May 2002.
- ¹⁰⁰ Children's Action Alliance (CAA), Prosecuting Juveniles in the Adult Criminal Justice System: Key Issues and Recommendations for Arizona, Phoenix, AZ: CAA, 2003. www.azchildren.org/caa/_mainpages/publications/publications_asp.
- ¹⁰¹ Griffin, Patrick, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws. Pittsburgh, PA: National Center for Juvenile Justice, 2003.
- ¹⁰² Gorman, Anna, "Few DAs Use New Power to Try Juveniles as Adults," *Los Angeles Times*, 8 August 2004.
- ¹⁰³ Gorman, Anna, "Few DAs Use New Power to Try Juveniles as Adults," *Los Angeles Times*, 8 August 2004.
- ¹⁰⁴ Warren, Jennifer, "Gov. Vetoes Bill on Juvenile Crimes," *Los Angeles Times*, 1 September 2004.
- ¹⁰⁵ Juvenile Law Center (JLC), Advancing the Rights of Children in Jeopardy. Philadelphia, PA: JLC, 2003. www.jlc.org/home/publication/pa_pressrelease.htm

¹⁰⁶ Bernard, Thomas J., The Cycle of Juvenile Justice, Oxford University Press, December 1991.

¹⁰⁷ Brasier, LL; McDiarmid, H, "Abraham Avoids Hard Prison Time," *Detroit Free Press*, 14 January 2000.



BIBLIOGRAPHY

American Bar Association [ABA]. Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners. www.abanet.org/crimjust/pubs/reports/introduction.html:ABA

American Correctional Association [ACA]. Resolution on the Children's Confinement Improvement Act. www.aca.org:ACA

American Jail Association [AJA] Resolutions. www.corrections.com/aja/resolutions/index: AJA

Audi, Tamara, "Prison at 14: Teenage Girls Serve Time with Adult Inmates," *Detroit Free Press*, 10 July 2000.

Austin, J. et al., Juveniles in Adult Prisons and Jails: A National Assessment. Washington DC: Bureau of Justice Statistics, US Department of Justice, 2000.

Begley, Sharon, "Why Depression Looks Different in a Kid's Brain," *Wall Street Journal*, 15 October 2004.

Belluck, Pam, "Fighting Youth Crime, Some States Blend Adult and Juvenile Justice," *The New York Times*, 11 February 1998.

Bernard, Thomas, The Cycle of Juvenile Justice. New York: Oxford University Press, 1991.

Blumstein, Alfred, "Violence Certainly is the Problem—Especially with Handguns." University of Colorado Law Review. www.saf.org/lawreviews/Blumstein2.htm, 1998.

Bollman, Amber, "Teen Acquitted in Uncle's Death," *Pensacola News Journal*, 6 March 2004.

Bozynski, Melanie and Szymanski, Linda, National Overviews. State Juvenile Justice Profiles. Pittsburgh, PA: National Center for Juvenile Justice, 2004. Online at www.ncjj.org/stateprofiles/

Bureau of Justice Statistics [BJS], 1998 Sourcebook of Criminal Justice Statistics. Washington, DC: BJS, US Department of Justice, 1999.

Butts, Jeffrey and Travis, J., The Rise and Fall of American Youth Violence: 1980 to 2000. Washington DC: The Urban Institute, 2002.

Catterall, J.S., On the Social Costs of Dropping Out of School. Stanford, CA: Center for Education Research, 1985.

Children's Action Alliance [CAA], Prosecuting Juveniles in the Adult Criminal Justice System: Key Issues and Recommendations for Arizona. Phoenix, AZ: CAA, 2003. www.azchildren.org/caa/mainpages/publications/publications_asp

Coalition for Juvenile Justice [CJJ], Ain't No Place Anybody Would Want to Be: Conditions of Confinement. Washington DC: CJJ, 1999.

Coalition for Juvenile Justice [CJJ], Handle with Care: Serving the Mental Health Needs of Young Offenders. Washington DC: CJJ, 2000.

Diament, Joseph, "New Hampshire Raises the Age of Majority in Juvenile/Criminal Statutes," Corrections Today. Lanham, MD: American Correctional Association, 2002.

Dilulio, John J. Jr., "The Coming of Super-Predators," *The Weekly Standard*, 27 November 1995.

Dilulio, John J. Jr., "Stop Crime Where It Starts," *New York Times*, 31 July 1996.

Editorial, "No Youth Crime Remedy," *Los Angeles Times*, 22 February 2000.

Editorial, "Judge Backs Up his Belief in Redemption of Children," *San Francisco Chronicle*, 15 January 2000.

Editorial, "Fixing Errors and Helping Youth," *Chicago Tribune*, 10 May 2002.

Fagan, Jeffrey, et al., "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," Juvenile and Family Court Journal. Reno, NV: National Council of Juvenile and Family Court Judges, 1989.

Ferdinand, Pamela, "Seventeen an Awkward Age, N.H. Juvenile Justice Finds," *Washington Post*, 27 March 2002.

Florida Department of Juvenile Justice [FDJJ]. Key Juvenile Crime Trends and Conditions. www.djj.state.fl.us/djj/research/statsnresearch/keytrends.html

Gaseau, Michelle and Mandeville, Meghan. Jailing Juveniles: Managing a Special Population. www.corrections.com: Corrections Connection.

Gorman, Anna, "Few DAs Use New Power to Try Juveniles as Adults," *Los Angeles Times*, 8 August 2004.

Greene, Ronnie and Doughery, G., "Kids in Prison: Tried as adults, they find trouble instead of help and rehabilitation," *Miami Herald*, 18 March 2001.

Griffin, Patrick, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws. Pittsburgh, PA: National Center for Juvenile Justice, 2003.

Grisso, Thomas and Schwartz, Robert G., Editors, Youth on Trial: A Development Perspective on Juvenile Justice. John D. and Catherine T. MacArthur Foundation Series on Mental Health and Development, University of Chicago Press, 2003.

Human Rights Watch [HRW], No Minor Matter: Children in Maryland's Jails. New York: HRW, 1999.

John D. and Catherine T. MacArthur Foundation, MacArthur Juvenile Adjudicative Competence Study. <http://www.mac-adoldev-juvjustice.org/page23.html:JDCTMF>

Juskiewicz, Jolanta, Youth Crime/Adult Time: Is Justice Served? Washington, DC: Building Blocks for Youth, 2000. www.buildingblocksforyouth.org/ycat/ycat.html

Juvenile Law Center [JLC], Advancing the Rights of Children in Jeopardy. Phila. Pa: JLC, 2003. www.jlc.org/home/publication/pa_pressrelease.htm

Krikorian, Greg. "Dispute Grows Over Tough Gang-Related Sentencing by Courts," *Los Angeles Times*, 9 April 2001.

Lanza-Kaduce, Lonn, Frazier, Charles, Lane J. and Bishop, Donna. Juvenile Transfer to Criminal Court Study: Final Report. Florida Department of Juvenile Justice: Tallahassee, FL, 2002. www.djj.state.fl.us/statsnresearch/contractreports/juveniletransfers.pdf

Levick, Marsha, Testimony on the Proposed Standards on the Confinement of Youthful Offenders in Adult Correctional Facilities, Juvenile Law Center www.jlc.org/home/JLC@WORK/juvenilejustice/ACA%20Testimony.html

Macallair, Dan and Males, Mike, Dispelling the Myth: An Analysis of Youth and Adult Crime Patterns in California over the Past 20 Years. San Francisco, CA: Justice Policy Institute, 2000.

Mendel, Richard, Less Hype, More Help: Reducing Juvenile Crime, What Works and What Doesn't Work. Washington DC: American Youth Policy Forum, 2000.

National Center for Education Statistics [NCES], Youth Indicators: Trends in the Well-being of American Youth. Washington, DC: NCES, US Department of Education, 2000.

Office of Juvenile Justice and Delinquency Prevention [OJJDP], OJJDP Statistical Briefing Book. Washington, DC: OJJDP, 2002. <http://ojjdp.ncjrs.org/ojstatbb/html/qa087.html>

Redding, Richard E., Recidivism Rates in Juvenile versus Criminal Court. Charlottesville, VA: Juvenile Forensic Evaluation Resource Center, 2000.

Rimer, Sara, "States Adjust Adult Prisons to Needs of Youth Inmates." *New York Times*, 25 July 2001.

Salant, Jonathon, "Youths Shouldn't be Tried as Adults, Study says." The Associated Press, March 2003.

Schiraldi, Vincent and Ziedenberg, Jason, The Florida Experiment: An Analysis of the Practice of Sending Kids to Adult Court. San Francisco, CA: Center on Juvenile and Criminal Justice, 2000.

The Sentencing Project [SP] "Prosecuting Juveniles in Adult Court: An Assessment of Trends and Consequences," The Sentencing Project Fact Sheet, Washington, DC: SP. www.sentencingproject.org/brief/juveniles.html

Snyder, H. and Sickmund, M., Juvenile Offenders and Victims: 1999 National Report. Pittsburgh, PA: National Center for Juvenile Justice, 1999.

Stahl, Anne et al., Juvenile Court Statistics 1996. Pittsburgh, PA: National Center for Juvenile Justice, 1999.

Stephan, James J. and Karlberg, Jennifer C., Prison and Jail Inmates at Midyear 2003. Washington DC: Department of Justice, Bureau of Justice Statistics, October 2003.

Strom, Kevin J., Profile of State Prisoners Under Age 18, 1985-97. Washington DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2000.

Susman, Tina, "Growing Up in Jail: Law Requires Juveniles to Face Adult Penalties and Prison," *Newsday*, 20 August 2000.

Talbot, Margaret, "Maximum Security Adolescent," *New York Times Magazine*, 10 September 2000.

Texas Youth Commission [TYC], Juvenile Certified as Adults by Major County, 2001. www.tyc.state.tx.us

Torbet, Patricia et al., Juveniles Facing Criminal Sanctions: Three States that Changed the Rules. Washington DC: US Department of Justice, Office of Justice Programs, OJJDP, 2000.

Trestrail, Joanne, "Science Explains Teenage Brain," *Chicago Tribune*, 16 September 2001.

United Nations [UN] United Nations Division of Social Policy and Development. www.un.org/events/youth2000/def2.htm

Warren, Jennifer, "Gov. Vetoes Bill on Juvenile Crimes." *Los Angeles Times*, 1 September 2004.

Ziedenberg, Jason, Drugs and Disparity: The Racial Impact of Illinois' Practice of Transferring Young Adult Offenders to Adult Court. Washington DC: Building Blocks for Youth, 2002. www.buildingblocksforyouth.org/Illinois/Illinois.html



REPORTS FROM THE COALITION FOR JUVENILE JUSTICE

2003

Unlocking the Future: Detention Reform in the Juvenile Justice System.

2001

Abandoned in the Back Row: New Lessons in Education and Delinquency Prevention.

Esperanza: Awakening to the Strength of Latino Youth.

2000

Handle with Care: Serving the Mental Health Needs of Young Offenders.

Enlarging the Healing Circle: Ensuring Justice for American Indian Children.

1999

Ain't No Place Anybody Would Want to Be: Conditions of Confinement for Youth.

1998

A Celebration or a Wake? The Juvenile Court After 100 Years.

1997

False Images: The News Media and Juvenile Crime.

1996

Transformation of the Juvenile Justice System: The States of the States.

1995

Youth Violence Prevention: A Fence or an Ambulance?

1994

No Easy Answers: Juvenile Justice in a Climate of Fear.

1993

Pursuing the Promise: Equal Justice for Juveniles.

1992

Myths and Realities: Meeting the Challenge of Serious, Violent, and Chronic Juvenile Offenders.

To order a CJJ report, please contact the national office:
(202) 467-0864, ext. 0, or www.juvjustice.org



THE WRITER

JILL WOLFSON

Jill Wolfson, author of “Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court” is an accomplished writer who specializes in child welfare and juvenile justice issues. Wolfson has won many state and national honors for her work, including awards from the National Press Club, The American Bar Association, The Western Society of Criminology and a Casey Foundation Fellowship. In 1997, Wolfson and her co-author, John Hubner, won the media award for an Outstanding Contribution in Communicating the Needs of Youth and Juvenile Courts, presented by the National Council of Juvenile and Family Court Judges, for the book, “Somebody Else’s Children—The Courts, the Kids, the Struggle to Save America’s Troubled Families” (hardcover, Crown 1997, paperback, Three Rivers Press, 1998). Wolfson also authored the 2003 Coalition for Juvenile Justice (CJJ) annual report, “Unlocking the Future: Detention Reform in the Juvenile Justice System,” and was co-author of several additional past reports from CJJ—addressing topics such as mental health needs, education and delinquency and conditions of confinement.