

Adjudication of Youths as Adults in the Criminal Justice System POSITION STATEMENT

The ostensible goals of transfer, or waiver, to the criminal justice system include: (1) deterrence of youth from committing crimes, (2) reduction in recidivism among youth who are transferred, and (3) improvement of public safety.

However, instead of accomplishing their intended goals, waivers have seriously disrupted the lives of youth, and their families, especially those from minority communities. The federal government, in concert with states, should review and develop a strategy to reform current transfer/waiver practices. The general goals of such reform must be: to reduce the number of youth inappropriately transferred to the criminal justice system who could be better served by the juvenile justice system, to provide rehabilitation services that support the development of youth as valued members of society, and to ensure community safety. Reform should specifically include:

- (1) a moratorium on the expansion of eligibility criteria for transfer.
- (2) limiting transfer only to judicial discretion (or sole authority by judge).
- (3) an elimination of transfers for non-violent offenders.
- (4) an elimination of transfer of first-time offenders.
- (5) the development of specialized facilities for transferred youth. Such facilities would include small living units that are secure and safe; programming that addresses the developmental, educational, health, mental health, religious, and other special needs of these youth; and adequately staffed with qualified workers to ensure safety and specialized programming (Council of Juvenile Correctional Administrators, 2005).

The first Juvenile Courts were established approximately one hundred years ago as an effort to develop a more humane system for youth than that of the criminal justice system. This was driven, in large part, by judicial acknowledgement that youth were developmentally quite different from adults with respect to the law. Youthful offenders were considered to be cognitively and morally immature as compared to their adult counterparts and therefore were not deemed as fully responsible as adults. In addition, youth were thought to be more malleable given their stage of development and responsiveness to interventions. This concept of developmental immaturity served as the framework for rehabilitation to prevent future criminal behavior, one of the primary goals of the juvenile court.

The juvenile justice system recognized that those young offenders, who were not amenable to rehabilitation or who were a threat to public safety, would be better dealt with in the criminal justice system. Judges were given the authority during the juvenile court's nascent phase to decide if an offense by a youth would be more appropriate for the adult criminal justice system. Due to an increasing rate of youth violence in the 1980's and early 1990's and the perceived failure by juvenile courts to deter youth violence, state legislatures enacted a broad range

of legal mechanisms by which delinquency cases could be transferred or waived to the adult criminal justice system. These legal mechanisms included discretionary waivers (also known as “certification,” “bindover,” “remand,” “transfer,” or “decline” proceedings), mandatory waivers, presumptive waivers, statutory exclusions, and “once an adult/always an adult” waivers.

In addition, prosecutors have recently been given more discretionary authority by state legislatures than judges in certain situations and may transfer a case via the mechanism of direct file. Many states do not identify the lowest age at which these waiver mechanisms can be applied. Some states identify ages as young as six and ten for which a child could legally be transferred to the criminal judicial system (Griffin, Torbet, and Szymanski, 1998).

Recent national data from the U.S. Department of Justice (OJJDP, 2003) indicates that approximately 7500 youth are transferred to the criminal court each year by judicial discretion, that approximately 27,000 youth are sent to the criminal justice system by direct file, and that 218,000 youth completely bypass the juvenile justice system via legislation that lowers the age at which an alleged juvenile offender will be dealt with as an adult below age eighteen. More than half of the transfer cases in one year were for nonviolent drug or property offenses, including 43 percent for offenses against persons, 37 percent for property offenses, 14 percent for drug offenses, and 6 percent for public order offenses. Eight percent of youth admitted to state prison before age 18 were released before reaching their eighteenth birthday and 75 percent were released before becoming 22 years old. Ninety-three percent have served their minimum sentence before age 28. Unfortunately, these youth did not receive the rehabilitative support that the juvenile justice system could have provided.

Research has demonstrated that the practice of transfer has not deterred youth in the larger community from offending; that with a few exceptions, i.e. property offenses, recidivism did not decrease among transferred youth, and improved community protection was not evident. One study concluded that the seriousness of re-offending among transferred youth was greater than for non-transfers. The claim that more serious offenders are less likely to respond to rehabilitation efforts is not supported by research (Lipsey and Wilson, 1998). Additionally, youth who are charged and convicted as adults receive felony records, which in many states means, for example, that youth are no longer eligible for federal or state loans for education or housing, further increasing the chance that they will remain involved in the criminal system. Also, convicted youth cannot vote in most jurisdictions which only serves to further marginalize these young people.

Waivers and transfers have been disproportionately applied to minority communities. In a study of eighteen jurisdictions sponsored by a coalition of children’s advocates (Juszkiewicz, 2000), researchers found that 82% of transfers involved minority youth, with African-Americans accounting for 70% of the transferred youth and Latinos accounting for 23%. In one extreme example of

a county in Alabama, African-American youth accounted for 3 out of 10 felony arrests while representing 80 percent of felony cases transferred to adult court. African-Americans were overrepresented among nonviolent drug and public order cases sent to the criminal justice system. African-American and Latino youth were more likely than white youth to receive a sentence of adult incarceration as opposed to adult probation or other lesser sentences. The use of private attorneys appeared to increase the likelihood of a transfer back to the juvenile court and lowered conviction rates. However, white youth were twice as likely to be represented by a private attorney and were convicted less frequently than African-American youth.

Recent studies on incarcerated youth indicate that up to 75% of incarcerated youth have a diagnosable mental illness (Cocozza and Skowyra, 2000). A disproportionate number of these youth are victims of child abuse. Procedures and frequency of mental health screening, assessment, and treatment of mental disorders among incarcerated youth vary widely from jurisdiction to jurisdiction; treatment of mental disorders is not mandated in most jurisdictions. There is evidence that suggests that youth housed in adult detention facilities are nearly five times more likely to be sexually assaulted, three times more likely to be assaulted by prison staff, and fifty percent more likely to be assaulted with a weapon than youth in a juvenile facility.

Developmental differences between youth and adults who commit crimes are great. In situations involving split second decisions, youth are on average, less mature than adults in the areas of cognition and emotional development. They tend to be less capable of appreciating the consequences of their behavior tend to follow the direction of their social group, are more readily swayed by their peers, are more impulsive and often demonstrate poor judgment. Many in the criminal justice system are not be mentally competent to be adjudicated (www.mac-adoldevjuvjustice.org/page22.html). As such, criminal justice sanctions are harsh, unreasonable, and fail to consider youth in a developmental context. These observations apply specifically to minors who are being adjudicated in the criminal justice system, and should not be construed to apply to minors' cognition and behavior in all other situations.

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Laurence Steinberg, et al., *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1010 (2003)

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