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IMPROVING JUVENILE JUSTICE POLICY IN CALIFORNIA: A CLOSER LOOK AT TRANSFER LAWS' IMPACT ON YOUNG MEN & BOYS OF COLOR

by Jennifer Lynn-Whaley and Andrea Russi

This brief takes a deeper look at juvenile transfer laws in California, exploring the circumstances under which they evolved, how they impact youth of color, and whether they indeed improve public safety and reduce recidivism. It concludes with recommendations and examples of promising approaches.

Criminal and juvenile justice policy continues to evolve as corrections philosophy adapts to current events, public opinion, and the application of new research. Within that context, the way youth¹ are handled within the juvenile justice system also continues to evolve. Dating back to the creation of the first juvenile court in 1899, there has been a long history of juvenile crime being treated differently—and juvenile punishments meted out separately—from adults.² As circumstances and the political climate combined to influence policy, treatment of serious and violent juvenile offenders increasingly reflected the more punitive orientation typically found in adult corrections. This

orientation is one that moves away from rehabilitative and therapeutic goals to emphasize punishment and incapacitation. As a matter of policy, how serious and violent juvenile offenders are managed, and where they are managed by the justice system so that public safety is maximized and recidivism is reduced are central to the discussion in this brief, and an issue that continues to plague policymakers and practitioners alike.

One way legislators have toughened sanctions against juveniles involves the practice of transferring youth from juvenile court to adult criminal court, under specific circumstances, known collectively as *transfer laws* (see Table 1). The reasoning behind this practice includes the public's desire to see violent youth punished and incapacitated as well as the idea that youth would be deterred from committing crimes due to the threat of punishment in adult courts, thereby increasing public safety.³ Despite a lack of evidence that transferring

1. In this policy brief, reference to “youth,” “juvenile offender,” “juvenile,” “teen,” “child,” and “young men and boys” means someone under the age of 18.

2. A. PLATT, *The Child Savers: The Invention of Delinquency*, 2nd ed. (1977), pp. 3-4, 138.

3. Deterrence theory includes the concepts of general deterrence and specific deterrence, where general deterrence is defined as youth refraining from committing crimes for fear of punishment, and specific deterrence meaning incarcerated youth would be deterred against recidivating once they were released. For more on deterrence theory and transfer laws, see Richard Redding, (2010), *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, US Department of Justice.

TABLE 1 | Types of Transfers to Adult Court⁴

Judicial Waiver	45 states (including CA) allow juvenile court judges the discretion to have a youth's case tried in adult criminal court.
Direct File or "Prosecutorial Waiver"	15 states (including CA) allow prosecutors the discretion to have a youth's case tried in adult criminal court.
Statutory Waiver	29 states (including CA) automatically require a youth's case to be tried in adult court based on the age of the youth, or the alleged crime, or both.

youth to adult court increases public safety, it has gained widespread support and its use has expanded since the mid-1990s, when judicial and statutory waiver were the primary transfer mechanisms to move youth to adult court.

DEFINING THE ISSUE

In the late-1980s when violent crime was on the rise, and notably juvenile violent crime, politicians responded to growing public anxiety by becoming increasingly "tough on crime" in their campaign rhetoric and legislative agendas. Between 1987 and 1993, the dramatic increase in juvenile crime was evidenced by spikes in nearly every violent crime category, and underscored by a 65% increase in juvenile homicides.⁵

However, before it became evident that the uptick of juvenile crime that had begun in 1988 was only to last roughly six years before dropping again, several academics made widely publicized predictions about youth crime that foretold of "big trouble that hasn't yet begun to crest."⁶ Their assessment was that American communities were "sitting atop a demographic crime bomb"⁷ where droves of urban youth were poised to unleash waves of violent crime across the country. Princeton University Professor John DiIulio coined the term, "super-predators" to describe this

population of aggressive and violent youth,⁸ and this became part of the basis for a decidedly more punitive juvenile justice agenda. From that point forward, architects of juvenile justice policy began shifting away from the long-standing focus on rehabilitation to mirror the more punitive corrections strategies that originated in the adult criminal justice system years earlier. By 1997, every state with the exception of three had modified laws to make it easier to try youth offenders in adult court.⁹ However, juvenile crime had already begun to stabilize and by 2000 it had dropped to levels observed in the mid-1980s.¹⁰

While the majority of the nation responded to the panic surrounding the spike in juvenile violent crime by passing crime bills that toughened sanctions against juveniles, California set the bar, pushing punitive juvenile policy further than any state.¹¹ In 2000, California enacted a ballot measure referred to as Proposition 21 (officially known as the *Gang Violence and Juvenile Crime Prevention Act*), overwhelmingly approved by a 65% to 35% margin. The law repealed and added sections to the California Penal Code and Welfare and Institutions Code, representing one of the largest overhauls of the state juvenile court system since 1961.¹² Proposition 21 was characterized by its supporters largely as anti-gang legislation, and contained a wide variety

4. Campaign for Youth Justice, JJDPFA Fact Book, "Trying Youth as Adults Fact Sheet," accessed online August 2011 at http://www.act4jj.org/media/factsheets/factsheet_20.pdf.

5. *Kids and Guns: 1999 National Report*, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, US Department of Justice, p. 2; *Juvenile Arrest 1999*, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, US Department of Justice (2000).

6. J. DiIulio, *The Coming of the Super-Predators*, *The Weekly Standard*, (November 25, 1995). Other academicians making similar claims included J. Wilson and C. Murray, cited in B. Krisberg, *Hate the Player Hate the Game: the politics of war against the young*, in "Continuing the Struggle for Justice" Eds. B. Krisberg, S. Marchionna & C. Baird, (2007), pp. 39-51.

7. J. DiIulio, *The Coming of the Super-Predators*, *The Weekly Standard*, (November 25, 1995).

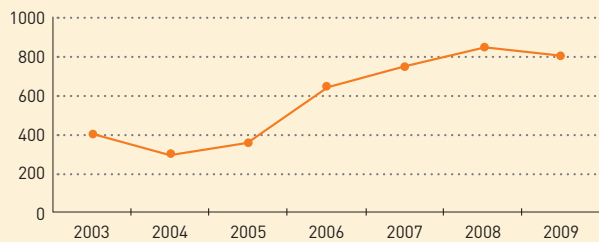
8. *Ibid*.

9. The three states are Nebraska, New York, and Vermont. *Juvenile Offenders and Victims: 1999 National Report*, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, US Department of Justice, p. 89.

10. C. Puozanchera, *Juvenile Arrests 2008*, (2009), Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, US Department of Justice.

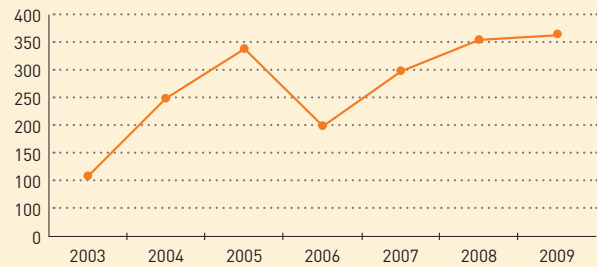
11. National Center for Juvenile Justice, *State Juvenile Justice Profiles*, "How have state laws governing criminal prosecution of juveniles changed in recent years?," (2006), accessed on July 12, 2011 at <http://70.89.227.250:8080/stateprofiles/overviews/transfer9.asp>.

FIGURE 1 | Direct File Dispositions in Adult Court in California



Source: Juvenile Justice in California 2003-2009, California Department of Justice, Criminal Justice Statistics Center, analysis by the Warren Institute.

FIGURE 2 | Number of Juveniles Sentenced to DJJ or Prison in Adult Court



Source: Juvenile Justice in California 2003-2009, California Department of Justice, Criminal Justice Statistics Center, analysis by the Warren Institute.

of provisions, including the creation of direct file, or “prosecutorial waiver”¹³ that for the first time enabled prosecutors, rather than judges, to determine whether a youth should be tried in, or transferred to, adult court. This provision is notable not only because it removes discretion from the juvenile court judge and shifts it to the prosecutor, but it also creates circumstances under which youth may be more easily tried in adult court. Prior to Proposition 21, California had already passed legislation creating *statutory waiver*, which stipulates that for certain offenses, youth aged 14 and older are automatically tried in adult court.¹⁴

Nearly seven years after Proposition 21 was enacted, California passed another piece of landmark juvenile justice legislation that came about in large part as a result of the financial shortfall that befell the state. In an effort partially intended to reduce costs to the state, Senate Bill 81 called for the “realignment” or transfer of non-violent offenders from secure, state-run facilities to county facilities and programs. As a result of this legislation, all offenders were to be managed at the county level, except those youth who committed certain serious and violent offenses.¹⁵

This legislation had the secondary impact of removing the availability of a secure and punitive placement option – that of the state facility – for prosecutors, who may be reluctant to send offenders to less secure camps and ranches.

In the years since Proposition 21 was enacted, the number of youth who were transferred to adult court through the “direct file” provision in Proposition 21 has increased substantially from 410 youth in 2003 to 769 youth in 2009, representing an 88% increase, as illustrated in Figure 1.¹⁶

Equally concerning is the escalation, over the same time period, in the number of youth sentenced to the California Youth Authority (CYA), now Division of Juvenile Justice (DJJ) or adult prison. With the passage of State Bill 81, only the most serious and violent offenders were being sent to DJJ, but many of the juveniles tried in adult court, regardless of the nature of their offense, were sent to DJJ because they could not be housed in adult prisons. Figure 2 depicts the rise in the number of youth sentenced to serve terms in DJJ or adult prisons from 110 in 2003 to 364 in 2009—a 231% increase.

12. B. KRISBERG, *Hate the Player Hate the Game: the politics of war against the young*, in “Continuing the Struggle for Justice” Eds. B. Krisberg, S. Marchionna and C. Baird, (2007), pp. 39-51.

13. Prosecutorial waivers (also known as “concurrent jurisdiction,” “prosecutorial discretion,” or “direct file”) allow prosecutors discretion to file cases against juveniles in either juvenile or adult court.

14. In California, statutory exclusion provisions apply to a juvenile who is 14 years or older who is accused of murder where special circumstances are alleged or various sex offenses. California Welfare & Institutions Code § 602 (West 2010); National Center for Juvenile Justice, State Juvenile Justice Profiles.

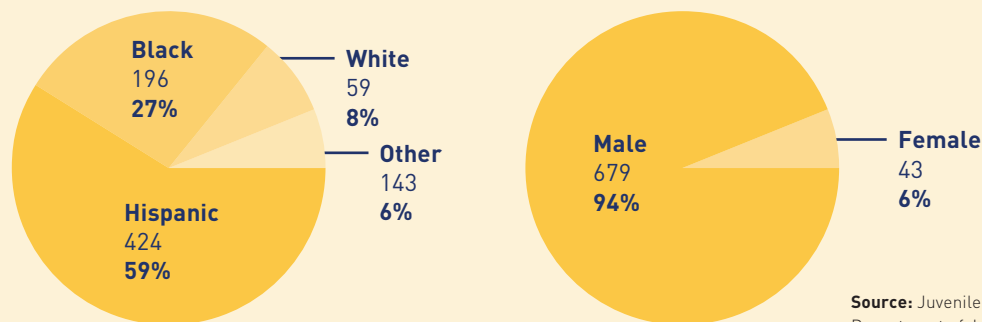
15. These crimes are listed in Welfare and Institutions Code § 707 (b)—the section that lists crimes for which minors can be tried as adults—they include murder, arson, robbery, rape, and kidnapping as well as several types of sex offenses.

16. After the passage of Proposition 21, there were no data collection systems in place until 2003, when Senate Bill 314 was enacted. It required data collection from both the juvenile and adult systems to document the impact of the new adultification law. Therefore, data are not available between 2000 and 2003. Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, (March 2007), available online: http://www.campaignforyouthjustice.org/documents/CFYJNR_ConsequencesMinor.pdf.

In addition to the sharp increase in the number of youth offenders tried in adult court, the disproportionate effect on youth of color—particularly males—is profound, which mirrors the sentencing disparities seen at earlier stages of juvenile case processing.¹⁷ In 2009, probation departments in California reported 1,115 transfers to adult

court. This number includes transfers made by judicial, statutory, and prosecutorial waiver.¹⁸ These transfers resulted in 722 adult court final dispositions in 2009, the majority of which were young boys and men of color as represented in Figure 3.¹⁹ More than eight out of ten dispositions received in adult court in 2009 resulted in a conviction (85%).²⁰

FIGURE 3 | Adult Court Dispositions in California by Race/Ethnicity, Gender (2009)



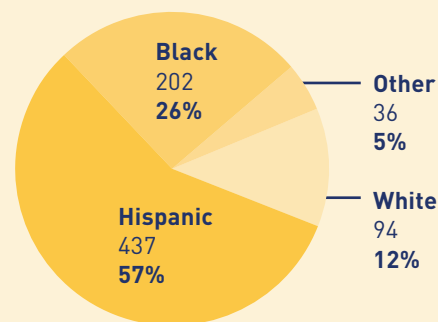
Source: Juvenile Justice in California 2009, California Department of Justice, Criminal Justice Statistics Center (July 2010)

According to the California Department of Justice, 611 juveniles received adult court convictions in 2009. Youth of color were sentenced to prison or DJJ at higher rate than white youth: 62% of Hispanic youth and 61% of African American youth versus 41% of white youth.²¹

In 2009, a total of 769 youth in California were transferred to adult court based on direct file by the prosecutor. As demonstrated in Figure 4, of the transferred youth, 26% (202) were African-American, 57% (437) were Hispanic, and 5% (36) were classified as “other.” Only 12% (94) were white. Of the 769 youth transferred in 2009, 96% were male (741) and 4% were female (28).

Numerous studies examining the impact of transfer laws have found that offenders who are youth of color are over-represented in criminal courts and receive disparate

FIGURE 4 | Direct Files in Adult Court in California, by Race/Ethnicity (2009)



Source: Juvenile Justice in California 2009, California Department of Justice, Criminal Justice Statistics Center (July 2010), analysis by the Warren Institute.

17. J. JUSZKIEWICZ, (2000), *Youth Crime/Adult Time: Is Justice Served?*, Prepared by Pretrial Services Resource Center for the *Building Blocks for Youth Initiative*.

18. California Department of Justice, Criminal Justice Statistics Center, *Juvenile Justice in California 2009*, available online: <http://ag.ca.gov>.

19. A disposition hearing is comparable to a sentencing hearing in criminal court. It occurs after the guilty plea or trial when the juvenile court imposes a disposition or sentence in the matter. Not all cases transferred to adult court reach a disposition within the same calendar year.

20. California Department of Justice, Criminal Justice Statistics Center, *Juvenile Justice in California 2009*, available online: <http://ag.ca.gov>.

21. *Ibid.*

treatment throughout the court process.²² Youth of color, particularly African-American and Latino youth, are more likely to have contact with the juvenile justice system than white youth. This impact is greater at all stages, from arrest to confinement.²³ Research shows that these youth experience a “cumulative disadvantage” as they move along the pipeline from arrest to incarceration.²⁴ For example, in California, youth of color represent 65% of the overall youth population but 84% of youth in detention.²⁵

One study tracked cases filed in 18 counties throughout the country over a six-month period (a total of 2,584 cases). It concluded that African-American youth were significantly less likely to be represented by private counsel. Youth represented by private counsel faced less likelihood of being convicted of a felony and were more likely to be transferred back to juvenile court. African-American youth were more likely than others to be held in adult jails before going to trial.²⁶

Juveniles transferred to adult court receive longer sentences than those sentenced in juvenile court for similar crimes.²⁷ The long-term consequences of being sentenced as an adult are not insignificant, especially in light of what is known about the challenges adult offenders with a felony conviction face in nearly every aspect of life, from obtaining

employment and housing to getting federal assistance for education. In contrast, in many juvenile cases in California, the juvenile record can be sealed and does not have to be disclosed as an adult.²⁸ However, once you are transferred to adult court, in most cases, you will remain in adult court for any future charges. Transferring a juvenile offender to adult court begins these challenges at an even earlier age, thus further reducing the likelihood that the youth will become a productive individual in his or her community.²⁹

DO TRANSFER LAWS IMPROVE PUBLIC SAFETY?

Given their widespread adoption, one might assume there is consensus that transfer laws have a demonstrated track record of success with their intended outcomes—that of improving public safety and reducing recidivism. The accumulating research, however, tells a different story. Numerous studies have failed to find evidence that trying youth in adult court results in reduced recidivism or that the transfers produce a deterrent effect.³⁰ In fact, findings to the contrary have been uncovered, revealing that juvenile transfers to adult court are found to *increase* recidivism rather than reduce it. Indeed, offenders waived to criminal court have been shown to recidivate at higher rates, more quickly, and for more serious and violent offenses when compared to

22. J. JUSZKIEWICZ, (2000), *Youth Crime/Adult Time: Is Justice Served?*, Prepared by Pretrial Services Resource Center for the *Building Blocks for Youth Initiative*; M. MALES & D. MACALLAIR, (2000), *The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California*, Prepared by Justice Policy Institute for the *Building Blocks for Youth Initiative*; E. POE-YAMAGATA & M. JONES, (2000), *And Justice for Some*, Prepared by The National Council on Crime and Delinquency for the *Building Blocks for Youth Initiative*.

23. D. HUIZINGA & T. THORNBERRY, (2007), *Disproportionate Minority Contact in the Juvenile Justice System: A Study of Differential Minority Arrest/Referral to Court in Three Cities*, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, US Department of Justice.

24. E. POE-YAMAGATA & M. JONES, (2000), *And Justice for Some*, Prepared by The National Council on Crime and Delinquency for the *Building Blocks for Youth Initiative*.

25. C. PUZZANCHERA, A. SLADKY, & W. KANG, (2008), *Easy Access to Juvenile Populations: 1990-2007*, available online: <http://www.ojjdp.ncjrs.gov/ojstatbb/ezapop/>; M. SICKMUND, T.J. STADKY, & W. KANG, (2008), *Census of Juveniles in Residential Placement Databook* available online: <http://www.ojjdp.ncjrs.gov/ojsstatbb/cjrp>.

26. J. JUSZKIEWICZ, (2000) *Youth Crime/Adult Time: Is Justice Served?*, Prepared by Pretrial Services Resource Center for the *Building Blocks for Youth Initiative*.

27. R. REDDING, (2010), *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, US Department of Justice.

28. The right to seal a juvenile record includes all court, probation, and police records related to a particular case. California Welfare & Institutions Code § 781 (West 2010). When a juvenile turns 18, she can petition the court to seal her records unless she has been convicted as an adult of a felony involving moral turpitude. Most importantly here, the juvenile must be able to show the case started and ended in juvenile court. In addition, if convicted of any offense listed in California Welfare & Institutions Code § 707(b), the court will not seal the juvenile record.

29. R. REDDING, (2003), *The Effects of Adjudication and Sentencing Juveniles as Adults: Research and Policy Implications*, Youth Violence and Juvenile Justice, 1: 128-155.

30. R. Redding, (2010), *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, US Department of Justice; A. McGowan, et al., (2007), *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review*, American Journal of Preventive Medicine, 32(4S); L. Lee & J. McCrary, (2005), *Crime, punishment, and myopia*. Working Paper 11491, National Bureau of Economic Research; Mason & S. Chang, (2001), *Re-arrest Rates Among Youth Sentenced in Adult Court: An Evaluation of the Juvenile Sentencing Advocacy Project*, Miami-Dade County Public Defender's Office.

Juvenile offenders who are waived to criminal court are 34% more likely to be re-arrested for a violent or other crime relative to offenders who have committed comparable crimes but who were retained in the juvenile court system.

offenders retained in juvenile court.³¹ A review of existing research on juvenile transfers to adult court by the non-partisan Task Force on Community Preventive Services found that juvenile offenders who are waived to criminal court are 34% more likely to be re-arrested for a violent or other crime relative to offenders who have committed comparable crimes but who were retained in the juvenile court system.³²

According to researchers, potential explanations for why youth tried in adult courts have higher rates of recidivism than youth retained in juvenile court include the influence of being labeled as a convicted felon and the resulting stigmatization; an overall perception that being tried as an adult is unjust or unfair that can manifest as resentment toward the system; the transference of criminal skill sets and behavior from adult offenders to juveniles; and finally the absence of support structures more available in a juvenile setting combined with an emphasis on punishment over rehabilitation.³³

In light of research demonstrating that juvenile transfer laws appear to generate the very behavior they seek to eradicate, one might wonder what logically sustains their implementation—especially given the more recent

scientific evidence that continues to evolve on adolescent brain development. This research asserts that juveniles are biologically different from adults in terms of their development, mental capacity and processes—an argument utilized by the Supreme Court to justify its ruling against capital punishment for juveniles whose crimes were committed under the age of 18.³⁴ There are three fundamental issues that this research has brought to bear on the policy of juvenile transfers. First, there is evidence that youth are less able to ascertain the consequences of their actions, and are thus less culpable relative to adults.³⁵ This fact supports the argument that juveniles should be held to a lower standard of punishment than adults that is more lenient. Second, research reveals that the average juvenile under the age of 16 lacks the mental capacity to comprehend and participate in the adult judicial process as required by law.³⁶ The cognitive processing of youth this age has been compared to that of adults who are found to be incompetent to stand trial. Finally, because their cognitive development is incomplete at this age, juveniles have been found to be more amenable and receptive to behavioral reform than adults, making them prime candidates for rehabilitative efforts.³⁷ The American Bar Association, in its “ABA Policies on Youth in the Criminal Justice System” advocates for sentence mitigation based on the notion that:

Youth are developmentally different from adults, and these developmental differences need to be taken into account at all stages and in all aspects of the adult criminal justice system.³⁸

These cognitive developmental findings in conjunction with research that trying youth as adults is correlated with

31. Ibid.

32. A. MCGOWAN, et al., (2007), *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review*, American Journal of Preventive Medicine, 32(4S).

33. G. BAZEMORE & M. UMBRIET, (1995), *Rethinking the Sanctioning Function in Juvenile Court: Retributive or Restorative Responses to Youth Crime*, Crime and Delinquency, 41: 296-316; D.L. MYERS, (2003), *The Recidivism of Violent Youths in Juvenile and Adult Court: A Consideration of Selection Bias*, Youth Violence and Juvenile Justice, 1: 79-101; C.W. THOMAS & D. M. BISHOP, (1984), *The Impact of Legal Sanctions on Delinquency: A Longitudinal Comparison of Labeling and Deterrence Theories*, Journal of Criminal Law and Criminology 75: 1222-45; L. WINNER et al., (1997), *The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term*, Crime and Delinquency 43: 548-63.

34. *Roper v. Simmons*, 543 U.S. 551 (2005).

35. A. MCGOWAN, et al., (2007), *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review*, American Journal of Preventive Medicine, 32(4S).

36. Ibid.

37. Ibid.

38. American Bar Association, *Youth in the Criminal Justice System*, 105C, Adopted by the House of Delegates, February 11, 2008.

reoffending at higher rates and the disproportionate impact on youth of color, have combined to create a formidable argument against the effectiveness of transfer laws. However, current juvenile corrections philosophy has trended away from reform. At the very minimum, policies addressing the sentencing and sanctioning of juvenile offenders need to be re-evaluated given the overwhelming evidence that taking an exclusively punitive approach has not yielded success.

RECOMMENDATIONS AND PROMISING APPROACHES

Many states as well as national legal, advocacy, and mental health organizations³⁹ have generated recommendations intended to temper or modify punitive juvenile justice legislation enacted in the mid-1990s that acknowledge the considerable existing research. A review of the recommendations made by a number of states identified by the National Juvenile Justice Network found that there are three reforms that share common support: (1) increasing the age for adult criminal court jurisdiction; (2) transferring juveniles back to juvenile court after appropriate case review of sentences in adult court and; (3) expanding education or rehabilitative programs.⁴⁰ There appears to be near consensus across states as well as national organizations that a mechanism should be in place to allow for the evaluation of, and capacity to return to juvenile court, juvenile cases that are transferred to adult court, referred to as *reverse waiver*. Currently a total of 25 states have reverse waiver laws, including California.

In thinking about recommendations and promising approaches, it is important to keep in mind that to change the provisions of California's Proposition 21 would require either a new voter initiative or a supermajority of the legislature. Both of these seem highly unlikely at present. There are, however, some steps that can be taken to lessen the negative effects of existing transfer laws.

There appears to be near consensus across states as well as national organizations that a mechanism should be in place to allow for the evaluation of, and capacity to return to juvenile court, juvenile cases that are transferred to adult court, referred to as reverse waiver. Currently a total of 25 states have *reverse waiver* laws, including California.

The first, mentioned above, is to increase the opportunity for youth to be able to seek a reverse waiver to return their case to juvenile court or to seek a *blended* sentence. California judges have the capacity to order a reverse waiver and return a juvenile from adult court to juvenile court in limited circumstances. Where a minor meets certain eligibility requirements, a criminal court may order a juvenile disposition in lieu of a criminal sentence if the court finds that such an order would serve the best interests of justice, protection of the community, and the juvenile being sentenced.⁴¹ Many researchers and advocates would like to see an expansion of the use of reverse waivers in California to return more youth to juvenile court.

A related recommendation is to increase the use of blended sentences. A blended sentence can mean that a juvenile court can impose a criminal sentence on a juvenile or a criminal court can impose a juvenile disposition. One option suggested in the research is to allow juveniles to be sentenced to both a juvenile and criminal sentence where the criminal sentence is suspended pending the juvenile's completion of a juvenile sentence.⁴² This could mean that a juvenile court would have the authority to impose an adult sentence that is suspended pending a juvenile disposition

39. These national organizations include the National Juvenile Justice Network, Campaign for Youth Justice, the American Psychiatric Association, and the American Bar Association.

40. The featured states include California, Connecticut, Illinois, North Carolina, Virginia, and Wisconsin. *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, (March 2007), available online: http://www.campaignforyouthjustice.org/documents/CFYJNR_ConsequencesMinor.pdf.

41. California Penal Code § 1170.19 (West 2010).

42. R. REDDING, (2003), *The Effects of Adjudication and Sentencing Juveniles as Adults: Research and Policy Implications*, Youth Violence and Juvenile Justice, 1: 128-155.

The transfer laws have an extremely disproportionate impact on young men and boys of color.

allowing the juvenile court to supervise the rehabilitation and progress of the youth into adulthood. Alternatively, a criminal court could be given the authority to impose a juvenile disposition with a suspended adult sentence. This approach gives a juvenile a chance at rehabilitation and an incentive to participate in treatment and it allows the court more time to determine if the juvenile is likely to be rehabilitated. Some, however, caution that allowing juvenile courts to impose the same sentences as criminal courts may destroy the special rehabilitative function of the juvenile justice system and increase, rather than decrease, the number of juveniles subject to adult sanctions.⁴³ Allowing for criminal courts to impose a blended sentence, but not juvenile courts might preserve the unique function of the juvenile courts, but it could possibly lead to more transfers to adult court.

A more promising recommendation is for California to provide a more effective continuum of juvenile justice services. Currently, prosecutors and judges are often faced with a choice between non-secure camps and ranches or adult court because the DJJ facilities do not provide a good alternative. Only the most violent and disturbed youth are

housed at DJJ, leaving judges and prosecutors without a viable option for juveniles who commit serious offenses. If prosecutors had the option of a secure state facility that could effectively rehabilitate youth who commit serious offenses, this would provide a workable alternative to sending youth to adult court. It would be beneficial to youth to receive the treatment and programs available in the juvenile system while still satisfying the public's desire for incapacitation of serious offenders.

Lastly, researchers and advocates need to educate judges, prosecutors, legislators, and the public about the research on transfer laws. Transferring juveniles to adult court does not reduce recidivism and increase public safety. A juvenile's frequency of offending, not the seriousness of the offense best predicts overall recidivism and the likelihood of future violent behavior.⁴⁴ Of equal importance is the fact that the transfer laws have an extremely disproportionate impact on young men and boys of color. This impact cannot be ignored given both the short- and long-term consequences of being convicted and sentenced in adult court. Research shows that there are lasting benefits to juveniles and the general public if youth are tried in juvenile court and have access to juvenile programs and treatments.

CONCLUSION

It would serve policymakers well to search for a middle ground within a juvenile justice sanctions continuum that combines a degree of severity and punishment appropriate to the seriousness of the offense, but that also incorporates rehabilitative components while taking into account extenuating circumstances of the youth's age and situation.

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43. F. ZIMRING, (2005), *American Juvenile Justice*, pp. 139-157; F. ZIMRING, (1998), *American Youth Violence*.

44. R. REDDING, (2010), *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, US Department of Justice.