Harms of Transfer to Adult Court Annotated Bibliography

Created by the Gault Center 2026
Transformative Policy Initiative

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I. Key Takeaways

- Transferring youth to adult court fails as a public safety tool while inflicting lasting harms on the development, future opportunities, and overall well-being, of youth in addition to perpetuating broader systemic harm on families and communities.[1]
- Extensive evidence demonstrates that transfer to adult court increases recidivism,[2] adult incarceration causes serious physical and psychological harm to youth[3] including a higher mortality rate,[4] and there are significant racial disparities that pervade the transfer process.[5]
- Developmental science supports retaining youth in the juvenile system,[6] with access to developmentally appropriate community-based supports.

[1] Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, Morbidity and Mortality WKLY. REP., Vol. 56 (No. RR-9), (2007).
[2] Michael Tonry, *Treating Juveniles as Adult Criminals: An Iatrogenic Violence Prevention Strategy if Ever There Was One*, 32 Am. J. Preventive Med. 4S (2007).
[3] Ian A. Silver, Daniel C. Semenza & Joseph L. Nedelec, *Incarceration of Youths in an Adult Correctional Facility and Risk of Premature Death,* 6 JAMA Network Open e2321805 (2023).
[4] *Id.*
[5] Mike Males & Dan Macallair, The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California, Washington, D.C.: Building Blocks for Youth, (2000), *see also,* The Sentencing Project, *Youth in Adult Courts, Jails, and Prisons* (2021).
[6] The Sentencing Project, *Youth Courts vs. Adult Courts: Why the Juvenile Justice System Works Better* (2026), *see also,* Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty,* 58 Am. Psychologist 12, 1009 (2003).

- Scholars propose restricting direct file and raising minimum transfer ages to full abolition, with leading scholars calling for a moratorium on transfer and elimination of all non-judicial pathways.[7]

II. Research on the Harms of Transfer

A. Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, Morbidity and Mortality WKLY. REP., Vol. 56 (No. RR-9), (2007).

- This report from the Centers for Disease Control and Prevention provides a review of the effectiveness of laws and policies that facilitate the transfer of youth to adult court and ultimately, recommends against transfer to prevent or reduce violence.
- From the Summary:

  "The independent, nonfederal Task Force on Community Preventive Services (Task Force), which directs the development of the Guide to Community Preventive Services (Community Guide), conducted a systematic review of published scientific evidence concerning the effectiveness of laws and policies that facilitate the transfer of juveniles to the adult criminal justice system to determine whether these transfers prevent or reduce violence among youth who have been transferred and among the juvenile population

[7] Kristina Kersey, *Time Out for Transfer: Youth Transfer as Punishment*, 26 Nev. L.J. 465 (2026), *see also* Katherine I. Puzone, *Juvenile Court Exists for a Reason: An Argument in Support of Recognizing a Constitutional Right for Those Under the Age of Majority to be Tried in Juvenile Court,* 19 Stan. J. C.R. & C.L. 157 (2023).

as a whole. For this review, transfer is defined as placing juveniles aged <18 years under the jurisdiction of the adult criminal justice system. The review followed Community Guide methods for conducting a systematic review of literature and for providing recommendations to public health decision makers. Available evidence indicates that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth. Available evidence was insufficient to determine the effect of transfer laws and policies on levels of violent crime in the overall juvenile population. On the basis of these findings, the Task Force recommends against laws or policies facilitating the transfer of juveniles to the adult criminal justice system for the purpose of reducing violence."

B. Michael Tonry, *Treating Juveniles as Adult Criminals: An Iatrogenic Violence Prevention Strategy if Ever There Was One*, 32 Am. J. Preventive Med. 4S (2007).

- **Purpose**
  - This article presents the Task Force on Community Preventative Services' recommendation against transferring youth to adult court because it is harmful to public health and is ineffective as a violence-prevention strategy.
  - The Task Force's findings highlight that transfer policies fail to deter crime and increase recidivism, as compared to individuals who receive community-based sanctions.
- **Methodology**
  - The article reviews policies adopted in the US between 1975 and 2000 that apply to young people in the juvenile legal and adult criminal systems and analyzes shifting political and policy narratives that expanded the use of transfer by states.

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- The article summarizes the Task Force's review of studies that examine whether transfer reduces violence through:
  - individual deterrence (preventing the specific youth from reoffending); or
  - general deterrence (discouraging other youth from committing crime).

- **Findings**
  - Youth who were transferred to adult court were 33.7% more likely to be rearrested compared to youth who remained in juvenile court.
  - Transfer increases future offending, rather than individual deterrence.
  - All states should set adult court jurisdiction at a minimum of 18.
  - All laws providing for automatic jurisdiction in adult court (direct file) for young people under 18 should be repealed.
  - Laws permitting case-by-case transfer should be re-examined to ensure that transfer is only used in cases where there is a clear demonstration that there is no amenability to juvenile court jurisdiction.
  - One-size-fits-all policies like transfer produce anomalies, injustices, and unwanted side effects, including recidivism.
- **Relevance**
  - The Community Preventative Services Task Force (CPSTF) "Works to improve the health of communities by issuing evidence-based recommendations and findings on public health interventions designed to improve health and safety."
  - CPSTF is an "independent, nonfederal panel of public health and prevention experts who represent a broad range of scientific, practice, and policy expertise in community prevention services, public health, health promotion, and disease prevention. Members are appointed by the director of the Centers for Disease Control and Prevention (CDC). CDC's Community Guide Program provides administrative, scientific, and technical support for the CPSTF."

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C. Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty,* 58 Am. Psychologist 12, 1009 (2003).

- A peer-reviewed theoretical synthesis arguing that adolescents are fundamentally less culpable than adults due to three categories of developmental immaturity: deficient decision-making capacity, unformed character, and reduced autonomy. The authors provide a framework for understanding how developmental science intersects with criminal law. In doing so, they help explain why chronological age matters when assessing culpability, determining appropriate punishment, and deciding whether young people should be treated as adults in the justice system. The authors also argue that these developmental realities provide both a constitutional and policy basis for maintaining a separate juvenile justice system and restricting transfer.

D. *Mike Males & Dan Macallair, The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California*, Washington, D.C.: Building Blocks for Youth, (2000).

- **Purpose**
  - This study is the first of five reports published by Building Blocks for Youth, a multi-year initiative to "protect minority youth in the justice system and promote rational and effective juvenile justice policies."
  - The research in this study examines the "impact of adult court transfers and sentencing on minority youth in California, with a specific look at minority representation in waivers (transfers of juvenile offenders to adult criminal court) in Los Angeles County."

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- The purpose of the analysis was to test whether minority youth were disproportionately transferred to adult court and sentenced to incarceration compared to white youth in similar circumstances.

- **Methodology**
  - This study used arrest and sentencing data from 1996-1998 from the LA County Probation Department Research Division, LA County District Attorney's Office, California Youth Authority Research Division, California Department of Justice Criminal Justice Statistics Center, Department of Finance Demographic Research Division and the United States Bureau of the Census.
  - The analysis compared the proportions of white, African-American, Hispanic and Asian/Others in the total youth population ages 10-17 that were sent to adult court and sentenced to a CYA facility.
- **Results**
  - Minority youth are 8.3 times more likely than white youth to be sentenced by an adult court to imprisonment in a California Youth Authority facility.
  - The report found two factors that contribute to the racial disparity in transfer to adult court: 1) Minority youth are almost 3 times more likely than white youth to be arrested for a "violent felony," and 2) Once in the system, minority youth that are arrested for a "violent felony" are 3 times more likely than white youth charged with "violent felonies" to be transferred to adult court and sent to confinement in a CYA prison.

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E. Ian A. Silver, Daniel C. Semenza & Joseph L. Nedelec, Incarceration of Youths in an Adult Correctional Facility and Risk of Premature Death, 6 JAMA Network Open e2321805 (2023).

- **Purpose**
  - This study sought to answer the question whether incarcerating young people in adult correctional facilities is associated with an increased risk of mortality through age 39.
- **Methodology**
  - The study relied on longitudinal data from 1997-2019 as part of the National Longitudinal Survey of Youth-1997, which included a nationally representative sample of 8984 individuals who were aged 17 years or younger at the time of the interviews that took place from 1997 to 2011 and from 2013-2019.
  - Statistical analysis was performed in 2022 and 2023.
- **Results**
  - Youth incarcerated in an adult facility were three times more likely to die by the age of 39 compared to those without contact with the legal system.
  - The study accounted for risk factors outside of adult incarceration, including risk factors associated with health, family background, and socioeconomic status, but the correlation between exposure to an adult correctional facility and early mortality remained.
  - The study found that while any formal contact with the legal system is associated with a higher risk of death, being incarcerated as a youth showed the highest risk for mortality.

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F. Donna M. Bishop, Charles E. Frazier, Lonn Lanza-Kaduce & Lawrence Winner, *The Transfer of Juveniles to Criminal Court: Does It Make a Difference?*, 42 Crime & Delinq. 171 (1996).

- **Purpose**
  - To determine the long-term effect, if any, on the transfer of young people to adult court
- **Methodology**
  - This was a matched-pair study of 2,738 Florida youth comparing young people who were transferred to adult court in 1987 against a control group retained in the juvenile legal system.
  - The study used seven variables to compare the two groups: offense type, number and seriousness of charges, number and seriousness of prior offenses, age, race, and gender.
- **Results**
  - The study found that transferred youth reoffended more quickly (135 days to rearrest vs. 227 days), were rearrested at a higher overall rate (30% vs. 19%), and recidivated at higher levels for every category of offense measured.
  - Analyses also showed that transferred youth were rearrested sooner and more frequently, on average.

G. Lonn Lanza-Kaduce, Jodi Lane, Donna M. Bishop & Charles E. Frazier, *Juvenile Offenders and Adult Felony Recidivism: The Impact of Transfer*, 28 J. Crime & Just. 59 (2005).

- **Purpose**
  - To determine the long-term effect, if any, on the transfer of young people to adult court

- **Methodology**
  - This study tracked 950 young people who were adjudicated of criminal offenses in Florida, half of whom had been transferred to adult court in 1995-96, focusing on adult felony recidivism (post-age-18 offending).
- **Results**
  - The study found that transferred youth were significantly more likely to be rearrested as adults and were rearrested more quickly, with the effect persisting after detailed matching on offense characteristics, prior record, age, race, and gender.

H. Angela McGowan, Robert Hahn, Akiva Liberman et al., *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* 32 Am. J. Prev. Med. S7 (2007).

- **Purpose**
  - The Task Force reviewed published scientific research to assess whether laws and policies that transfer young people to the adult criminal justice system are effective in preventing or reducing interpersonal violence. Specifically, it examined effects on violence among youth transferred to the adult system and on violence across the broader juvenile population.
- **Methodology**
  - This systematic review was conducted through the CDC's Task Force on Community Preventive Services, evaluating seven studies across six different transfer laws.
- **Findings**
  - The task force found a median increase of 34% in violent rearrests among transferred youth compared with those retained in the juvenile legal

system, along with evidence of increased pretrial violence, elevated victimization of youth placed in adult facilities, and higher suicide rates among young people incarcerated in adult institutions.

I. Steiner, B., Hemmens, C., & Bell, V. (2006). *Legislative Waiver Reconsidered: General Deterrent Effects of Statutory Exclusion Laws Enacted Post-1979*. Justice Quarterly, 23(1), 34-59.

- **Purpose**
  - The purpose of this study was to examine the deterrent effect of transfer on young people.
- **Methodology**
  - The report reviews various forms of legislative waiver statutes present in 22 states that either enacted legislative waiver or substantially changed their waiver laws after 1979.
  - The authors of the report conducted a comparative analysis, reviewing the legislative history, internet surveys of each state's attorney general's office and each state's legislative service committee to the monthly "juvenile arrest rate" for violent crime per 100,000 persons under 18.
- **Findings**
  - Waiver legislation does not have a deterrent effect on youth charged with violent offenses.
  - The report concludes that it "may be time for policy makers to question their current response to violent juvenile crime. It may be time to reconsider legislative waiver."

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III. Policy Reports and Statements on the Harms of Transfer

A. The Sentencing Project, *Youth in Adult Courts, Jails, and Prisons* (2021).

- **Purpose**
  - This report reviews the "history, harms, pathways and trends that treat children as if they were adults."
  - To advocate for policies that keep youth in the juvenile legal system.
- **Methodology**
  - Examines developmental and social science research along with U.S. Supreme Court developmental jurisprudence that underscore the premise that children are different from adults.
  - Reviews data from the Bureau of Justice Statistics to highlight racial disparities present in transfer proceedings and the harm of incarcerating young people in adult facilities.
  - Reviews policy measures states have taken to narrow or end automatic transfer.
- **Findings**
  - Policies to reduce youth transfer require a racial justice lens as racial and ethnic disparities persist for young people transferred to the adult system. Black youth are nine times more likely than white youth to be given an adult prison sentence, while Tribal youth are twice as likely and Latinx youth are 40% more likely than white youth to be prosecuted as adults.
  - Incarcerating young people in adult facilities is dangerous, increases a young person's exposure to sexual abuse, solitary confinement, as well as exacerbates mental health issues and long-lasting trauma.

- Youth transfer to adult court increases recidivism by 34%, while research shows that young people who are kept in the juvenile legal system are less likely to re-offend.

B. Justice Policy Institute,.*The Child Not the Charge: Transfer Laws Are Not Advancing Public Safety,* (2021).

- **Purpose:**
  - This policy report reviews the "tough on crime" era that created many of the transfer mechanisms present in our country today, and whether they are effective.
- **Methodology**
  - The report reviews the transfer mechanisms that exist in the United States and reforms that states have taken to expand juvenile court jurisdiction.
- **Findings**
  - When reviewing the data of youth that are transferred to adult court, the reporting data underscores that transfer laws exacerbate racial and ethnic disparities, do not improve public safety outcomes, and young people who are exposed to incarceration are frequently victims of violence and trauma that "lead to lifelong consequences."
  - This report makes several recommendations: 1) Eliminating transfer mechanisms for all youth, regardless of the committing offense; 2) Use community-based programming as a first choice, and any type of age appropriate confinement as a last resort; 3) Increase investments in approaches that address the needs of individual and community level victimization and increase prevention and intervention by establishing public health partnerships to reduce violence; 4) Use risk and needs assessment tools in decision making around placement and length of

stay; and 5) Increase age-appropriate resources for youth who are subjected to secure confinement.

C. Human Rights Watch, *Branded for Life: Florida's Prosecution of Children as Adults Under Its "Direct File" Statute* (2014).

- This is an investigative report from Human Rights Watch on Florida's prosecutorial direct-file law, which sends more children out of the juvenile system and into adult court than any other state. The report pulls data from Florida's Department of Juvenile Justice and incorporates findings from a series of interviews with system-impacted youth, prosecutors, judges, defense attorneys, child advocates and probation officers.
- In reviewing the data, HRW found that the racial disparities present in the state are stark. Data shows that Black youth make up only 27.2 percent of young people arrested, but account for 51.4 percent of youth sent to adult court; whereas white youth make up 28 percent of young people arrested but account for only 24 percent of youth sent to adult court.
- This report makes several recommendations to the State of Florida, including legislative and policy changes, recommendations for elected prosecutors, judges, youth defenders, and court administrators, highlighting that the direct file statute fails to fulfill the intentions of Florida's lawmakers in that it does not consider the best interests of the child, is difficult for children to understand, and produces arbitrary and racially disparate results.

D. Human Rights for Kids, *The Childhood Trauma-to-Prison Pipeline* (2026).

- This report from Human Rights for Kids details survey results from 2,200 individuals who were incarcerated as adults for crimes they committed as children. The findings from the report demonstrate the fact that "children tried as adults are often victims long before they became [system-involved],"

discusses the intersection between childhood trauma and the legal system, and outlines recommendations to invest in prevention, trauma-informed care models, and policy and practice reforms.

E. The Sentencing Project, *Youth Courts vs. Adult Courts: Why the Juvenile Justice System Works Better* (2026).

- This report from The Sentencing Project discusses why the juvenile legal system is better for youth accused of breaking the law than are adult courts, focusing on the juvenile court system's ability to address the individual young person as well as the harm they caused.
- From the report: "Despite their many flaws, juvenile courts are better for youth who break the law than are adult courts. Contrary to critics' beliefs, juvenile courts regularly address serious and violent crimes. Juvenile courts do not offer a "slap on the wrist;" they often issue harsh punishments. The frequent alternative, sending youth to adult courts, is a dangerous and counterproductive response."

F. The Sentencing Project, Automatically Charging Youth as Adults (2025).

- This report by the Sentencing Project highlights the harmful practice of direct file, or "auto-charging" youth in adult court. This national analysis looks at the practice of direct file and the pervasive harms that it has on the wellbeing and future thriving of young people and makes recommendations for states to limit pathways for young people to be sent into the adult legal system.

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G. Juvenile Justice Initiative, Keeping the Promise of Juvenile Court: The Failed Experiment of Trying and Sentencing Children in Adult Court in Illinois (2025).

- This issue brief by the Juvenile Justice Initiative provides an overview of transfer laws in Illinois. Additionally, the brief reviews demographic data on young people who are being tried as adults and identifies the ways that transfer fails children and public safety in the state of Illinois. The brief ends by calling for a return to full individual review in juvenile court before transfer and outlines five additional recommendations that are consistent with research and international standards.

H. Human Impact Partners: Juvenile Injustice: Charging Youth as Adults is Ineffective, Biased and Harmful (2017).

- This report looks at the impact of transfer on young people in California, making findings that:
  - The Juvenile Legal System is biased against youth of color;
  - "Tough on Crime" laws criminalize youth and are ineffective;
  - The adult court system ignores the environmental factors that affect adolescent behavior;
  - Incarceration undermines youth health and wellbeing; and
  - Families of incarcerated youth experience negative impacts.
- The report also includes several policy recommendations that focus on eliminating transfer, community-based restorative and transformative justice approaches, alternatives to sentencing for youth who commit serious crimes, support of families as they navigate the juvenile legal system, culturally appropriate services for young people and families, equitable distribution of

educational resources and opportunities, and reinvestment into communities that expand opportunities for young people.

I. National Counsel for Juvenile and Family Court Judges, Promoting Public Safety and Positive Youth Development: Judicial Decision-Making in Judicial Transfer, Blended Sentencing, and Reconsideration Hearings (2025).

- This technical assistance bulletin was created by the National Council of Juvenile and Family Court Judges (NCJFCJ) focuses on the practices of judicial transfer, blended sentence and reconsideration hearings and underscores the impact of adolescent development and other factors that courts should consider when making transfer or certification decisions.
- "Research indicates that youth transfer to criminal court does not improve community safety. It has not led to reduced juvenile crime and rarely reduces recidivism. Rather, the bulk of evidence indicates that transfer has no effect or even negative effects on these desired outcomes. There is also evidence that transfer is disproportionately used as a sanction against racial and ethnic minorities, worsening pre-existing disparities in the justice system. Finally, transfer appears to have serious deleterious effects on youthful offenders.
- "Therefore, juvenile and criminal justice scholars and stakeholders are effectively unanimous in their conclusion that youth should be transferred to adult court only in very rare circumstances (Bishop, 2000; Feld, 2017; Myers, 2016; Zimring & Tanenhaus, 2014)—or, ideally, not at all (Arya, 2018; Council of Juvenile Justice Administrators & Campaign for Youth Justice, 2022; Inter-American Commission on Human Rights, 2018; Ryan, 2018)."

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J. Human Rights Watch, Kids You Throw Away: New Jersey's Indiscriminate Prosecution of Children as Adults (2025).

- Human Rights Watch conducted a study on New Jersey's waiver mechanisms, finding that the state is effectively operating a prosecutorial waiver system that is disproportionately harming Black and Latine youth, sidelining judicial oversight, and prioritizing punishment over treatment.
- This report offers recommendations for a wide range of system professionals to ultimately end the prosecution of children in adult court. Outlining the harms of adult prosecution on youth, this report argues that waiver systems disregard adolescent development while exacerbating childhood trauma.
- Additionally, this report offers a helpful framework to challenge prosecutorial discretion and waiver mechanisms using adolescent development research, local data on racial disparities and differential treatment, and youth perspectives on the harms of adult prosecution.

K. Human Rights for Kids, Disposable Children: The Prevalence of Child Abuse and Trauma Among Children Prosecuted and Incarcerated As Adults in Maryland (2024).

- This report details the results of the first-ever state-wide Adverse Childhood Experiences (ACEs) survey administered to people currently incarcerated for crimes they committed as children (under eighteen). The trauma measured from ACEs surveys include physical, sexual, and emotional abuse; physical and emotional neglect; separation from parents; mental illness or substance abuse in the home; parent or sibling incarceration; and domestic violence in the home.

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L. Human Rights for Kids, *Unheard: The Epidemic of Severe Childhood Trauma Among Girls Tried as Adults* (2024).

- This research article explores the history of girls prosecuted as adults in courts across the United States. It explores the effects of childhood trauma and victimization on brain and physical development and the connection to involvement in the criminal legal system as children.
- The article describes the results of a survey of young women who were tried and incarcerated as adults for crimes committed while they were girls. Most of the women who completed the survey indicated that they had been victims of serious trauma before they ever committed any offense.
- Ultimately, the article offers some reforms for treating system-involved girls including: early screening to identify girls who have experienced trauma sooner to potentially stop legal system involvement, insisting on trauma-informed environments in long-term placements for girls, and prohibiting girls with trauma histories from being tried as adults.

M. Human Rights for Kids, Crimes against Humanity: The Mass Incarceration of Children in the United States, (2023).

- This report gathers a national snapshot of the individuals who are currently in prison who was "prosecuted, convicted, and incarcerated for crimes they committed as children," finding that the U.S. is currently incarcerating 32,359 individuals in prison for crimes committed as children.
- HRK makes the argument that young people transferred to adult court and sentenced to prison have experienced human rights abused in the form of physical and sexual violence, solitary confinement, lack of mental health treatment and educational programming, and isolation from their families.

- In reviewing this data, HRK makes recommendations for state and federal policy makers including:
  - Raising the minimum age of transfer to sixteen years of age and prohibit transfer of children 15 and younger;
  - End direct file and statutory exclusion;
  - Permit retroactive resentencing for young people tried as adults;
  - Include child-status considerations when sentencing youth as adults, including ACES and childhood trauma;
  - Restore judicial discretion when sentencing children and allow courts to make individualized sentencing decisions;
  - Provide parole eligibility for young people sentenced to adult court after 15 years; and
  - Collect data and regularly track the number of young people incarcerated in adult facilities.

N. American Academy of Child & Adolescent Psychiatry Policy Statement: Direct File of Juveniles (2014).

- This statement from the American Academy of Child & Adolescent Psychiatry outlines their opposition to the direct file of young people into the adult system.
- From the policy statement: "The AACAP believes that any decisions regarding the transfer of a juvenile suspect to adult court should, at a minimum, involve an independent judicial review. Such a proceeding can consider issues including the child's age and developmental level, cognitive functioning and psychiatric status, family, school and general medical history. Optimally, an independent judicial review would involve assessments by competent mental health professionals with appropriate training and qualifications to work with children and adolescents. Juvenile suspects should be represented by counsel

during such hearings. Decisions to try a juvenile as an adult should not be made in the absence of such an independent review process. Specifically, such decisions should not be made arbitrarily by prosecutors. For these reasons, the AACAP opposes statutes which permit or require juvenile suspects to be transferred or waived into adult court without judicial review."

O. Temple Center for Public Health Law Research: Transfer of Juvenile Offenders to Adult Court (2019).

- This position statement from Temple Center for Public Health Law Research reviews transfer mechanisms as an effective strategy in deterring crime and reducing recidivism among young people.
- Reviewing the law, data and evidence, "in the judgment of a Community Guide expert panel, there is sufficient evidence to conclude that processing youths through adult systems has a negative impact on public health."

IV. Legal Mechanisms to Oppose Transfer

A. Convention on the Rights of the Child art. 40(2)(b) ("CRC"), Nov. 20, 1989, 1577 U.N.T.S.

- Purpose
  - The Convention on the rights of the Child is an international treaty that recognizes the rights, development and well-being of children.
  - The CRC permits every child accused of a criminal offense the right to:
    - Be presumed innocent until proven guilty;
    - Be informed promptly and directly of charges against them;
    - Have matter determined quickly in fair, independent hearing with representation by counsel;
    - Not be forced to give testimony or confess guilt;

- ➢ Have decision of consequence decided by impartial body or governing authority; and
- ➢ Have privacy respected at all stages.

- Article 40(2)(iii) of the CRC requires provides that children have a right to a "competent and specialized court," one of the requirements for a fair trial.
- The CRC provides national and international expectations for how a young person should be treated while in governmental custody.

- **Relevance**
  - 196 countries, including the United States, have signed the CRC, demonstrating a worldwide commitment to protecting the lives of children around the world as well as ensuring their development, health and well-being. This treaty can be used to highlight that transfer to adult court does not recognize the rights, development and well-being of children.
  - The CRC is an international human rights treaty; and the United States has not ratified the CRC. Therefore, the CRC can be highly persuasive but is not binding for American courts.

B. Roger-Claude Liwanga and Patrick Ibe, *Transfer of Child Offenders to Adult Criminal Courts in the USA: An Unnecessary Exercise, Unconstitutional Practice, International Law Violation, or All of the Above?* 49 Ga. J. Int'l & Compar. L. 99.

- This article examines the legality of transferring young people to adult courts pursuant to the Convention on the Rights of the Child, the international human rights treaty adopted by the United Nations General Assembly in 1989 and evaluates whether current transfer laws are consistent with constitutional

protections and international human rights standards, whether existing judicial waiver policies should be reconsidered, and the efficacy of judicial waiver.

- The article examines the evolution of the juvenile legal system in the United States and U.S. Supreme court developmental jurisprudence, explores the various mechanisms of transfer, including "once an adult, always an adult" policies, and compares U.S. law with international legal standards, such as the United Nations Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and Customary International Law.
- The author argues that the practice of transfer violates the United Nations Convention on the Rights of the Child Article 40(2)(iii) as it does not guarantee a child's right to a "competent and specialized court," one of the requirements for a fair trial that should be enforced by all nations.
- Additionally, transfer is not an effective tool to deter young people from future offending or recidivism, and states that have transfer provisions should restore full jurisdiction of juvenile court for all young people, fulfilling the requirement that a young person have a "competent and specialized system."

C. Juvenile Sentencing Project, Limiting Transfer to Adult Court: Enhancing Judicial Oversight, Quinnipiac Univ. Sch. of L (2020).

- The purpose of this memorandum (memo) is to address reforms that aim to keep children in the rehabilitation-focused juvenile justice system, rather than transfer them to adult criminal proceedings, in support of the argument that youth are better served in the juvenile legal system.
- The memo highlights developmental U.S. Supreme Court jurisprudence (*Miller* and *Graham v. Florida)*, underscoring the court's recognition that young people are les culpable and more capable of rehabilitation. The memo also looks at data on the rates of recidivism for young people who have been transferred to adult court, and the racial disparities present in transfer decisions.

- Youth prosecuted in adult courts are 34% more likely to reoffend than those in juvenile court, and transfer laws disproportionately impact youth of color.
- The memo argues that mandatory transfer and Statutory Exclusion and Direct File statutes that provide prosecutors with the exclusive discretion to file cases in adult court should be limited or altogether eliminated.

D. Logan Knutson, *Waging the Battle for Society's Soul: The Constitutionality of Juvenile Transfer Legislation in the Wake of Jones v. Mississippi*, 110 Minn. L. Rev. 1485.

- The author evaluates whether the Eighth Amendment developmental jurisprudence in the *Graham* Supreme Court trilogy and *Jones v. Mississippi* extends beyond JLWOP sentences and to transfer legislation, "barring the most punitive forms of juvenile transfer legislation including mandatory waiver, automatic waiver, and certain forms of presumptive waiver".
- The article reviews a young person's diminished culpability pursuant to Eighth Amendment precedent and the role the U.S. Supreme Court and neuroscientific community have played in recognizing constitutional protections unique to young people, synthesizes the history of state transfer laws, and applies the JLWOP jurisprudence in the *Graham* trilogy and *Jones* case to transfer laws.
- The author argues that mandatory and automatic youth transfer are unconstitutional because they ignore a young person's decreased culpability and capacity for rehabilitation in violation of the Eighth Amendment, and there is a need for youth transfer laws to be reformed or abolished and replaced with systems that allow for more discretion and consideration of the specific young person.

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E. Christopher Slobogin, *Treating Juveniles Like Juveniles: Getting Rid of Transfer and Expanded Adult Court Jurisdiction*, 46 Tex. Tech L. Rev. 103 (2013).

- The author of this article argues that transfer to adult court should be eliminated for any young person under the age of 18, not because of developmental science, but because criminal sanctions do not have the same effect of deterrent effect on young people as adults.
- Through this lens, the author suggests that the juvenile legal system is the prime place to provide a prevention-oriented approach, focused on specific deterrence (individual prevention) and rehabilitation as compared to retribution or general deterrence (like the adult system).
- The article reviews Supreme Court cases, psychology and neuroscience research, studies on recidivism and deterrence, and evidence on community-based programs to support conclusion that youth should remain in juvenile court.
- The article underscores that "crime reduction, taxpayer relief, and reformation (rather than exile) of [youth]" by keeping them in the juvenile legal system is a good alternative to transferring young people to adult court.

F. Kristina Kersey, *Time Out for Transfer: Youth Transfer as Punishment*, 26 Nev. L.J. 465 (2026).

- The author argues that the practice of transferring a young person to adult court should be viewed as punishment rather than categorizing transfer as a decision regarding jurisdiction, specifically because transfer decisions occur before a finding of guilt. The author calls for a moratorium on the transfer of young people into the adult system, calling for a study of the policy, procedure and

practice of transfer and offers lessons learned from advocates for the abolition of the death penalty movement as a starting point for transfer.

- The article dives into a national review of the various transfer schemes in the United States, including statutory exclusion, judicial waiver, and prosecutorial discretion/direct file, as well as analyzing punishment theory and 8th Amendment jurisprudence in the context of transfer proceedings, incorporating the U.S. Supreme Court's developmental jurisprudence as a framework for driving "increased due process protections to address youth capacity for change, enhanced substantive due process rights, Eighth Amendment protections, congressional guidance on due process protections and a focus on constitutional protections as opposed to public opinion in transfer determinations."
- The author highlights Canada as an example of a country that requires youth be tried in juvenile court and a finding of guilt made before an adult sentence is imposed. The article underscores that youth transfer is punishment because it exposes adolescents to harsher penalties, denies them constitutional protection, and happens before the adolescent has been proven guilty, is not consistent with accepted punitive theories and increases recidivism, and transfer decisions should not occur until the adolescent is proven guilty because these decisions insinuate guilt before the youth is tried and given adequate due process.

G. Lane Mullin, *Race, Recidivism, and Prosecutorial Discretion in Juvenile Transfer Cases in Virginia*, 38 Geo. J. Legal Ethics 39 (2025).

- This article analyzes Virginia's transfer mechanism after legislative reforms in 2020: raising the minimum age for transfer and requiring more judicial oversight in transfer; underscoring that significant issues remain, including excessive prosecutorial discretion, racial disparities, and limited reverse waiver options.

- The article reviews Virginia's five transfer mechanisms: general transfer, mandatory certification, prosecutorial discretion, direct indictment, and self-waiver, combining statutory analysis with Virginia Department of Juvenile Legal System data and empirical studies on recidivism, deterrence, and racial bias in transfer decision-making.
- The author finds that racial disparities remain pervasive in Virginia, highlighting that in Fiscal Year 2022, Black children were 20% of Virginia's youth population but 75% of children transferred to adult court.
- Additionally, prosecutors retain substantial power through mandatory certification, direct indictment, and discretionary transfer, often without binding statutory guidance. The failure to have guidelines for prosecutors has created "justice by geography," resulting in disproportionate transfer discretion, case management and sentencing.
- The author makes several policy recommendations for Virginia to consider as alternatives to transfer and to help reduce racial disparities, including 1) increasing diversion programming, 2) abolish unchecked prosecutorial discretion, 3) increase DJJ oversight over juvenile transfer, and 4) educate players on the impact that transfer has on recidivism and the racial disparities that exist in transfer.

H. Paolo G. Annino, *Children in Florida Adult Prisons: A Call for a Moratorium*, 28 Fla. St. U. L. Rev. (2001).

- This article focuses on the harms of incarcerating youth in Florida's adult prisons as a result of direct file and transfer laws.
- The author focuses on responding to three common arguments that are made when incarcerating youth in adult prisons in Florida: "(1) that because the juvenile justice system has failed, the only place to incarcerate serious juvenile offenders is in the adult system; (2) that the public is better protected if

juveniles are sentenced as adults; and (3) that children are better off in an adult prison because they may learn moral and legal lessons, may receive needed psychological and vocational services, and may become productive and rehabilitated citizens."

- The author calls on the Florida Legislature to impose an immediate moratorium on imprisoning children ages 12-16 in adult prisons.

I. Rachel Jacobs, Note, *Waiving Goodbye to Due Process: The Juvenile Waiver System*, 19 Cardozo J. Equal Rts. & Soc. Just. 989 (2013).

- The author argues that waiver mechanisms violate due process because they fail to account adequately for a young person's diminished culpability, capacity for rehabilitation, and individual circumstances, and a judge or prosecutor's decision to transfer a child into adult court is "more times than not, wholly arbitrary."
- The article reviews the penological justification for transferring a young person to adult court and finds that the reasons for waiving young people into adult court as a way to enhance public safety "never came to fruition."
- The article highlights that young people should be provided with due process protections similar to the *Mathews v. Eldrige* balancing test, arguing that "the erroneous mislabeling of a youth as an adult criminal rather than as a juvenile delinquent has significant consequences," and that the *Roper* and subsequent developmental jurisprudence of the Supreme Court opens the door to the argument that it grants children a *right* to be charged in juvenile court.

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J. Cara H. Drinan, *The Miller Trilogy and the Persistence of Extreme Juvenile Sentences*, 58 Am. Crim. L. Rev. 1659 (2021).

- The article focuses on automatic transfer provisions and mandatory sentencing schemes as unconstitutional considering the U.S. Supreme Court developmental jurisprudence beginning with *Miller*.
- The author highlights that two legal mechanisms- transfer to adult court and mandatory minimum sentencing schemes, create the "perfect storm" for justice-involved youth. Transfer proceedings are common in every state, and once a young person is transferred to adult court, they are then subjected to mandatory minimum sentencing schemes that were drafted for adults. These two legal mechanisms, when viewed through the lens of the Supreme Court's jurisprudence recognizing a young person's diminished culpability and increased amenability, should be found unconstitutional as applied to young people.
- The author suggests that a new avenue for challenging transfer lies in the 8th Amendment bar against "cruel and unusual punishments" clause, arguing that the shift from juvenile to adult court "alters the lens of analysis from rehabilitation to retribution, and eliminates rehabilitative outcomes only available in juvenile court." And the author suggests that even through mandatory minimum sentences are not JLWOP, this legislation was not drafted with teenagers in mind, failing to consider the individual characteristics of each young person.

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K. Melissa Lee, and Jessica Levin, *Leveraging the State Constitution to Challenge Racialized Discretion in Washington's Juvenile System*, 98 Temp. Law Rev. 493 (2026).

- This law review examines the disproportionate impact of prosecuting children of color in adult criminal court, identifying the practice as a racial justice concern that contributes to mass incarceration and conflicts with adolescent brain science. It challenges the perception that adult prosecution is a rare exception reserved for the most serious cases. The authors describe efforts by Seattle University School of Law's Civil Rights Clinic to end the practice. They argue that prosecuting children as adults is inconsistent with research on adolescent development and perpetuates racial disparities in the criminal legal system. Finally, the essay identifies opportunities to challenge the practice under the Washington State Constitution, building on the state supreme court's rulings in other areas of law.

L. Katherine l. Puzone, *An Eighth Amendment Analysis of Statutes Allowing or Mandating Transfer of Juvenile Offenders to Adult Criminal Court in Light of the Supreme Court's Recent Jurisprudence Recognizing Developmental Neuroscience,* 3 Va. J. Crim. L. 52 (2015).

This article examines how Supreme Court decisions recognizing adolescent brain development and reduced juvenile culpability conflict with laws allowing youth to be prosecuted as adults. It reviews rulings prohibiting the juvenile death penalty, life without parole for non-homicide offenses, and mandatory life without parole for juvenile homicide offenses. The author argues that direct file laws, which allow prosecutors to charge youth in adult court without a judicial transfer hearing, should also be scrutinized under the Eighth Amendment. Because adult prosecution can expose youth to sentences equivalent to life

imprisonment, the article argues that these procedures raise constitutional concerns. Given that the result of an adult charge could be the equivalent of life in prison-and in light of the developmental neuroscience recognized by the Supreme Court-procedures used to transfer youth to adult criminal courts must comport with the Eighth Amendment. It advocates for individualized transfer hearings that consider mitigating factors and adolescent development before a young person can be prosecuted in adult court.

M. Katherine I. Puzone, *Juvenile Court Exists for a Reason: An Argument in Support of Recognizing a Constitutional Right for Those Under the Age of Majority to be Tried in Juvenile Court*, 19 Stan. J. C.R. & C.L. 157 (2023).

- The article outlines the argument that although the Supreme Court has required due process when states hold hearings to transfer youth to adult court, it has not established a constitutional right to juvenile court or required a transfer hearing before adult prosecution. As a result, constitutional challenges to prosecutorial direct file laws have generally failed. The author contends that more recent Supreme Court decisions recognizing adolescent brain development and reduced culpability provide a basis for establishing a constitutional right for youth to be tried in juvenile court. This article provides youth defenders with a constitutional framework for challenging laws that allow prosecutors to charge young people directly in adult court without a judicial transfer hearing. It explains how the Supreme Court's recognition of adolescent brain development and diminished culpability may support arguments for a constitutional right to juvenile court"

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N. Evie Komninakas, *Presumed Guilty: The Unconstitutionality of Juvenile Transfers to Adult Court*, Colum. Undergraduate L. Rev. (2025).

- This article outlines why transferring youth to adult court is unconstitutional because it undermines the rehabilitative purpose of the juvenile legal system.
- The author seeks to demonstrate that current transfer mechanisms violate the Eighth Amendment, the Due Process Clause, and the Equal Protection Clause by allowing statutory exclusion and prosecutorial waiver, denying youth the individualized procedural safeguards guaranteed by the Constitution.
- The author reviews the mechanisms in which a young person can be transferred to adult court: statutory exclusion, prosecutorial waiver, or judicial waiver and argues that youth transferred to adult court using statutory exclusion and prosecutorial waiver are deprived of constitutional protections as they are not allowed individualized hearings before transfer.
- Additionally, the author highlights that transferring youth to adult court exposes young people to additional harms while incarcerated, including losing privacy protections, diminished educational opportunities, an increased risks of sexual assault, PTSD, depression and anxiety.
- Finally, the article underscores the lack of federal regulation regarding when or how a child is transferred to adult court, which undermines the rehabilitative purpose of juvenile court and violates constitutional equal protection by subjecting youth to different legal outcomes based on jurisdiction.

O. Youth Justice: A Guidebook for Legislators, National Conference of State Legislatures, July 2026.

- This is a guidebook for legislators, court professionals and the public from the National Conference of State Legislatures, was created to “help inform and

guide policymakers in effective approaches to juvenile justice policy that balance rehabilitation, accountability an public safety."

- There are six main sections of this guidebook:
  - Youth Justice at the Federal Level
  - Turning Lessons in Adolescent Development into Policy
  - Minimizing Contact with the Justice System
  - Protecting Due Process Rights of Young People
  - Effective Responses to Mental and Behavioral Health Needs
  - Reforming Detention and Conditions of Confinement
  - Reducing Collateral Consequences for System-involved Youth
  - Reentry and Community
- The guidebook shares research and data supporting incorporating developmental science, minimizing contact with the juvenile legal system, shifting from incarceration to community-based alternatives, addressing the mental health needs of young people and protecting young people's due process rights and supporting access to well-resourced and specialized counsel.