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JUVENILE AND FAMILY COURT JUDGES



Promoting Public Safety and Positive Youth Development:

Judicial Decision-Making in Judicial Transfer,
Blended Sentencing, and Reconsideration Hearings

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INTRODUCTION

The juvenile justice and criminal justice systems have different goals (Kupchik, 2003). While both are concerned with community safety and accountability, the juvenile system has a focus on rehabilitation where the criminal system is oriented toward punishment. However, every state also has mechanisms to move youth into the criminal (“adult”) justice system for processing and sanctioning when they are accused of particularly serious offenses. All states have statutes that permit or mandate the waiver or transfer of youth into the criminal system for trial and sentencing. Some have mechanisms that subject youth to *both* juvenile and criminal justice system sanctions in a sentencing scheme known as “blended sentencing.” States with blended sentencing statutes combine rehabilitative juvenile justice system intervention with the possibility of more punitive criminal justice system sanctions should rehabilitative services prove ineffective. The criminal sanctions are initially stayed or suspended while the juvenile court disposition is imposed, with the option to impose the more severe “adult” sentence should the youth reoffend or otherwise violate the terms of the juvenile disposition.

Through their statutory framework of creating a juvenile justice system, all states have established a general preference to handle youth who commit crimes in a system that is specifically designed for youth. However, with the mechanism of transfer, states have long made adult system processes and sanctions available as responses to some offenses committed by youth. For these youth and offenses, it is thought that adult system goals, processes, and sanctions better promote public safety, accountability, and deterrence. Interestingly, and possibly in recognition of the differences between adults and juveniles, over the past five decades, states with broad transfer provisions, particularly those with automatic provisions that limit, or completely remove judicial discretion for transfer provisions, have enacted a variety of mitigating policies, such as reverse waiver from adult court, blended sentencing, and more recently, second look or reconsideration hearings. Such provisions offer remedial avenues to examine the appropriateness and fairness of using the criminal justice system and imposing long prison terms as responses to youth crime.

This technical assistance bulletin focuses on the practices of judicial transfer (also referred to as discretionary waiver, certification or bindover¹), blended sentences and reconsideration² hearings. The bulletin also addresses the legislative frameworks they create for judicial decision-making, the impact of adolescent development, and the factors and considerations that judges should take into account when handling offenses committed by youth where removal from the juvenile system and placement in the adult system is at issue.

ADOLESCENT DEVELOPMENT

In the past several decades, a significant body of scientific research (National Research Council, 2013), as well as the Supreme Court decisions in *Roper v. Simmons* (2005) and *Miller v. Alabama* (2012) provide important guidance and caveats to handling youth in the adult criminal justice system. Simply put, youth are different from adults because their brains are still developing. Therefore, judicial officers should consider the science of adolescent development when adjudicating youthful offenders. In many cases, public safety may be better served when juveniles remain in the juvenile justice system.

Key findings of United States Supreme Court rulings and the scientific research on adolescent development follow.

The *Roper Court* determined that children are constitutionally different than adults. Juveniles have diminished culpability and greater prospects for reform. The Court noted important differences between adolescents and adults: They lack maturity (chronologically and developmentally speaking) and have an “underdeveloped sense of responsibility,” which leads to recklessness, impulsivity, and heedless risk-taking. They “are more vulnerable to negative influences and outside pressures[,]” such as “from their family and peers[,]” and “have limited control over their own environments,” including the ability to “extricate themselves from horrific, crime-producing settings” (*Roper v. Simmons*, 2005.) Additionally, the *Miller Court*, citing its earlier decision in *Roper*, notes, a “child’s character is not as well formed as an adult’s,” and that “traits are less fixed” (*Miller v. Alabama*, 2012.) Research in the fields of social science and neuroscience have identified

¹In addition to judicial waiver, several states also include in their transfer statutes prosecutorial transfer, sometimes called direct file, and automatic transfer that mandates transfer to the adult system based on a youth’s age and offense.

²It is important to note that not all states that have blended sentencing have reconsideration hearings. Additionally, the exact title given to this hearing may vary depending on the jurisdiction.

the biological processes of brain development and change and corresponding behaviors that make adolescents different from adults (see Cerniglia and DiPomponio, 2024 and Telzer et al., 2018 for example.) The changes to the brain “during adolescence (particularly in the prefrontal cortex and limbic system) may be related to the propensity for sensation-seeking and risk-taking behaviors seen during adolescence” (Arnold et al., 2017).

In *Miller*, the Court discusses several considerations for judges to think about when imposing a severe sentence on a youth.³ These factors capture the differences noted above between youth and adults and the unique characteristics of youth and their life/developmental stage. They include age and maturity (and associated characteristics like immaturity, impulsiveness, and failure to fully grasp the consequences of their actions); family and home environment including upbringing, family dynamics, socioeconomic conditions, and potential exposure to abuse or neglect; circumstances of the offense, especially with respect to the youth’s role in the offense; the influence of peer pressure, and whether the crime was spontaneous or planned; and the potential for rehabilitation being greater for adolescents than adults (*Miller v. Alabama*, 2012; see also Arnold et al., 2017.)

As is evident in *Roper*, *Miller*, and related Supreme Court decisions, the field of juvenile jurisprudence has been markedly influenced by knowledge about adolescent development, adolescent neuroscience, and psychosocial maturation processes and the research that establishes that adolescents are different from adults and less culpable for their criminal acts. It is incumbent on judges handling youth cases where legal statutes permit judicial transfer, the imposition of blended sentencing and reconsideration hearings to be aware of the legal recognition of, and scientific research on, adolescent development.

ADULT IMPRISONMENT IN CONTEXT

The imposition of prison terms as a sentence for adult offenders is a long and widely used practice in the United States. However, in recent decades, researchers, adult correctional administrators, and policymakers have recognized that incarceration is often ineffective, unfair, and a poor cost-benefit proposition. Adult individuals subjected to imprisonment have high rates of recidivism, and individuals incarcerated for long prison terms do not have lower recidivism rates than those with shorter terms (NIJ, 2016). The practice of imprisonment of adult offenders also causes significant inequities. Black and brown adults

³At issue in the *Miller* case was imposing a sentence of life without parole for crimes committed by individuals when they were in their adolescence.

receive sentences of imprisonment more often and for longer periods than white adults who commit the same offenses and have similar offense histories (see Nazgol and Nellis, 2022 for example). Contrary to the belief and public policy that supports imprisonment as a strategy to promote public safety and deter crime, many studies indicate that the strongest predictive factor for the reduction or elimination of engaging in subsequent offenses is age and the natural maturation (also referred to as “aging out of crime”) that occurs with most individuals in the transition from adolescence into adulthood (Mulvey et al., 2010).

Youth subject to criminal court processing have poor outcomes. Their rates of recidivism are the same or higher than those of youth who remain in the juvenile justice system for the same offense. While imprisoned in adult facilities, they lose the educational, treatment, and appropriate maturation experiences available to youth handled in the juvenile justice system (Mendel, 2022). Serving time in institutions with regulations, conditions, and staff trained to house and manage adult offenders exposes youth to abuse, punishment, and expectations of compliant behavior they are often not capable of because of their chronological, cognitive, and emotional immaturity.

Mendel (2022) explains that incarceration, whether in an adult or juvenile facility, fails to deter delinquent behavior or reduce recidivism for a variety of reasons. Mendel posits that as the adolescent brain continues to develop, most youth “age out” of their delinquent behaviors. Interestingly, he explains incarcerating youth may actually disrupt some adolescent development. “Research finds that incarceration slows young people’s psychological maturation – exactly the opposite of what’s needed to foster positive behavior change and promote desistance from delinquency.” Therefore, it is important to develop practices that both acknowledge and address adolescent development.

THE LAW AND JUDICIAL OPTIONS FOR MAINTAINING YOUTH IN THE JUVENILE JUSTICE SYSTEM

Statutory Frameworks: Juvenile Court Judge Has Discretion

The transfer provisions that preserve judicial discretion for juvenile court judges are traditional discretionary judicial waiver and juvenile blended sentencing. These statutes allow juvenile court judges with discretion to determine whether a case should remain in the juvenile justice system or be transferred to criminal court.

Judicial Transfer: Discretionary Waiver

- Some 46 states have statutes on discretionary judicial waiver. Such statutes give the juvenile court judge discretion in making the waiver decision within the state's prescribed criteria, typically limited by offense and age of the offender (Puzzanchera et al., 2022).
- While many states, such as Pennsylvania, have various statutory factors that a court must consider in transfer hearings, the factors generally fall into the three main criteria established by the Supreme Court in *Kent v. United States* (1966): potential risk of dangerousness, level of sophistication–maturity, and treatment amenability (Brannen, 2006).
- Pennsylvania's statute further states: Before a court can judicially waive a case, the court must find *prima facie* evidence that the youth committed a felony delinquent act and “that there are reasonable grounds to believe that the public interest is served by the transfer for criminal prosecution” (42 Pa. Cons. Stat. § 6355, 1995). The statute goes on to cite various other factors a court must consider, such as public safety, impact of crime on the community, and whether the juvenile is amenable to treatment in the juvenile system.

Juvenile Blended Sentencing

- Approximately 28 states have blended sentencing regimes which allow a court to impose both a juvenile and adult sentence (Puzzanchera et al., 2022; NCJFCJ, 2016.) There are both juvenile and criminal blended sentences.
- The following states have juvenile blended sentences: Alaska, Arkansas, Colorado, Connecticut, Illinois, Indiana, Kansas, Massachusetts, Michigan, Minnesota, Montana, New Mexico, Ohio, Rhode Island, and Texas (Puzzanchera et. al, 2022). Tennessee also recently implemented legislation allowing for juvenile blended sentences (Tenn. Code Ann. § 37-1-102 et seq., 2024).
- The following states have criminal blended sentences: Alaska, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Vermont, Virginia, West Virginia, and Wisconsin (Puzzanchera et. al, 2022).

- Juvenile and criminal blended sentences can be further broken up into the following categories: juvenile exclusive, juvenile inclusive, juvenile contiguous, criminal exclusive, and criminal inclusive (Puzzanchera et al., 2022). “In essence [with blended sentences], if the youth fails to abide by the juvenile court disposition, the court of jurisdictional authority, either criminal or juvenile, can revoke the juvenile sentence and impose the stayed adult sentence” (Schaefer et al., 2016). If the young person cooperates in the juvenile disposition, the criminal sentence will never go into effect.
- Individuals on both sides of the debate may find benefits to blended sentencing. For example, “[t]he possible consequence of an adult sentence if the juvenile commits a new offense, violates probation, or fails to respond to rehabilitation serves to hold juveniles accountable... [yet] offers juvenile offenders ‘a last chance’ at rehabilitation” (Howell et al., 2000).
- However, juvenile blended sentences increase the overall risk that juvenile-age offenders will be sanctioned as adults. These laws also tend to be complex for parties in these cases to understand and are differentially applied by geography (Cheesmann et al., 2010). Further, some scholars have identified a “disparity” in holding juveniles to adult probation standards under blended sentencing regimes (Cassady, 2017; Shear, 2010).
- Every state with a juvenile or criminal blended sentencing provision has a complex, state-specific procedure for how the blended sentence is applied. But generally, in states with juvenile blended sentences, if a youth meets certain age and offense criteria, the prosecutor may choose to file a motion for blended sentencing requesting that the youth either be subjected to extended juvenile jurisdiction or formally designated a youthful offender. Some states allow the youth to also request a blended sentence or special designation (see for example Ark. Code § 9-27-501, 2023).
- At the hearing, the court is often asked to consider the same factors mentioned in many discretionary judicial waiver categories. Again, the factors often center around the three *Kent* criteria of risk to public safety, level of criminal sophistication, and treatment amenability. (Brannen, 2006). Additional factors may include the seriousness of the offense, culpability of the juvenile, the type of juvenile facilities and programs available for the youth while in the juvenile system (see for example Ark. Code § 9-27-503, 1999).

- Reconsideration Hearings. Some juvenile blended sentencing statutes allow for a hearing when the youth reaches the age of majority, or another specified age, to determine whether the adult sentence should be stayed or imposed (Schaefer et al., 2016). Examples of states that allow for a reconsideration hearing within the context of juvenile blended sentencing include Arkansas, Colorado, Kansas, and Rhode Island.
- Colorado’s aggravated juvenile offender statute requires the court to consider a wide range of factors at the reconsideration hearing: the youth’s prior history, behavior in custody, and nature of the offense, as well as information regarding “court-ordered psychological evaluation and risk assessment, the offender’s progress and participation in classes, programs, and educational improvement; the likelihood of rehabilitation, and the placement where the offender is most likely to succeed in reintegrating in the community” (Colo. Rev. Stat. § 19-2.5-1127, 2021). Arkansas’s statute requires consideration of factors including “the recommendations of the professionals who have worked with the juvenile” and victim impact evidence (Ark. Code § 9-27-507, 2024).
- However, not every state with reconsideration hearings provides delineated factors to consider in the manner of Colorado and Arkansas; some instead instruct judges more generally to contemplate public safety and the youth’s efforts at rehabilitation with little specific guidance, as is the case with Kansas and Rhode Island (Kan. Stat. Ann. § 38-2364, 2016; 14 R.I. Gen. Laws § 14-1-42, 2010).

Statutory Frameworks: Criminal Court Judge Has Discretion

Similar to the aforementioned statutes, reverse waiver and criminal blended sentencing provide courts with some discretion in deciding whether a youth’s case should fall under the purview of the adult court or the juvenile court. However, in these situations, the criminal court judge is the one making the decisions. These statutes most often exist in states that have automatic transfer provisions (i.e., mandatory judicial waiver or statutory exclusion).

Reverse Waiver

- Twenty-eight states have reverse waiver statutes. These laws allow juveniles whose cases are in criminal court to petition to have them transferred to juvenile court. These laws generally apply to cases initiated in criminal court under statutory exclusion or

prosecutorial discretion provisions. Reverse transfer provisions often parallel a state's discretionary waiver criteria and are not necessarily available to all transferred cases. In some states, transfer cases resulting in conviction may be reverse-transferred to juvenile court for disposition (Puzzanchera et al., 2022).

Criminal Blended Sentences

- Twenty-three states have criminal blended sentences.
- Griffin (2008) explains that “criminal blended sentences allow the criminal court to impose a juvenile disposition instead of an adult criminal sentence” and that “[o]ften a suspended adult sentence may be added to the juvenile disposition, as a guarantee of good behavior.”
- These provisions often operate with a similar, but more flexible purpose as reverse waiver to juvenile court, in contrast to juvenile blended sentencing. The overall intent of criminal blended sentencing is to mitigate the effects of transfer laws in individual cases (Griffin, 2008).

JUDICIAL GUIDANCE FOR DECISION-MAKING IN JUDICIAL TRANSFER, BLENDED SENTENCING, AND RECONSIDERATION HEARINGS

As previously discussed, some state statutes on discretionary judicial waiver, blended sentencing, and reconsideration, provide courts with a list of factors to consider when making decisions about whether a youth's case should be handled in the juvenile or adult system and what type of sentence can be imposed. However, this publication recognizes that not every state has all the hearings discussed in this bulletin. Depending on the jurisdiction and proscribed statutes, the level of discretion judges have in making these decisions may vary considerably.

To the extent state statutes permit or allow for judicial discretion in assessing youth responsibility, mitigating factors, and risk for re-offending, it is strongly recommended that judges take an individualized approach to decision making when considering transferring youth to criminal court or imposing blended sentencing.

The following are some factors that judges can consider at transfer hearings, hearings on the imposition of a blended sentence, or at reconsideration hearings after youth have served the juvenile justice system portion of their sentence to determine where, and in what system, a youth could best be served (NCJFCJ, 2018).

- Risk/needs assessment and forensic evaluation, especially forensic evaluations and risk/needs assessment that emphasize dynamic and risk factors. It is particularly important to have a current assessment at the point of a reconsideration hearing after the youth has had the opportunity to participate in juvenile justice system interventions and services (Arnold et al., 2018).⁴
- The services, intervention, programs and incentives offered to the youth and the youth's participation in those services.
 - With appropriate treatment, even youth who have committed the most serious and violent offenses can be rehabilitated (Lipsey et al., 2010).
 - For example, Haerle (2016) found that youth sentenced to juvenile correctional placements under a blended sentencing scheme were statistically less likely to recidivate following participation in an intensive therapeutic treatment program called the Violent Offender Treatment Program (VOTP). Even youth who did not complete the program showed reductions in recidivism rates.
- Youth's behavior/conduct while in juvenile custody including disciplinary actions, their context, and therapeutic services offered to youth experiencing disciplinary measures, as well as youth's efforts to conform to rules, expectations, and to engage in activities involving school, recreation, chores, peer interaction, personal hygiene.
 - Of note, assaultive behavior while institutionalized appears to be a strong predictor of post-release recidivism for young people committed under blended sentencing laws. (Caudill and Trulson, 2016; Trulson et al., 2011).
- Compliance with court orders

⁴Albeit in the context of resentencing hearings for adults who were sentenced to life without parole as juveniles, Arnold and co-authors suggest that forensic mental health assessments "should be viewed on a continuum" especially given "the concept of developmental maturity as a fluid and dynamic construct." This reasoning can be applied to blended sentencing reconsideration hearings as well.

- Youth, family member/caring adult input at the hearing on the youth’s progress, goals and plans for the future.
- “Opportunities provided to the juvenile for rehabilitation and the juvenile’s efforts towards rehabilitation” (Ark. Code § 9–27–507, 2024).
- Likelihood of rehabilitation
 - Brannen et al. (2006) found that juvenile court judges did *not* weigh treatment amenability, one of the three *Kent* criteria, with the same significance as the other two criteria. Unlike dangerousness and sophistication–maturity, amenability did not have a significant impact on judicial transfer decision. By failing to fully consider amenability, judges may be inadvertently undermining the intent of the *Kent* decision.
- “Placement where the offender is most likely to succeed in reintegrating in the community” (Colo. Rev. Stat. § 19–2.5–1127, 2021).
- Re–entry plan that includes connections with community support and preparation of family members and school system to receive and support youth
- Re–entry follow up hearings
- Whether the youth poses a threat to public safety by considering:
 - Youth’s maturation; supports that youth has been connected to in the community; support from family for the youth to return home; changes in behavioral health since being under the supervision of the juvenile justice system, especially if they have received treatment for substance use, trauma, and mental health; plans and services necessary to support behavioral health if continued under the jurisdiction of the juvenile system/ released under community supervision.
- Trauma history and whether any services or treatment were offered to address trauma.
 - “Studies find that youth who become involved in the juvenile justice system are several times more likely than other youth to have suffered trauma – or adverse childhood experiences– while growing up” (Mendel, 2022).

Judicial Considerations at Transfer and Reconsiderations Hearings

Questions to Ask	Information to Review
What is the current risk of re-offending/threat to public safety?	Results of current risk assessment and forensic evaluation that focuses on dynamic risk factors (especially at re-consideration hearings after youth has had the opportunity to participate in juvenile justice interventions and to receive services and skill building)
What rehabilitation services have been offered by the juvenile justice system?	Services, interventions, programs including evidence-based treatments offered to address trauma, substance abuse, mental health, educational success, workforce preparation
What has been the youth's responsivity to juvenile justice services and what changes in behavioral health and maturation have they demonstrated?	<p>Youth's behavior and conduct while in juvenile custody, including disciplinary actions(their context, and therapeutic responses offered to youth);</p> <p>Youth efforts to conform to rules and expectations and to engage in activities involving school, recreation, chores, peer interactions, personal hygiene;</p> <p>Participation in restorative justice programming, when offered;</p> <p>Positive changes in behavioral health especially related to receiving treatment for substance use, trauma, and mental health disorders;</p> <p>Compliance with court orders</p>
What is the likelihood of (further) rehabilitation if the youth is retained in the juvenile justice system?	<p>Age;</p> <p>Availability of case planning services in the juvenile justice system;</p> <p>Involvement of family in case planning;</p> <p>Juvenile justice system treatment/interventions available/to be offered to address dynamic criminogenic risk factors such as anti-social thinking and attitudes, education, employment, recreation and leisure, family relationships, trauma, substance use</p>
What family and community connections and support exist to promote youth maturation and responsibility?	<p>Youth and family input on youth's goals and plans for the future;</p> <p>Potential placement in the community where the youth is most likely to succeed in reintegrating into the community;</p> <p>After care/re-entry plans and supports in the community (school, employment, faith-based organizations)</p>

Youth capacity for behavioral change and growth is much greater than adults. As the research summary below sets forth, juveniles handled in the juvenile system fare much better than those who are placed in the adult system. The adult system is ill equipped and poorly resourced to provide youth with needed opportunities and services for their healthy development and preparation to be law abiding citizens and contributors to their communities.

RESEARCH SUMMARY OF ADULT VS. JUVENILE SYSTEM PROCESSING AND OUTCOMES

Transfer mechanisms have existed in various forms since the early 20th century, developing soon after the juvenile court itself. However, the practice was reserved for chronic and violent offenders deemed incapable of rehabilitation, and youth were most often transferred via judicial waiver after having received an individualized assessment by a juvenile court judge (Fagan, 2008).

In the late 1970s, states began to pass new laws that caused youth to be automatically transferred into criminal court when accused of serious violent offenses. Then, in the late 1980s and 1990s, the youth violent crime arrest rate began to rise (Griffin, et al., 2011; Snyder & Sickmund, 1999). Some social commentators warned that the increase signaled the emergence of a new breed of hyperviolent youth—so-called “super-predators” who were more dangerous than previous generations (DiLulio, 1995; Bennett, et al., 1996). Many legislators looked to youth transfer to criminal court as a solution.

Between 1992 and 1997, all but six states enacted or expanded transfer provisions (Snyder & Sickmund, 1999). This dramatically increased the number of youth processed in criminal court and held in adult facilities. In 1985, approximately 4,000 youth were housed in adult facilities; in 1997 that number reached nearly 15,000 (Mistrett & Espinoza, 2021).

During the same time period, states also passed new legislation to change disposition options and create blended sentencing options or a “middle ground” between traditional juvenile dispositions and adult sentences (Snyder & Sickmund, 1999). By 1999, 22 states had blended sentencing statutes and a taxonomy for considering this alternative to traditional transfer mechanisms (Snyder & Sickmund, 1999; Torbet, et al., 1996).

Deterrence

As Myers (2003a) notes, advocates of youth transfer argue that adult court processing results in harsher punishments for juvenile offenders and greater public safety. Transfer is presumed to achieve these effects via deterrence.

According to deterrence theory, criminally-inclined youths should be deterred from offending by the possibility of adult punishment in the adult criminal system. Youth should

choose not to commit any “adult crimes,” lest they find themselves serving “adult time.” This should result in a lower juvenile violent crime rate and greater public safety.

The experience of being processed in criminal court is also intended to deter offenders from recidivating. Youth in criminal court should theoretically face stronger punishment than their peers in juvenile court; this heightened punishment should then cause transferred youth to desist from illegal behavior.

There is a rich body of literature testing the efficacy of youth transfer as a deterrent; findings are summarized in the following discussion.

Juvenile Crime Rate

One foundational study, which predates the super-predator panic of the 1990s, examined the impact of a 1978 New York transfer law on the state’s juvenile violent crime rate (Singer & McDowall, 1988). It found no evidence that the law had decreased crime by youth. Similarly, a study examining a 1980 Idaho statutory exclusion law found no effect on the youth crime rate (Jensen & Metsger, 1994).

In the decades since, a number of researchers have examined the national impact of the 1990s’ expanded transfer laws (Koper, et al., 2011; Steiner, et al., 2006; Steiner & Wright, 2006; Zimring & Rushin, 2013). They, too, found no evidence that these laws improved public safety. Indeed, the expansion of transfer laws continued after the juvenile violent crime rate began to fall again (Snyder & Sickmund, 1999).

Sentencing and Recidivism

The other promised outcome of transfer is more effective punishment for juvenile offenders. This punishment is intended to be more severe than that doled out by the juvenile system and is meant to deter transferred youth from future offending.

Sentencing Outcomes for Youth in Criminal Court vs. Youth in Juvenile Court

Ideally, one could compare court dispositions between youth in criminal court and youth in juvenile court to test this proposition. Unfortunately, it is rarely possible to make direct comparisons between youth processed in juvenile court and youth processed in adult court because of selection bias (Myers, 2003b). Youth that commit the most serious offenses

are usually transferred, so those youth that remain in the juvenile justice system tend to be a less serious group. It is unsurprising, then, that transferred youth receive harsher sentences than youth who are not transferred due to the seriousness of their crimes. Additionally, the existence of mandatory minimum sentences in criminal court results in a “criminal court tariff” for transferred youth (Kupchik, 2006a).

A number of researchers have also noted the heterogeneity of youth who are transferred to criminal court; they may be transferred for homicide or for lesser offenses like theft, may be first-time offenders or chronic delinquents, and each of these factors may interact with their sentencing outcomes (Lehmann, 2022; Loughran, et al., 2010; Rinehart, et al., 2016; Schubert, et al., 2010). Finally, a recent multilevel analysis found that the *method* of transfer into criminal court can impact sentencing (Zane, 2017). For example, youth transferred via judicial waiver are more likely to be sentenced to jail or prison while youth transferred via statutory exclusion are less likely to face criminal sanctions.

Despite the methodological challenges of comparing sentencing outcomes for youth in criminal court to youth in juvenile court, it does seem clear that transferred youth are more likely to be incarcerated than non-transferred youth (Fagan, 1996; Kupchik, 2006b; Lemmon, et al., 2005; Myers, 2003a). However, not all transferred youth receive sentences of incarceration. One study found that more than a quarter of transferred youth received neither a jail or prison sentence (Mulvey & Schubert, 2012) while another found that “only 15% of excluded youths were incarcerated in institutions typically reserved for serious adult criminals” (Lemmon, et al., 2005). This means that transferred youth could be returned to the community while still within their “peak crime time,” losing any possible crime reduction effects due to incapacitation (Myers, 2003a).

Sentencing Outcomes for Youth in Criminal Court vs. Adults in Criminal Court

Comparing outcomes between transferred youth and similarly-charged young adults is much more straightforward—and yields some surprising results. While youth are less likely to be sentenced to incarceration compared to adults, researchers find evidence of a “juvenile penalty,” wherein transferred youth are actually sentenced *more harshly* than adults charged with similar crimes (Jordan, 2014; Jordan & McNeal, 2016; Kurlychek & Johnson, 2010; Kurlychek & Johnson, 2004; Lehmann, 2022). In this sense, then, the retribution desired by proponents of juvenile transfer to criminal court is fulfilled.

Recidivism Rates

Crucially, however, juvenile transfer and harsher sentences do not appear to reduce recidivism. Rather, the vast majority of studies find that youth transfer either has no effect on recidivism rates (Fagan, et al., 2007; Loughran, et al., 2010; Trulson, et al., 2020) or actually results in *higher* recidivism rates (Bishop, 2000; Drake, 2013; Hahn, et al., 2007; Johnson, et al., 2011; Kurlychek, et al., 2022; LanzaKaduce, et al., 2005; Mulvey & Schubert, 2012; Myers, 2003b). That is to say—transfer often makes the problem worse. In one foundational study, Bishop (2000) found that transferred youth were rearrested more quickly and more frequently than youth who remained in juvenile court. They performed worse than the comparison on every measure of recidivism.

Systematic reviews and metaanalyses consistently support the finding that transfer has a null or negative effect on recidivism (Kurlychek, 2016; McGowan, et al., 2007; Redding, 2010; Zane, et al., 2016). Informed largely by Zane, et al.'s 2016 metaanalysis, the Office of Justice Programs' CrimeSolutions database has rated juvenile transfer to adult court as an ineffective practice (OJP, 2017).

Racial and Ethnic Disparities

While *transfer* does not appear to increase public safety, it *does* increase racial disparities. Indeed, some of the very earliest transfer studies noted the overrepresentation of Black and Hispanic youth in juvenile transfer proceedings (Eigen, 1981; Keiter, 1973). For example, Keiter (1973) found that 95% of youth transferred to criminal court in 1970 in Cook County, Illinois were Black or Hispanic.

In more recent years, a handful of states annually report juvenile transfers with demographic details (Juvenile Justice GPS. National Center for Juvenile Justice). Among those states are Arizona and California. Of youth receiving adult court dispositions in California, 80% were Black or Hispanic (Juvenile Justice in California 2021, California Department of Justice). In Arizona, 100% of youth transferred to criminal court by discretionary judicial waiver were Hispanic or Native American and 86% of youth transferred by prosecutor discretion were Hispanic, Black or Native American (Arizona's Juvenile Court Counts, FY 2021, Arizona Administrative Office of the Courts).

Researchers have found that racial disparities are magnified at virtually every stage of the transfer process – youth of color are more likely to be transferred to criminal court in the first place (Bishop, et al., 1996; Brown & Sorensen, 2013; Bryson & Peck, 2020; Cheesman, et al., 2010; Gann, 2019), more likely to be sentenced to incarceration (Howell & Hutto, 2012; Jordan, 2014; Jordan & Freiburger, 2010; Jordan & McNeal, 2016; Kupchik, 2006b; Lehmann, 2018; Lehmann, et al., 2017, 2018), and are sentenced to longer periods of incarceration (Lehmann, 2018; Lehmann, et al., 2017, 2018) as compared to white youth.

Youth Outcomes

As the vast majority of transferred youth eventually return to their communities, it is in the public interest that they are given the opportunity to grow into healthy and well-adjusted adults. However, transferred youth appear to have worse educational and employment outcomes than their non-transferred peers (Augustyn & Loughran, 2017; Sharlein, 2018; Silver et al., 2024). Incarceration in adult facilities as a juvenile is particularly harmful—youth subject to placement in these facilities have, on average, poorer mental health (Semenza et al., 2024), a heightened probability of experiencing violent victimization by age 33 (Silver et al., 2025), and even an increased risk of early mortality before reaching the age of 40 (Silver et al., 2023) as compared to their peers.

Researchers suggest three possible explanations for the higher recidivism rates and worse outcomes found among transferred youth: 1) incarceration, especially in an adult facility, can interfere with normal adolescent development (Augustyn & McGloin, 2018; Kurlychek, et al., 2022; Mulvey & Schubert, 2012); 2) adult facilities often provide less access to educational and rehabilitative opportunities than juvenile facilities (Bishop, 2000; Johnson, et al., 2011; Kupchik, 2007; Lambie & Randell, 2013; Ng, et al., 2012); and 3) the social stigma and legal consequences of an adult criminal conviction create lifetime barriers to employment and educational attainment (Eggleston, 2007; Mistrett & Espinoza, 2021).

Though Bishop (2000) notes that there are few comparative studies of confinement conditions for youth in juvenile facilities compared to adult facilities, youth in adult facilities do appear to have higher mental health needs than their peers while simultaneously lacking access to comparable therapeutic services (Austin, et al., 2000; Fagan & Kupchik, 2011; Murrie, et al., 2009; Ng, et al., 2012; Ng, et al., 2011; Park & Sullivan, 2021; Washburn, et al., 2008).

CONCLUSION

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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