

**Different from Adults:
An Updated Analysis of
Juvenile Transfer and
Blended Sentencing Laws,
With Recommendations
for Reform**

by the National Center for Juvenile Justice

ModelsforChange

Systems Reform in Juvenile Justice

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Models for Change

Models for Change is an effort to create successful and replicable models of juvenile justice reform through targeted investments in key states, with core support from the John D. and Catherine T. MacArthur Foundation. Models for Change seeks to accelerate progress toward a more effective, fair, and developmentally sound juvenile justice system that holds young people accountable for their actions, provides for their rehabilitation, protects them from harm, increases their life chances, and manages the risk they pose to themselves and to the public. The initiative is underway in Illinois, Pennsylvania, Louisiana and Washington.

Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform

Introduction

In every U.S. state, juveniles are acknowledged to be fundamentally different from adults. That's why, as a rule, they are treated differently when they break the law. But every state makes exceptions to this general rule—prosecuting some juvenile-age offenders “as adults” in criminal court, and sanctioning them in the adult correctional system. Laws providing for these exceptions are called transfer laws.

Although transfer laws are not new—they have been around in some form for as long as there have been juvenile courts—in the last three decades of the 20th century they became far more common, more sweeping in their coverage, and more automatic in their operation than ever before. During the 1990s particularly, nearly every state legislature took steps to create new transfer mechanisms or expand the reach of existing ones, eliminate discretion in transfer decision-making, and shift authority over transfer from judges to prosecutors. While still an exception to the general rule, transfer must now be regarded as a very prominent feature of America's approach to juvenile offending.

This report is an effort to map the current landscape of laws governing the trial, sentencing, and sanctioning of juveniles as adults—to summarize and take stock of the transfer laws of all 50 states and the District of Columbia as of the beginning of 2008.¹ It will also explore what the data tell us—and do not tell us—about the volume and characteristics of youth who are being transferred under these laws. Finally, it will call attention to some ways in which transfer laws, from any point of view, stand in need of improvement, and suggest some simple measures that states can take to make them more fair, flexible, and consistent.

Transfer Terms

There are three basic kinds of transfer law. All states have one or another of these kinds of laws, and most have more than one kind.

- **Judicial waiver laws** allow juvenile court judges to waive their jurisdiction over individual young people accused of breaking the law, thus clearing the way for their prosecution in criminal court. Under a waiver law, a case against a juvenile originates in juvenile court, and may be transferred only after a judge's approval, based on articulated standards, following a formal hearing.
 - **Statutory exclusion laws** grant criminal courts exclusive original jurisdiction over certain classes of cases involving juveniles. If a youth is charged with a crime excluded from juvenile court jurisdiction, the case must originate in criminal court.
 - **Prosecutorial discretion** or **concurrent jurisdiction laws** leave it up to prosecutors to decide, in specified classes of cases, whether to file charges in juvenile or criminal court, since original jurisdiction is held concurrently by both courts. There is no hearing to determine which forum is appropriate, and usually no specific standards for deciding between them.
- In addition to these basic categories, many states have one or more of the following:
- **“Once an adult/always an adult” laws** requiring that juveniles who have previously been handled as adults be criminally prosecuted for all subsequent offenses, regardless of their nature.
 - **Reverse waiver laws** allowing juveniles whose cases are in criminal court to petition to have them transferred to juvenile court.
 - **Blended sentencing laws**, which may either provide juvenile courts with tougher sentencing options (juvenile blended sentencing), or allow criminal courts to impose juvenile dispositions (criminal blended sentencing).

Transfer/Blended Sentencing Provisions

State	Judicial Waiver			Prosecutorial Discretion	Statutory Exclusion	Reverse Waiver	Once Adult/ Always Adult	Juvenile Blended	Criminal Blended
	Discretionary	Presumptive	Mandatory						
Total U.S.	45	15	15	15	29	25	34	15	17
Alabama	X				X		X		
Alaska	X	X			X			X	
Arizona	X			X	X	X	X		
Arkansas	X			X		X		X	X
California	X	X		X	X	X	X		X
Colorado	X	X		X		X		X	X
Connecticut			X			X		X	
Delaware	X		X		X	X	X		
District of Columbia	X	X		X			X		
Florida	X			X	X		X		X
Georgia	X		X	X	X	X			
Hawaii	X						X		
Idaho	X				X		X		X
Illinois	X	X	X		X	X	X	X	X
Indiana	X		X		X		X		
Iowa	X				X	X	X		X
Kansas	X	X					X	X	
Kentucky	X		X			X			X
Louisiana	X		X	X	X				
Maine	X	X					X		
Maryland	X				X	X	X		
Massachusetts					X			X	X
Michigan	X			X			X	X	X
Minnesota	X	X			X		X	X	
Mississippi	X				X	X	X		
Missouri	X						X		X
Montana				X	X	X		X	
Nebraska				X		X			X
Nevada	X	X			X	X	X		
New Hampshire	X	X					X		
New Jersey	X	X	X						
New Mexico					X			X	X
New York					X	X			
North Carolina	X		X				X		
North Dakota	X	X	X				X		
Ohio	X		X				X	X	
Oklahoma	X			X	X	X	X		X
Oregon	X				X	X	X		
Pennsylvania	X	X			X	X	X		
Rhode Island	X	X	X				X	X	
South Carolina	X		X		X				
South Dakota	X				X	X	X		
Tennessee	X					X	X		
Texas	X						X	X	
Utah	X	X			X		X		
Vermont	X			X	X	X		X	
Virginia	X		X	X		X	X		X
Washington	X				X		X		
West Virginia	X		X						X
Wisconsin	X				X	X	X		X
Wyoming	X			X		X			

Judicial Waiver Laws

Most states grant judges some form of authority to waive jurisdiction over individual cases involving minors, so that they may be prosecuted in adult criminal courts. Judicial waiver is the oldest, most traditional, and still the most common form of transfer law, but its importance has diminished in recent years. While judicial waiver was once the sole means by which juvenile-age offenders could be transferred to criminal court in most of the nation, there are now only eight states in which this remains true.² In the others, judicial waiver laws remain on the books, but alongside more recently added prosecutorial discretion or exclusion laws that may impact far more youth.

A total of 45 states have **discretionary waiver laws**. They designate a class of cases in which juvenile courts may consider waiving jurisdiction, generally on the prosecutor's motion. They prescribe broad standards to be applied, factors to be considered, and procedures to be followed in waiver decision-making, and require that prosecutors bear the burden of proving that waiver is appropriate.

Most states set a minimum threshold for waiver-eligibility—generally a minimum age, a specified type or level of offense, and/or a sufficiently serious record of previous delinquency—but it is often quite low. In a few states, prosecutors may ask the court to waive virtually any juvenile delinquency case. As a practical matter, however, even in these states, waiver proceedings are likely to be relatively rare. Nationally, the proportion of juvenile cases in which prosecutors seek waiver is not known, but waiver is granted in only about 1% of petitioned delinquency cases.³

While the prosecution bears the burden of proof in a discretionary waiver proceeding, this burden is sometimes shifted to the juvenile. Fifteen states have **presumptive waiver laws** designating a category of cases in which waiver to criminal court is rebuttably presumed to be appropriate. If a juvenile meets age, offense, or other statutory criteria triggering the presumption, he or she must present evidence adequate to rebut the presumption in favor of transfer, or the case will be sent to criminal court.

Mandatory waiver laws go even further—requiring juvenile courts to transfer certain cases for criminal prosecution, no matter what. The statutes of 15 states provide for mandatory waiver in cases that meet certain age/offense or prior record criteria. Proceedings against juveniles subject to mandatory waiver are initiated in juvenile court, but the juvenile court judge's primary role is simply to confirm that the statutory requirements for mandatory waiver are met.⁴ Accordingly, in

most respects a mandatory waiver law functions more like a statutory exclusion than a traditional judicial waiver law.

Statutory Exclusion Laws

A total of 29 states have **statutory exclusion laws**, defining the juvenile court's jurisdiction in such a way as to leave out certain kinds of cases involving juvenile-age offenders. Typically, the statutory definition of "delinquency" specifically excludes certain offenses or age/offense/prior record combinations. Accused juveniles in such cases are outside the juvenile court's original jurisdiction. They are treated as adults—and proceeded against in criminal court—from the beginning.

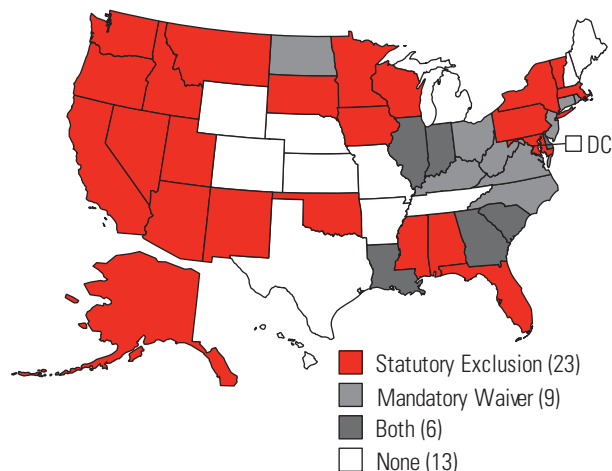
When the states that legislatively exclude a class of offenders from juvenile court jurisdiction are combined with those that *mandate* judicial waiver in some cases (as described above), the resulting total is 38 states that provide for "automatic transfers."

Prosecutorial Discretion/Concurrent Jurisdiction Laws

Prosecutorial discretion or concurrent jurisdiction laws in 15 states define a category of cases in which prosecutors may determine whether to proceed initially in juvenile or criminal court. Each court is given jurisdiction, concurrent with the other.

As a practical matter, prosecutorial discretion laws function very differently from judicial waiver laws, even though each gives a public official the authority to make discretionary transfer determinations in a defined class of cases. Few states make any effort to guide or limit prosecutors' decisions, or to specify

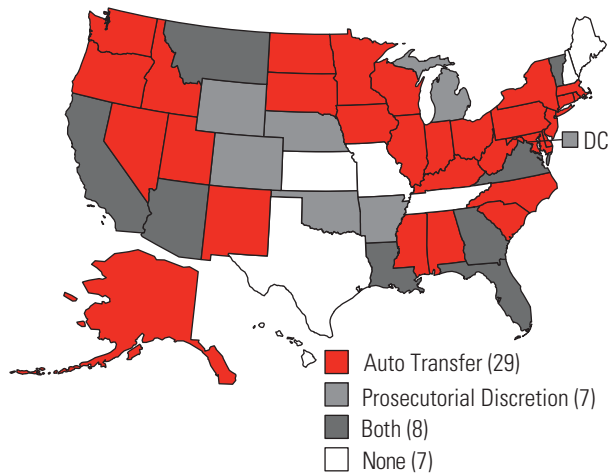
Statutory Exclusion and Mandatory Waiver



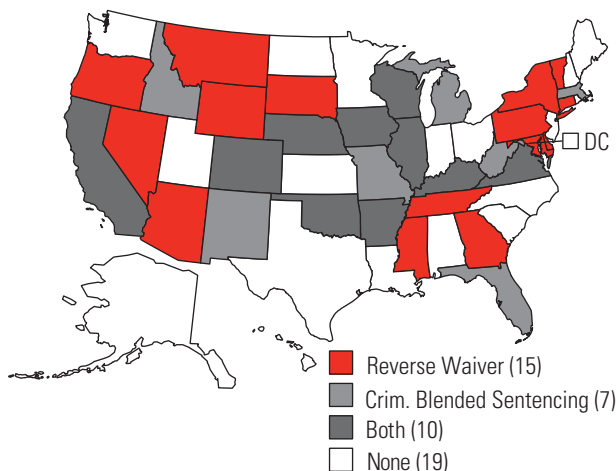
any general principle or specific factors to be considered in transfer decision-making. Prosecutors are given no incentive to opt sparingly for criminal handling, or to choose their occasions with care. Because no hearing is held and no evidentiary record created, defendants have no opportunity to test the basis for transfer decisions or to present counter-evidence of their own. And afterwards, there is nothing to review to determine whether decisions were made appropriately. As a result, prosecutorial discretion laws in some places may operate more like statutory exclusions, sweeping wholesale categories into criminal court, with little or no individualized consideration.

In all, 44 states have laws—including prosecutorial discretion, statutory exclusion, and/or mandatory waiver laws—that either dictate criminal handling of certain defined categories of juvenile offenders, or else place decisions about that handling solely in the hands of prosecutors.

Auto-transfer, Prosecutorial Discretion



Reverse Waiver, Criminal Blended Sentencing



Other Transfer-Related Laws

In 34 states, one transfer to criminal court automatically renders a juvenile an “adult” in connection with all subsequent prosecutions. Although there are many variations, **once an adult/always an adult laws** basically create an automatic waiver or exclusion for any juvenile who has previously been handled as an adult. Such a youth is tried as an adult for all subsequent offenses, even those that would not otherwise qualify for transfer.

Generally (but not always), once an adult/always an adult laws apply only to juveniles who have not only been tried, but *convicted* as adults. But if they do apply—again with some exceptions—they require adult prosecution for all new offenses, whether serious or not.

Although automatic and prosecutor-controlled transfer mechanisms have become common in the last few decades, even juveniles subject to these mechanisms are often afforded a chance, at some point in the process, to show a judge that they don’t belong in the adult system after all. These judicial corrective or “fail-safe” laws are of two basic kinds: **reverse waiver laws** that permit criminal courts to restore transferred youth to juvenile court for trial or disposition, and **criminal blended sentencing laws** that authorize criminal courts to impose juvenile dispositions rather than criminal ones in sentencing transferred youth.

A total of 25 states have reverse waiver laws that allow juveniles subject to prosecution in criminal court to petition to have their cases transferred to juvenile court. Generally, in such cases the criminal court is guided by the same kinds of broad standards and considerations as a juvenile court in a waiver proceeding. In most cases, the reverse waiver hearing is held prior to trial, and if the reverse waiver is granted, the case is adjudicated in juvenile court. But sometimes the offender’s guilt must be established first, and reverse waiver is for disposition purposes only.

A total of 17 states have criminal blended sentencing laws, authorizing criminal courts to sentence juveniles who have been tried and convicted as adults to supervision, treatment, and rehabilitative programs available only in the juvenile system. In other words, while the youth may have been *convicted* as an adult, he or she will be *sanctioned* as a juvenile. The juvenile disposition may be imposed by itself or in combination with a suspended criminal sentence to ensure cooperation with the dispositional program.

Historical Development of Transfer Laws

Mechanisms for judicially-controlled transfer were a feature of some of the earliest juvenile codes. Other forms of transfer were virtually nonexistent. This basic situation remained unchanged for the first 70 years of the juvenile court's history. By 1969, while about two-thirds of the states had some sort of judicial waiver provision for transferring difficult cases, only three states had exclusion provisions, and only two had prosecutorial discretion laws.⁵

The 1970s and early 1980s saw the beginnings of a marked expansion of traditional waiver laws and a proliferation of non-judicial transfer laws. By 1983, nearly all states had enacted judicial waiver laws. In addition, a total of 20 states had adopted some form of automatic transfer (exclusion or mandatory waiver), and nine states had enacted prosecutorial discretion laws.⁶

These general trends accelerated dramatically in the 1990s. Reacting to public fear and outrage over the surge in juvenile arrests for violent crimes that began in the mid-1980s and peaked in 1994, legislatures in nearly every state revised or rewrote their laws to broaden the scope of transfer—lowering age/offense thresholds, moving away from individual and toward categorical handling, and shifting authority from judges to prosecutors. During the years 1992–1999:

- 27 states extended the reach of judicial waiver laws, lowering age requirements or otherwise broadening eligibility
- 13 states enacted new presumptive waiver laws
- 35 states created or expanded automatic transfer laws
- 11 states strengthened prosecutors' role in transfer, either expanding or enacting new prosecutorial discretion laws

In retrospect, the highwater mark of transfer law expansion appears to have been California's Proposition 21, which was approved by the state's voters in March of 2000. Proposition 21 not only added a number of broad new categories of juveniles eligible for transfer, but also established entirely new prosecutorial discretion and exclusion mechanisms.

Since then, the overall volume of legislative change has diminished considerably. Transfer law changes, when they have occurred, have tended to be minor. While most changes have expanded transfer eligibility in small ways, in isolated instances they have actually contracted the reach of transfer laws, at least slightly. The most notable instance occurred in Illinois, where a 2007 amendment revised that state's transfer law for drug offenses committed near schools or public housing, transforming what had been a statutory exclusion into a presumptive waiver law.⁷ As a result of the change, cases that had previously originated in criminal court are now filed in juvenile court, and transferred only with a judge's approval.

Types of Blended Sentencing

In recent decades, many states have experimented with "blended sentencing" as a more flexible alternative to transfer. However, the general term covers two different types of law, which can have radically different tendencies.

- **Juvenile blended sentencing laws** in 15 states enhance the sanctioning power of juvenile courts. Typically, a juvenile blended sentencing law authorizes a juvenile court to impose a suspended criminal sentence along with its usual disposition, as a guarantee of good behavior. Assuming the youth cooperates in the juvenile disposition, the criminal sentence will never go into effect. But in general, blended sentencing of this type increases the overall risk that juvenile-age offenders will be sanctioned as adults.
- **Criminal blended sentencing laws** in 17 states empower criminal courts, in sentencing transferred juveniles, to impose juvenile dispositions rather than criminal sentences. Again, often a suspended adult sentence may be added to the juvenile disposition, as a guarantee of good behavior. But the overall tendency of criminal blended sentencing is to *mitigate the effects* of transfer laws in individual cases.

What Do the Data Tell Us About Transfer?

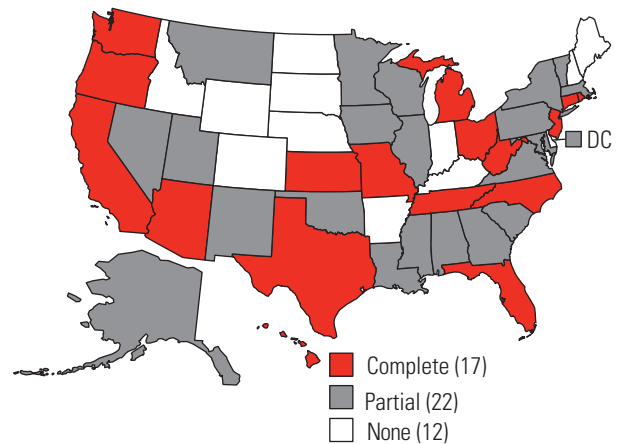
The statistical picture of transfer in the United States is surprisingly fragmentary and incomplete, and has been for decades. There are no national datasets that track the overall number of juveniles who are tried as adults. From state juvenile case processing information submitted to the National Juvenile Court Data Archive, it is possible to form a national estimate of the number of cases in which juveniles are *judicially waived* to criminal court annually, as well as their offenses and demographic characteristics. But the number of juveniles who reach criminal courts as a result of statutory exclusions or prosecutors' discretionary choices is unknown. While a few states track and report detailed information regarding these forms of transfer, most do not. As a result, no accurate national estimate of the number of young people affected is possible.

In the year 2005, an estimated 6,900 transfers by judicial waiver occurred in the nation as a whole. In addition, 11 states reported some 4,000 other, nonjudicial transfers—that is, instances in which juvenile-age offenders were prosecuted in criminal court without being waived there by juvenile courts. The resulting total of about 11,000 transfers for 2005 is clearly an undercount, however. Of the 36 states that provide for some form of nonjudicial transfer—statutory exclusion, prosecu-

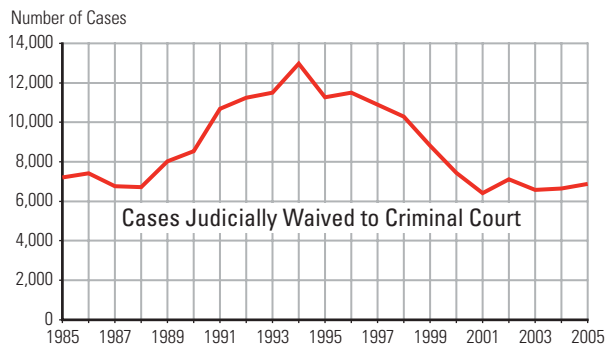
rial discretion or both—only 11 report any information on the number of youth affected.

In all, reasonably complete information on the number of youth transferred to criminal court is available for only 17 states. In 22 other states, information is available regarding some but not all transfers. In the remaining 12 states, no information at all appears to be readily available regarding the number of transferred youth.

Transfer Reporting by State



Total Judicial Waivers, 1985–2005



The number of cases judicially waived to criminal court peaked in 1994. The subsequent decline in waivers corresponded with a general post-1994 decline in juvenile violence, but it is probably also attributable at least in part to the dramatic expansion of statutory exclusion and prosecutorial discretion laws that occurred in the 1990s. Following the passage of these new and expanded nonjudicial transfer laws, many cases that might otherwise have been subject to waiver were undoubtedly filed directly in criminal court, bypassing juvenile court altogether. In all likelihood, the decline in judicial waivers during the last decade was to some degree offset by increases in other forms of transfer.

Source: Adams, B. and Addie, S. (2008). "Delinquency Cases Waived to Criminal Court, 1985-2005." *OJJDP Fact Sheet*. Washington, DC: U. S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

How Could States Improve their Transfer Laws?

For the most part, state transfer laws have been stable in recent years. No major revisions or expansions, of the kind that were relatively commonplace in previous decades, have occurred since the year 2000, and none seems likely at present. The pendulum that began swinging some time in the 1970s, and gained momentum in the 1980s and 1990s, seems to have all but stopped.

In fact, it may be poised to swing back, at least part of the way. The juvenile crime and violence trends that occasioned the states' original expansions of transfer have long since reversed themselves.⁸ Skepticism about the practical effectiveness of transfer as a crime-fighting measure has grown. (See sidebar, "Do Transfer Laws 'Work'?") Recent developmental research highlighting the crucial differences between adolescent and adult brain functioning has worked to undercut the "adult time for adult crime" rationale.⁹ And serious public questions have been raised about the disparate impact of transfer on minorities and the vulnerable position of transferred youth in adult correctional settings.¹⁰ Although none of these considerations has yet resulted in any broad roll-back of transfer laws, several states have shown signs of willingness to reconsider their approaches to transfer or to scale back their transfer laws, at least in small ways.

Assuming that there is going to be a reform of transfer laws, what form might it take? Some prominent organizations—including some decidedly mainstream ones, like the American Bar Association and the National Council of Juvenile and Family Court Judges—have called for a complete reversal of the historical changes outlined above, and a return to the days in which all transfers were individualized, hearing-based, and judicially controlled.¹¹ It's true that some states have managed all along with nothing other than traditional judicial waiver. Presumably, others could. But the outright elimination of automatic and prosecutor-driven transfer laws seems unlikely, especially so soon after their wholesale adoption.

On the other hand, there is clearly room for improvement in state transfer laws. These needed reforms are of three basic kinds:

- Reforms that **build in "fail-safes"** to avoid unintended or unjust consequences in transfer cases.
- Reforms that **afford more flexibility** in sentencing transferred youth.

- Reforms that mandate **better tracking and reporting** of basic information regarding juvenile transfers

Recommendation 1. Build in Comprehensive Fail-Safes Against Unintended or Unjust Transfer Consequences

There are very few states whose laws do not, for some defined category of juvenile offenders, either (1) dictate criminal handling outright or (2) give prosecutors sole authority to decide on criminal handling. But to ensure that youth who fall into these categories have some opportunity, at some point in the process, to plead their individual circumstances before a judge, many states have criminal blended sentencing or reverse waiver laws that serve as fail-safe mechanisms. By means of either kind of law, a state may simultaneously define a broad category of cases that it believes merit criminal handling and also ensure that its courts will have an opportunity to consider whether such handling is actually appropriate in individual cases.

But not all states have fail-safe mechanisms, and not all fail-safe laws are comprehensive or flexible enough to afford individualized consideration to every juvenile subject to transfer.

- **Missing fail-safes.** A total of 15 states have no fail-safe laws at all, though juveniles in these states may either be categorically excluded from juvenile court jurisdiction or subject to criminal handling at the unreviewable discretion of prosecutors: Alabama, Alaska, District of Columbia, Indiana, Louisiana, Minnesota, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Utah, and Washington.
- **Inadequate fail-safes.** In 14 other states, fail-safe mechanisms either are not available in every case subject to categorical transfer rules, or else restrict judges' authority to make individual exceptions to those rules: Arizona, California, Connecticut, Florida, Georgia, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Nevada, New York, Oregon, and Virginia.

By providing comprehensive and flexible fail-safe mechanisms for transfer cases, states can provide a judicial corrective against unforeseen and unintended results.

Recommendation 2. Give Criminal Courts the Flexibility to Make Truly Individualized Sentencing Decisions in Transfer Cases

Even states that are committed to prosecuting juveniles as adults may give their criminal courts a special degree of sentencing flexibility in dealing with transferred juveniles—

including the power to impose juvenile dispositions rather than criminal ones in appropriate cases. But most criminal blended sentencing statutes fall short of 100% coverage—meaning that there is some set of transferred juveniles who are afforded no opportunity to argue that they would be better handled in the juvenile correctional system. And the narrowest apply only in one restricted set of circumstances—when a juvenile in criminal court pleads or is found guilty of a lesser offense that would not have been subject to criminal prosecution in the first place. Ideally, all states should give criminal courts the power to sentence transferred youth appropriately, looking past the legal fiction of their “adulthood” to take into account their individual backgrounds, degrees of culpability, treatment and service needs, and amenability to rehabilitation.

Recommendation 3. Collect and Report Data That Are Complete Enough to Allow Policymakers and the Public to Judge The Operation and Effectiveness of Transfer Laws

As noted above, the information needed to assess the operation, effectiveness, and impact of the nation’s expanded transfer laws is largely missing. Most states collect and report no information or incomplete information on juvenile transfers. That means that the most basic questions—regarding the number of transferred juveniles, their offenses, their ages and other demographic characteristics, the way their cases are handled, the kinds of sentences they receive, etc.—are unanswerable at the national level.

Do Transfer Laws “Work”?

Judgments about the effectiveness of any law depend partly on what the goals of that law are thought to be. But research has failed to establish the effectiveness of transfer laws in deterring crime generally, or in reducing the likelihood that transferred youth will commit further crimes.

A recent Bulletin from the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) summarizes the results of several decades of research on the effects of transfer laws. With respect to the general deterrence effects of these laws—their effectiveness in reducing crime in the general juvenile population, by discouraging the commission of offenses subject to transfer and criminal prosecution—the research has not produced entirely consistent results. Most studies have failed to uncover any reductions in juvenile crime rates that can be linked to laws subjecting youth to criminal prosecution. One multi-state analysis concluded that there could be a moderate general deterrent effect under the right circumstances, and interviews with juveniles suggest the possibility that sufficiently publicized transfer laws could deter offending. But the weight of the evidence indicates that state laws exposing juveniles to the risk of transfer have had little or no tendency to deter would-be juvenile criminals. Whether this is due to juveniles’ general lack of knowledge or awareness of transfer laws, their discounting of risks or failure to weigh risks in decision-making, their immaturity or lack of impulse controls, or other factors, is not known.

On the other hand, research comparing youth who were prosecuted as adults with similar youth handled in the juvenile system leaves little doubt regarding the specific counter-deterrent effects of transfer laws—that is, their tendency to increase subsequent offending, especially violent offending, on the part of transferred youth. Six well-designed studies, all with large sample sizes, employing a variety of different methodologies and measures of offending, and focusing on a range of jurisdictions, populations, and transfer mechanisms, have all agreed in finding higher overall recidivism rates among juvenile offenders who were prosecuted as adults than among similarly situated youth retained in the juvenile system. In most of these studies, higher recidivism rates were found for criminally prosecuted youth of all kinds, although one reported a lower recidivism rate for transferred drug offenders, and two others found either lower recidivism rates or no difference in rates for some transferred property offenders. But all the studies found higher overall reoffense rates for those processed in the criminal system, and substantially higher rates for violent offenders prosecuted as adults. Criminally prosecuted youth were also generally found to have reoffended sooner and more often.

Source: Redding, R. (August 2008). “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?” *OJJDP Juvenile Justice Bulletin*. Washington, DC: U. S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

One effect of this ignorance and uncertainty, which has now persisted for decades, may be to prop up the status quo. The states that expanded or enacted new transfer laws in the 1980s and 1990s did so on the basis of certain assumptions and expectations—for example, that transferred offenders would be “the worst of the worst,” that they would be selected for transfer on a fair and consistent basis, and that the sanctioning they would receive in the adult system would be more certain and severe. But because for the most part no provision was made for collecting and reporting data on the subsequent operation of these laws, the original assumptions have never been tested. And if they are never tested, they can never be proved wrong.

Recent small-scale studies in Illinois and Vermont, shedding light on the actual operation of transfer laws in those states, have shown how mistaken some common assumptions about these laws can be:

- In Illinois, legislation enacted in the 1980s created a special exclusion for drug offenses committed within 1,000 feet of school or public housing property. While the exclusion was intended to target dangerous drug traffickers statewide, and to expose them to serious penalties, later analysis piecing together several years of transfer data revealed that those affected by the law were, almost without exception, minority residents of Cook County whose offenses were nonviolent and who were sentenced at most to probation in the adult system. In 2005, primarily in response to these revelations, the exclusion was repealed and replaced with a judicial waiver.¹²
- In Vermont, a longstanding prosecutorial discretion law—giving State’s Attorneys a criminal-handling option for any 16- or 17-year-old youth—was thought to be necessary in view of the greater seriousness of older youths’ offending, and the need for more serious sanctions than the juvenile system is capable of imposing. Yet analysis

of a year’s worth of criminal court case processing data revealed that in fact 86% of those prosecuted under this law were misdemeanants, and that nearly all were diverted or dismissed, fined, or placed on very low-intensity probation.¹³ In 2008, Vermont’s General Assembly created a Juvenile Jurisdiction Policy and Coordinating Council to look into the possibility of eliminating the state’s prosecutorial discretion law and plan for the return of older youth to the state’s juvenile justice system.

It is possible that transfer laws are working as intended in some places but not others. In too many states, however, neither lawmakers nor the public are in any position to judge. This is especially unfortunate in those states where transfer laws are drawn very broadly—sweeping up high-volume crime categories that cover a range of offense types and severities, or entrusting broad age or age/offense groups to the unstandardized and unreviewable decision-making of prosecutors. There is a very high risk that laws of this kind, operating in the dark, may be producing practical effects that are different from, or even flatly contrary to, those that were intended at the time of their enactment.

In any case, it is not acceptable that an indicator of system functioning as basic as this one should simply be left blank, depriving policymakers, planners, and the general public of the information they need to judge the workings and effectiveness of transfer laws.

The Future of Transfer

Transfer—in some form—is now probably a permanent feature of American juvenile justice. But what form? Decades of rapid evolution have left us with a startling variety of transfer mechanisms and approaches—from the broad and sweeping to the narrow and focused; from the quick and easy to the slow and laborious. It is unlikely that each of these approaches is somehow uniquely suited to the conditions in which it

Detailed State Transfer Law Summaries Are Available on NCJJ’s State Juvenile Justice Profiles Website

Readers who want to learn more about individual state laws governing the criminal prosecution and sentencing statutes of juveniles can access detailed state-by-state summaries online at <http://www.ncjj.org/stateprofiles/>. The State Juvenile Justice Profiles website was developed and is maintained and updated periodically by NCJJ for the Office of Juvenile Justice and Delinquency Prevention. To see a summary of a particular state’s transfer/blended sentencing laws, select that state from the drop-down box under “State Profiles,” and scroll down to the “Trying Juveniles as Adults” section of the profile. To access all the summaries, select “Trying Juveniles as Adults” from the “National Overviews” drop-down box.

arose. And without more information, we cannot be justified in assuming that each is getting the results that its designers intended, or that the public would approve.

Given this state of affairs, there are some obvious steps that responsible legislators and other state policymakers should take. Mandating the collection and reporting of essential transfer data is one. Building more flexibility and common sense into existing transfer structures, without altering their basic character, is another.

But the time may be right for a more fundamental reconsideration of transfer laws. In view of research tending to discredit transfer as a broad-brush crime-control strategy, there is little doubt that states should now be looking for ways to minimize the overall number of transfers and to target transfer more carefully than in the past. That means revisiting transfer statutes, reopening the question of what they are meant to accomplish, and rewriting them to ensure that they do the job.

Endnotes

¹ Unless otherwise noted, references to “states” and “state law” in this publication are intended to include the District of Columbia. All discussion of state law is based on analysis of state statutes as amended through the end of the 2007 legislative sessions. To access the author’s detailed state-by-state summaries of these laws go to http://www.ncjj.org/stateprofiles/overviews/transfer_state_table.asp and click on the state name.

² Connecticut, Hawaii, Kansas, Kentucky, Maine, Missouri, New Hampshire, and Texas.

³ Puzanchera, C., and Sickmund, M. (2008). *Juvenile Court Statistics 2005*. Pittsburgh, PA: National Center for Juvenile Justice.

⁴ In addition, the juvenile court may retain power to oversee preliminary matters and make necessary orders relating to appointment of counsel, detention, and so on.

⁵ Feld, B. “The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes.” *The Journal of Criminal Law and Criminology*, Vol. 78, No. 3 (Autumn 1987), pp. 471-533.

⁶ *Ibid.*

⁷ Illinois Public Act 94-0574, amending 705 ILCS 405/5-130 and 705 ILCS 405/5-805.

⁸ Snyder, H., and Sickmund, M. (2006). *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

⁹ MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. “Less Guilty by Reason of Adolescence.” *Issue Brief 3*, downloadable at http://www.adjj.org/downloads/6093issue_brief_3.pdf

¹⁰ See Burgess-Proctor, A., Holtrop, K., and Villarruel, F. (2007). *Youth Transferred to Adult Court: Racial Disparities*. Washington, DC: Campaign for Youth Justice. Also Campaign for Youth Justice. (November 2007).

A “Vital Sign” of System Functioning

The Models for Change initiative, which seeks to create successful and replicable models of juvenile justice system reform through targeted investments in key states, has designated accurate and complete transfer data as one of a select group of “Vital Signs” of state juvenile justice system functioning. Just as pulse, temperature, blood pressure and a few other key measures are useful for making quick assessments of the health and functioning of a human body, juvenile justice Vital Signs are being proposed as shorthand indicators of overall system health and performance. In all there are five Vital Signs:

- Measures of the frequency of transfer to adult criminal court
- Measures of system reliance on incarceration and formal handling
- Measures of the social engagement of juvenile justice youth
- Measures of racial and ethnic disparity
- Measures of recidivism

In the jurisdictions in which Models for Change works, efforts are being made to track, improve, and refine Vital Sign data—and where necessary to assemble, merge and reconfigure data collected for other purposes into a suitable set of Vital Signs. It is hoped that the resulting measures will not only be useful to state planners and policymakers, but will serve over time as critical markers of progress towards a more rational, fair, effective and developmentally appropriate juvenile justice system. For more information, see <http://modelsforchange.net/partners/technical/>

Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America. Washington, DC: Campaign for Youth Justice.

¹¹ See American Bar Association. (1996). *IJA—ABA Juvenile Justice Standards Annotated: A Balanced Approach*, ed. by Robert E. Shepherd, Jr., p. 285. Washington, DC: American Bar Association. Also National Council of Juvenile and Family Court Judges. (2005). *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*. Reno, NV: National Council of Juvenile and Family Court Judges.

¹² See Kooy, L. (2008). *Changing Course: A Review of the First Two Years of Drug Transfer Reform in Illinois*. Downloadable from the Models for Change website at <http://modelsforchange.net/pdfs/ILtransferReport.pdf>

¹³ Griffin, P., Thomas, D. and Puzanchera, C. (2007). *Final Report: Juvenile Justice Jurisdiction Study*. Downloadable at the Vermont Agency of Human Services website at <http://humanservices.vermont.gov/boards-committees/cfcpp/publications/vt-jurisdiction-study-final-1>.

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