

Innovation Brief

Reforming Automatic Transfer Laws: A Success Story

In the mid-1980s, the Illinois Legislature took a tough stance on drug use among youth. As part of a national trend toward harsher punishments for juveniles, lawmakers decided to prosecute in adult court all 15- and 16-year-olds charged with drug offenses within 1,000 feet of a school or public housing development. Although the law applied to youth throughout the state, its effects were felt most harshly by children of color from Chicago. Armed with data gathered with support from the Models for Change initiative, advocates overcame criticism that proposed reforms were “soft on crime” and mounted a successful campaign to change the law. Within two years, automatic transfers in Cook County, which includes Chicago, fell by two-thirds—without compromising public safety.

The Issue

Illinois, like many states in the 1980s, wanted to send a message about being tough on crime. The state, which opened the country’s first juvenile court at the beginning of the 20th century, began taking steps to automatically transfer youth to the adult criminal justice system for certain offenses. Although lawmakers started with a small list of only the most serious offenses, the automatic transfer statutes quickly grew to include non-violent crimes.

Between 1985 and 1989, the Illinois legislature expanded automatic transfer legislation to include 15- and 16-year-olds charged with drug offenses that took place within 1,000 feet of a school or public housing. On its face, the law appeared to be race neutral. However, it quickly became clear that white and minority youth fared very differently under the law. In 1999, African-Americans made up 15 percent of the state’s youth population, but 85 percent of the youth transferred to adult court. In Cook County, 99 percent

of youth transferred to adult court for drug offenses were African-American or Latino.

The Impact of Illinois’ Drug Transfer Laws on Youth of Color in 1999

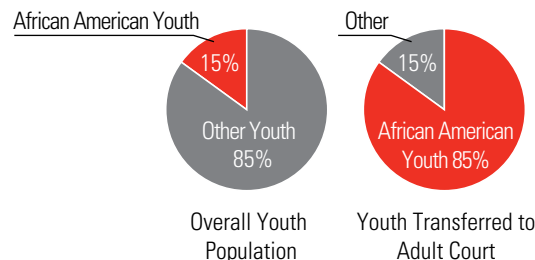


figure 1

Self-reporting studies had repeatedly shown that white youth actually use and sell drugs at a higher rate than youth of color. So why did the law have such a disproportionately negative impact on minority youth? The answer is that

schools and public housing developments are much more highly concentrated in Chicago than in the rest of the state. Thus, the city's youth, who were primarily minorities, were much more likely to experience the law's effects than young people from other parts of the state, where minority populations are lower.

The law had an especially dramatic impact on particular minority communities within the city: just three zip codes generated 85 percent of all transfers to adult court in Cook County. One of those zip codes included the city's juvenile detention facility, raising at least the possibility that a youth's proximity to the detention center might influence the likelihood of being taken into custody and prosecuted instead of simply being warned and released.

Soon after the law went into effect, juvenile and criminal justice advocates saw these disturbing trends emerge. With support from Models for Change, several organizations—including Northwestern University's Children and Family Justice Center, the Juvenile Justice Initiative, and the Illinois Criminal Justice Information Authority—gathered data revealing the stark disparities mentioned above. However, the data alone did not galvanize action among legislators or the public.

Innovations

Gathering data to advance reforms. In 1998, the Cook County Public Defender, which handled many of the cases of youth transferred for drug offenses, recruited a specialized staff to represent youth in adult court. The Juvenile Transfer Advocacy Unit (JTAU) consisted of attorneys, paralegals, and social workers. In addition to representing youth in individual cases, the JTAU designed a research project to illustrate the problems with the Illinois transfer laws. JTAU staff gathered data on a range of variables over two years, including charge, race, sex, previous juvenile and adult court referrals, previous involvement with the child welfare system, and arresting police district.

The JTAU's findings, illustrated in the sidebar on this page, formed the basis of a new push to change the state's transfer laws. With this information in hand, the original advocates began to educate others.

Automatic Transfers, Cook County

Of the 393 automatic transfers of youth in Cook County from October 1999 through September 2000:

- Over 99 percent were minority youth.
- 66 percent were drug offenders.
- 39 percent had no previous referrals to juvenile court prior to the automatic transfer.
- 61 percent had no previous services in juvenile court prior to the automatic transfer.
- 37 percent had their cases dismissed.
- 74 percent received adult probation rather than incarceration.
- Less than 1 percent came from suburban Cook County, outside the City of Chicago.

Overcoming criticisms of being “soft on crime.”

In 2001, advocates approached lawmakers with a proposal to remove all drug offenses from the automatic transfer statute. Although State Representative Barbara Flynn Currie introduced a bill to do just that, the proposed legislation faced resistance from the Illinois State's Attorneys Association and others, who characterized it as “soft on crime.”

But with JTAU's data collection in hand, advocates could effectively respond to claims that reform efforts would increase crime and put communities at risk. Data revealed that over 90 percent of youth charged with drug offenses received minor sentences or none at all. So when opponents claimed that harsh laws were necessary to preserve public safety, reformers could point out that even under current laws, very few youth went to prison for drug-related convictions.

Advocates also stressed the long-term harms of an adult criminal conviction, which could bar youth from employment, housing, and financial aid for school, undercutting their ability to lead lawful lives. Additionally, once an individual was transferred to adult court, Illinois law barred him from ever receiving rehabilitative services through the juvenile justice system. Thus, youth who needed drug treatment were less likely to receive it once they came under the jurisdiction of the adult criminal justice system. Barack Obama, then an Illinois state senator, testified in 1998 that the automatic transfer regime was an “unsustainable, unconscionable approach” that branded some youth “with adult sentences with no prospect for rehabilitation.”

Focusing national attention on Cook County.

In addition to building support among Illinois-based advocates, reformers appealed to national organizations. Advocates reached out to the Building Blocks for Youth initiative, a multi-strategy, multi-state project that brought together child and youth advocates, researchers, community organizers, and law enforcement professionals working to reduce racial and ethnic disparities in the juvenile justice system. The MacArthur Foundation, other foundations, and the federal Office of Juvenile Justice and Delinquency Prevention provided funding for the Building Blocks initiative, which agreed to help highlight the harmful effects of the Illinois transfer statute and develop a media outreach strategy.

Building Blocks for Youth released a major national report, written by the Justice Policy Institute, entitled *Drugs and Disparity: The Racial Impact of Illinois' Practice of Transferring Young Drug Offenders to Adult Court*. The 2001 publication cast Illinois's laws as the most racially biased in the nation, citing data collected by the JTAU. Its release garnered significant national media attention, including headlines in the Chicago Tribune, USA Today, and the Washington Post. Paul Simon, then-U.S. senator for Illinois, stated that “the racial disparities uncovered by this report are appalling and cry out for correction.”

Identifying a legislative champion. The media attention generated enough legislative attention to achieve some reform. In 2002, House Bill 4129 became law. The legislation provided that youth who were prosecuted in adult court for a limited number of drug offenses could obtain a hearing to determine whether their case should be sent back to juvenile court, in what is called “reverse waiver.” However, advocates continued their push for broader legislative change.

According to Betsy Clarke, President of the Illinois Juvenile Justice Initiative, identifying a champion for reform in the state legislature was critical. That champion was Illinois State Senator John Cullerton, a former Cook County public defender and a strong supporter of modifications to the existing transfer statute. In addition to making legislative change a priority, Senator Cullerton played a vital role in

breaking through an impasse with the State's Attorney's office over the extent of the reforms.

Building bipartisan support. In 2004, the Illinois General Assembly created the Task Force on Trial of Juveniles in Adult Court to study and make recommendations for the state's transfer laws. Over the next year, the task force received testimony from national experts on transfer policies, stakeholders from around the state, community members, and victims of violent crimes.

Through that process, the Task Force generated legislation that:

- Required cases of youth charged with drug offenses to be heard first in juvenile court. (If a youth on school grounds allegedly sold drugs to someone under age 17, there was a legal presumption that the case would be transferred to adult court.)
- Created standardized lists of factors for judges to consider in making decisions on discretionary transfer, presumptive transfer, and extended jurisdiction juvenile prosecutions.
- Expanded automatic transfer for those charged with aggravated battery with a firearm, by deleting the “zone” provision that limited transfer to offenses within 1,000 feet of a school.

The first two points earned the support of advocates, while the third, expanding automatic transfer for aggravated battery offenses, garnered support from lawmakers who were initially opposed to reforms. The compromise was critical; it meant that legislators could not frame the reform of transfer laws as a partisan issue in their reelection campaigns. With support from both Republicans and Democrats, the legislation was signed into law on August 12, 2005—the first rollback of automatic transfer laws in Illinois in 19 years.

Results and Lessons

From 2003 to 2007, Cook County saw a 72 percent decrease in automatic transfers to adult court. In 2007, only 2 percent of the remaining transfers to adult court were for drug-related offenses—a significant difference from 1999, when such offenses represented 66 percent of all automatic transfers. Since 99 percent of automatic transfers before the

Youth of Color Automatically Transferred to Adult Court in Cook County

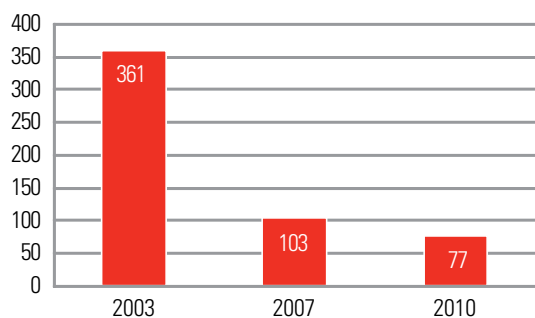


figure 3

reforms had been youth of color, the overall drop meant that far fewer minority youth entered the adult criminal justice system. In 2007, 256 fewer minority youth appeared in adult court. This was a significant accomplishment, even though the reforms did not change the racial and ethnic breakdown of overall referrals to adult court, 99 percent of which still involved youth of color.

Importantly, Cook County did not see any increase in discretionary transfers to adult court, nor did it see an increase in the number of delinquency petitions filed in juvenile court. This provided strong evidence that the changes did not have a detrimental effect on public safety. There have been no calls to reinstate the transfer provisions in light of these outcomes.

The Broader Impact

The effort to roll back the drug transfer statute helped forge new alliances among advocacy organizations, public officials, and state legislators. The partnerships from this effort helped make juvenile justice reform a shared issue, not a battle between advocates and public safety proponents. Indeed, the push to reform the transfer statute helped build

the momentum that led Illinois to pass legislation just two years later raising the age of juvenile court jurisdiction for misdemeanor offenses from 17 to 18.

Additionally, while advocates had presented general statistics on the racial and ethnic disparities associated with Illinois's drug transfer laws for around twenty years, it was only later that they developed the ability to track the locations of arrests for those offenses. "Geomapping," as it's known, is now a cornerstone of efforts to improve services for youth and reduce racial and ethnic disparities.

Resources

Changing Course: A Review of the First Two Years of Drug Transfer Reform in Illinois <http://www.modelsforchange.net/publications/111>

Drugs and Disparity: The Racial Impact of Illinois' Practice of Transferring Young Drug Offenders to Adult Court http://www.justicepolicy.org/uploads/justicepolicy/documents/drug_disparity.pdf

"Challenging the Automatic Transfer Law in Illinois: Research and Advocacy Working Together for Change" in *No Turning Back: Promising Approaches to Reducing Racial and Ethnic Disparities Affecting Youth of Color in the Justice System* http://www.cclp.org/documents/BBY/ntb_fullreport.pdf

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This brief is one in a series describing new knowledge and innovations emerging from Models for Change, a multi-state juvenile justice reform initiative. Models for Change is accelerating movement toward a more effective, fair, and developmentally sound juvenile justice system by creating replicable models that protect community safety, use resources wisely, and improve outcomes for youth. The briefs are intended to inform professionals in juvenile justice and related fields, and to contribute to a new national wave of juvenile justice reform.