

Border Disputes between Juvenile and Adult Criminal Justice Systems:  
Exclusion and Transfer Laws

It is increasingly common for juvenile offenders to end up in the adult criminal system. As many as 25 percent of all juvenile offenders younger than eighteen are now prosecuted in adult court. Between 1990 and 2004, there was a **208 percent increase** in the number of juveniles serving time in adult prisons on any given day. An overwhelming percentage of these youth are disproportionately minority. Black youth are more 4.7 times more likely and Hispanic youth 3.4 times more likely than their white counterparts to be transferred to adult court; in 1997, 58 percent of youth in state prisons were black and 15 percent were Hispanic.

The underlying rationale for transfer to adult court is that minors should serve “adult time for adult crime.” This, along with the assumption that juveniles who commit sophisticated crimes possess adult maturity of judgment and competency, has led to a significant increase in the number of juveniles who are transferred to adult court.

Many of the laws passed in the 1990s to increase the numbers of youth tried in adult court have as their roots fears of the coming “super predator.” In multiple media stories in the 1990s, the adolescent offender was depicted as violent, incorrigible, and on the fast track to a life of crime. While state legislatures acted quickly to change policy, the reality soon became apparent: most crimes committed by juveniles are nonviolent, making the need to incarcerate them for extended periods of time in adult prison unnecessary, and the vast majority of individuals who offend during adolescence do not continue to do so in adulthood. But the punitive laws passed in the 1990s have largely stayed on the books.

*Multiple Pathways to the Adult System*

There are many routes for a minor to enter the adult system:

- Judicial waiver: Under judicial waiver, the juvenile court judge makes a decision about whether a particular youth should be transferred to adult court, allowing for the consideration of the individual’s characteristics—such as the juvenile’s maturity level, personal circumstances, and prior history. However, in some states, judicial waiver has been made “presumptive” based on various factors such as the age of the juvenile, the type of offense, or prior record—shifting the burden to the juvenile to show why he or she should stay in the juvenile system. In still others, judicial waiver is mandatory if there is probable cause that the juvenile committed the offense.
- Statutory exclusion: These are laws that *exclude* youth from the juvenile court, usually if they meet certain age or crime criteria or both. For example, twenty-two states currently automatically transfer juvenile offenders to the adult court if they

are charged with murder and are of a certain age—in Wisconsin youth as young as ten can be tried as adults for murder. Only three states exclude certain older minors altogether from the juvenile system; in those states, the age of majority is seventeen.

- Concurrent jurisdiction and direct file: Also referred to as prosecutorial discretion, in these cases prosecutors decide whether or not a juvenile will be transferred directly to adult court. In most states, in order to qualify for direct file, the juvenile must be of a certain age and/or committed an eligible offense, although certain states, such as Georgia, allow for direct file for any offense at any age. In 2003, fifteen states allowed prosecutors to direct file, either for more serious offenses—twelve states—or for any offense—three states.
- Blended sentencing: Youth—depending on age, crime, and/or prior record—may receive sentences that will be served partially under the jurisdiction of the juvenile court and partially under the jurisdiction of the criminal court. Under blended sentencing, youth may or may not have to serve the adult phase of their sentence, depending upon various factors—completing recommended treatment or sticking to the terms of probation, for example—but the terms are often vague and lacking in procedural safeguards—such as whether the youth is entitled to representation.

#### *Treating Juvenile Offenders in the Adult Criminal System Does Not Prevent Crime*

Generally, rates of juvenile offending are not lower in states where transfer to adult court is more common. This is probably because adolescents are developmentally immature compared to adults; they discount changes in the law and do not account for severe legal consequences for their behavior. This relative “developmental immaturity,” supported by research as well as anecdote, leads teens to make poor decisions, engage in risky behavior, act in a seemingly reckless manner, and be overly influenced by peers. The long-term ramifications of a delinquent act are often the further thing from a teen’s thoughts as he or she commits a crime.

#### *Treating Juvenile Offenders in the Adult Criminal System Decreases Safety and Increases Costs*

Transferring juveniles to adult court actually leads to more crime; research has emerged showing that adolescents released from adult correctional facilities or boot camps are more likely to re-offend than offenders with the same background and criminal records but who were referred to other, less punitive placements. This is probably because placement in adult prisons exposes youth to antisocial individuals, serving as a criminal training ground of sorts. In addition, placement in adult prison reduces educational opportunity, stigmatizes youth thereby reducing later employability, and puts youth at risk for victimization, which negatively impacts their mental health. While sentences for nonviolent crime are generally shorter in the adult system than the juvenile, the negative

exposure outweighs the gains of a shorter sentence. Moreover, juveniles who are tried for violent crimes receive dramatically longer sentences because there is no upper age limit to the punishment in the adult court—leaving them without access to intervention programs that might reverse their criminal tendencies.

Not only does incarceration in adult prison lead to more crime, it is not cost-effective. It is more expensive to house youth in adult jails than to rehabilitate them—in part because of the direct cost of their incarceration and in part because of the indirect costs associated with recidivism, decrease in future employment, and increase in mental illness associated with placing youth in adult prisons.

### *Conclusion*

While some violent, older repeat offenders should be transferred to the adult system, in general, transfer and exclusion laws are not successful in reducing crime or cost-effective. Given that incarcerating youth with adults is expensive and fails to deter first-time crime or lower recidivism rates, policies that have increased the numbers of youth in adult criminal jails should be reconsidered.

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