



# Snapshot of National Organizations' Policy Statements on Youth in the Adult Criminal Justice System



An estimated 200,000 youth are prosecuted in the adult criminal justice system every year, and nearly 10,000 youth are locked in adult jails or prisons on any given day. The adult criminal justice system is not set up to adequately manage youth offenders. Developmental studies have shown that youth are ill-prepared to actively participate in adult court proceedings, and are unable to adequately recognize the long-term consequences of their legal decisions. Judges and attorneys in adult criminal court often have little to no experience with young offenders, and once convicted, system stakeholders may not be familiar with age appropriate programs and resources to help children.

The consequences of an adult criminal conviction for youth are serious, negative, life-long, and severely impair youth chances at future success. Youth tried in adult criminal courts can lose access to student financial aid and their right to vote; making it even more difficult for youth to achieve positive outcomes by obtaining an education, gainful employment, and participating in the democratic process. Most states allow employers to deny jobs to people with adult criminal records, regardless of the age at conviction or how minor the offense.

The public strongly supports investing in rehabilitative approaches to help youth instead of prosecuting youth in adult court or placing youth in adult jails and prisons. A national survey released in October, 2011 conducted on behalf of the Campaign for Youth Justice reveals that Americans are squarely on the side of reform-

ing our youth justice system— with a greater focus on rigorous rehabilitation over incarceration, and against placing youth in adult jails and prisons.<sup>1</sup> The public strongly favors rehabilitation and treatment approaches, such as counseling, education, treatment, restitution, and community service, rejects the placement of youth in adult jails and prisons, and strongly favors individualized determinations on a case-by-case basis by juvenile court judges in the juvenile justice system than automatic prosecution in adult criminal court.

Studies across the nation have consistently concluded that juvenile transfer laws are ineffective at deterring crime and reducing recidivism. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a report highlighting the ineffectiveness of juvenile transfer laws at providing a deterrent for juvenile delinquency and decreasing recidivism and the federal Centers for Disease Control and Prevention released a report with similar findings.<sup>2</sup>

States have started to take action to remove youth from the adult criminal justice system and from adult jails and prisons. The National Conference of State Legislatures (NCSL) released a report in August, 2012, *Juvenile Justice Trends in State Legislation, 2001-2011*, that shows trends in juvenile justice state legislation over the past decade reducing the prosecution of youth in adult criminal court with legislators using a growing body of research on adolescent development

and responding to this by changing state policies such as expanding the jurisdiction of juvenile courts by increasing the upper age of jurisdiction.

The overwhelming consensus of diverse organizations ranging from the American Correctional Association to the National Association of Counties is that:

1. Youth should never be automatically prosecuted in the adult criminal court.
2. Youth charged with non-violent offenses and first-time offenders should not be prosecuted in adult criminal court.
3. Youth should be removed from adult jails and prisons.
4. Youth should be treated in a developmentally appropriate manner throughout the justice system.
5. Harsh sentences for youth, such as mandatory minimums, should be eliminated.

Copies of the policy statements and guidelines in their entirety can be found online at <http://www.campaignforyouthjustice.org/research/cfyj-policy-briefs>.



BECAUSE THE CONSEQUENCES AREN'T MINOR



# Youth Prosecuted in Adult Criminal Court

## Key Policy Statements

“Transfer to adult court should not be automatic or a presumption in the handling of juvenile cases. . . Any transfer to criminal court should consider the individual case and the community, and not be based solely on the type of offense. Consideration of the case should include the mental health of the youth and its bearing on the charges.”<sup>3</sup>

- *American Academy of Child and Adolescent Psychiatry*

“ABA opposes, in principle, the trend toward processing more and younger youth as adults in the criminal justice system.”<sup>4</sup>

- *American Bar Association*

“ACA supports sentencing policies that hold youthful offenders accountable in an age-appropriate way, while focusing on rehabilitation and reintegration into society.”<sup>5</sup>

- *American Correctional Association*

“Standard 1.1 C: No criminal court should have jurisdiction in any proceeding against any person whose alleged conduct would constitute an offense on which a juvenile court adjudication could be based if at the time the offense is alleged to have occurred such person was fifteen, sixteen, or seventeen years of age, unless the juvenile court has waived its jurisdiction over that person.”<sup>6</sup>

“Standard 2.2 C. defines those circumstances...Subsection 1 requires that the juvenile be charged with a ‘serious’ class one or class two juvenile offense [which] are defined by the maximum sanctions that may be imposed. Most offenses likely to fall within the categories, such as murder, rape, and armed robbery, will be ‘serious’...Only juveniles who pose genuine threats to community safety should be waived and exposed to the greater sanctions of the criminal court.”<sup>7</sup>

- *Institute of Judicial Administration/  
American Bar Association*

“Reform should specifically include [an] elimination of transfers for non-violent offenders [and] first-time offenders. Reform should specifically include [a] moratorium on the expansion of eligibility criteria for transfer.”<sup>8</sup>

- *American Psychiatric Association*

“The APA supports procedures for responding to juvenile offenders that include explicit consideration of the level of development, the nature and impact of mental disorder, and the impact of legal decisions on the offender’s access to appropriate care. The APA opposes statutes which permit or require juvenile suspects to be transferred or waived into adult court without judicial review.”<sup>9</sup>

- *American Psychiatric Association*

“CJJ opposes trying and sentencing youth in adult criminal court, except in the rare case of a chronic and violent offender, and then only at the discretion of, and following an assessment by, a juvenile court judge...CJJ also opposes giving prosecutors the authority to transfer youth to adult court.”<sup>10</sup>

- *Coalition for Juvenile Justice*

“When waiver to the adult criminal justice system does occur, CJCA believes that it should be accomplished through a process that maintains judicial decision-making to determine the appropriateness of transferring young offenders into the adult correctional system. CJCA opposes all policies that result in the automatic transfer of young people to the adult system without judicial review, as well as policies that grant the prosecutor full discretion.”<sup>11</sup>

- *Council of Juvenile Correctional Administrators*

“This church supports an end to current practices of trying, sentencing, and incarcerating youth in the adult criminal justice system as well as ending youth sentences of life in prison without the possibility of parole...At the most fundamental level, this church calls for a juvenile justice system that more closely matches its original rehabilitative intent and is equipped to meet the needs and manage the risks of all youth offenders.”<sup>12</sup>

- *Evangelical Lutheran Church of America*

“The Legal Needs of Children Committee of The Florida Bar opposes the direct filing of children to adult court in Florida and believes that the decision to prosecute children as adults should be made solely by the judiciary.”<sup>13</sup>

- *Legal Needs of Children Committee,  
The Florida Bar Association*

“NACo opposes trying and sentencing youth in adult criminal court, except in the case of a chronic and violent offender, and then only at the discretion of a juvenile court judge...NACo supports that the decision to transfer a juvenile to adult court should be made by a juvenile court judge or jury...NACo supports the reform of state laws that inappropriately send far too many youth under the age of 18, including first-time and non-violent offenders into the adult criminal justice system.”<sup>14</sup>

- *National Association of Counties*

“Current research confirms that the portion of the brain that controls and suppresses impulses, and is critical to good judgment and decision-making, is not fully developed in youth under age 18. Youth have difficulty thinking of consequences under stress and managing powerful impulses without adult help. Therefore, they should not be viewed as acting with the level of moral culpability that characterizes adult criminal conduct...NACo opposes trying and sentencing youth in adult criminal court, except in the case of a chronic and violent offender, and then only at the discretion of a juvenile court judge.”<sup>15</sup>

- *National Association of Counties*

“Therefore, NASW opposes the incarceration of all youths under the age of 18 in the adult criminal justice system.”<sup>16</sup>

- *National Association of Social Workers*

“[W]aiver and transfer decisions should only be made on an individual, case-by-case basis, and not on the basis of the statute allegedly violated; and affirms that the decision should be made by the juvenile delinquency court judge...[and] waiver and transfer of juveniles to adult court should be rare and only after a very thoroughly considered process.”<sup>17</sup>

- *National Council of Juvenile and Family Court Judges*

“Based on the fact that public safety and youth rehabilitation are best served through the juvenile justice system, the cases of all youth who are under age 18 at the time of the alleged offense should be processed in juvenile court, regardless of the type of offense.”<sup>18</sup>

- *The National Juvenile Justice Network*



# Youth in Adult Facilities

## Key Policy Statements

“Children and adolescents should be detained or incarcerated only in facilities with developmentally appropriate programs (or structure) and staff trained to deal with their unique needs. If children and adolescents must be housed in adult correctional care facilities, they should be separated from the adult population by sight and sound and provided with a developmentally appropriate environment.”<sup>19</sup>

- American Academy of Pediatrics

“If detained or incarcerated, youth in the adult criminal justice system should be housed in institutions or facilities separate from adult facilities until at least their eighteenth birthday. Youth detained or incarcerated in the adult criminal justice system should be provided programs which address their educational, treatment, health, mental health, and vocational needs.”<sup>20</sup>

- American Bar Association

“The American Correctional Association supports separate housing and special programming for youths under the age of majority who are transferred or sentenced to adult criminal jurisdiction...In those jurisdictions that continue to house youths under the age of majority in adult correctional/detention systems, hous[e] them in specialized facilities or units [that] have no sight or sound contact with adult offenders in living, program, dining or other common areas of the facility.”<sup>21</sup>

“Therefore, correctional agencies should support the adoption of legislation in each state that authorizes correctional authorities to place people under the age of majority who are detained or sentenced as adults in a youthful offender unit distinct from the adult system...”<sup>22</sup>

- American Correctional Association

“[T]he American Jail Association [is] opposed in concept to housing juveniles in any jail unless that facility is specifically designed for juvenile detention and staffed with specially trained personnel.”<sup>23</sup>

- American Jail Association

“Specialized facilities for transferred youth [should address] the developmental, educational, health, mental health, religious, and other special needs of these youth; and [be] adequately staffed with qualified workers to ensure safety and specialized programming.”<sup>24</sup>

- American Psychiatric Association

“Counties are urged to remove juveniles from correctional facilities which detain accused or adjudicated adults.”<sup>25</sup>

- National Association of Counties

“The National Commission on Correctional Health Care believes the incarceration of adolescents in adult correctional facilities is detrimental to the health and developmental well-being of youth...Adolescents should be separated and provided opportunities for appropriate peer interaction.”<sup>26</sup>

- National Commission on Correctional Health Care

“The facility [should] be constructed in a way that eliminates even accidental or incidental sight, sound or physical contact between juvenile detainees and adult prisoners.”<sup>27</sup>

- National Juvenile Detention Association

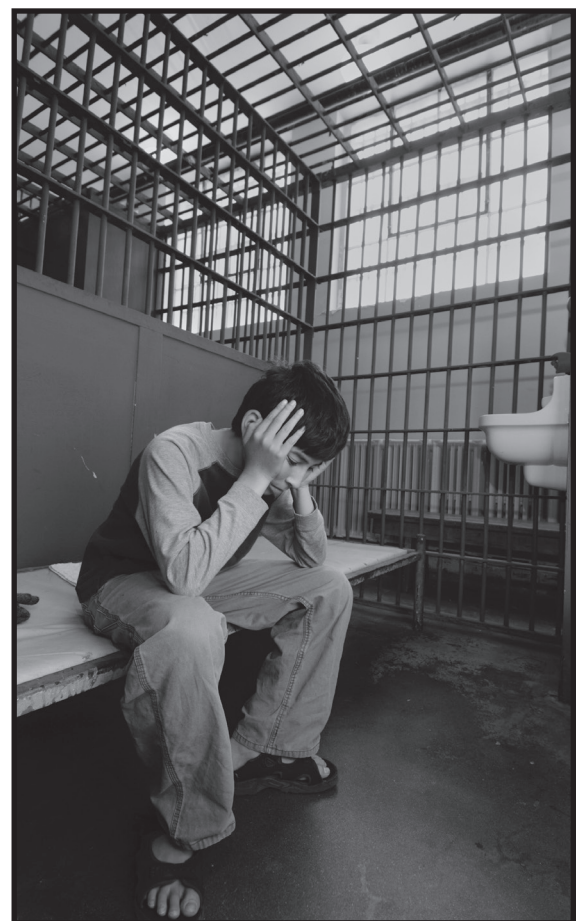
“Rather than automatically sending older youth in the adult system, states should allow youth who enter the

system prior to turning 18 to remain in the juvenile justice system into their early twenties.”<sup>28</sup>

- National Juvenile Justice Network

“Nevertheless, it remains our belief that all juvenile offenders have the right to access rehabilitation and treatment services, which are fundamental principles of the juvenile justice system and of juvenile detention...It is the position of NPJS that waived or transferred juveniles accused of committing a crime and requiring temporary holding in a secure setting be held in a juvenile detention pending judicial determination to the contrary. NPJS opposes any action that places juveniles at risk of being victimized by adult offenders.”<sup>29</sup>

- National Partnership for Juvenile Services



## Sources

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For links to the complete policies and position statements of the following national organizations go to:  
<http://www.campaignforyouthjustice.org/national-resolution.html>

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- American Academy of Pediatrics*, Health Care for Children and Adolescents in the Juvenile Correctional Care System (2001)
- American Bar Association*, Resolution on Youth in the Criminal Justice System - 101D (2002)
- American Bar Association*, Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners (2001)
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- American Correctional Association*, Public Correctional Policy on Juvenile Justice (2007), Opposing Life Sentences Without Possibility of Parole for Youthful Offenders (2014) and Public Correctional Policy on Youthful Offenders Transferred to Adult Criminal Jurisdiction (2014)
- American Jail Association*, Juveniles in Jails (2008)
- American Medical Association*, Health Status of Detained and Incarcerated Youth (1990)
- American Psychiatric Association*, Position Statement on Legal Proceedings and Access to Psychiatric Care for Juvenile Offenders (2013)
- American Public Health Association*, Encourage Healthy Behavior by Adolescents (2000)
- Association of State Correctional Administrators*, Resolution #2 - Evaluating the Effects of Incarceration in Adult Facilities on Youth Offenders (2006)
- Council of Juvenile Correctional Administrators*, Waiver and Transfer of Youths to Adult Systems (2009)
- Coalition for Juvenile Justice*, "Children Detained in Adult Jails" and "Limit Youth Transfers to Adult Criminal Court"
- Evangelical Lutheran Church of America*, The Church and Criminal Justice: Hearing the Cries (2013, April).
- The Florida Bar Association*, "Direct File Position Proposed (2013)" and "Transfer information for FL Bar Meeting (2013)"
- International Community Corrections Association*, ICCA Public Policy on Juvenile Justice (2006)
- National Association of Counties*, American Policy Platform & Resolutions (2009) and Justice and Public Safety (2013)
- National Association of Criminal Defense Lawyers*, Resolution of the Board of Directors Opposing the Transfer of Children to Adult Court (2002)
- National Association of Social Workers*, Juvenile Justice and Delinquency Prevention (2005)
- National Commission on Correctional Healthcare*, Position Statements: Health Services to Adolescents in Adult Correctional Facilities (1998) and Prevention of Juvenile Suicide in Correctional Settings (2007)
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- National Juvenile Justice Network*, Policy Platform: Youth in the Adult System (2013, August).
- National Partnership for Juvenile Services*, Position Statement: Holding Juveniles Being Charged as Adults in Juvenile Detention (2013, March).
- National Prison Rape Elimination Commission*, National Prison Rape Elimination Commission Report (2009)
- United States Conference of Mayors*, Calling for Reauthorization of the Juvenile Justice and Delinquency Prevention Act (2008)

## Appendix - How a Youth Ends Up in the Adult Justice System<sup>30</sup>

Age of Juvenile Court Jurisdiction	These laws determine the age of adulthood for criminal justice purposes. They effectively remove certain age groups from the juvenile court control for all infractions, whether violent or non-violent, and place them within the adult court jurisdiction.
Transfer and Waiver Provisions	These laws allow young people to be prosecuted in adult courts if they are accused of committing certain crimes. A variety of mechanisms exist by which a youth can be transferred to adult court. Most states have transfer provisions, but they vary in how much authority they allow judges and prosecutors to exercise.
Judicial Waiver	This is the most traditional and common transfer and waiver provision. Under judicial waiver laws, the case originates in juvenile court. Under certain circumstances, the juvenile court judge has the authority to waive juvenile court jurisdiction and transfer the case to criminal court. Some states call the process “certification,” “remand,” or “bind over for criminal prosecution.” Others “transfer” or “decline jurisdiction” rather than waiver. State statutes vary in how much guidance they provide judges on the criteria used in determining if a youth’s case should be transferred.
Prosecutorial Waiver	These laws grant prosecutors discretion to file cases against young people in either juvenile or adult court. Such provisions are also known as “concurrent jurisdiction,” “prosecutorial discretion,” or “direct file.”
Reverse Waiver	This is a mechanism to allow youth whose cases are being prosecuted in adult court to be transferred back down to the juvenile court system under certain circumstances.
Statutory or Legislative Exclusion	These laws exclude certain youth from juvenile court jurisdiction entirely by requiring particular types of cases to originate in criminal rather than juvenile court.
“Once an Adult, Always an Adult”	These laws require youth who have been tried as adults to be prosecuted automatically in adult courts for any subsequent offenses.
Blended Sentencing	These laws allow juvenile or adult courts to choose between juvenile and adult correctional sanctions in sentencing certain youth. Courts often will combine a juvenile sentence with a suspended adult sentence, which allows the youth to remain in the juvenile justice system as long as he or she is well-behaved.

To learn more about the laws in your state see, Office of Juvenile Justice and Delinquency Prevention, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting* (September 2011).

# Endnotes

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- 4 American Bar Association. (2002). *Youth in the Criminal Justice System* (Resolution No. 101D). Chicago, IL: Author.
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- 18 National Juvenile Justice Network, (2013, August). *Policy Platform: Youth in the Adult System*. Washington, DC: Author.
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- 23 American Jail Association. (2008, May). *Juveniles in Jails*. Hagerstown, MD: Author.
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- 25 National Association of Counties. (2009). Juvenile Justice and Delinquency prevention. In *American Policy Platform & Resolutions* (pp. 10-15). Washington, DC: Author.
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