



Juvenile InJustice:

Charging Youth as Adults is Ineffective, Biased, and Harmful

EXECUTIVE SUMMARY



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“As a society ... do we want young people to be left to a specific, certain fate in prison ... or do we want a process of education, a process of healing, a process of insight to support them to understand how they got there, a process of growth? What do we want?”

– Malachi, charged as an adult at age 15

In all 50 states, youth under age 18 can be tried in adult criminal court through various types of *juvenile transfer laws*. In California, youth as young as 14 can be tried as adults at the discretion of a juvenile court judge. When young people are transferred out of the juvenile system, they are more likely to be convicted and typically receive harsher sentences than youth who remain in juvenile court charged with similar crimes.^{1,2}

This practice undermines the purpose of the juvenile court system, pursues punishment rather than rehabilitation, and conflicts with what we know from developmental science. Furthermore, laws that allow youth to be tried as adults reflect and reinforce the racial inequities that characterize the justice system in United States.

In this report, we review the process that unfolds when a young person is tried as an adult in California and evaluate the health and equity impacts of charging youth as adults. Our findings indicate that:

The Justice System is Biased Against Youth of Color

Youth of color are overrepresented at every stage of the juvenile court system.³ Rampant racial inequities are evident in the way youth of color are disciplined in school,⁴ policed and arrested, detained, sentenced, and incarcerated.⁵ These inequities persist even after controlling for variables like offense severity and prior criminal record.⁶ Research shows that youth of color receive harsher sentences than White youth charged with similar offenses.⁷

Youth of color are more likely to be tried as adults than White youth, even when being charged with similar crimes. In California in 2015, 88% of juveniles tried as adults were youth of color.⁸

TYPES OF JUVENILE TRANSFER

Judicial waiver:

When a juvenile court judge transfers a juvenile defendant to adult court after a waiver or fitness hearing. California and 44 other states have statutes allowing for judicial waiver.



Mandatory direct file:

When a youth is automatically disqualified from being tried in juvenile court due to the type of crime they are accused of committing. This is no longer possible in California since the passage of Proposition 57 in November 2016, yet 39 other states have statutes allowing for mandatory direct file.



Prosecutorial direct file:

When a prosecuting attorney files the case in adult court directly. This is no longer possible in California since the passage of Proposition 57 in November 2016, yet 13 other states and the District of Columbia have statutes allowing for prosecutorial direct file.



“Tough on Crime” Laws Criminalize Youth and are Ineffective

Research shows that “tough on crime” policy shifts during the 1980s and 1990s have negatively impacted youth, families, and communities of color. These laws were fueled by high-profile criminal cases involving youth, sensationalized coverage of system-involved youth by the media, and crusading politicians who warned that juvenile “super-predators” posed a significant threat to public safety. The general sentiment — not based on research or data — across the political spectrum was that treatment approaches and rehabilitation attempts did not work.

However, time has shown that harshly punishing youth by trying them in the adult system has failed as an effective deterrent. Several large-scale studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.^{2,9}

The Adult Court System Ignores the Environmental Factors that Affect Adolescent Behavior

When someone is charged in adult court, they are either found guilty or innocent — and they receive a punishment if they are found guilty. By contrast, the juvenile court system (at least in theory) is meant to focus on reasons for the youth’s behavior rather than just their guilt or innocence. A juvenile court judge is responsible for reviewing that youth’s case with their family, community, and future development in mind.

The following environmental factors affect youth behavior and are more likely to be ignored in the adult court system:

- ▶ **Community disinvestment affects youth development and behavior.** In low-income communities and communities of color, there are clear indicators of disinvestment rooted in historical trends and contemporary policies — including poor quality housing, under-resourced schools, scarce and low-paying jobs, and omnipresent police. These policies and their consequences marginalize communities, and the lack of opportunity influences young peoples’ physical health and outlook on life. Growing up in these neighborhoods puts children at risk for behavior considered “deviant” and antisocial.
- ▶ **Poverty creates stress.** Poverty prevents families from providing material needs and often reduces parents’ presence in their children’s lives. This can lead youth to take on a parental role in the family. This role switching, known as parentification, can impact a young person’s life outlook and sense of self. It can force them to make hard choices and even engage in compromising behaviors. Youth that grow up in affluent households are protected from having to make these hard choices — and from being criminalized for their behavior when they act out.
- ▶ **Childhood traumas can have long-term effects.** Research shows that there is a strong link between childhood trauma (for example physical or emotional abuse or witnessing violence in the community) and a variety of physical and mental health outcomes, including disruptive behavior, antisocial behavior, psychosis, and mood disorders. System-involved youth are likely to have lived through Adverse Childhood Experiences (ACEs).
- ▶ **Youth do not make decisions like adults.** It is common and normal for youth to engage in risky behaviors that may negatively impact their health. In fact, our brains reward us for these risky behaviors when we are adolescents. Research shows that this phenomenon has an important developmental function: these early risk-taking experiences prepare us for adulthood, leading us to be more willing to take on important new challenges later in life, such as starting a job or leaving home. Charging youth as adults directly ignores this science of adolescent development.

Incarceration Undermines Youth Health and Well-Being

When we lock up young people, they are more likely to be exposed to extreme violence, fall prey to abuse, and suffer from illness. High rates of violence, unchecked gang activity, and overcrowding persist in Division of Juvenile Justice facilities where many youth sentenced as adults start their incarceration. Fights frequently erupt in facility dayrooms and school areas.

Even if young people manage to escape direct physical abuse in juvenile or adult facilities, exposure and proximity to violence can be harmful in and of itself. Research suggests that exposure to violence can lead to issues with development in youth.



Youth participant at a Youth Justice Coalition poster-making party to support Senate Bill 9 - California Fair Sentencing for Youth (which became law in 2013).

Families of Incarcerated Youth Experience Negative Impacts

Parents and family members of system-involved youth are systematically excluded from the adult court process — they are not given meaningful opportunities to help determine what happens to their children. The inability to participate fully while their loved one is going through the system can be mentally and emotionally harmful to families.

In addition, contact with the justice system often entails exorbitant expenses that can worsen family poverty. The economic burden of legal fees, court costs, restitution payments, and visitation expenses can have disastrous and long-lasting financial consequences for families.

Solutions Exist

1. Eliminate the practice of charging youth as adults under any circumstance.
2. Require that system professionals undergo additional hands-on training and coaching by formerly incarcerated people and local community organizations on topics such as youth development, community history, trauma, implicit bias, institutional and structural racism, and the structural causes of crime.
3. Implement community-oriented and problem-oriented policing according to promising practices, with primary aims of improving community safety and reducing contact between youth and law enforcement.
4. Implement school and community-based restorative and transformative justice approaches focused on healing as an alternative to the court system for most youth.
5. Research and pilot viable alternatives to sentencing for youth who commit serious crimes.
6. Ensure support for families as they navigate the justice system — especially investing in peer mentoring strategies that link families and formerly incarcerated people.
7. Increase inter-agency collaboration.
8. Increase funding for quality and culturally appropriate wrap-around services for youth and their families, including programs that connect youth to traditional practices of community building and healing.
9. Change school funding and education policy to provide quality and culturally appropriate education in all communities and ensure equitable distribution of educational resources and opportunities.
10. Implement justice reinvestment strategies and other forms of investment in low-income communities of color to expand opportunity for youth of color and their families.

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