



Youth &  
Community  
Justice

# Treat Kids as Kids

## Why Youth Should Be Kept in the Juvenile System

Recent developments in law and science affirm what we have long known: Young people are not miniature adults. Since 2010, the United States Supreme Court has reiterated this common sense conclusion in three separate cases, all of which rejected the application of an adult standard to youth who transgress the law. (*Graham v. Florida*, 2010; *JDB. v. North Carolina*, 2011; and *Miller v. Alabama*, 2012).

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**The juvenile justice system** was indeed founded more than a century ago on the premise that children require a different system to effectively hold them accountable and to redirect them from crime. In 1899, the nation's first "juvenile court" was created in Chicago specifically to separate transgressing youth from the adult criminal justice system, and to create a more rehabilitative system for young people (Deitch, Barstow, Luckens, & Reyna, 2009; American Bar Association, n.d.).

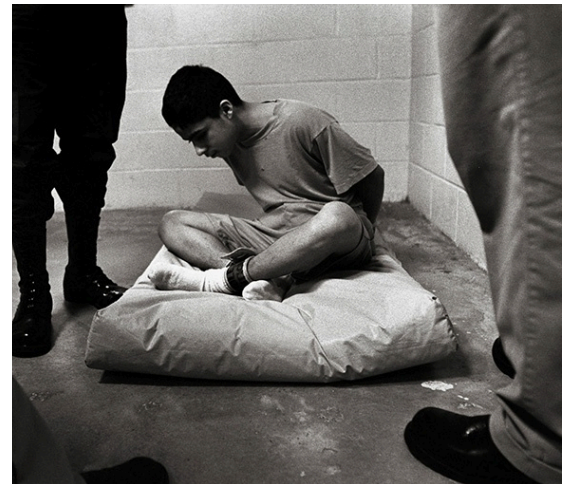
But since the creation of the juvenile court, policies and practices that deviate from the original rehabilitative goals of the juvenile justice system have proliferated. The 1980s and 1990s were marked by a wave of efforts in many states to return youth to the punitive adult system (Addison & Addie, 2012; Fagan & Liberman, 2007). From 1990 to 2004, the number of youth held nationwide in adult jails and prisons increased by 208 percent (Fagan, 2008).

Currently, about 250,000 children each year are prosecuted, sentenced, or incarcerated as adults in the United States (Arya, 2011). African American and Latino youth suffer most from

policies that allow youth to be sentenced as adults – they are disproportionately punished in the adult justice system, and are more likely to be sentenced to adult prisons (Hartney & Silvia, 2007; Daugherty, 2011). In California, an estimated 6,500 individuals are incarcerated in an adult prison for a crime they committed under the age of eighteen (Fair Sentencing for Youth, 2013). And roughly 1,000 children are subject to the adult criminal justice system in California every year.

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Violence and Juvenile Crime Prevention Act," also known as Proposition 21. This allowed children as young as 14 to be tried in the adult system in California and added several crimes for which youth could be charged as adults. Prop 21 also allowed prosecutors instead of judges to decide whether a youth should be tried as an adult.

After the passage of Prop 21, the average number of youth charged as adults skyrocketed in California. From 2003 to 2010, California's rates of prosecutorial direct file – cases in which the prosecutor makes the decision to file a case in adult instead of juvenile court – approximately doubled (Males & Teji, 2012).

### The Myth of the "Superpredators"

The widely held myth that juvenile crime was increasing, and that it accounted for most of the nation's crime, fueled the nation's reversion to treating youth as adults. In the 1990s, this myth was advanced by several prominent researchers who believed the upcoming generation of youth would include a large group of "super-predators" that would generate a dramatic increase in national crime rates (Campaign for Youth Justice [CFYJ], 2007). This belief influenced public opinion, making it easier for people to support the idea of treating youth as adults, and led to passage of many state



laws that eased the transfer of youth to the adult criminal justice system.

Despite the public’s fears, however, the theory of a super-predator generation never materialized, and its primary author finally admitted that his prediction never came to pass (Becker, 2001). In fact, data shows that in recent years the national juvenile crime rate has actually fallen to a 30-year low (Puzzanchera, 2013). In California, the arrest rate for youth under age 18 has dropped to the lowest in the state’s history since statistics were first compiled in 1954 (Males, 2012).

The majority of youth who come in contact with the justice system, moreover, do not commit serious offenses, with nearly half of them appearing in the system only once (National Research Council, 2013). Research furthermore shows that most youth offenders naturally “age out” of delinquent behavior as they transition from adolescence and early adulthood to more mature adulthood (Loeber, Farrington, & Petechuk, 2013).

In short, the crime predictions of the 1990s that led to the expanded use of the adult system for youth have been proven untrue. And our system of youth justice has eroded over the past several decades to what it was at the turn of the century when young offenders were seen and treated as if they were “miniature adults.”

### Adolescent Development and Youth Justice

Research consistently finds that treating youthful offenders as adults is inappropriate, detrimental to their development, and ineffective as a deterrent to crime (Peerman, Daugherty, Hoornstra, & Beydler, 2014; Redding, 2010). Recent studies have shown that adolescents experience significant psychological change and brain development that affect their ability to react appropriately to certain situations (Arya, Ryan, Sandoval, & Kudma, 2007; Scott & Steinberg, 2008a). While intellectually similar to adults, adolescents are more likely to act impulsively, more susceptible to peer influence, and are prone to risky experimentation as a part of their identity formation. Teenage impulsiveness and experimentation can lead to negative and sometimes criminal behaviors that do not necessarily reflect deficiencies of character, but rather their stage of development (Scott & Steinberg, 2008a).

Though the developing minds and identities of young people lead to risky and sometimes criminal behavior, their formative stage of development also makes them more responsive to positive influences and capable of change. Youth are especially capable of learning, growing, and changing when placed in positive, age-appropriate settings that are



responsive to their needs. Their behaviors are not fixed, and their values are not yet solidified (Scott & Steinberg, 2008b; Deitch et al., 2009).

Recent state and federal court rulings have relied on the research showing that adolescents are different than adults to strike down on constitutional grounds criminal justice practices that fail to account for these differences. For example, in the United States Supreme Court’s 2012 decision in *Miller v. Alabama* (2012), Justice Kagan wrote, “[Children] are constitutionally different from adults for purposes of sentencing . . . Juveniles have diminished culpability and greater prospects for reform.” Applying this reasoning, the Court invalidated mandatory life without parole sentences for youth under the age of eighteen at the time of their crimes.

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These same principles compel the conclusion that all young people who violate the law are more effectively treated and held accountable in an age-appropriate system of justice.

### The Harms of Prosecuting Youth as Adults

The practice of prosecuting youth in the adult system is not only ineffective, it is harmful – to the youth who need positive and age-appropriate redirection, and to society. In adult jails and prisons, youth are often isolated from adults for their own protection. This puts them at danger of experiencing severe depression and other mental health issues, and increases their risk for committing suicide (CFYJ, 2007). In fact, one study found that youth are 36 times more likely to commit suicide in an adult jail than in a juvenile facility (CFYJ, 2014). Adult prison and jail staff are ill-equipped and unprepared to give youth the age-appropriate support and services they need. For example, adult facilities offer fewer counseling services, educational and job training opportunities, and treatment options than juvenile facilities (Peerman et al., 2014).



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of all inmate-on-inmate sexual violence in adult prison are **youth victims**

**66%** of sexually abused youth were victimized more than once

**79%** of sexually abused youth were physically forced into sexual contact

**28%** of sexually abused youth were injured after the incident



When youth are placed in adult facilities, moreover, they are disproportionately likely to be victims of sexual abuse. The Bureau of Justice Statistics reported that in 2005 and 2006, although youth only made up 1 percent of adult jail inmates, they accounted for 21 percent of victims of inmate-on-inmate sexual violence (Beck, & Harrison, 2006). Similarly, a 2013 DOJ study found that out of the youth who were sexually abused, 66 percent were victimized more than once, 79 percent were physically forced into sexual contact, and 28 percent were injured after the incident (Beck et al., 2010). Additionally, a study found that youth are five times more likely to be sexually assaulted and two times more likely to be beaten by staff in adult facilities than in juvenile facilities (Mulvey & Schubert, 2012). The National Prison Rape Elimination Commission Report

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(2009) concluded that juveniles confined with adults are probably most vulnerable to sexual assault of all confined populations, and that girls confined in adult facilities are at especially high risk of

assault by staff. The lack of needed programs and services for youth in adult facilities compounds the risk of harm.

One case that was instrumental in influencing Congress to pass the Prison Rape Elimination Act (PREA), a case that is not atypical, is that of Rodney Hulin. In 1996, Rodney was a 16-year-old boy from Texas who was sentenced to adult prison for setting a dumpster on fire. While in prison, he was repeatedly raped in his cell (The Prison Rape Reduction Act of 2002: Hearing before the Committee, 2002). After Rodney was raped once, he requested to be sent to another facility. His request was denied and he was assaulted several more times. Rodney sent a note to the warden of the facility begging to be moved:

*"I have been sexually and physically assaulted several times, by several inmates. I am afraid to go to sleep, to shower, and just about everything else. I am afraid that when I am doing these things, I might die at any minute. Please sir, help me"*

*(The Prison Rape Reduction Act of 2002: Hearing before the Committee, 2002).*

His plea went unanswered, and Rodney committed suicide in his cell at age 17. Rodney is only one of the many youth who are victims of sexual abuse in adult facilities. As the National Rape Elimination Commission reported, "More than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse" (CFYJ, 2014).

In September 2014, Zachery Proper killed himself in his cell after being sentenced to 35-80 years in adult prison. Zachery was charged and sentenced as an adult at 13 years old for killing his grandparents. According to reports, Zachery was also a good student, a member of his school's football team, and enjoyed swimming, camping and canoeing with his family. But Zachery was also a victim of childhood abuse and suffered from depression (Levick, 2014).

The negative effects of an adult conviction extend beyond the physical and psychological damages inflicted in prison. Youth sentenced in the adult system experience lifelong consequences associated with an adult record (Mauer & Chesney-Lind, 2010; Legal Action Center, 2004). The Vera Institute of Justice estimates that youth with an adult criminal record will earn an average of \$61,691 less over the course of a lifetime due to lost employment opportunities (Henrichson & Levshin, 2011).

And punishing youth as adults does not make the community safer. In fact, evidence suggests that it decreases public safety. Studies have shown that youth tried in adult criminal courts have higher recidivism rates than when they are tried in juvenile courts (Redding, 2003). The experience of being tried in an adult courtroom alone may induce feelings of

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injustice, lead youth to internalize criminal identities, and exacerbate delinquency tendencies (Redding, 2010). An analysis of recidivism rates for 12- to 18-year-olds found that youth who received adult sentences were 2.3 times more likely to be rearrested and 4.9 times more likely to recidivate than those who received juvenile sanctions (Mason & Chang, 2001). Similarly, the Centers for Disease Control and Prevention recommends against using transfer mechanisms as a tool to reduce violence, concluding that generally, transfer of youth to adult courts increases rather than prevents violence (McGowan et al., 2007).



### Racial Inequities in Adult Court Prosecutions

Youth of color are more likely to suffer the damaging consequences of prosecution in the adult system. African American and Latino youth are overrepresented at every stage of the juvenile justice system, and are more likely than white youth to be tried as adults (Hartney & Silvia, 2007). Black youth represent just 17 percent of youth in the general population, but are 30 percent of youth who are arrested, and 62 percent of youth who are prosecuted in adult courts. They are 9 times more likely to be sentenced to adult prison than white youth (CFYJ, 2012). Latino youth are 43 percent more likely than white youth to be transferred to the adult system, and 40 percent more likely to serve time in adult prison (Arya et al., 2009). These disparities are not explained by differences in criminal behavior, and suggest trends of accumulated disadvantage, where youth of color are treated more harshly at each decision point in the juvenile justice system – from arrest to sentencing (Hartney & Silvia, 2007).

Youth of color in California are sentenced to the adult system at rates shockingly out of proportion with their share of the youth population. While black youth were only 6 percent of California’s adolescent population (ages 10 – 19) in 2012 (California Department of Finance, 2014) they were more than a quarter (26%) of youth given adult court dispositions (California Department of Justice, 2012). Juvenile judges were more likely to find black and Latino youth unfit and transfer them to the adult system. More than three-quarters (80%) of fitness hearings for Latino youth and more than 75 percent of fitness hearings for black youth resulted in transfer to the adult system, while just over half (58.3%) of fitness hearings for white youth resulted in transfer (California Department of Justice, 2012).

### Recent Progress

There have been some encouraging policy and law changes in recent years reversing the trend to treat transgressing youth as adults. As noted earlier, there have been three United States Supreme Court decisions in the span of just four years that reverse criminal practices and sentences that do not account for the differences between adolescents and adults. At the state level, since 2006, 23 states have passed laws to keep youth from being tried as adults and placed in adult facilities (Daugherty, 2013). Additionally, 11 states have passed laws that limit youth from being placed in adult jails and prisons. Eight states, including California, have changed mandatory minimum sentencing for youth being tried as adults. Four states have given juvenile courts more power to transfer cases

### Black youth represent:



general population



of youth who are arrested



of youth who are prosecuted in adult courts



more likely to be sentenced to adult prison than white youth

of those youth filed on as adults back to the juvenile court system (Daugherty, 2013). Colorado and Indiana passed legislation limiting the offenses for which prosecutors could directly file juvenile cases in adult court, and Colorado eliminated the use of direct file entirely for youth ages 14 and 15 (Daugherty, 2013). Five states also expanded the use of “reverse waiver” or “reverse transfer” hearings, which allow judges to consider moving cases filed in adult court back to juvenile court for youth under 18 (Arya, 2011; Daugherty, 2013).

Two recent law changes in California reflect considerable progress in reversing the damaging trend of treating youth as adults. SB 9, enacted in 2012, provides most individuals sentenced to life without the possibility of parole who were under the age of 18 at the time of their crime the opportunity to petition their sentencing court for a new sentence. Because this legislation is also retroactive, it provides roughly 227 youth offenders sentenced to die in an adult prison the ability to petition for their parole (Duda, 2011).

One year after the passage of SB 9, the California Legislature followed up with SB 260. Signed into law in 2013, SB 260 creates a new parole procedure for youth sentenced as adults who were under 18 at the time of their crime. This new procedure requires the state Board of Parole Hearings to review the cases of these youth sentenced to more than 15 years in prison and to give “great weight” to the fact that they were children when they committed their crime. SB 260 gives about 1,500 California prisoners who committed their crimes as minors and who served at least 15 years by January 2014 the ability to petition for early parole hearings (Thompson, 2013).

These changes represent a slow yet positive trend to eliminate the imposition of adult punishment on youth. But there is still much work to do. The brain science, the research on the detrimental effects of the adult system on youth, the racially discriminatory use of the practice, and the negative effect on public safety all make it clear that we need to completely reverse the ill-conceived trend of prosecuting youth as adults. ■

# Policy Recommendations for California:

California should ultimately end the practice of prosecuting youth in adult courts. Toward that goal, we recommend the following changes in law:



1

**Eliminate Direct File.** Proposition 21 gave prosecutors broad discretion to file juvenile cases in adult courts, without a fitness hearing. It also expanded mandatory direct file provisions. Use of direct file has caused the rates of youth prosecution in the adult system to skyrocket, led to significant geographic disparities in adult court prosecution, and has had no measurable impact on public safety. Discretionary direct file is vulnerable to prosecutor abuse of power. Both mandatory and discretionary direct files should be disallowed.

2

**Collect and Publish Better Data.** California law does not currently require the collection of comprehensive information about the prosecution and incarceration of youth in the adult system in California. The collection of data and reporting on the number of youth held in state prisons who were under 21 at the time of their offense should be statutorily required. In addition, the Department of Justice should be mandated to collect and report on the number and outcomes of fitness hearings in juvenile courts, the number and outcomes of direct files, and the number and outcomes of all cases where youth are tried in adult court, all cross-referenced with gender, age, and race of the defendant and county of prosecution. Information on youth charged as adults prior juvenile adjudication history should also be reported.

3

**Restrict Judicial Waivers.** Approximately 25 percent of youth sent to the adult system in California in 2011 were a result of a judicial waiver after a “fitness” hearing. But of the youth who faced fitness hearings, an alarming 75 percent were waived to the adult court. Laws should be enacted prohibiting the use of judicial waivers for all first-time offenders. Additionally, presumptions regarding fitness hearings for youth charged as adults should be changed. Youth should be presumed fit to remain in the juvenile court and have to be found unfit by the court. Moreover, the rule that youth must be found fit in all of the five current criteria of the fitness hearings should be changed so that they must be found fit by a majority of the factors.



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