

# THE IMPACT OF MANDATORY TRANSFER & STATUTORY EXCLUSION STATUTES

Each year, at least 76,000 youth come in contact with the adult criminal justice system. Many of these youth are automatically treated as adults under legislative mandatory transfer statutes. These statutes identify specific offenses that require juvenile court judges to transfer a youth to adult court after a finding of probable cause (mandatory waiver to adult court) or result in their cases automatically starting in adult court (statutory exclusion from juvenile court).

## WHICH STATES HAVE MANDATORY TRANSFER STATUTES?

- In 2018, youth in 13 states were subject to mandatory waiver laws, meaning juvenile court judges had to transfer the youth to adult court after a finding of probable cause.
  - States with mandatory waivers laws are: Connecticut, Delaware, Illinois, Indiana, Kentucky, Louisiana, New Jersey, North Carolina, North Dakota, Ohio, South Carolina, Virginia, and West Virginia.<sup>4</sup>



## WHAT IS MANDATORY TRANSFER?

- Mandatory transfer is a type of transfer provision that requires juvenile court judges to send youth to adult criminal court after a finding of probable cause and confirmation of the youth's age.
- Statutory exclusion is a type of transfer provision that requires a youth to start in adult criminal court based on their age and the offense charged.<sup>1</sup>
- These laws are largely a result of the myth of the juvenile super predator in the 1990s, which resulted in the adultification of youth and increased criminalization of youthful behavior in school and in communities.

- In 2018, youth in 28 states were subject to statutory exclusion laws meaning youth were automatically tried adult court for certain offenses which excluded them from the juvenile courts jurisdiction.
  - States with statutory exclusions laws are: Alabama, Alaska, Arizona, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Washington, and Wisconsin



## WHAT IMPACT DOES IT HAVE?

- Youth who are sentenced to adult facilities are five times more likely to be victims of sexual abuse and 36 times more likely to commit suicide than their peers in juvenile facilities.<sup>2</sup>
- Youth prosecuted in the adult system are 34% more likely to recidivate and with more violent offenses.<sup>3</sup>
- Mandatory transfer statutes and statutory exclusion statutes tie the hands of juvenile court judges. They prohibit consideration of individual circumstances relating to the offense or the offender before the youth is treated as an adult.

## WHY STATES SHOULD ELIMINATE MANDATORY TRANSFER

### Mandatory Schemes in General are Under Increased Scrutiny by Courts

- Mandatory transfer statutes are harmful. Like mandatory life without parole and other mandatory minimum sentences, mandatory transfer statutes do not allow juvenile court judges who are in the best position to assess the rehabilitative needs of youth to consider individualized factors to determine whether a youth should be treated as an adult.
- In December 2016, the Ohio Supreme Court held that “mandatory transfer of juveniles without providing for the protection of a discretionary determination by the juvenile court judge violates juveniles’ right to due process,” under the Ohio constitution.<sup>5</sup> The Court argued that it violated fundamental fairness for 16 and 17 year olds to be subject to mandatory transfer solely because of their age when they are treated as children in every other circumstance. “The one-size-fits-all approach runs counter to the aims and goals of the juvenile system.”<sup>6</sup> The Court reaffirms the constitutionality of discretionary transfer which requires an “amenability hearing” by a juvenile court judge before a youth is transferred to adult court, but strongly strikes down the mandatory transfer scheme.

Please note, on May 25, 2017, the Ohio Supreme Court reversed its decision in *State v. Aalim I*. In *State v. Aalim II*, the Court held that the legislature has exclusive power over defining court jurisdiction, so the mandatory transfer provision was within the legislature’s power. They also argued that juveniles are not a suspected class and transfer hearings are not a fundamental right so there was no equal protection violation or due process violation as long as the youth was represented, received notice, and had an initial probable cause hearing.<sup>7</sup>

- The U.S. Supreme Court’s jurisprudence is moving toward a recognition that individualized review of a youth’s history, the circumstances of the offense, and a youth’s ability to change are critical to determining a youth’s sentence.
- “An offender’s age,’ we made clear in *Graham* ‘is relevant to the Eighth Amendment,’ and so ‘criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Miller v. Alabama*, 567 U.S. 11 (2012).
- “We thought the mandatory scheme flawed because it gave no significance to ‘the character and records of the individual offender or the circumstances’ of the offense, and ‘exclud[ed] from consideration the possibility of compassionate or mitigating factors.” *Miller v. Alabama*, 567 U.S. 13 (2012)
- In 2014, the Iowa Supreme Court struck down mandatory minimum sentences for juveniles as unconstitutional in *State v. Lyle*: “[t]here is no other area of the law in which our laws write off children based only on a category of conduct without considering all background facts and circumstances.”<sup>8</sup>

### Mandatory Transfer Statutes take away a Court’s ability to make individualized, appropriate, assessments of youth

- Juvenile court judges are trained and familiar with both the services available to youth in the juvenile system in their state and the developmental needs of youth for purposes of rehabilitation.
- Juvenile courts were created specifically to address the individualized needs of youth and in recognition that youth are different from adults.

### Mandatory Transfer Statutes are not necessary to ensure youth who commit serious offenses and are a danger to themselves or the community are held accountable.

- Repealing mandatory transfer does not limit a state’s ability to try and treat youth as adults who have committed serious offenses.
- 45 states and DC already have transfer statutes that allow juvenile court judges to determine if a youth can or cannot be rehabilitated in the juvenile justice system.

## ENDNOTES:

1 Griffin, P., Torbet, P., and Szymanski, L. 1998. *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Retrieved from <https://www.ojjdp.gov/pubs/tryingjuvasadult/toc.html>

2 Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§156016-15609 (2003) *See also* Arya, Neelum. *Getting to Zero: A 50-State Study of Strategies to Remove Youth from Adult Jails*. Los Angeles, CA: UCLA School of Law, 2018. Retrieved from [https://drive.google.com/file/d/1LLSF8uBlrcqDaFW3ZKo\\_k3xpk\\_DTmtV/view](https://drive.google.com/file/d/1LLSF8uBlrcqDaFW3ZKo_k3xpk_DTmtV/view).

3 Centers for Disease Control and Prevention. *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Prevention Services*. MMWR 2007; 56 (No. RR-9): Retrieved from <https://www.cdc.gov/mmwr/PDF/rr/rr5609.pdf>

4 <http://www.jigps.org/jurisdictional-boundaries>

5 State v. Aalim, Slip Opinion No. 2016-Ohio-8278, <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-8278.pdf>

6 Id. at 13.

7 State v. Aalim, 150 Ohio St.3d 489, 2017-Ohio-2956, <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2017/2017-Ohio-2956.pdf>

8 State v. Lyle, Iowa Supreme Court, July 18, 2014, <https://caselaw.findlaw.com/ia-supreme-court/1673152.html>