

# Social Justice Brief

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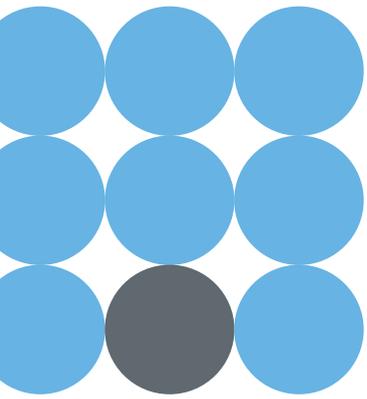
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# The Color of Youth Transferred to the Adult Criminal Justice System: Policy & Practice Recommendations

The primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty.





# The Color of Youth Transferred to the Adult Criminal Justice System: Policy & Practice Recommendations

In the United States, the vestiges of slavery are embedded in the criminal justice system and codified in the Thirteenth Amendment to the Constitution:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Individuals who have been convicted of criminal offenses in the United States may be treated and punished as enslaved people under the Constitution. In the United States, in every state, youth under age 18 are eligible to be transferred from juvenile court to adult court. In adult court, these youth receive public criminal records, get locked behind bars in adult jails, and receive lengthy sentences in facilities that were not made to take their social or brain development into account. Upon conviction in the criminal justice system, they become eligible to be treated and punished as enslaved people.

Advocates seeking to understand and reduce disproportionate representation of black youth in the adult criminal justice system must start by looking through the lens of the Thirteenth Amendment.<sup>1</sup> Despite significant declines in juvenile arrest rates and the total number of youth being sent to adult court, adult jails, and adult prisons, juvenile court judges are transferring black youth to adult courts at some of the highest percentages in

thirty years of data collection. Black youth are approximately 14% of the total youth population, but 47.3% of the youth who are transferred to adult court by juvenile court judges who believe the youth cannot benefit from the services of their court.<sup>2</sup> Black youth are 53.1% of youth transferred for person offenses despite the fact that black and white youth make up an equal percentage of youth charged with person offenses, 40.1% and 40.5% respectively, in 2015.<sup>3</sup>

Researchers, system stakeholders, and advocates have reported on the disproportionate representation of black youth at nearly every contact point in the juvenile justice system. Some research indicates that even when accounting for the type of offense, black youth are more likely to be sent to adult prison and receive longer sentences.<sup>4</sup> Although stakeholders acknowledge these findings, they are rarely contextualized beyond the justice system. In this brief, the Campaign for Youth Justice (CFYJ) and the National Association of Social

Workers (NASW) outline how black youth end up at the front door of adult courts through three state case studies of Oregon, Florida, and Missouri. We dive into the historical context of racial terror inflicted on black communities that has shaped the foundation of systemic policies, practices, and procedures that compound disproportionality. From this context, we highlight what advocates and local and state officials are doing to overcome the impact of historic and ongoing racism. Finally, we make recommendations for what social workers and advocates can do to redress racial disproportionality in black youth transferred to adult court through clinical practice and policy advocacy.

## Introduction

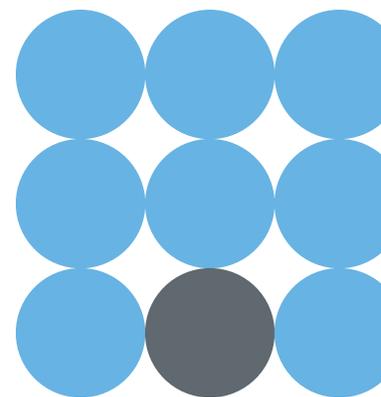
Kalief Browder,<sup>5</sup> Uniece Fennell,<sup>6</sup> Emmanuel Akueir,<sup>7</sup> and Jaquin Thomas<sup>8</sup>—what do these youth have in common? They are young people of color, they were charged and prosecuted as adults before reaching the age of 18, and their contact with the adult system led them to take their lives. Their painful stories are emblematic of the plight associated with the disproportionate prosecution and incarceration of youth of color in the adult criminal justice system.

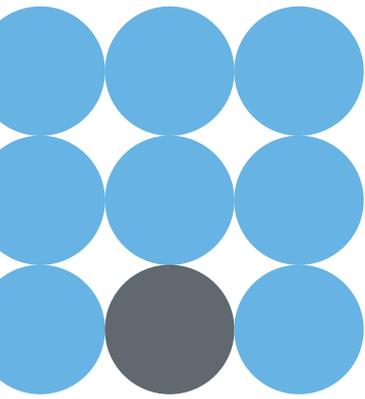
Although the total number of youth waived by juvenile court judges has declined by nearly 75% from its peak in 1994, black youth remain disproportionately represented.<sup>9</sup> In 2015, black youth were 14% of the youth population nationally<sup>10</sup> but 47.3% of the youth waived to adult court by juvenile court judges—a small decline from over 50% in 2014, but still among the highest percentage of black youth waived in nearly thirty years of data collection.<sup>11</sup>

Racial and ethnic disproportionality does not start at the point of transfer to the adult system. As a result, there is no way to eliminate disproportionality at transfer without a recognition of why youth of color are more likely to be referred to the juvenile system from their schools or policed in their communities. These challenges are deeply rooted in the fabric of American society and although data confirm their existence, there is still insufficient acknowledgment of the long-term effects of slavery, Jim Crow laws, racial terrorism, and the explicit and implicit biases that have existed and continue to exist against people of color. As a result, policies and practices in states across the country both unintentionally and intentionally perpetuate these challenges.

CFJY and NASW share a deep concern for the racial and ethnic disproportionality and disparities that exist in our nation's juvenile and adult criminal justice systems. We understand that this disproportionality is a symptom of chronic and systemic racism beyond the confines of the justice system itself, but we believe that intentional advocacy and transformative thinking by social workers, attorneys, youth advocates, and system leaders can begin to redress this issue locally and statewide.

The purpose of this brief is to highlight how three states have grappled with policies and practices with deeply rooted racial impacts on the transfer of black youth. Specifically, we looked at how advocates, agencies, community members, and legislators have pushed for changes to place front and center the need to recognize, track, and continue to address racial disproportionality in the justice





system. This brief will conclude with recommendations for policies and practices that social workers and other youth advocates may consider in the pursuit of more just and equitable outcomes for youth at-risk of entering the adult criminal justice system.

## Youth in the Adult Criminal Justice System

### How Do Youth End Up in the Adult Criminal Justice System?

In 2015, at least 75,900 youth under 18 were prosecuted as adults in the United States every year.<sup>12</sup> There are three main ways that youth can be transferred to the adult criminal justice system.

#### Statutory Exclusion

First, legislators can statutorily exclude youth under 18 from juvenile court by setting a lower age of juvenile court jurisdiction or by excluding all youth charged or convicted with certain offenses from going to juvenile court. In 2015, an estimated 66,700 youth were automatically treated as adults because their state had a lower age of juvenile court jurisdiction that excludes 16 and/or 17-year-olds solely because of their age.<sup>13</sup> Four states—Louisiana, South Carolina, New York, and North Carolina—passed legislation in 2016 and 2017 to fully raise their age of juvenile court jurisdiction to age 18 by 2019 or 2020.<sup>14</sup> Missouri passed legislation in 2018 with an implementation date of January 2021.<sup>15</sup> Only four states—Georgia, Michigan, Texas, and Wisconsin—have lower ages of juvenile court jurisdiction without legislation passed to raise the age in the near future.<sup>16</sup> All of the youth cited in the first paragraph of this brief were tried as adults without a hearing in front of a juvenile court judge

because they lived in states with lower ages of juvenile court jurisdiction at the time of their arrests.

In addition to lower ages of juvenile court jurisdiction, legislatures can also exclude some youth from juvenile court if they are a certain age and charged with a certain offense. In states like Maryland, legislators statutorily exclude youth from juvenile court for 33 offenses.<sup>17</sup> However, in 2014 legislative changes expanded the opportunity for these youth to request a hearing to go to juvenile court.<sup>18</sup> As a result, in the City of Baltimore, the percentage of youth prosecuted as adults whom judges later transferred back (that is, reverse waived) to the juvenile system increased from fewer than 40% in 2014 to 90% in 2017.<sup>19</sup> Finally, many state legislatures have also passed “once an adult, always an adult” laws that statutorily exclude youth from juvenile court based on prior charges or convictions in adult court.<sup>20</sup>

#### Judicial Waiver

Second, juvenile court judges can waive youth to adult court. In 2014, juvenile court judges waived approximately 4,000 youth to adult court.<sup>21</sup> Overall, the number of youth transferred by juvenile court judges to adult court nationally is relatively small compared to youth statutorily excluded or direct filed by prosecutors to adult court. However, this was not always the case. Before the 1970s, most youth were only transferred by judicial waiver, and only eight states statutorily excluded youth; by 2000, 38 states had statutory exclusion laws.<sup>22</sup> Discretionary judicial transfer is the most efficient in terms of judicial economy. Unlike statutory exclusion, when a judge decides after a detailed

transfer hearing that a youth cannot be served in the juvenile justice system, the youth is less likely to have their case dismissed or to end up on probation or back in the juvenile court.<sup>23</sup> However, the legislature may limit the discretion of juvenile court judges by making transfer mandatory or creating a presumption of transfer after a juvenile court judge finds certain factors; nevertheless, judicial waiver remains one of the most common transfer mechanisms, with 45 states and DC allowing some form of judicial waiver in their statutes.<sup>24</sup>

### Prosecutorial Discretion or Direct File

Finally, in 12 states and Washington, DC, prosecutors have the power to decide where to prosecute youth through prosecutorial direct file.<sup>25</sup> Like statutory exclusion laws, prior to the 1970s, only 2 states, Florida and Georgia, allowed prosecutors to decide where a youth would be prosecuted, but the number of jurisdictions rose to 15 by 2000, and only recently decreased after changes to laws in California and Vermont.<sup>26</sup> It is important to note that while prosecutorial direct file explicitly empowers the prosecutor with the decision to transfer a youth to adult court, most transfer mechanisms require the initiative of a prosecutor, and prosecutorial charging decisions affect a youth's eligibility for transfer.

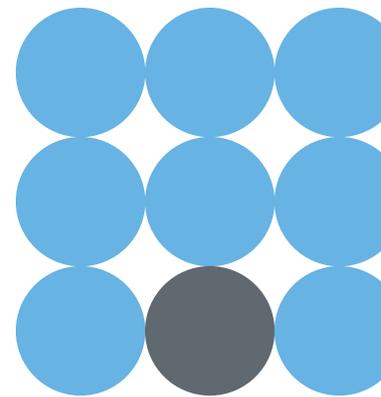
### Who Ends Up in the Adult Criminal Justice System?

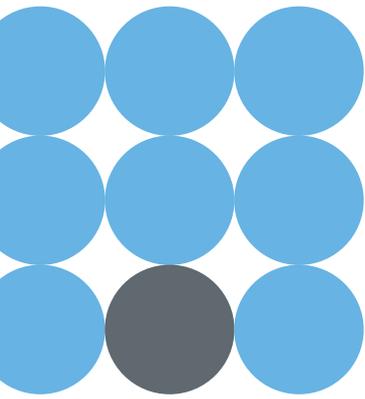
The youth who end up in the adult criminal justice system are more likely not only to be black or brown children, but also to commit suicide while in adult jail,<sup>27</sup> to have psychiatric symptoms than youth housed in juvenile facilities,<sup>28</sup> and to reoffend<sup>29</sup> once they are back in their communities.

In addition, although youth in the adult system face many of the same consequences as adults, neuroscientists, adolescent psychologists, and even the U.S. Supreme Court have reiterated that youth are fundamentally different from adults. In 2005, 2010, and 2012, the U.S. Supreme Court relied on neuroscience and research on adolescent development to ban the death penalty for individuals who committed offenses as juveniles and to end mandatory juvenile life without parole. In *Roper v. Simmons*,<sup>30</sup> *Graham v. Florida*,<sup>31</sup> and *Miller v. Alabama*,<sup>32</sup> the Court emphasized this difference. In Justice Kagan's majority opinion in *Miller* she writes,

We reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's "moral culpability" and enhanced the prospect that, as the years go by and neurological development occurs, his "deficiencies will be reformed."<sup>33</sup>

Youth involved in both the juvenile and adult justice systems are not only neurologically different, but are also more likely to have mental health needs. Studies estimate that between "one-half and two-thirds of [detained] juveniles have one or more psychiatric disorders."<sup>34</sup> In addition, many youth involved in the juvenile or adult systems have also experienced exposure to complex trauma<sup>35</sup> described as multiple, invasive, and persistent exposure to violence, abuse, or neglect.<sup>36</sup> In some states, public defender offices employ social workers who identify, document, and report this trauma along with other mitigating factors and recommend treatment or alternative sentencing for youth. In some states, judges use reports from social workers not only to adjust a youth's sentence, but also to decide





to keep or waive the youth back to juvenile court. In these cases, the practical role that a social worker plays in stopping transfer or deferring a harsh adult sentence is pivotal. Unfortunately, these opportunities are not available in every state or in every case, and given the multiple pathways for youth to end up in the adult criminal justice system and the disproportionate impact on the most vulnerable and high-need youth of color, it is imperative to understand how and whether states are acknowledging and addressing this difficult system contact point.

### What Happens to Youth in the Adult Criminal Justice System?

There are several reasons why transferring youth to the adult criminal justice system is a harmful and ultimately ineffective practice for system stakeholders who want to promote public safety. Placement in adult jails and prisons generally inhibit a youth's access to treatment, education, and members of their support networks.<sup>37</sup> Educational and rehabilitative programming are limited in adult jails and prisons because the facility, staff, and programming were not developed to serve youth. Staff might not have specialized training, and even if they do the staff-to-inmate ratio in adult facilities is generally higher.<sup>38</sup>

As a result, youth in adult facilities are at a slightly increased risk of physical or sexual abuse by staff and other inmates.<sup>39</sup> In an effort to protect youth, adult facility administrators often place youth in solitary confinement, also known as protective custody, for extended periods of time.<sup>40</sup> Unfortunately, solitary confinement is just as dangerous for youth, so much so that prolonged use of the practice was deemed torture by United Nations' Special Rapporteur of the Human Rights Council in

2011.<sup>41</sup> There are national standards and movements to limit the solitary confinement of youth in juvenile facilities, but these reforms often do not reach youth in adult facilities.<sup>42</sup> After release, youth involved in the adult criminal justice system also face some of the same collateral consequences of an adult conviction as adults, including barriers to employment, housing, education, and voting due to a public criminal record.<sup>43</sup> However, these youth have no lived experience navigating these systems in a way that an adult might navigate them.

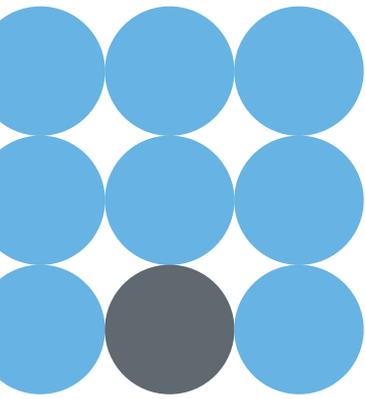
### Race, Ethnicity, and Youth Transfer Data

There is no federal law requiring the collection of data on all the transfer mechanisms that place youth in adult courts. Under the Juvenile Justice and Delinquency Prevention Act of 1974, states generally collect data on youth waived by juvenile court judges to adult court, but this transfer mechanism is not as widely used as statutory exclusion or prosecutorial direct file.

As a result, beyond judicial waiver, individual states decide whether to collect data on their other transfer mechanisms. As of 2018, 35 states and Washington, DC, published data within the last five years on juvenile transfer and youth convicted in adult court (see Appendix 1). Of these jurisdictions, only 18 disaggregated data by race. In 2018, Indiana passed legislation to expand its data tracking to include disaggregation by race, sex, age, county of prosecution, charges filed, conviction received, and sentence received.<sup>44</sup>

In addition to limited disaggregated data, some states do not annually update their





A little over 20 years later, in November 1994, Oregon voters approved a ballot initiative called Measure 11. As noted in *Table 1 below*, Measure 11 created mandatory minimum prison sentences for a number of crimes and required automatic transfer to adult court of youth ages 15 to 17 charged with certain felony offenses. In 1995 and 1997, the legislature added additional offenses, specifically attempted murder, attempted aggravated murder, arson, compelling prostitution, and use of a child in display of a sex act.<sup>48</sup> As a result of Measure 11, on June 1, 2018, the Oregon Department of Corrections held 263 individuals who were transferred to adult court as juveniles and the Oregon Youth Authority (OYA) held 138 youth.<sup>49</sup>

### Racial Disproportionality among Youth Tried as Adults in Oregon

In Oregon, white youth are approximately 64% of the youth population, Hispanic youth are 20.3%, Asian youth are 4%, black youth are 2.3%, youth of two or more races are 5.8%, Native American youth are 1.2%, and Native Hawaiian/Pacific Islander youth are 0.5%.<sup>50</sup> In 2017, juvenile court judges waived and the provisions of Measure 11 transferred a total of 139 youth to adult court. Of the youth in adult court, 42.4% were white youth, 34.5% were Hispanic youth, 15.8% were black youth, and 2.2% were Native American youth.<sup>51</sup> Hispanic, black, and Native American youth are all disproportionately represented in the adult system in Oregon, and have been over the past decade. The representation of black youth, in particular, has been significantly disproportionate with percentages as high as

**TABLE 1: Measure 11 Crimes and Minimum Mandatory Sentences for Juveniles Age 15,16, or 17**

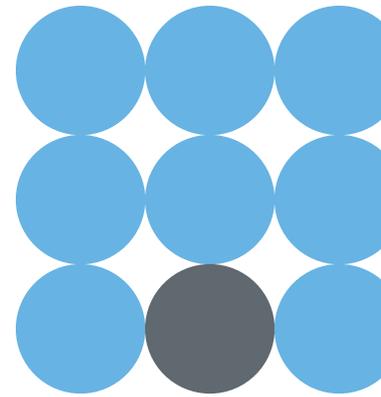
Offense List	Years	Months
Assault in the second degree (ORS 163.175), kidnapping in the second degree (ORS 163.225), robbery in the second degree (ORS 164.405), using a child in a display of sexually explicit conduct (ORS 163.670), compelling prostitution (ORS 167.017(1)(a),(b), or (d))	5	10
Manslaughter in the second degree (ORS 163.118), rape in the second degree (ORS 163.365), sodomy in the second degree (ORS 163.395), unlawful sexual penetration in the second degree (ORS 163.408), sexual abuse in the first degree (ORS 163.427)	6	3
Attempt or conspiracy to commit murder (ORS 163.115), assault in the first degree (ORS 163.185), kidnapping in the first degree (ORS 163.235), robbery in the first degree (ORS 164.415), arson in the first degree when offense is a threat of serious physical injury (ORS 164.325)	7	6
Manslaughter in the first degree (ORS 163.118), rape in the first degree (ORS 163.375), sodomy in the first degree (ORS 163.405), unlawful sexual penetration in the first degree (ORS 163.411)	8	4
Attempt or conspiracy to commit aggravated murder (ORS 163.095)	10	0
Aggravated vehicular homicide (ORS 163.149)	20	0
Murder (ORS 163.115)	25	0

Source: Oregon Revised Statute Chapter 137.707.

22.7% of the youth in adult court whereas only being 2.3% of the population.

Since the adoption of Measure 11 in 1995, Oregon youth of color have consistently been disproportionately affected. Black youth are 13 times more likely than their white peers to face adult court.<sup>52</sup> According to a 2018 report of the Oregon Council on Civil Rights, black youth are more likely to be charged with second-degree robbery, a lower-level Measure 11 offense.<sup>53</sup> A majority of youth charged with

Multnomah County, district attorney Rod Underhill announced in 2016 that he would recommend youth get charged in juvenile court if they plea to an offense that is not covered under Measure 11.<sup>56</sup> Although this local prosecutorial effort is one step toward keeping youth out of adult court, it also creates a dangerous incentive for youth to plead guilty very early in their case. It is important that local prosecutors track data and outcomes on youth who benefit from this practice and review its impact on racial



**TABLE 2: Percentage of Youth in Adult Court in Oregon from 2007 to 2017**

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
White	60.3	67.9	50.3	46.4	51.6	47.8	47.1	39.0	42.0	45.5	42.4
Hispanic	18.3	17.5	28.8	24.6	25.6	24.1	22.5	28.6	31.6	26.0	34.5
Black	15.3	16.9	15.2	22.5	15.8	19.6	22.5	22.7	21.3	21.1	15.8
Native	1.6	2.9	1.5	3.8	3.3	2.7	3.2	4.5	2.3	2.4	2.2
Asian	2.1	0.9	2.1	0.7	1.9	3.6	1.6	0.6	0	1.6	2.9
Other/unknown	2.3	5.6	2.1	2.1	1.9	2.2	3.2	4.5	2.9	3.3	2.2
Total	431	391	330	289	215	224	187	154	174	123	139

Source: Oregon Youth Authority. (2018). Dispositions. Retrieved from [www.oregon.gov/oia/Pages/jjis\\_data\\_eval\\_rpts.aspx](http://www.oregon.gov/oia/Pages/jjis_data_eval_rpts.aspx)

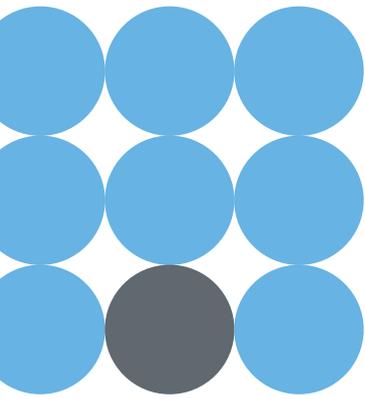
these lower-level offenses end up pleading down to charges that are still tried in adult court but do not require mandatory minimum sentencing.<sup>54</sup> The inclusion of lower-level offenses in Measure 11 results in youth facing adult court who could have started in juvenile court. The inclusion of lower-level second-degree offenses has resulted in black youth being 13.7 times more likely than their white counterparts to face a Measure 11 indictment.<sup>55</sup>

### Addressing Racial Disproportionality of Youth Prosecuted as Adults in Oregon

One way that local officials have attempted to address racial disproportionality among youth convicted as adults due to Measure 11 is to adopt local prosecutorial policies. In

disproportionality. This local practice could continue to reproduce racial disproportionality in the juvenile system even if fewer youth end up in the adult system.

In addition to local efforts, in 2017 the Oregon legislature passed a bill to allow for the creation of a racial and ethnic impact statement for state measures that are likely to affect the criminal justice system.<sup>57</sup> Legislative racial impact statements, which originated in Iowa, can help provide legislators with a fully informed perspective of the impact of their legislation.<sup>58</sup> As with local practice, it is important to track the impact of these statements on the passage of laws that could reduce or exacerbate racial and ethnic disproportionalities or disparities. In addition,



OYA, which holds both juveniles adjudicated delinquent and youth tried as adults, is using data analysis to make the case for keeping youth in the juvenile system. According to OYA, youth tried as adults who complete their sentence in OYA have a 22% recidivism rate after 36 months.<sup>59</sup> However, youth tried as adults who complete their sentence with the Department of Corrections have a 38% recidivism rate. Both on a local and state level, Oregon officials are attempting to address Measure 11 and its impact on mass incarceration of its black residents.

### Prosecutorial Direct File in the Sunshine State

Like Oregon, Florida has a long, tenuous, and brutal history of racial injustice. This history provides context for a justice system that, on record, prosecutes and incarcerates the highest number of youth as adults in the country, a disproportionate majority of whom are black youth.<sup>60</sup>

In 2017, the Equal Justice Initiative released their third edition of *Lynching in America: Confronting the Legacy of Racial Terror*. The report documents terror lynching in twelve 12 of the most active lynching states in the country. Florida is one of the 12 states.<sup>61</sup> In fact, Florida was among the top four states with the highest statewide rate of lynchings, along with Louisiana, Mississippi, and Arkansas.<sup>62</sup> In the early 20th century, terror lynchings were accompanied by mob violence against predominantly black communities, like in the decimation of Rosewood in 1923. The small community was overrun by a mob of white men who burned homes and the town's church because they believed that a Rosewood resident assaulted a white woman.<sup>63</sup> There was also state violence, such as the shooting

of black young men in Groveland by the county's sheriff in 1951.<sup>64</sup> The Florida legislature has attempted to make amends by apologizing for the horrific treatment of the Groveland Four<sup>65</sup> and providing reparations to Rosewood families,<sup>66</sup> but the legacy of Jim Crow continues to loom over black youth in Florida.

Among the youth population in Florida, 43% are white youth, 29% are Hispanic youth, 21% are black youth, 3% are Asian youth, 3% are youth of two or more races, and 0.5% are Native American youth. Although Black youth are only 21% of the youth population, they accounted for 67.7% of the mandatory and discretionary direct file transfers of youth to adult court in the state in 2016.

According to a 2016 study using data from nearly 31,000 transferred youth in Florida, black and Hispanic youth were significantly more likely than white youth to receive a jail sentence when transferred to adult court than were their white peers.<sup>67</sup> Black youth were 2.3 times more likely to receive an adult jail sentence versus supervision than white youth, and Hispanic youth were 1.4 times more likely to do so than their white counterparts.<sup>68</sup> In comparing the likelihood of a youth receiving a prison sentence versus community supervision, black youth were 1.7 times more likely to receive a prison sentence than their white peers.<sup>69</sup> According to the study, not only are black and Hispanic youth more likely to receive sentences in adult court, they are more likely to receive longer prison sentences. Black youth prison sentences were 7.8% longer than white youth sentences for the same type of offense. These statistics indicate that black youth receive the harshest sentences among transferred youth, and that Hispanic

youth face more stringent sentencing than their white peers. This is particularly harmful as Florida has the highest publicly reported number of youth direct filed to the adult criminal justice system in the country and the highest day count of youth in adult prisons.<sup>70</sup> Florida is among the 12 states that give prosecutors the discretion to direct file youth to adult court without a juvenile court judge reviewing the decision.<sup>71</sup> Consequently, in 2016, Florida prosecutors reported direct filing 1,084 youth.<sup>72</sup> Florida's prosecutorial direct file allows for youth as young as 14 to be prosecuted as adults.<sup>73</sup> In Florida, prosecutors may direct file youth accused of misdemeanors under specific circumstances.<sup>74</sup>

In addition to prosecutorial discretion, Florida has judicial discretion transfer and statutory exclusion called mandatory direct file. Judicial discretion is the most common statutory transfer mechanism nationally, but in Florida judges do not exercise their transfer discretion as much as Florida prosecutors. In fact, 99% of transferred youth are direct filed to adult court under mandatory direct file or prosecutorial direct file.<sup>75</sup>

When Florida judges exercise their discretion, they do so by holding a waiver hearing in which the prosecution and defense present evidence for and against transfer to adult court. The judge then considers factors related to the effectiveness of rehabilitation to determine whether the youth should be waived to adult court. These factors include the following:

“The seriousness of the alleged offense to the community and whether it is best served by transferring the youth for adult sanctions.

Whether the alleged offense was committed in an aggressive, violent,

premeditated, or willful manner.

Whether the alleged offense was against people or property, with greater weight given to offenses against people, especially if personal injury resulted.

The probable cause as found in the report, affidavit, or complaint.

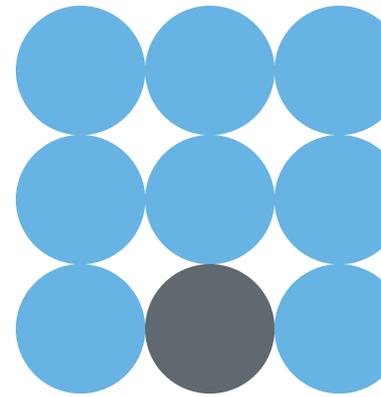
The desirability of trial and disposition of the offense in one court when the youth's associates in the alleged offense are adults or youth who are to be tried as adults.

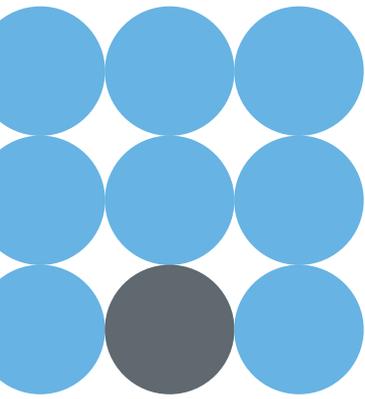
The sophistication and maturity of the juvenile.

The record and previous criminal history of the juvenile, including previous contacts with the department, the Department of Corrections, the former Department of Health and Rehabilitative Services, the Department of Children and Families, other enforcement agencies, and courts; prior periods of probation; prior adjudications that the youth committed a delinquent act or violation of law, greater weight given if the youth has previously been found to have committed a delinquent act or violation of law involving a misdemeanor.

The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation in the juvenile court.”<sup>76</sup>

After considering these factors, Florida juvenile court judges decide whether to transfer the youth to adult court. These decisions are irreversible. There is no reverse waiver mechanism to challenge any form of transfer to adult court. It is important to note that these factors are relatively limited and do not give sufficient weight to the individual needs of the youth, specifically the youth's history with trauma, mental health needs, disabilities, and family or community supports. As a result,





disparities are compounded by factors that black youth are disproportionately affected by, like prior contact with the system. It is also of note that in 2018, a Miami judge was suspended for using the word “moolie” (a shortened version of *mulignan*, a Sicilian slur referring to a black person) to describe a black defendant. He also called another man’s family and friends “thugs.”<sup>77</sup> As a result, this judge was reassigned from criminal court to juvenile court, where he will have full discretion to transfer youth of any age.

### Efforts to Reduce Direct File in Florida

Given the substantial racial disproportionality in the number of youth who are direct filed under the mandatory and discretionary direct file statute, a number of practical and policy recommendations have been made to address this issue. The No Place for a Child Coalition is a nonpartisan, statewide campaign group focused on reducing direct file in Florida. Over the last four years, the coalition has advocated for ending mandatory direct file, raising the minimum age for discretionary direct file from 14 to 16, limiting the types of offenses that make a youth eligible for direct file, and creating a reverse waiver mechanism, so that youth can return to juvenile court.

In addition to legislative efforts, progressive newly elected prosecutors have created new decision-making procedures to limit the use of discretionary prosecutorial direct file. Specifically, state’s attorney general, Melissa Nelson, who ran for office after defending a 12-year-old child who was prosecuted as an adult, has actively focused on reducing direct file.<sup>78</sup> In the first six months of her tenure, the rate of prosecuting children in her district fell by 43%.<sup>79</sup>

In addition to advocating for statewide legislation and changes in local practice, local city and county leaders have also supported efforts to reduce direct file through local resolutions. In the city of St. Petersburg,<sup>80</sup> city of Pensacola,<sup>81</sup> and Escambia County,<sup>82</sup> local leaders passed resolution in support of direct file reform during the 2018 legislative session. The local and statewide attention on direct file has helped reduce the overall number of youth in the adult system in Florida. However, it is important to note that statewide the percentage of youth transferred to adult court compared with the total number of youth coming into contact with the system has remained relatively steady. In fiscal year (FY) 2012, youth transferred to adult court were 3.14% of the youth overall coming into contact with the system, and in FY 2016, transferred youth were 3.12%.<sup>83</sup> As a result, significant work still needs to be done to address the criminalization of black youth in Florida.

### From the Missouri Compromise to the Missouri Model

In 1820, Congress passed the Missouri Compromise,<sup>84</sup> which prohibited slavery in the Louisiana Territory north of the 36 degree, 30 minute latitude line, with the exception of Missouri, which became a slave state.<sup>85</sup> It was in the Missouri Supreme Court that Dred Scott petitioned for his freedom, noting that after being purchased in Missouri, he lived in the free states of Illinois and upper Louisiana.<sup>86</sup> The Missouri Supreme Court’s denial of his claim and the subsequent petition in the circuit court of the United States for the District of Missouri resulted in an appeal to the U.S. Supreme Court. The 1857 *Scott v. Sandford* decision, written by Chief Justice Taney, held that black people were not

citizens within the meaning of the Constitution and therefore could not sue in federal court. Since slavery was lawful under the U.S. Constitution at the time, it was the individual state that could determine whether a black person was a free man or a slave, and in Missouri Mr. Scott was considered a slave.<sup>87</sup> It is Missouri's history as a slave state and the origin of one of the most controversial U.S. Supreme Court cases in American history that led to Missouri being the non-southern state with the second highest number of racial terror lynchings,<sup>88</sup> with 60 reported lynchings between 1877 and 1950.<sup>89</sup>

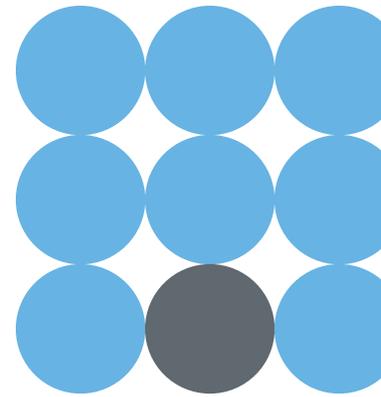
On August 9, 2014, Missouri once again became the center of racial upheaval when Michael Brown, a black unarmed teenager, was shot at least six times by a white police officer, Darren Wilson.<sup>90</sup> His body subsequently lay in the street for four hours before being transported to the morgue.<sup>91</sup> Brown's shooting in Ferguson, Missouri, and subsequent protest resulted in two U.S. Department of Justice (DOJ) investigations. In March 2015, DOJ found that the Ferguson Police Department violated the civil rights of its citizens. Then U.S. Attorney General Eric Holder made the following announcement:

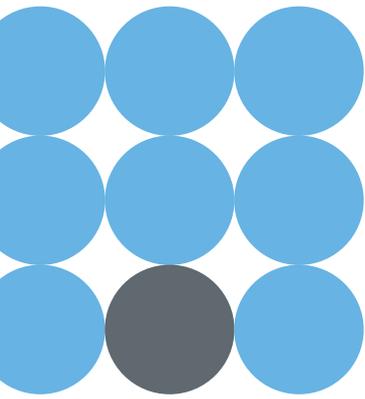
Our Investigation showed that Ferguson Police officers routinely violated the Fourth Amendment in stopping people without reasonable suspicion, arresting them without probable cause, and using unreasonable force against them. Now that our investigation has reached its conclusion, it is time for Ferguson's leaders to take immediate, wholesale, and structural corrective action.<sup>92</sup>

Like the state itself, Missouri's juvenile justice system has a complicated history. It is often referred to as the Missouri Model, synonymous with small, home-like, therapeutic juvenile facilities considered by experts to be far more humane than most juvenile facilities across the country. However, the benefits of the model are not applied throughout Missouri's juvenile system. Until 2018, Missouri was one of a handful of states that still automatically treated all 17-year-olds as adults without legislation passed to change the law.<sup>93</sup> With the passage of SB 793, 17-year-olds will be treated as youth starting in January 2021.<sup>94</sup>

In addition to a lower age of juvenile court jurisdiction, Missouri allows juvenile court judges to certify 12- to 16-year-old youth to adult court for any offense that would be considered a felony if committed by an adult.<sup>95</sup> Juvenile court judges must hold a hearing to consider transfer for youth charged with first-degree murder, second-degree murder, first-degree assault, forcible rape, forcible sodomy, first-degree robbery, distribution of drugs, or have committed two or more prior unrelated offenses, which would be felonies in adult court.<sup>96</sup> It is important to note that a judge may transfer a youth without a basic finding of probable cause that the youth committed the offense. In its July 2015 investigation report, DOJ noted the problem of the lack of a probable cause finding requirement in its investigation into the St. Louis County Family Court.<sup>97</sup>

Under Missouri Revised Statute Section 211.071 (6), when a judge holds a hearing to consider transfer, a written report is prepared for the judge's consideration with the following certification criteria:





- » *The seriousness of the offense alleged and whether the protection of the community requires transfer to the court of general jurisdiction*
- » *Whether the offense alleged involved viciousness, force, and violence*
- » *Whether the offense alleged was against people or property, with greater weight being given to the offense against people, especially if personal injury resulted*
- » *Whether the offense is part of a repetitive pattern of offenses, which indicates that the child may be beyond rehabilitation under the juvenile code*
- » *The record and history of the child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions and other placements*
- » *The sophistication and maturity of the child as determined by consideration of his home and environmental situation, emotional condition, and pattern of living*
- » *The age of the child*
- » *The program and facilities available to the juvenile court in considering disposition*
- » *Whether or not the child can benefit from the treatment or rehabilitative programs available to the juvenile court*
- » *Racial disparity in certification*

Examining race and youth transfer in Missouri is particularly interesting because it is one of the first states in the country to encourage juvenile court judges to consider racial disparities in their decision to transfer a youth to adult court. The legislature added the racial disparity transfer factor in 1995 to address concerns that transfer was disproportionately affecting youth of color.<sup>98</sup> Unfortunately, the effort to require judges to consider racial disparities has not eliminated them or other issues within Missouri’s transfer process. According to the *Missouri Juvenile and Family Division Annual Report* for calendar year 2016, black youth were 14.8% of the youth ages 10 through 17 in calendar year 2015 but made up 72% of the youth certified (that is, transferred) to adult court by a juvenile court judge, even though they made up only 40% of the youth charged with felony offenses.<sup>99</sup> Although the overall number of youth certified to adult court has decreased, it is important to note that the percentage of law violation referrals that result in certifications has increased, particularly in 2013 and 2014, when certifications went from being 0.18% of all juvenile referrals to 0.32% in 2013 and 0.34% in 2014.<sup>100</sup>

**TABLE 3: Missouri Juvenile Justice Referrals and Certifications to Adult Court**

<b>Group</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Black youth certified</b>	30	43	46	38	38
<b>White youth certified</b>	24	21	18	12	14
<b>Hispanic and other youth certified</b>	1	4	2	1	1
<b>Total Certified</b>	55	68	66	51	53
<b>Total youth referrals for law violations</b>	29,715	20,962	19,382	19,281	18,449

Source: Missouri Office of the State Court Administrator, *Missouri Juvenile and Family Division Annual Report* (Jefferson City, MO: Author, 2016). Retrieved from [www.courts.mo.gov/file.jsp?id=40673](http://www.courts.mo.gov/file.jsp?id=40673)

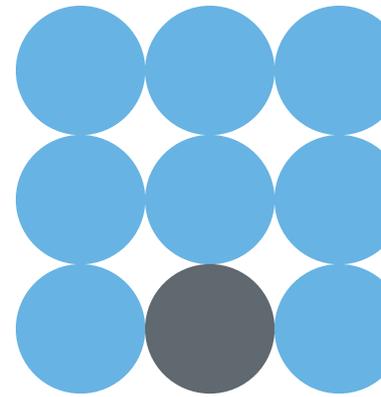
After the July 2015 investigative report on racial and ethnic disparities in the St. Louis County Family Court, the Missouri Supreme Court established the Commission on Racial and Ethnic Fairness.<sup>101</sup> In 2017, the commission held a series of community meetings to get feedback on the juvenile justice system, and in November 2017 the commission submitted a report.<sup>102</sup> One of the outstanding items for the commission to consider was “requir[ing] evidentiary probable cause determinations in certification [transfer] hearings.”<sup>103</sup>

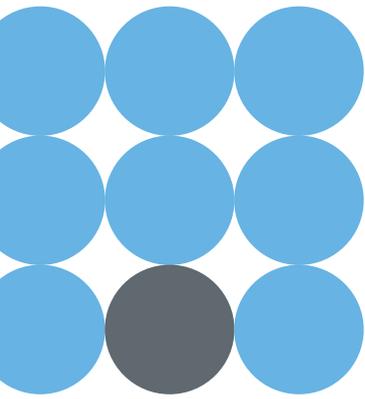
Although the total number of black youth transferred to adult court by juvenile court judges has decreased since the introduction of the racial disparity certification factor in 1995, the percentage of black youth certified compared with the total number of law violation referrals has increased from 0.1% in 2012 to 0.2% of all the law violation referrals in 2016. Racial disproportionality remains an ongoing challenge for the state. Requiring a probable cause hearing whenever a juvenile court judge chooses to transfer a youth to the adult court could help reduce the number of transfers and disproportionality. Moving forward, Missouri should also consider collecting data not only on where youth are likely to be certified to adult court, but the specific offenses leading to certification to determine whether there is disparity and disproportionality by offense that should be addressed to reduce racial and ethnic disproportionate minority contact. Like those of Oregon and Florida, Missouri’s past and relatively recent history of treatment of black residents and particularly black teenagers elevates the necessity of the work of the Commission on Racial and Ethnic Fairness. There are statutory and practical reforms Missouri can continue to make to become a true model of youth justice reform.

## The Role of Social Workers and Youth Advocates in Reducing Racial and Ethnic Disparities and Disproportionality in Transfer of Black Youth to Adult Court

Social workers and youth advocates play a critical role in the juvenile justice system and can positively affect youth at risk of prosecution as adults. Clinical social workers can help criminal defense attorneys provide holistic services and identify cost-effective community treatment options, particularly for youth suffering from substance abuse use, mental health disorders, or disabilities.<sup>104</sup> Those trained in forensic social work can help develop mitigation reports for defense that highlight the context of the child in his or her environment; whether he or she has been exposed or experienced past trauma, has limited cognitive abilities, and resiliency and strengths that indicate a community intervention would be successful.

Beyond clinical interventions, social workers and youth advocates should be active leaders in advocating for legislative changes that intentionally target and aggressively address harmful disproportionality. Social work training and education provide social workers with a unique insight and expertise into the social, health, and environmental factors that affect youth, and as a result a better understanding of the need for culturally and developmentally appropriate strategies and services. Here are a few recommendations for practice and policy that could help reduce racial and ethnic disparities and disproportionality in transfer of Black youth to adult court.





## Policy and Practice Recommendations

**Advocate for local officials to recognize the importance of keeping all youth, with an emphasis on youth of color, out of the adult criminal justice system through city council and county commissioner resolutions.**

Encouraging locally elected officials to reevaluate and make a public statement regarding the treatment of youth, particularly youth of color in the adult system in the city or county can make a significant difference. Specifically, we need to work with local governing officials to pass resolutions in support of keeping youth out of the adult system and using those resolutions to advocate for budget policies and priorities that align with the resolutions. Examples of these resolutions in Multnomah County, Oregon; Pensacola, Florida; and Wake County, North Carolina are available in Appendix 2. In Multnomah County, this local work laid the groundwork for statewide reforms to keep youth out of adult facilities.

**Advocate for local prosecutors to develop transparent procedures around when to motion to transfer or direct file a youth to adult court.**

Local prosecutors both in and outside of states with prosecutorial direct file have a lot of power in the transfer process. Advocating for local prosecutors to develop transparent procedures and practices around transfer can illuminate where the greatest racial and ethnic disproportionalities exist and provide data to directly address them. Specifically, tracking the race, age, and gender of a youth by offense, conviction, and sentence can illuminate the most common offenses that youth of color are charged with and give local official an opportunity to provide specific community interventions.<sup>105</sup>

**Advocate for legislation requiring social workers to be a part of the juvenile defense team.**

Social workers already play a vital role in Family and Juvenile Court cases as social services case workers, court-appointed special advocates, and guardians ad litem for youth who experience abuse, neglect, abandonment, or are involved in custody disputes.<sup>106</sup> To the extent possible, social workers in these roles should consider remaining engaged in a case if a youth is charged in either juvenile or adult court if they have a pre-existing active abuse, neglect, abandonment, or custody case open. If advocacy beyond the child welfare context for youth who touch the justice system is not an option, social workers should consider advocating for legislation to require social workers on juvenile defense teams. In 2014, the Colorado legislature passed HB 1023 requiring that juvenile public defender offices hire social workers to support their defense of juvenile clients.<sup>107</sup> Individualized, comprehensive, and developmentally appropriate treatment recommendations from social workers can help keep youth out of adult court or adult placements. Social workers play a key role in developing those recommendations and identifying appropriate services as an alternative to transfer or detention. They also play a role in helping defense attorneys understand and relate to the complex needs of their youth clients.<sup>108</sup>

**Advocate for legislation considering the racial impact of bills that could increase the number of youth prosecuted, sentenced, and incarcerated as adults.**

In a growing number of states including Iowa, Oregon, Connecticut, Minnesota, and most recently in New Jersey, legislators have begun creating opportunities to learn the racial and

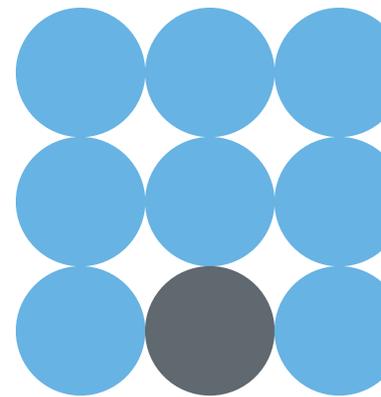
ethnic impact of legislation related to the prosecution, incarceration, and sentencing of their citizens.<sup>109</sup> Although states are still analyzing the impact of these laws, they provide both a framework and foundation for arguments against bills that have a disparate or disproportionate affect. Without these laws, concerns about the racial and ethnic impact of criminal or juvenile justice legislation would likely be invisible or disregarded.

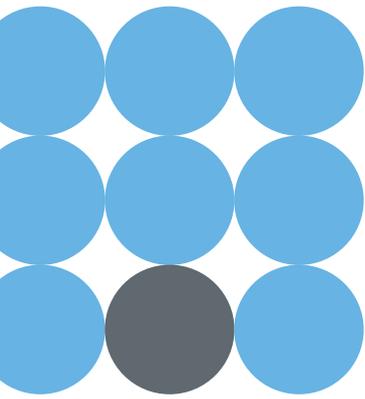
### **Develop and research community-based alternatives to incarceration for transferred youth.**

Social workers are trained in evidence-based practice and to look at both macro and micro influences on program outcomes. Social work training also includes racial and structural analysis of policy and clinical interventions. Restorative practices, multisystemic therapies, and trauma-responsive interventions all show promise with youth transferred to adult court. However, there is very little research on what community interventions exist to support transferred youth in their home communities. Developing this knowledge base is a critical tool for judges, prosecutors, and community members, including victims, in redressing alternatives to youth transfer.

### **Conclusion**

Racial and ethnic disproportionality cannot be resolved at the point of transfer to the adult system without a holistic approach to addressing the systemic and individual factors that lead black youth to the justice system. Federal, state, and local officials must aggressively collect data and review their policies and practices regularly to identify systemic issues in order to implement effective changes. Local officials generally have a lot of power to shape their policies and practices around arrest, charging, and transferring youth. As a result, it is crucial that there is transparency and accountability at the local level so that innovative approaches to addressing disproportionality are captured and grounded in data and evidence. On the state level, it is important that legislation provides discretion but creates a presumption against treating youth as adults and requires local actors to address disproportionality where it exist. America's traumatic racial challenges, particularly in the justice system, are a part of its history and present but do not have to be a part of its future. Advocates, including social workers practicing on the macro and micro levels, can address these challenges with a holistic and collaborative approach rooted in historical context.



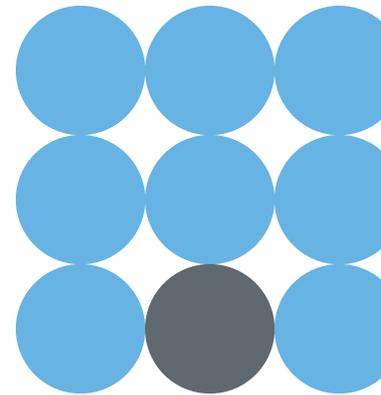


## Appendix 1: States with Publicly Available Data on Youth/Cases Transferred to Adult Court and Youth Convicted as Adults

STATE	YEAR	REPORT LINK
Alabama	CY 2017	<a href="http://dys.alabama.gov/images/task_force/AL%20JJ%20Task%20Force%20Report_FINAL.pdf">http://dys.alabama.gov/images/task_force/AL%20JJ%20Task%20Force%20Report_FINAL.pdf</a>
Arizona	FY 2016	<a href="http://www.azcourts.gov/Portals/29/JJSD%20Publication%20Reports/Juveniles%20Processed/AZJuvCrtCountsFY16.pdf">www.azcourts.gov/Portals/29/JJSD%20Publication%20Reports/Juveniles%20Processed/AZJuvCrtCountsFY16.pdf</a>
California	CY 2015	<a href="https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/jj15/jj15.pdf">https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/jj15/jj15.pdf</a>
Colorado	FY 15-16	<a href="http://www.colorado.gov/pacific/cdhs/publications-reports">www.colorado.gov/pacific/cdhs/publications-reports</a> (Youthful offender system admissions found in judicial district profile report)
Connecticut	FY 14-15	<a href="http://www.ct.gov/ocpd/lib/ocpd/publications/2014-15_annual_report_of_the_chief_public_defender_for_web_viewing.pdf">www.ct.gov/ocpd/lib/ocpd/publications/2014-15_annual_report_of_the_chief_public_defender_for_web_viewing.pdf</a>
District of Columbia	CY 2014	<a href="https://scdc.dc.gov/sites/default/files/dc/sites/scdc/publication/attachments/Annual_Report_2014.pdf">https://scdc.dc.gov/sites/default/files/dc/sites/scdc/publication/attachments/Annual_Report_2014.pdf</a>
Florida	FY 16-17	<a href="http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard">www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard</a>
Georgia	CY 2014	<a href="http://juveniledata.georgia.gov/DataReports.aspx?report=RRIDataEntryReport">http://juveniledata.georgia.gov/DataReports.aspx?report=RRIDataEntryReport</a>
Hawaii	CY 2003-12	<a href="http://ag.hawaii.gov/cjia/files/2013/01/Data-Book-for-2003_2012.pdf">http://ag.hawaii.gov/cjia/files/2013/01/Data-Book-for-2003_2012.pdf</a>
Illinois	CY 2017	<a href="http://www2.illinois.gov/idjj/SiteAssets/Pages/Data-and-Reports/IDJJ%202017%20Annual%20Report.pdf">www2.illinois.gov/idjj/SiteAssets/Pages/Data-and-Reports/IDJJ%202017%20Annual%20Report.pdf</a> (Youth committed with adult sentences to Illinois Department of Juvenile Justice) <a href="http://www2.illinois.gov/idoc/reportsandstatistics/Documents/FY2016%20Annual%20Report.pdf">www2.illinois.gov/idoc/reportsandstatistics/Documents/FY2016%20Annual%20Report.pdf</a> (Prison population age 17)
Iowa	FY 2015	<a href="https://humanrights.iowa.gov/sites/default/files/media/Juvenile%20Court%20Services%202015%20Annual%20Report.pdf">https://humanrights.iowa.gov/sites/default/files/media/Juvenile%20Court%20Services%202015%20Annual%20Report.pdf</a>
Kansas	FY 2017	<a href="http://web.kscourts.org/stats/17/2017%20Juvenile%20Offender%20Caseload.pdf">http://web.kscourts.org/stats/17/2017%20Juvenile%20Offender%20Caseload.pdf</a>
Kentucky	FY 2016	<a href="https://djj.ky.gov/SiteAssets/Pages/default/DJJ%20Annual%20Report%20FY%202016.pdf">https://djj.ky.gov/SiteAssets/Pages/default/DJJ%20Annual%20Report%20FY%202016.pdf</a> (Youthful offender sentence numbers)
Maryland	FY 14-15	<a href="http://djs.maryland.gov/Documents/publications/Youth%20Charged%20as%20Adults%20-%202014%20and%202015.pdf">http://djs.maryland.gov/Documents/publications/Youth%20Charged%20as%20Adults%20-%202014%20and%202015.pdf</a>
Michigan	CY 2016	<a href="http://courts.mi.gov/education/stats/Caseload/reports/statewide.pdf">http://courts.mi.gov/education/stats/Caseload/reports/statewide.pdf</a>
Minnesota	CY 2015	<a href="https://mn.gov/mmb-stat/results-first/juvenile-justice-report.pdf">https://mn.gov/mmb-stat/results-first/juvenile-justice-report.pdf</a>
Mississippi	CY 2014	<a href="http://www.mdhs.ms.gov/media/307113/DYS-2014-Annual-Report.pdf">www.mdhs.ms.gov/media/307113/DYS-2014-Annual-Report.pdf</a>
Missouri	CY 2016	<a href="http://www.courts.mo.gov/file.jsp?id=40673">www.courts.mo.gov/file.jsp?id=40673</a>
Nebraska	FY 2016	<a href="https://supremecourt.nebraska.gov/sites/default/files/2016-juvenile-justice-system-statistical-annual-report-viewing.pdf">https://supremecourt.nebraska.gov/sites/default/files/2016-juvenile-justice-system-statistical-annual-report-viewing.pdf</a>
Nevada	FY 2017	<a href="http://dcfs.nv.gov/uploadedFiles/dcfsnvgov/content/Programs/JJS/Juvenile_Justice_Data.pdf">http://dcfs.nv.gov/uploadedFiles/dcfsnvgov/content/Programs/JJS/Juvenile_Justice_Data.pdf</a>
New Jersey	CY 2018	<a href="http://www.nj.gov/oag/jjc/aboutus_demo_stats.html">www.nj.gov/oag/jjc/aboutus_demo_stats.html</a>
New Mexico	FY 2016	<a href="https://cyfd.org/docs/FY16_JJSAAnnualReport.pdf">https://cyfd.org/docs/FY16_JJSAAnnualReport.pdf</a>
New York	FY 2016	<a href="http://www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/newyorkstate.pdf">www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/newyorkstate.pdf</a>
North Carolina	FY 2016-17	<a href="http://www.ncdps.gov/documents/2017-county-databook">www.ncdps.gov/documents/2017-county-databook</a>
North Dakota	2017	<a href="http://www.ndcourts.gov/court/News/juvrep2017.pdf">www.ndcourts.gov/court/News/juvrep2017.pdf</a>
Ohio	FY 2017	<a href="http://www.dys.ohio.gov/Portals/0/PDFs/Home/NewsAndFacts/Statistics/Ytac_FY2017.pdf">www.dys.ohio.gov/Portals/0/PDFs/Home/NewsAndFacts/Statistics/Ytac_FY2017.pdf</a>
Oregon	CY 2017	<a href="http://www.oregon.gov/oya/reports/jjis/2017/2017_Dispositions.pdf">www.oregon.gov/oya/reports/jjis/2017/2017_Dispositions.pdf</a>
Pennsylvania	CY 2016	<a href="http://pcs.la.psu.edu/publications-and-research/annual-reports/AR2016/view">http://pcs.la.psu.edu/publications-and-research/annual-reports/AR2016/view</a>

Rhode Island	FY 2017	<a href="http://www.rikidscount.org/Portals/0/Uploads/Documents/Factbook%202017/2017%20RI%20Kids%20Count%20Factbook%20for%20website.pdf">www.rikidscount.org/Portals/0/Uploads/Documents/Factbook%202017/2017%20RI%20Kids%20Count%20Factbook%20for%20website.pdf</a>
South Carolina	FY 16-17	<a href="http://www.state.sc.us/djj/pdfs/2016-17%20Annual%20Statistical%20Report.pdf">www.state.sc.us/djj/pdfs/2016-17%20Annual%20Statistical%20Report.pdf</a>
Tennessee	CY 2014	<a href="http://www.tncourts.gov/sites/default/files/docs/2014_annual_juvenile_court_statistical_report.pdf">www.tncourts.gov/sites/default/files/docs/2014_annual_juvenile_court_statistical_report.pdf</a>
Texas	FY 2017	<a href="http://www.txcourts.gov/media/1441398/ar-fy-17-final.pdf">www.txcourts.gov/media/1441398/ar-fy-17-final.pdf</a>
Vermont	FY 2017	<a href="http://www.vermontjudiciary.org/sites/default/files/documents/Appendix%20I%20-%20Statewide.pdf">www.vermontjudiciary.org/sites/default/files/documents/Appendix%20I%20-%20Statewide.pdf</a>
Virginia	FY 2017	<a href="http://www.djj.virginia.gov/pdf/about-djj/DRG/FY17_DRG.pdf">www.djj.virginia.gov/pdf/about-djj/DRG/FY17_DRG.pdf</a>
Washington	FY 2014	<a href="http://www.dshs.wa.gov/sites/default/files/JJRA/pcij/documents/annual-report2014/Sect-7j-Trans.to.Adult.Crt.pdf">www.dshs.wa.gov/sites/default/files/JJRA/pcij/documents/annual-report2014/Sect-7j-Trans.to.Adult.Crt.pdf</a>
Wisconsin	CY 2017	<a href="http://www.wicourts.gov/publications/statistics/circuit/docs/juvstate17.pdf">www.wicourts.gov/publications/statistics/circuit/docs/juvstate17.pdf</a>

Notes: CY = calendar year; FY = fiscal year.



## APPENDIX 2: Local Resolutions

### Multnomah, OR County Resolution on Youth in Adult Jails

#### BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR MULTNOMAH COUNTY, OREGON

##### RESOLUTION NO. 08-166

Directing that Juveniles in Custody in Multnomah County be Held at the Donald E. Long Juvenile Detention Home

##### The Multnomah County Board of Commissioners Finds:

- Juveniles certified to stand trial as an adult may be legally housed in jail.
- Juveniles are developmentally different from adults; these differences must be given consideration when youthful offenders are taken into custody.
- Juveniles require programs that are designed especially for youth with specially-trained staff, services not readily available in Multnomah County's jails.
- The juvenile justice system exists to enhance public safety, to hold youthful offenders accountable, and to develop their competencies through treatment and education programs in order to make positive changes in their lives. Detained and incarcerated youth must be provided programs which address their long-term education, health, and mental health needs.
- Multnomah County operates the Donald E. Long Juvenile Detention Home (JDH) which maintains a safe, secure, stable, and enriching environment for juveniles in custody while protecting the community.
- The JDH staff is trained in providing services and programs to youthful offenders. In addition, JDH provides opportunities for appropriate peer interaction for the development of youthful offenders.

##### The Multnomah County Board of Commissioners Resolves:

The Board of County Commissioners directs that juveniles in custody in Multnomah County be held at the Donald E. Long Juvenile Detention Home unless the Sheriff and the Director of the Department of Community Corrections, or their designee, agree to alternate placement.

ADOPTED this 18th day of December 2008.

BOARD OF COUNTY COMMISSIONERS FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY FOR MULTNOMAH COUNTY, OREGON

SUBMITTED BY: Commissioner Lisa Naito, District 3

## RESOLUTION NO. 18-05

### A RESOLUTION TO BE ENTITLED:

#### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA STATING THE PREFERENCE AND WILL OF THE CITY OF PENSACOLA TO HAVE THE CHILDREN OF THIS COMMUNITY TREATED AS CHILDREN WHEN THEY BREAK FLORIDA LAW**

WHEREAS, children are developmentally different from adults and these differences are documented by research on the adolescent brain and acknowledged by the U.S. and state supreme courts, as well as state and federal laws that prohibit youth under age 18 from taking on major adult responsibilities such as contracting, voting, jury duty and military service; and

WHEREAS, the juvenile justice system is designed for, and more effective at, rehabilitating children who fall into the delinquency system than the adult corrections system, which focuses on punishment rather than rehabilitation; and

WHEREAS, children who are placed under the commitment of the juvenile court system are required to receive age-appropriate services and education, and remain closer to their families, all of which reduces the likelihood of future offending; and

WHEREAS, prosecuting children in adult court has been proven not to deter crime, and in fact, a child prosecuted in the adult criminal justice system is 34% more likely to be rearrested for a felony than a child who remains in the juvenile justice system; and

WHEREAS, it is harmful to both public safety and children's well-being to confine youth in adult jails, where they are significantly more likely to be physically and sexually assaulted or to commit suicide; and

WHEREAS, adult jails are not designed to house children separately from adults, as required by law, and thus often hold children in solitary confinement and deprive them of adequate educational services, which in turn, make them less likely to get back on track when released; and

WHEREAS, most of the children tried as adults in Florida are charged with non-violent offenses; and

WHEREAS, Florida's reliance on prosecutorial discretion leads to disparate sentencing under similar circumstances creating a system of "justice by geography" which disproportionately harms children of color and children with disabilities and mental health issues; and

WHEREAS, children prosecuted as adults receive an adult criminal record when convicted that can diminish their future education and employment opportunities and strip them of the right to vote, enlist in the military, or receive financial aid for college before these youth even turn 18; and

WHEREAS, since 2009, more than 14,000 children have been prosecuted as adults in Florida – ninety-eight percent of whom are "direct filed" in adult court by prosecutors with no hearing, due process, oversight, or input from a judge; and

WHEREAS, Florida is one of only 13 states that allows its children to be prosecuted as adults for criminal offenses and one of only three states that do not allow a juvenile court judge to participate in the decision to prosecute a child as an adult; and

WHEREAS, Florida prosecutes more children as adults for criminal offenses than any other state and the First Judicial Circuit transferred 120 children to adult court in Fiscal Year 2016- 2017, more than any other circuit in the state; and

WHEREAS, even if prosecutors did not have sole discretion to transfer children to the adult system through "direct file," children could still be transferred to the adult system through the "judicial waiver" process – a process in which a judge is involved in the decision to prosecute a child as an adult – which, according to a 2016 public opinion poll, 62% of Floridians believe this the better way for the state to decide whether to prosecute children as adults.; and

WHEREAS, seventy percent of Floridians believe children should be held in a system separate from adult offenders; and

WHEREAS, the oversight, training, and expertise of juvenile court judges uniquely qualifies them to advise on the suitability of the adult court for a child.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. That the City Council affirms its support of treating children as children through the juvenile justice system where services are provided to the child and his/her family.

SECTION 2. That the City Council urges our Legislative Delegation and the entire Florida Legislature to adopt comprehensive reform legislation that would require a fitness hearing before a juvenile court judge for any and all prosecution of children under the age of 18 and require that children prosecuted as adults be held in juvenile facilities only.

SECTION 3. That this Resolution be transmitted to the Speaker of the House, the Senate President, and all members of our Legislative Delegation upon its passage.

SECTION 4. This Resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

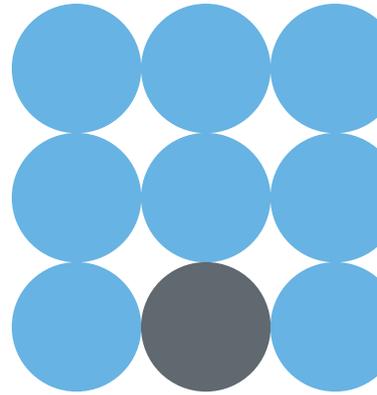
Adopted: \_\_\_\_\_

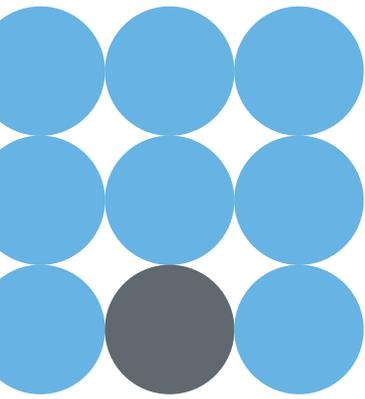
Approved: \_\_\_\_\_

President of City Council

Attest:

\_\_\_\_\_ City Clerk





**A RESOLUTION SUPPORTING RAISING THE AGE OF JUVENILE JURISDICTION FROM 16 TO 18 IN NORTH CAROLINA FOR ALL CRIMES OTHER THAN CLASS A THROUGH E FELONIES AND TRAFFIC OFFENSES AND SUPPORTING THE PASSAGE OF HOUSE BILL 280.**

WHEREAS, on March 8, 2017, a bipartisan group of North Carolina House of Representative members filed House Bill 280 with the North Carolina House of Representatives Clerk's Office; and

WHEREAS, House Bill 280, titled "Juvenile Justice Reinvestment Act" would raise the age of juvenile jurisdiction to include 16- and 17-year-olds except in the case of certain felonies and motor vehicle laws; and

WHEREAS, North Carolina remains one of only two states in the U.S. that automatically prosecute 16- and 17-year-olds as adults, regardless of the severity of the crime; and

WHEREAS, adolescents prosecuted in the juvenile justice system are less likely to go on to commit another crime compared to juveniles tried in the adult system, which results in lower costs to society and more children growing up to become educated, employed citizens; and

WHEREAS, evidence shows that the juvenile justice system - with programs tailored to how children think and learn - is more effective at rehabilitating youth and that neuroscience and psychological studies prove brain development continues until well into a person's 20s; and

WHEREAS, raising the age of juvenile jurisdiction to 18 will lead to significant long-term financial savings, safer communities, better academic results and overall better outcomes for children; and

WHEREAS, although juvenile crime has been declining, in 2014 alone, more than 17,000 misdemeanor charges were filed against 16- and 17-year-olds statewide; and

WHEREAS, even in cases where the charges are dismissed, there remains the very real and long-term collateral consequences of a public record that could impact a young person's ability to get hired for their first job, be eligible for college financial aid or enlist in the military; and

WHEREAS, 97 percent of crimes committed by 16- and 17-year-olds in North Carolina are either categorized as misdemeanors (80 percent) or non-violent felonies (17 percent); and

WHEREAS, in 2016, the NC Commission on the Administration of Law & Justice under the strong direction and leadership of NC Supreme Court Chief Justice Mark Martin, made a recommendation in favor of raising the age of juvenile jurisdiction (except for A-E felonies and traffic offenses); and

WHEREAS, the NC Commission on the Administration of Law & Justice also recommends expanding existing programs to reduce school-based referrals to juvenile and adult court known as "School-Justice Partnerships;" and

WHEREAS, the NC Sheriffs' Association, NC Police Benevolent Association, NC Association of County Commissioners, NC Association of Chiefs of Police, and NC Chamber of Commerce Legal Institute are all on record in support of raising the age to 18; and

WHEREAS, the North Carolina Association of County Commissioners adopted raising the age of juvenile jurisdiction from 16 to 18 in its 2017-2018 Legislative Goals, placing it within the top five priority goals for the session;

THEREFORE BE IT RESOLVED that the Wake County Board of Commissioners reaffirms its support raising the age of juvenile jurisdiction from 16 to 18 for all crimes other than Class A through E felonies and traffic offenses

AND BE IT FURTHER RESOLVED that the Wake County board of Commissioners asks the North Carolina General Assembly to adopt House Bill 280, together with all necessary funding such a change requires.

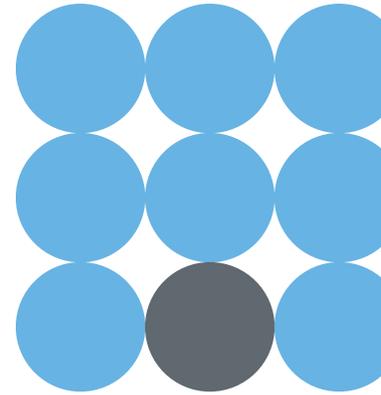
Adopted the 20th day of March, 2017.

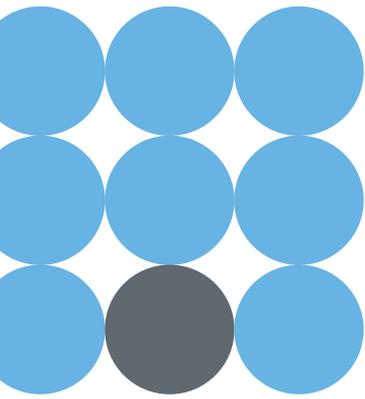
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Sig Hutchinson, Chairman Wake County Board of Commissioners

## END NOTES

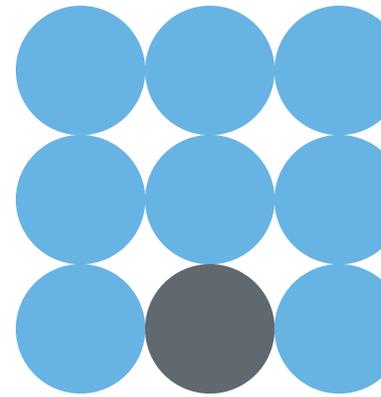
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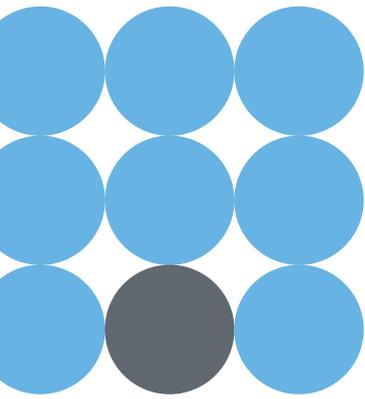




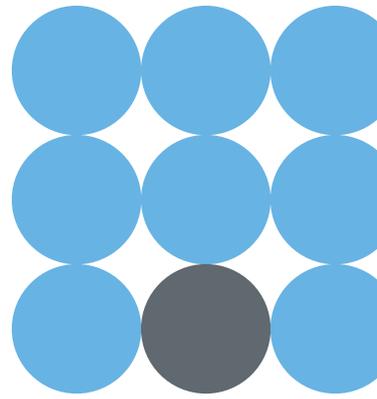
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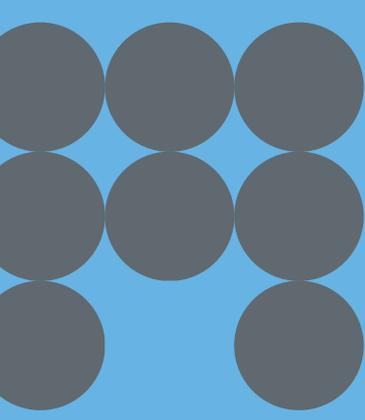
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# NASW Resources

**NASW** » [SocialWorkers.org](https://www.socialworkers.org)

**NASW Foundation** » [NASWFoundation.org](https://www.naswfoundation.org)

**NASW Press** » [NASWPress.org](https://www.naswpress.org)

**NASW Assurance Services, Inc.** » [NASWAssurance.org](https://www.naswassurance.org)

**NASW Center for Workforce Studies** » [Workforce.SocialWorkers.org](https://www.workforce.socialworkers.org)

**Help Starts Here** » [HelpStartsHere.org](https://www.helpstartshere.org)

**Social Work Reinvestment Initiative** » [SocialWorkReinvestment.org](https://www.socialworkreinvestment.org)

**Social Work Policy Institute** » [SocialWorkPolicy.org](https://www.socialworkpolicy.org)

**Social Work Portal** » [SocialWorkers.org/swportal](https://www.socialworkers.org/swportal)



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