



FUTURES DENIED

Why California Should Not Prosecute 14- and 15-year-olds as Adults

HUMAN
RIGHTS
WATCH





Futures Denied

**Why California Should Not Prosecute
14- and 15-year-olds as Adults**

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The W. Haywood Burns Institute is dedicated to protecting and improving the lives of youth of color by promoting restorative and equitable justice system practices. We work to eliminate racial and ethnic disparity by building community-centered responses to youthful misbehavior. We are a grassroots to grassroots organization. We believe innovation comes from the bottom and influences those at the top. That is why we work with impacted community members and decision makers at the local level to affect change that transforms justice systems.

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Summary and Recommendations

After decades of handling youth 15 and younger in its rehabilitation-focused juvenile justice system, in 1995 California discarded its longstanding approach and adopted a new law allowing 14- and 15-year-olds to be tried in adult criminal court. In present day California, a young teenager in criminal court is treated in every way just like an adult: the same procedures, laws, and sentences—including adult prison—are applied with virtually no exception. When a young person is tried as an adult, it means he or she is denied the full services and treatment of the juvenile system. The decision to try a young person as an adult is undeniably a decision to give up on that youth.

This dramatic change in policy was not based on research on effective methods to deal with youth who commit crimes; it did not rely on advances in the neuroscience of adolescent development and receptivity to rehabilitation; nor did it take into account studies conclusively showing that youth treated in the juvenile system are less likely to commit new crimes than those tried as adults. That research did not exist at the time the law was changed. The 1995 law was the product of a “tough on crime” period of racialized fear-mongering and false predictions of increased crime and the rise of “super-predator” youth.

In the years since, more than 1,500 14- and 15-year-olds have faced transfer to the adult system. The law predominantly affects youth of color, with Black youth more than 11 times more likely, and Latino youth nearly five times as likely as white youth to face prosecution in adult court. In addition to the radical difference in how individual young people are treated, prosecuting 14- and 15-year-olds in adult court has weakened, not enhanced, public safety. Decades of research now concludes that youth prosecuted in adult court are more likely to recidivate than youth treated in the juvenile justice system.

Prosecuting 14- and 15-year-olds in adult court has weakened, not enhanced, public safety.

This paper explores the impact of sending youth who are in middle school or early high school to the adult criminal justice system. It gives a brief overview of the past two decades of research on what makes young people act the way they do and the effect of being tried in the juvenile versus adult justice system. It provides perspective from juvenile

court professionals and young people who have experiences both the juvenile and adult prison systems.

California is at a crossroads: its legislature now has the data and research to show that the 1995 law was a bad decision for both individual youth and public safety. A bill, SB 1391, is pending in the legislature. It provides California the opportunity to correct course. If enacted, this bill will ensure that 14- and 15-year-olds receive age-appropriate treatment and services needed for a healthy transition to adulthood, and that public safety is enhanced, not weakened.

California Didn't Always Try 14- and 15-Year-Olds as Adults



In the United States, most laws recognize the immaturity and vulnerability of 14- and 15-year-olds. This 14-year-old has just graduated from middle school and will start 9th grade in the fall. © 2018 Ray Adornetto

A 14- or 15-year-old can be prosecuted as an adult in California, and more than 1,500 young people ages 15 and under have faced adult court sentences, including life in prison.¹ Other laws recognize the immaturity and vulnerability of people this young with a wide range of restrictions. Fourteen and 15-year-olds cannot get a driver's license, go to an R-rated movie, vote in an election, buy alcohol or a lottery ticket, join the military, consent to sex, or enter into a legal contract. Yet, they can face a court system and punishment designed and intended for adults.

This was not always the case. Until 1995, California did not permit any 14- or 15-year-old to be tried as an adult.² Instead, these younger teens were kept under the authority of the juvenile court. While far from perfect, it is a system intended to address the needs of youth.³

¹ Data sets provided to authors in November 2016 and December 2017 by Office of the Attorney General, California Department of Justice (DOJ), comprising juvenile court petition, direct file and transfer hearing statistics by county, race, ethnicity, gender, age, offense, and transfer hearing result for the 2003-2016 period. Data referenced include all youth ages 14- and 15- years old who were either directly filed or had a transfer hearing in California state from 2003-2016. Note that these data are only from 2003 forward. The state did not collect data on transferred youth prior to 2003, so we do not know how many youth were transferred to the adult system from 1995-2002.

² If a youth is not tried as an adult, his or her case is processed in the juvenile system. California's juvenile justice "system" might be more accurately described as 59 systems: 58 county-based systems and one state-run agency. The county systems try youth accused of crimes in juvenile court and have a variety of methods to provide community-based services and can also incarcerate youth in county-run juvenile halls, ranches, and camps. The state agency runs three juvenile prisons and a fire camp that are reserved for youth who have been adjudicated or convicted of serious crimes. The state agency is a division of the state adult corrections agency, and formally known as the "Department of Corrections and Rehabilitation, Division of Juvenile Facilities." It is most commonly referred to as the "Division of Juvenile Justice." It was formerly known as the California Youth Authority. In this document we will refer to the state juvenile justice agency as the Division of Juvenile Justice.

Crime increased dramatically in the 1980s and 1990s, reaching an apex in 1994, and included high rates of violent crime by adolescents.⁴ Politicians and the public worried about the increase in crime, and pundits warned about a growing wave of adolescent “super-predators,” a term coined by then-Princeton Professor John Dilulio and deployed in a highly racialized narrative.⁵ Youth of color were overrepresented in media portrayals of crime during this period.⁶ Dilulio claimed that “Americans are sitting atop a demographic crime bomb,” and predicted that the following decade would “unleash an army of young male predatory street criminals,” who are “fatherless, Godless... radically impulsive, brutally remorseless youngsters.”⁷

³ California’s history of youth incarceration at the state level (once called the California Youth Authority (CYA), now called the Division of Juvenile Justice (DJJ)) has been largely defined by abuse, violence, and failed reforms. See Daniel E. Macallair, *After the Doors Were Locked: A History of Youth Corrections in California and the Origins of the Twenty-First Century Reform* (Lanham: Rowman & Littlefield, 2015). Sweeping changes were required during the 13 years the system was under court monitoring as a result of the *Farrell* lawsuit. However, many believe the state still has an outdated prison model that no amount of effort will fully transform. Those changes do include, however, evidence-based programming that has not yet been evaluated as to its effectiveness in the DJJ setting. It is also important to note that most youth incarcerated in California are not incarcerated in these state facilities, but instead held in local facilities. This report is based on the knowledge that although the state DJJ facilities have many serious problems, they are nevertheless better for transition-age youth age 18 to 25 than adult prisons.

⁴ “Juvenile Arrest Rates by Offense, Sex, and Race (1980-2010),” Office of Juvenile Justice and Delinquency Prevention, National Center for Juvenile Justice December 2012, www.ojjdp.gov/ojstatbb/crime/excel/jar_2010.xls (accessed July 31, 2018). See also Barry Feld, “Legislative Exclusion of Offenses from Juvenile Court Jurisdiction,” 2000, p. 11 (“juvenile arrests for violent crime increased sixty-two percent from 1988 to 1994.”).

⁵ John J. Dilulio, Jr., “My Black Crime Problem, and Ours,” *City Journal*, Spring 1996, http://www.city-journal.org/html/6_2_my_black.html (accessed July 31, 2018); Kevin M. Drakulich, “The hidden role of racial bias in support for policies related to inequality and crime,” *Punishment & Society*, vol. 17, no. 5, December 1, 2015, pp. 541-574; Bob Greene, “‘Superpredators’ May Be Just the Beginning,” *Chicago Tribune*, December 27, 1995, http://articles.chicagotribune.com/1995-12-27/features/9512270002_1_superpredators-young-criminals-meanest (accessed July 31, 2018); Christopher Reed, “Natural Born Teen Killers Plague US,” *The Guardian Foreign*, August 22, 1996; George Will, “‘187’: in-your-face look at a society run amok,” *Chicago Sun-Times*, August 10, 1997.

⁶ See Elizabeth S. Scott and Laurence Steinberg, *Rethinking Juvenile Justice* (Cambridge: Harvard University Press, 2008), p. 107.

⁷ William J. Bennett, John J. Dilulio Jr., and John P. Walters, *Body Count: Moral Poverty ...and How to Win America’s War Against Crime and Drugs* (New York: Simon & Schuster, 1996); Lori Montgomery, “‘Super-Predator’ – Or Just A Kid With A Gun? – Skyrocketing Number of Teen Killers Brings Debate On Causes,” *Seattle Times*, May 30, 1996, <http://community.seattletimes.nwsources.com/archive/?date=19960530&slug=2331969> (accessed July 31, 2018).

It was in this context that California legislators passed a bill lowering the age at which youth could face adult penalties from 16 to 14.⁸ The predictions of that time period were wildly wrong, though, and crime rates nationwide actually began to fall. This trend continued into the new century, and by 2012 the juvenile violent crime arrest rate hit a 32-year low.⁹ “The impact of the ‘tough on crime laws’ is counter to what people thought,” Fernando Giraldo, the Chief of Probation for Santa Cruz County, with more than 30 years of probation experience and who saw the changes in law, reflects. “Exposing young people to longer terms of incarceration with no support and rehabilitation increases the likelihood of violence. Bringing young people back to the community without the benefit of support and rehabilitation, that is what compromises public safety.”¹⁰

“The impact of the ‘tough on crime laws’ is counter to what people thought. Exposing young people to longer terms of incarceration with no support and rehabilitation increases the likelihood of violence. Bringing young people back to the community without the benefit of support and rehabilitation, that is what compromises public safety.”

Fernando Giraldo, Chief of Probation, Santa Cruz County

A Center for Disease Control study on the effect of transferring youth to the adults system has on future violence came to a similar conclusion: “To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good.”¹¹ Researchers have concluded that the policies and practices that have led to

⁸ A.B. 560, 1994.

⁹ See Jeffrey A. Butts, “Violent Youth Crime in U.S. Falls to New 32-Year Low,” *DataBits*, John Jay College of Criminal Justice Research and Evaluation Center, New York, 2013, <https://johnjayrec.nyc/wp-content/uploads/2014/07/databit201304.pdf> (accessed July 31, 2018). Dilulio himself has acknowledged that his dire predictions were wrong, and now advocates for programs and prevention over incarceration. See Elizabeth Becker, “As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets,” *New York Times*, February 9, 2001, <http://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html> (accessed July 31, 2018).

¹⁰ W. Haywood Burns Institute interview with Fernando Giraldo, Santa Cruz County Probation Chief, May 17, 2018.

¹¹ Robert Hahn et al., “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 Preventive Services,” Department of Health and Human Services, Centers for Disease Control and Prevention, November 2007, <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm> (accessed July 31, 2018), p. 9.

increased incarceration do not lead to less violent crime.”¹² The law, however, remains, and its use over the last two decades has caused extensive damage to individual youth, their families, their communities, and public safety.

How Youth are Transferred to Adult Court

California law gives district attorneys the authority to file a motion to transfer to adult court any 14- or 15-year-old accused of a serious offense, which include the most serious of crimes, homicide, but also include some nonviolent drug offenses.¹³ Upon the motion of a district attorney, a judge holds a hearing to determine whether a youth should remain in the juvenile justice system or have the case transferred to adult court.¹⁴ When a youth’s case is transferred, the youth is treated as if he or she is an adult: all adult court laws and procedures apply.



In California, 14- and 15-year-olds can be tried in adult court and face adult punishments, including life in prison. © Richard Ross

Justice by Geography

The rate at which youth in California age 15 and younger face adult court prosecution varies dramatically by county.¹⁵ As the graph below illustrates, youth in California face vastly

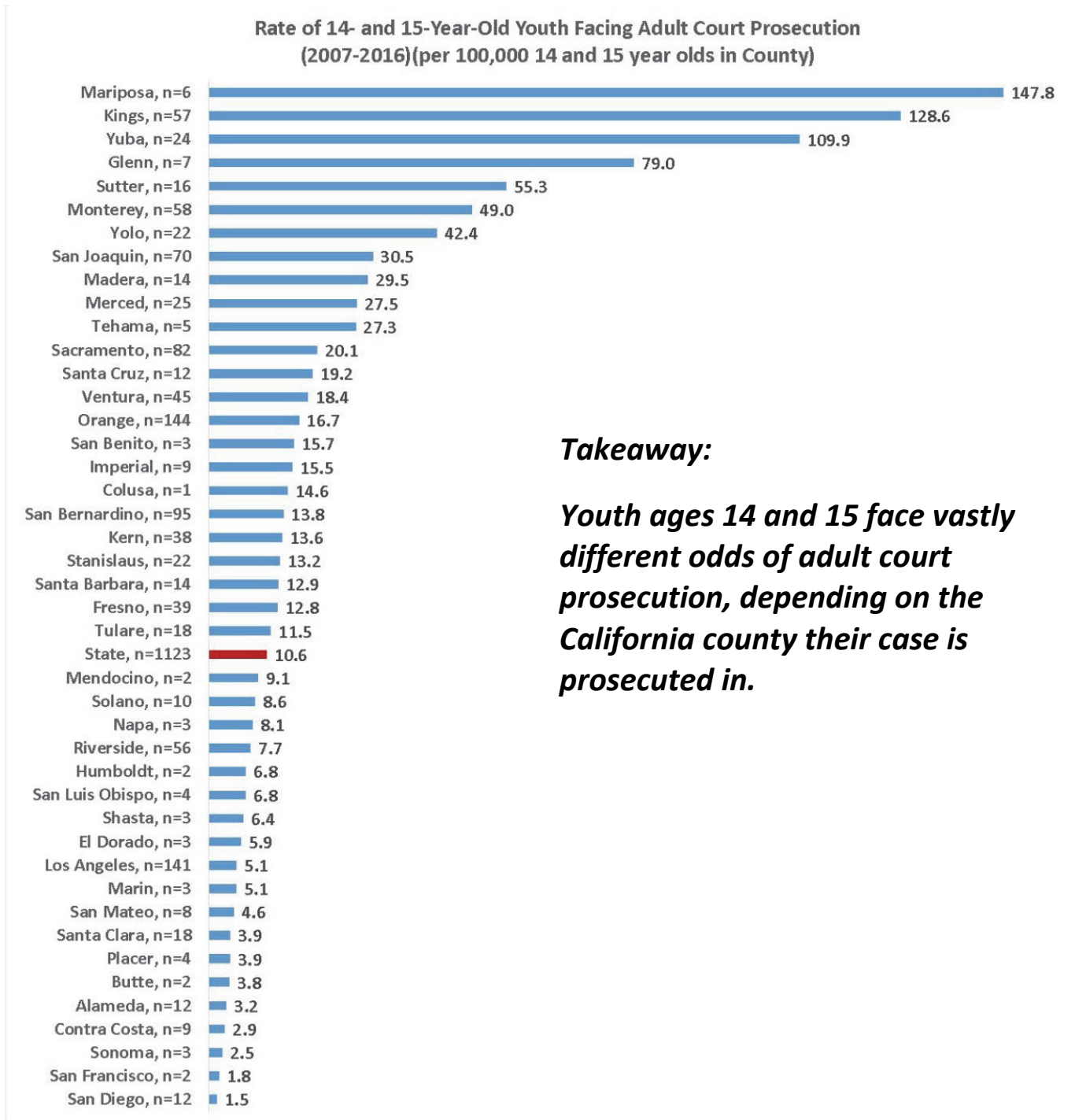
¹² In fact, increased incarceration at today’s levels has a negligible crime control benefit. See Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling, *What Caused the Crime Decline?* Brennan Center for Justice at NYU School of Law, 2015, pp. 7-8, 22.

¹³ Welf. & Inst. Code § 707(a)(1). The crimes for which a 14- or 15-year-old may be transferred to adult court are listed in the Welf. & Inst. Code § 707(b).

¹⁴ Welf. & Inst. Code § 707(a)(2).

¹⁵ Office of the Attorney General, *California Department of Justice* (DOJ), (2017). Direct file and transfer hearing statistics, by county, race, ethnicity, gender, age, offense, and transfer hearing result [data set], Sacramento, California, Department of Justice. Provided by special request, on file with the authors.

different odds of being prosecuted in adult court simply because of where they were accused of committing a crime.



Takeaway:

Youth ages 14 and 15 face vastly different odds of adult court prosecution, depending on the California county their case is prosecuted in.

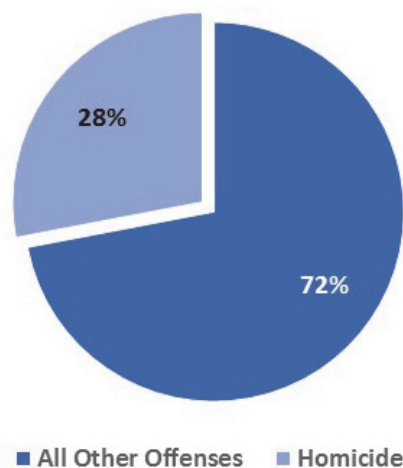
n= number of 14 and 15-year-olds who were either directly filed in adult court or had a transfer hearing.

Offenses Contributing to Adult Court Prosecution of Youth Age 15 and Younger

In California, the vast majority of youth subject to adult court prosecution (72 percent) are accused of offenses such as burglary, robbery, and assault, according to statewide statistics. Homicide charges account for only 28 percent of the cases.¹⁶ The research reflects what Santa Clara County Chief of Probation Laura Garnette sees in her county: “(m)ore often than not, these young kids got wrapped up in a bad situation, and often times, adults are involved. The kids are vulnerable and end up taking the heat.”¹⁷

“More often than not, these young kids got wrapped up in a bad situation, and often times, adults are involved. The kids are vulnerable and end up taking the heat.”

Laura Garnette, Chief of Probation, Santa Clara County



From 2007-2016, a total of 1,123 14- and 15-year-olds faced adult court prosecution. Of them, 803 or 72 percent, were referred for offenses other than homicide.

¹⁶ Ibid. Other offenses for which 14- or 15-year-olds were prosecuted as adults from 2007-2016 include: Robbery (24 percent), Assault (18 percent), Other Felonies (6 percent), Assault and Battery (3 percent), Burglary (3 percent), Weapons (2 percent), Kidnapping (2 percent), Lewd or Lascivious Behavior (2 percent), Other Misdemeanor (2 percent), or Other Status Offenses (2 percent).

¹⁷ W. Haywood Burns Institute interview with Laura Garnette, Chief of Probation, Santa Clara County, July 6, 2018.

The Transfer Hearing Process Itself May be Harmful to Youth



Daniel Mendoza is 14 in this photo, the age when he faced being tried as an adult and sentenced to life in prison. Instead, he was kept in the juvenile justice system.

© 2009 Private

While not all youth who are subject to a transfer hearing are ultimately transferred, the hearing process itself may be harmful to youth. Daniel Mendoza remembers: “Every time I went to court I listened to people talk about me. The DA said I was “incorrigible.” They said I was “hardened criminal” and that my behavior stemmed from being a “bad” kid. I was 14, and I barely knew the definition of the words they used to describe me. But the meaning was clear...I listened. I took it in. There was at least part of me that believed them.”¹⁸

In addition, months can pass before the conclusion of a

case.¹⁹ While the transfer hearing is pending, youth are usually incarcerated in local county juvenile halls which are designed to be temporary holding facilities, and while they have education and some services, they typically do not have case-planning for programming, treatment, and educational services intended for long-term incarceration. With youth spending many months (and sometimes years) incarcerated in such facilities

“Every time I went to court I listened to people talk about me. The DA said I was “incorrigible...” I was 14, and I barely knew the definition of the words they used to describe me. But the meaning was clear... I listened. I took it in. There was at least part of me that believed them.”

Daniel Mendoza

¹⁸ Human Rights Watch telephone interview with Daniel Mendoza, April 26, 2018, Davis, California.

¹⁹ For example, based on an analysis conducted by Santa Clara County from 2015-2016, the average time a youth is held in juvenile hall while awaiting a transfer hearing is 170 days. “Santa Clara County Transfer Hearing Analysis: Case Processing Time,” W. Haywood Burns Institute, Oakland, (February 2017, <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=7955&Inline=True> (accessed July 31, 2018), p. 17.

pending the outcome of the transfer decision, the state misses key opportunities to provide the services and rehabilitation available in the juvenile system.



While not all youth who are subject to a transfer hearing are ultimately transferred, the hearing process itself may be harmful to them. © Richard Ross

Prosecuting 14- and 15-year-olds in Adult Court Has Weakened, Not Enhanced, Public Safety

Prosecuting 14- and 15-year-olds as adults is harmful from a public safety perspective. Compared to youth transferred to adult court, youth who are kept in the juvenile justice system are less likely to commit new crimes in the future.²⁰ Decades of research concludes that punishing youth, including 14- and 15-year-olds, as adults does not reduce future crime.²¹

A study by the Centers for Disease Control found that “evidence indicates that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth” after they have been released.²² A Department of Justice analysis of all existing studies conducted on youth transferred as of 2010 determined that rates of recidivism were higher among juveniles who were tried in adult courts than among those kept in the juvenile system, particularly in the case of those convicted of violent crimes.²³ In fact, one large-scale study found the recidivism rate for youth tried in adult court for violent offenses was 100 percent greater than for those tried in juvenile court.²⁴ The Department of Justice report concluded that transfer “does not engender community protection,” but instead “substantially increases recidivism.”²⁵

²⁰Robert Hahn et al., pp. 6-9.

²¹ Ibid. In fact, the threat of a more severe punishment, like adult sentences, do not deter criminal behavior: “the power of deterrence in serious adolescent offenders appears to rest in the perceptions of the certainty, not the severity, of the punishment for criminal involvement...[The]severity [of sanctions] will do little to change behavior.” Edward P. Mulvey, Carol A. Schubert, Alex Piquero, *Pathways to Desistance—Final Technical Report*, Document No. 244689 (research report submitted to the United States Department of Justice) January 2014, <https://www.ncjrs.gov/pdffiles1/nij/grants/244689.pdf> (accessed July 31, 2018), p. 13.

²² Robert Hahn et al., p. 1; see also Kristin Johnson, Lonn Lanza-Kaduce, and Jennifer Woolard, “Disregarding Graduated Treatment: Why Transfer Aggravates Recidivism,” *Crime & Delinquency*, vol. 57, no. 5, September 2011.

²³ Richard Redding, “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?” *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, June 2010, <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf> (accessed June 26, 2018), p. 2.

²⁴ Ibid. p. 6.

²⁵ Ibid. p. 6.

Researchers have suggested a number of reasons for the higher recidivism rates of youth convicted of violent offenses in adult court as compared to their peers who are adjudicated of violent offenses in juvenile court. They include: a sense of resentment and injustice youth often feel about being tried and punished as adults; the adult system's lesser focus on rehabilitation and family support as compared to the juvenile system; youth absorbing criminal behavior while incarcerated; the stigmatization and other negative effects of labeling youth as felons, loss of civil rights and privileges, and the difficulty in obtaining employment.²⁶

“To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that [transfer policies] do more harm than good.”

**Department of Health and
Human Services,
Centers for Disease
Control and Prevention**

²⁶ Redding, pp. 7-8, provides an excellent summary of research on why juveniles tried as adults have higher recidivism rates.

Youth of Color Bear the Brunt of Adult Court Prosecution

The erroneous perception of youth of color as inherently more violent and deserving of harsher punishment was a hallmark of the “super-predator” era, and its legacy persists.²⁷ Substantial and pervasive racial and ethnic disparities plague the prosecution of 14- and 15- year-olds as adults across the country.²⁸ In California, Black and Latino youth are significantly more likely than white youth to face adult court prosecution.²⁹ For every one white youth facing adult court prosecution, there are more than 11 Black youth and nearly five Latino youth. Put another way, Black youth are more than 11 times as likely and Latino youth nearly five times as likely to face adult court prosecution.³⁰ Importantly, young youth of color are more likely to face adult court prosecution than white youth, even when controlling for their alleged offense.³¹

Transfer hearings do not mitigate the disparities. All youth subject to transfer hearings come into the courtroom with the same types of offenses. But, youth of color have very different outcomes. Data shows that when young white youth have a transfer hearing, it is unlikely they will be transferred to adult court. For every 10 white youth age 15 and younger with a transfer hearing, one is transferred to adult court. On the other hand, young youth of

²⁷ Tamar R. Birkhead, The Racialization of Juvenile Justice and the Role of the Defense Attorney,” *Boston College Law Review*, vol. 58 no. 2, 2017, pp. 380-461, <https://lawdigitalcommons.bc.edu/bclr/vol58/iss2/2/> (accessed July 31, 2018).

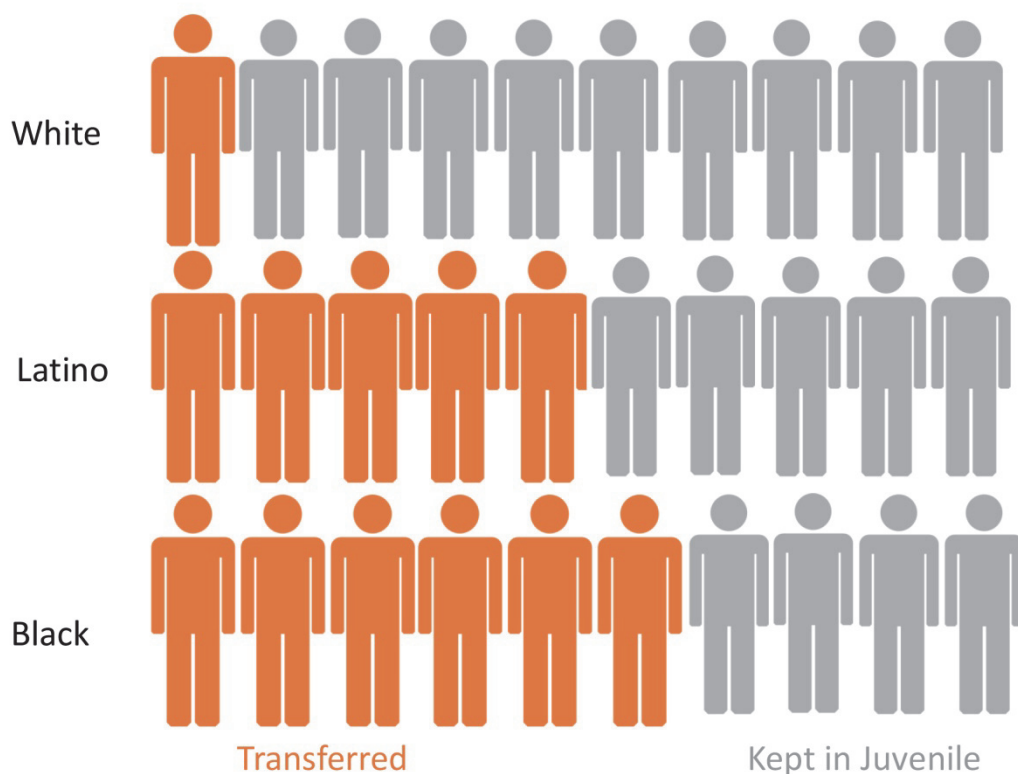
²⁸ Charles Puzzanchera and Sarah Hockenberry, “National Disproportionate Minority Contact Databook,” *National Center for Juvenile Justice, Office of Juvenile Justice and Delinquency Prevention*, [n.d.], <http://www.ojjdp.gov/ojstatbb/dmcd/b/> (accessed July 31, 2018); Joe M. Brown and Jon R. Sorensen, “Race, Ethnicity, Gender, and Waiver to Adult Court,” *Journal of Ethnicity in Criminal Justice*, vol. 11, July 2013, pp. 181-195.

²⁹ Department of Justice (DOJ), comprising juvenile court petition, direct file and transfer hearing statistics by county, race, ethnicity, gender, age, offense, and transfer hearing result for the 2003-2016 period. Data referenced include all youth ages 14- and 15- years old who were either directly filed or had a transfer hearing in California state from 2007-2016. On November 8, 2016, California voters passed Proposition 57, “The Public Safety and Rehabilitation Act of 2016,” which removed the District Attorney’s power to directly file youth in adult court. Now, the DA must file a petition for a “transfer” hearing (previously called a “fitness” hearing). During the transfer hearing, a Judge will ultimately decide whether the youth should remain in the juvenile justice system or be transferred to adult court. Since Proposition 57 was not passed until 2016, this report includes data on 14- and 15-year-olds who were directly filed in adult court. See Appendix A for a breakdown of cases directly filed and transferred.

³⁰ Ibid.

³¹ Ibid. The three most frequent offenses for which 14- and 15- year old youth face adult court prosecution are homicide, robbery and assault. The overwhelming majority of youth accused of robbery and assault have their cases filed in juvenile court from the outset (98 percent of youth accused of robbery and 99 percent of youth accused of assault). But youth of color face greater odds of facing adult court prosecution. Black youth are almost twice as likely as white youth to face adult court prosecution for robbery and assault charges, and Latino youth are nearly four times as likely. The same is true for the most serious offense for which a youth faces prosecution: homicide. Whereas 41 percent of white youth accused of homicide face adult court prosecution, 48 percent of Black youth and 55 percent of Latino youth do.

Odds of Transfer to Adult Court (2007-2016)



See Appendix A for more information.

color who have a transfer hearing are much more likely to be transferred. For every 10 Latino youth age 15 and younger with a transfer hearing, five are transferred, and for every 10 Black youth, six are transferred.³²

Recent research indicates that people in the United States perceive childhood differently for youth of color than for white youth.³³ In one study, police officers were shown a photo

³² Ibid. For older youth who have transfer hearings, there is still a greater likelihood of transfer for youth of color, but the difference is not as stark as with 14- and 15-year-olds. Of the 290 white youth 16 years and older who had a transfer hearing from 2007-2016, 154 (53 percent) were transferred. Of the 663 Black youth 16 years and older who had a transfer hearing, 501 (75 percent) were transferred. Of the 1551 Latino youth, 1219 (79 percent) were transferred.

³³ Phillip Atiba Goff, "The essence of innocence: Consequences of dehumanizing Black children." *Journal of Personality and Social Psychology*, vol. 106, 2014, pp. 526 – 545; Rebecca Epstein, Jamilia J. Blake, and Thalia Gonzalez, *Girlhood Interrupted: The Erasure of Black Girls' Childhood* (Washington DC: Center on Poverty and Inequality, Georgetown Law, 2017),

of a youth—Black, white, or Latino—and were provided a description of the crime that the youth committed. Then, they were asked questions about how old they thought the child was and how responsible they felt the child was for his actions. When told the youth committed a felony, officers overestimated the age of Black youth by 4.5 years and of Latino youth by 2.3 years, but actually underestimated the age of white youth.³⁴ The officers consistently described youth of color as less child-like and more culpable than their white counterparts.³⁵ Such factors provide context for the racial and ethnic disparities in transfers to adult court. It is possible that those involved in the transfer decision-making process—district attorneys, lawyers, judges, probation officers—may similarly perceive a white youth as a younger child than he or she is and reject the notion that the youth should be subjected to adult court prosecution. Conversely, a Black young person may be seen as older, more culpable, and therefore more deserving of harsh punishment.

<https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf> (accessed July 31, 2018).

³⁴ Phillip Atiba Goff, "The essence of innocence: Consequences of dehumanizing Black children." *Journal of Personality and Social Psychology*, vol. 106, 2014, pp. 526-545.

³⁵ Ibid.

The Juvenile Justice System is Designed for Youth



Unlike adult prison, the state's juvenile prison facilities provide each youth with a comprehensive education program and services tailored to address the issues that landed them in custody. Here young men participate in a group therapy session.

© 2007 Steve Yeater/AP Images

In 1995 when California changed its law and began prosecuting 14- and 15-year olds as adults, neuroscientific research on adolescent brain development was nascent. Since that time, new methods have spurred significant investigation. Today, it is widely accepted that youth continue neurological development through young adulthood, and do not achieve full brain development in the area needed for decision-making and self-control until their mid-20s.³⁶

Neurological studies have established that the frontal lobe, which is responsible for executive function, appreciating risks, controlling impulsivity, and resisting peer influences, is underdeveloped in teenagers, especially young teens.³⁷ Fourteen- and 15-year-olds are biologically more like 12- and 13-year-olds than 16- and 17-year-olds in terms of brain development and executive

³⁶ Alexandra Sifferlin, "Why Teenage Brains Are So Hard to Understand," *Time*, September 8, 2017, <http://time.com/4929170/inside-teen-teenage-brain/> (accessed July 31, 2018).

³⁷ Laurence Steinberg et al., "Age Differences in Future Orientation and Delay Discounting," *Child Development*, vol. 80, no. 1, 2009, pp. 28-44; Laurence Steinberg et al., "Age Differences in Sensation-Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model," *Developmental Psychology* vol. 44, no. 6, 2008, pp. 1764-78; Laurence Steinberg and Katherine Monahan, "Age Differences in Resistance to Peer Influence," *Developmental Psychology*, vol. 43, no. 6, 2007, pp. 1531-43.

functions.³⁸ While there is no bright line between 15 and 16, research has concluded that young teens cannot reason as well as older youth and adults, nor do they have the same skills to remove themselves from potentially dangerous situations, especially those involving peers.³⁹ Recent US Supreme Court decisions acknowledge the developmental differences between children and adults; observe that youth have “diminished culpability” as compared to adults; and recognize that when given appropriate supports, youth have greater capacity for change.⁴⁰

The juvenile justice system is designed to address the needs of youth by offering age-appropriate support and rehabilitative services. It is a system that philosophically recognizes that youth have a unique capacity for change and growth. It is also a system that was designed to address the needs of youth who commit serious crimes. Santa Cruz County Probation Chief Fernando Giraldo explains,

“As chief of probation, working with young people accused of serious crimes is my job. That’s our whole focus. We have the responsibility, the tools, the training and the expertise. I am confident in the capacity and resources of the juvenile justice system. It’s why I am proud to do my job.”⁴¹

Fourteen- and 15-year-olds are biologically more like 12- and 13-year-olds than 16- and 17-year-olds in terms of brain development and executive functions.

³⁸ Ibid.

³⁹ There are significant developmental differences between 14- and 15-year-olds and 16- and 17-year-olds. Normal adolescent development means that youth 15 and younger are developmentally behind older youth: they are more vulnerable to risky behavior, less able to control their impulses, have a lesser ability to understand risk, or think about the future and anticipate consequences of decisions. These are abilities that grow over time. Research has shown that general cognitive abilities typically are not mature until age 16. See, Laurence Steinberg et al., “Age Differences in Future Orientation and Delay Discounting,” *Child Development*, vol. 80, no. 1, 2009, pp. 28-44; Laurence Steinberg et al., “Age Differences in Sensation-Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model,” *Developmental Psychology*, vol. 44, no. 6, 2008, pp. 1764-78; Thomas Grisso et al., “Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants,” *Law and Human Behavior*, no. 27, 2003, p. 333.

⁴⁰ *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2397 (2011) (“A child’s age is far ‘more than a chronological fact.’ *Eddings v. Oklahoma*, 455 U.S. 104, 115 [(1982)]. It is a fact that ‘generates common-sense conclusions about behavior and perception,’ [Yarborough v.] *Alvarado*, 541 U.S. [652, 667 (2004)], that apply broadly to children as a class.”); *Graham v. Florida*, 130 S. Ct. 2011 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); see also Tamar R. Birkhead, *Juvenile Justice Reform* 2.0, 20 J.L. & POL’Y 15 (2011); Marsha Levick, “Kids Really Are Different: Looking Past *Graham v. Florida*,” *Criminal Law Reporter*, 2010, pp. 2-3. (“Kennedy’s opinion in *Graham* is an expansive statement about the limitations under the Constitution of applying adult sentencing principles and practices to juvenile offenders whose personal and developmental attributes remain sharply distinct from their adult counterparts.”)

⁴¹ W. Haywood Burns Institute interview with Fernando Giraldo, Santa Cruz County Probation Chief, May 17, 2018.

In the youth justice system, young people are required to receive the same education services provided to all children in the state, as well as required to participate in individualized services to address behavioral health, disabilities, trauma, and other needs. In contrast, youth who are sent to adult prison are not provided with age-appropriate treatment and education, and usually have to wait years before having access to important treatment and educational opportunities. The rehabilitative services available in the adult criminal justice system pale in comparison to what is offered to youth in the juvenile justice system. The authors of *Reforming Juvenile Justice: A Developmental Approach*, published by the National Research Council note: “In comparison to juvenile facilities in many states, most prisons have few educational, vocational, or therapeutic programs and generally are unlikely to provide the opportunity structures needed for healthy psychological and social maturation during this critical developmental stage.”⁴²

For youth accused of serious crimes, the state’s Division of Juvenile Justice (DJJ) provides various evidence-based and therapeutic services that are geared toward changing the direction of young people’s lives.⁴³ Importantly, after being subject to litigation and a consent decree with far-reaching remedial requirements, DJJ made substantial improvements to the type of rehabilitative services available to youth and tailors these services to the youths’ specific needs.⁴⁴ According to DJJ Director Chuck Supple, “(a)ction steps individually tailored to address areas of risk form the basis of a youth’s case plan, and progress is incentivized through the behavioral management system.”⁴⁵

Juvenile justice advocates and experts recognize that alternatives to incarceration best meet youths’ developmental needs and that DJJ still requires improvements, but the recent improvements cannot be ignored. “As someone who was formerly incarcerated at DJJ and

⁴² Richard Bonnie et al., eds., *Reforming Juvenile Justice: A Developmental Approach* (Washington DC: The National Academies Press, 2013), p. 135; California Rehabilitation Oversight Board, “C-ROB, September 2017, C-ROB Report,” Office of the Inspector General, State of California, 2017, https://www.oig.ca.gov/media/crob/reports/C-ROB_Annual_Report_September_15_2017.pdf (accessed July 31, 2018).

⁴³ Welf. & Inst. Code § 731 (a) refers to the youth prison system as the “Division of Juvenile Facilities” and abbreviates it “DJF.” The California Department of Corrections website and California Rules of Court, rule 5.805 refer to the youth prison system as the “Division of Juvenile Justice” and abbreviate it “DJJ.” The abbreviations DJJ and DJF are frequently used interchangeably.

⁴⁴ Consent Decree at 1, *Farrell v. Allen*, no. RG 03079344 (Cal. Super. Ct., Alameda Cnty. July 28, 2004), http://www.cdcr.ca.gov/juvenile_justice/docs/ConsentDecree.pdf (accessed July 31, 2018).

⁴⁵ Human Rights Watch email from Chuck Supple, Director, Division of Juvenile Justice, July 17, 2018.

now an expert witness in cases where youth are subject to DJJ, I believe that incarceration should always be the last resort,” said Frankie Guzman, director of Youth Justice Initiative at National Center for Youth Law. “But DJJ has come a long way and is a far better place to get an education and treatment than prison. DJJ’s programs are tailored to address the unique needs of youth who commit serious crimes. That is not something available in adult prison.”⁴⁶

“As someone who was formerly incarcerated at DJJ and now an expert witness in cases where youth are subject to DJJ, I believe that incarceration should always be the last resort. But DJJ has come a long way and is a far better place to get an education and treatment than prison.”

**Frankie Guzman,
Director of Youth
Justice Initiative at
National Center for
Youth Law**



Frankie Guzman is 15 in this photo, the same age he was when he committed a crime for which he could have been tried as an adult. Kept in the juvenile system, when released he enrolled in college, ultimately graduating from University of California Berkeley with a bachelor’s degree in English and University of California Los Angeles with a law degree. Recipient of the prestigious Soros Justice Fellowship, he now is a nationally respected advocate on youth justice issues. © 1996 Private

⁴⁶ W. Haywood Burns Institute email correspondence from Frankie Guzman, California Youth Justice Initiative Director, National Center for Youth Law, July 18, 2018.



“It’s not summer camp,” said Miguel, who spent several years locked up at the Division of Juvenile Justice. “It felt like prison to me.” Here youth line up at a state juvenile prison facility.

© 2007 Steve Yeater/AP Images

Whether at the state DJJ level or at local county juvenile halls, ranches, or camps, there are many flaws with facilities and programs, and an over-reliance on incarceration generally. However, the correct way to address these issues is to resolve the problems and focus future attention on evidence-based responses to youth in conflict with the law. Sending youth to the adult system is not the answer. Youth committed to the Division of Juvenile Justice can be held until they are 25 years old, meaning youth accused of crimes at age 14 or 15 would have 10 or 11 years to benefit from the age-appropriate rehabilitative and educational services offered by DJJ. “I know all young people have the potential to change. They just need what I got,” said Daniel Mendoza who was 14 when involved in a murder. He faced adult court prosecution and a life sentence, but a rare turn of events allowed his case to remain in the juvenile system. “The juvenile system held me accountable for my actions. I learned—really learned—what I did wrong and why. And, at the same time the juvenile system gave me opportunities that were integral to growth.” Daniel attributes his time in the juvenile system to fostering his love for education. When he got out, he

“The kids facing these dire consequences made a split-second decision. It’s not the culmination of who they are or what they can become. And we’re never going to help them heal and grow if we don’t understand that.”

Laura Garnette, Chief of Probation, Santa Clara County

enrolled in college and will graduate in the fall with a bachelors’ degree in sociology from the University of California at Davis.⁴⁷ “It was unfortunate but fortunate to have been in DJJ. I know that contradicts itself but to me it was unfortunate that I had to go through the path of gangs, drugs, and animosity...to land in DJJ,” Oscar Canales said in explaining his perspective. “[But] I was very fortunate to [be in the] various programs offered there, with its mandated groups and mandated school, I completed...goals for my future. I am now a full-time student and I am pursuing higher education.”⁴⁸

Santa Clara County Probation Chief Laura Garnette underscored the need to focus on youths’ potential with education and services, “(t)he kids facing these dire consequences made a split-second decision. It’s not the culmination of who they are or what they can become. And we’re never going to help them heal and grow if we don’t understand that.”⁴⁹

One reason that the services available in the juvenile justice system are so important is that teens and young adults are in a formative developmental stage of life. This is a period in which they are especially affected by the people surrounding them—for better or worse.

Anouthinh “Choy” Pangthong was 14 at the time of a crime for which he was tried as an adult and changed the direction of his life in prison after 10 years of gang-involvement in prison. “I wasn’t mentally strong enough to stand on my own as a [young person] in prison,” he said, and described being negatively influenced to do the wrong instead of the

⁴⁷ Human Rights Watch telephone interview with Daniel Mendoza, April 26, 2018, Davis, California.

⁴⁸ Letter to Human Rights Watch from Oscar Canales, July 8, 2018. Oscar was 15 when he committed a crime and was facing a 32-year sentence adult court. Instead, he was kept in the juvenile system.

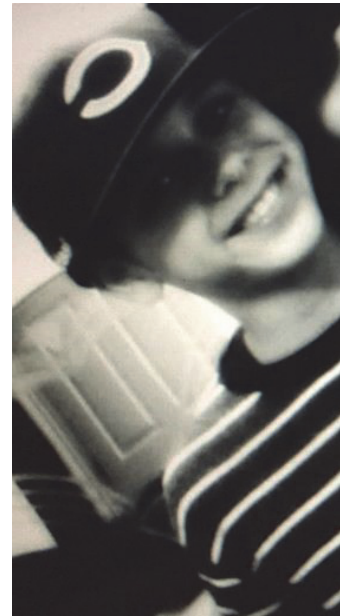
⁴⁹ W. Haywood Burns Institute interview with Laura Garnette, Chief of Probation, Santa Clara County, July 6, 2018.

right things in prison. “If I was kept in the juvenile system, the opportunity for change would've been present much sooner in my life.”⁵⁰

Robert Garcia was 16 at the time of his crime, but the psychiatrist’s report to court described him as “very naïve and immature,” with the mental and emotional development of an eight- or nine-year-old.⁵¹ Nevertheless, the juvenile court judge transferred Robert to adult court where he was ultimately sentenced to 25-to-life. He remembers his experience:

I got just a glimpse of what [the services and treatment of the juvenile system] could have meant in my life because I was held in juvenile hall pending the outcome of my case...I was treated as a kid with problems, problems that had solutions. It felt like my life was turning around. But then I was sent to adult prison.⁵²

Many youth in conflict with the law have experienced abuse, neglect, and trauma that research has shown can alter a child or youth’s physical, emotional, and intellectual development, and ultimately, their behavior.⁵³ This can leave them especially vulnerable to negative influences in adult prison and especially in need of services that they can better access in the juvenile justice system. According to a multi-state study by the National Center for Mental Health and Juvenile Justice, 70 percent of youth in the juvenile justice system have at least one mental health disorder, compared to 20 percent of youth in the community.⁵⁴ Of those youth diagnosed



Oscar Canales was 14 in this photo and 15 at the time of a crime for which he faced being tried as an adult. Instead, he was kept in the juvenile system. He was recently released and will start college in the fall. © Private

⁵⁰ Human Rights Watch email correspondence with Anouthinh “Choy” Pangthong, who spent 22 years in California State prisons, July 9, 2018.

⁵¹ Psychiatrist’s report to court on file with the authors.

⁵² Testimony of Robert Garcia before the California State Senate Public Safety Committee, May 12, 2015.

⁵³ Development Services Group, Inc., “Intersection Between Mental Health and the Juvenile Justice System,” (Literature review), Model Programs Guide, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 2017, <https://www.ojjdp.gov/mpg/litreviews/Intersection-Mental-Health-Juvenile-Justice.pdf> (accessed July 31, 2018).

⁵⁴ Linda A. Teplin et al., “Psychiatric Disorders in Youth in Juvenile Detention,” *Archives of General Psychiatry*, vol. 59, 2002, pp. 1133–1143, <https://pdfs.semanticscholar.org/f652/b86407296e7870e993a6e90fb47485821coc.pdf> (accessed July 31, 2018).

with at least one disorder, 60 percent also met the criteria for three or more disorders.⁵⁵ Studies also estimate that approximately 30 percent of detained and incarcerated youth have learning disabilities compared to eight percent of youth in the community.⁵⁶

These national findings are consistent with the experiences shared with Human Rights Watch from persons who were convicted in adult court at the age of 14 or 15. In a survey of more than 100 incarcerated people who were tried as adults and were 14 or 15 years old at the time of their alleged offense, more than half had received special education services before incarceration, earned low or failing grades, or been suspended or expelled two or more times. The majority of respondents indicated that at the time of their arrest they had stopped attending school.⁵⁷

⁵⁵ Kathleen R. Skowrya and Joseph J. Cocozza, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System* (Delmar, New York: National Center for Mental Health and Juvenile Justice Policy Research Associates, Inc., 2007), https://www.ncmhjj.com/wp-content/uploads/2013/07/2007_Blueprint-for-Change-Full-Report.pdf (accessed July 31, 2018).

⁵⁶ Mary K. Evans, Samantha S. Clinkinbeard, and Pete Simi, "Learning Disabilities and Delinquent Behaviors among Adolescents: A Comparison of Those with and without Comorbidity," *Deviant Behavior*, vol. 36, 2014, pp. 200–20; National Council on Disability, *The Civil Rights of Institutionalized Persons Act: Has it Fulfilled Its Promise?* (Washington, DC: National Council on Disability, 2005).

⁵⁷ Responses to Human Rights Watch survey sent to more than 1,000 persons tried as adults prior to 2009 for alleged crimes committed prior to age 18. Respondents included approximately 125 people who were age 14 or 15 at the time of the crimes. Administered in writing, 2009–2011.

“I know all young people have the potential to change. They just need what I got. The juvenile system held me accountable for my actions. I learned—really learned—what I did wrong and why. And, at the same time the juvenile system gave me opportunities that were integral to growth.”

Daniel Mendoza



Daniel Mendoza was 14 and faced a life sentence in the adult system. Instead, he was kept in the juvenile system. Now an adult, next year he will graduate from University of California at Davis. In this 2018 photo, Daniel had just been recognized for his leadership with the Brandon Harrison Youth Leader/Youth Organizer Award. © 2018 Tina Curiel Allen

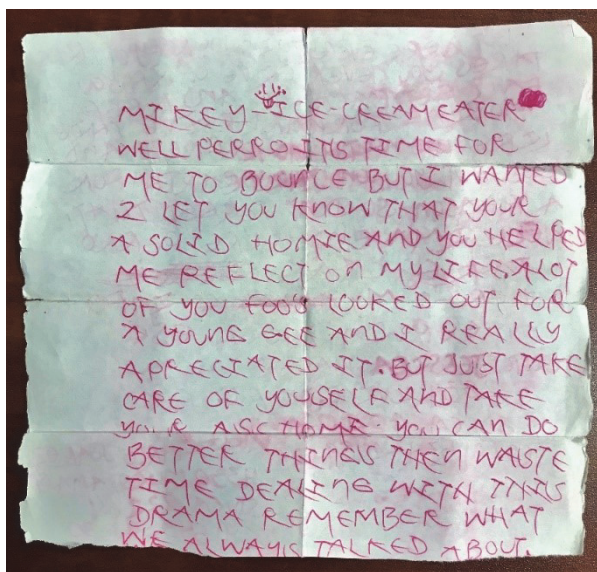
Divided Justice: The Chance Jesse Didn't Get

The paper is well-creased and flattened in a way only achieved by being carried in a wallet for years. Miguel unfolds the pages. "I carry this to remind me that I was lucky." His voice thickens. "I was given a chance he didn't get."

Miguel was 18 the last time he saw 15-year-old Jesse.⁵⁸ They had cells next to each other at the Ventura Youth Correctional Facility. Through the thin wall they talked at night, sharing painful childhoods. Miguel had been arrested at 15, too. Same age, similar crimes. But what awaited them could not be more different. Miguel, sentenced as a juvenile, spent several years in a juvenile facility, getting treatment and counseling. Miguel would be released. Jesse's future was a life sentence in adult prison. He would be held in the juvenile facility only temporarily and then shipped to state prison.

Miguel watched his neighbor spiral into despair. "We had deep conversations. He didn't

know his dad; his mother had been raped. He knew he was going to prison and he didn't have hope. He had a life sentence, and told me, 'Perro, this is going to be the rest of my life.'" Jesse did not participate in programs or counseling, instead choosing the gang. He told Miguel it was what he needed to do to prepare for prison. "I told him, 'You don't have to do this!'" Miguel remembers. "'You're better than this!' But I couldn't convince him." Jesse started getting gang tattoos on his face and joining in gang actions. "He did those things because of the number of

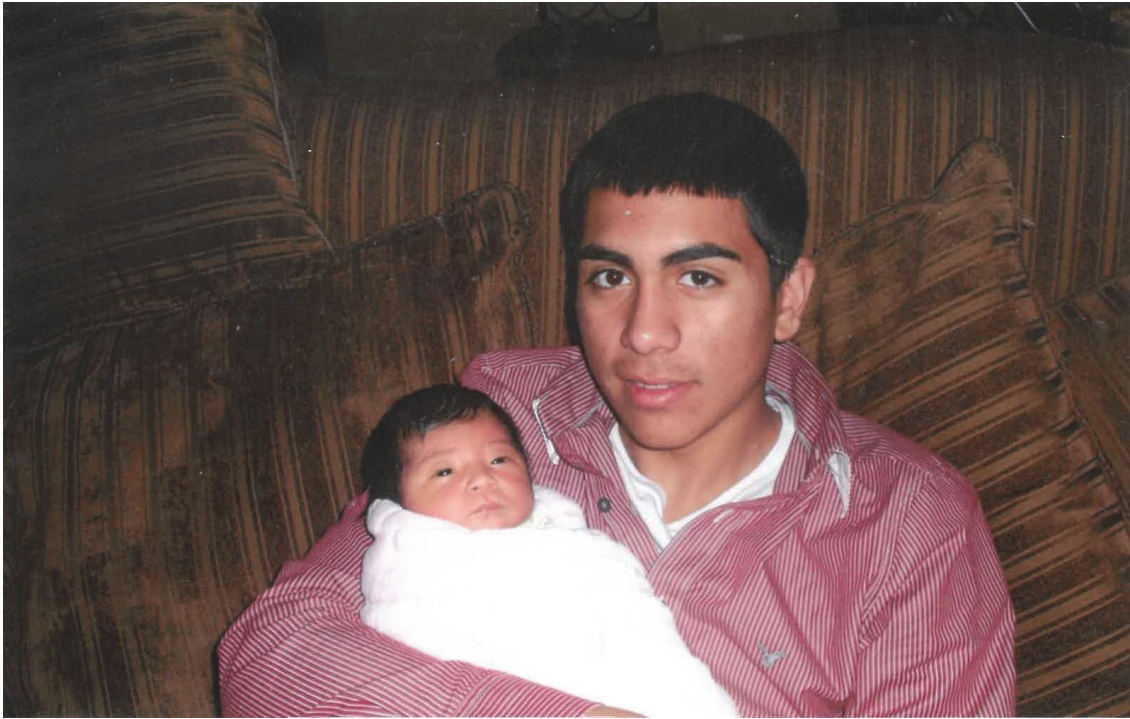


Miguel carries Jesse's letter in his wallet, a reminder that his life could have been very different.

© 2018 Miguel Garcia

⁵⁸ The name Jesse is a pseudonym.

years on his sentence, because...there



"I was scared I'd never go home...I'd miss my newborn niece growing up." Miguel at 15, with his niece in a photo taken approximately one month before his crime. © 2010 Private

was nothing left for him." Miguel came back to his cell one day and found Jesse gone; he had been transferred. Later, he found a letter under his bed where it had been slid through a crack in the wall between their cells.

Three years earlier, at 15, Miguel victimized people and searched for status on the street. He carried a knife. When a brawl broke out, he panicked. He took out his knife hoping to break up the fight, but stabbed someone, and that person almost died. Arrested for attempted murder, an attorney met him in a small cinder block room at juvenile hall; he sat on a metal bench and she stood. "The DA wants to send you to adult court," she told him. "I was like, 'Wait up, I didn't know I could be charged as an adult,'" Miguel remembers. She told him he was facing a life sentence. "I felt sick to my stomach. My heart was racing. My hands clammy." A few minutes later they were in court. "There was a lot of legality. A lot of penal codes being spoken. I had no idea what was going on." Back in juvenile hall it became clear that youth challenging transfer to adult court were in juvenile hall for years. "I was scared I'd never go home...Would I be able to be with my grandmother when she

passed? I'd miss my newborn niece growing up. I started thinking about what happened to



Jesse, arrested at 15 and tried as an adult, remains incarcerated and living in a California State Prison cell similar to this one many years later. © 2017 David Royal/Monterey Herald

people in prison, the movies about people having to clique up with gangs...What would prison mold me into?”

He focused his energy on preparing for prison, starting with being able to defend himself. “I wanted to get bulkier. I worked out in my cell. [I felt like] I needed to be a warrior. I stopped trusting people and started putting out this image of toughness.”

And then, a turning point. His mother took action that is not possible for most families: she cashed in her retirement savings and hired a skilled, dedicated lawyer. He got Miguel a deal: plead guilty, agree to be committed to juvenile prison, and you can stay in the juvenile system. The deal meant being locked up possibly to age 25, but less if he did well. Nevertheless, it meant cells with heavy metal doors. “When I arrived [at DJJ], I was stripped naked, had to squat and cough. I thought, ‘Whoa. I’m not in juvie anymore.’”

“I was shocked, though, because there were programs there that I was actually excited about.” Soon he was over-involved, doing so much that staff advised him to slow down. He also started talking to a counselor. “Throughout my childhood, my father was extremely abusive. Food not hot enough? He’d throw it at my mother. My brother crying? He’d lift him in the air and yell that boys don’t cry. At DJJ I received counseling, and I unpacked my own pain, anger, and sadness. I was mentored. I began to understand how my actions impacted others. I was required to be in school and found I loved it.”

When he was released, Miguel enrolled in community college. While working two and sometimes three jobs, he earned three associate’s degrees with honors. He transferred to University of California at Riverside, and graduated with a bachelor’s degree. He volunteers with at-risk youth, interned with a member of the California State Assembly, and is on the national board of the Coalition for Juvenile Justice. This summer he is working in a policy fellowship. He plans to attend law school.



Miguel graduated from University of California at Riverside in June 2018 with a degree in Political Science. © 2018 Fernando Zacarias

“When I was 15, no one would have guessed I’d be where I am now, but I was lucky, and I got what I needed to become who I am today,” he explained. “But Jesse was no different from me. If he had had that chance, he would have been like me.”

Miguel looks down at the paper again. “Mikey-ice-cream eater,” the letter starts out. “Don’t forget, God put you on this earth for a reason.” Miguel is certain that he does have a purpose in life. He believes Jesse did, too.⁵⁹

⁵⁹ Human Rights Watch telephone interview with Miguel Garcia, July 4, 2018, Fresno, California.

For Youth Sentenced to Adult Prison Terms: “Survival was My Only Priority.”

“I never had felt so hopeless.”

Michael Mendoza, tried as an adult for a crime he committed at 15, remembering the bus ride to prison.

“Prey or predator.” That is how many young people describe their choice entering prison. The assessment is not wrong. Prison yards can be filled with warring gangs and random violence. Young people in prison face the highest rate of sexual victimization: the most recent US Department of Justice data found that nearly 40 percent of the victims of inmate-to-inmate sexual assault are under 25 years

old.⁶⁰ Studies also suggest that youth under 20 experience the highest rates of sexual abuse by staff of any prison age demographic.⁶¹ While California no longer incarcerates youth under age 18 in adult prisons, most 18-year-olds lack the physical and emotional maturity to protect themselves in a prison setting.

For many in prison, violence becomes a daily reality. Fifty-two percent of youth tried as adults who responded to a Human Rights Watch survey reported that they had been physically or sexually assaulted in California prisons.⁶² Ninety-four percent reported they had witnessed violence while in prison, with stabbings the most common form reported. Witnessing violence in prison “affects you deeply,” noted one person. “It’s traumatic.” “It made me realize I might die in prison,” said

⁶⁰ Allen J. Beck, Ramona R. Rantala, and Jessica Rexroat, “Sexual Victimization Reported by Adult Correctional Authorities, 2009-11,” *Special Report*, Bureau of Justice Statistics, Office of Justice Programs, US Department of Justice, January 2014, <https://www.prearesourcecenter.org/sites/default/files/library/sexualvictimizationreportedbycorrectionalauthorities2009-2011.pdf> (accessed July 2, 2018). Other reports have also found that victims consistently tend to be younger than perpetrators. See Pat Kaufman, “Prison Rape: Research Explores Prevalence, Prevention,” *NIJ Journal*, Issue no. 259, National Institute of Justice, March 2008, <https://www.ncjrs.gov/pdffiles1/nij/221505.pdf> (accessed July 2, 2018).

⁶¹ Allen J. Beck et al., “Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09,” Bureau of Justice Statistics, Office of Justice Programs, US Department of Justice, August 2010, <http://www.bjs.gov/content/pub/pdf/svpjrio809.pdf> (accessed July 2, 2018).

⁶² For this question, 295 out of 534 respondents reported that they had themselves been a victim of violence.



Mike Mendoza when he was 15, the same age he was at the time of his crime. He was tried as an adult and sentenced to life in prison. © 1996 Private

another.⁶³ Respondents described themselves eventually becoming numb to violence and having trouble trusting others.

When asked about their experience entering adult prison, the majority of respondents who were 14 or 15 years old at the time of their crimes stated that they felt scared, did not believe it was real, and looked to older incarcerated adults for advice. “I will never forget that bus ride,” Michael Mendoza said. Feet shackled and hands cuffed to a chain around his waist, he was headed to prison to serve a life sentence for a crime he committed at 15. “The older man next to me told me to enjoy the view of the

world for the last time. I never had felt so hopeless. From that moment forward, survival was my only priority.”⁶⁴

Leo C., who had been arrested at age 15 and sentenced to life in prison, described his perspective upon entering prison: “I didn’t understand a lot, and I felt I was a kid around adults. I tried to get along as I tried to understand.”⁶⁵ Robert Garcia remembers entering prison: “I remember vividly that first day [in prison.] I was given a bed roll, a prison uniform, toothbrush, and soap. I struggled to carry it all as I was led to the prison unit where I would be housed. Looking up at tiers of cells, men with big mustaches stared out at me. Men working out, with their shirts off and gang tattoos prominently displayed, looked me over.

⁶³ These percentages are based on Human Rights Watch’s survey of youth under age 18 at the time of a crime for which they were sentenced to adult prison terms in California, in which 505 out of 536 respondents reported that they had been the victim of an assault in prison. Several did not answer the question and wrote that they feared retaliation if they responded.

⁶⁴ Human Rights Watch interview with Michael Mendoza, April 22, 2018, Sacramento, California.

⁶⁵ Human Rights Watch survey response. Leo C. is a pseudonym. He had been in prison for 21 years at the time of this statement in 2009.

“Looking up at tiers of cells, men with big mustaches stared out at me. Men working out, with their shirts off and gang tattoos prominently displayed, looked me over. They seemed big, and I felt really small. One called me over and asked what gang I was with. It was clear: I was small, inexperienced, and without friends in a brutal place.”

Robert Garcia, tried as an adult for a crime he committed at 16, reflecting on his first day in prison

They seemed big, and I felt really small. One called me over and asked what gang I was with. It was clear: I was small, inexperienced, and without friends in a brutal place. I needed protection. I succumbed to those pressures and for nearly 10 years in prison my life spiraled down.”⁶⁶

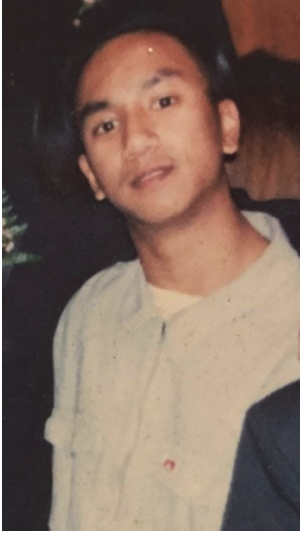
This is not to say that every experience with older prisoners is negative. Many individuals interviewed for this report and in other contexts describe meeting people in prison who were able to offer support despite their surroundings. Individuals were helped in a myriad of ways, from tips on how to avoid trouble, being taught how to shave, or getting a nudge to change direction in life for the better. Many older people in prison take seriously the need to mentor and provide positive role models for

younger people. In several of California’s 34 prisons there are prisoner-initiated mentorship programs.⁶⁷

A law that went in to effect in July 2015 created a new classification process that may help ease entry into prison by diverting certain younger prisoners from maximum security level to lower level prison units, but gangs and violence still exist in lower-level security units and it is too early to know the law’s impact.

⁶⁶ Testimony of Robert Garcia before the California State Senate Public Safety Committee, May 12, 2015.

⁶⁷ For example, the prisoner-led group, “Life Line for Youthful Offenders” at Solano State Prison pairs younger people with an older mentor and provides positive peer support. *Life Line for Youthful Offenders Facilitator/Mentor Handbook*, p. 2, on file with the authors.



Anouthinh “Choy” Pangthong was 15 in this photo, the same age he was at the time of his crime. He was tried as an adult and sentenced to life in prison.
© 1995 Private

Gangs play on fear and strategically target the youngest entering prison. Choy was 14 years old when he committed a crime and was sentenced to life in adult prison. When he entered prison a few years later, he joined a gang for protection and spent the next 10 years gang-involved. “I felt I was thrown into the lion's den to fend for myself. And for over a decade that's what I had to do,” he explained, reflecting back on his choices more than 20 years ago. Antonio M., who was arrested at age 15, tried as an adult and sentenced to a life term, remembers entering prison: “I was scared that I might be raped and beaten. I was influenced into committing violence to other inmates.”⁶⁸

The recruitment pressure can be highly methodical and strategic. “The process, it is not only purposeful, it is diabolical,” says John D., a former gang leader who had

responsibility for recruitment and formation of young members.⁶⁹ Sophisticated recruitment tactics focus on young men who are isolated, John explains, and “the most prized are orphans, you know, young men that don’t have any family, or really any friends...[We would] utilize them for...certain tasks, certain jobs that we needed done.” Jobs like carrying weapons, distributing drugs, and committing assaults and murder. As a recruiter, John said he knew vulnerable youth would be

“You’re at their mercy... you’re told you can’t walk away or else we’ll kill you... [W]hat 18-year-old has a chance? Or even a 19- or 20-year-old? [Y]ou feel like you have no other options other than to cooperate.”

John D., former gang recruiter

⁶⁸ Human Rights Watch survey response. Antonio M. is a pseudonym. He had been in prison for 19 years at the time of this statement in 2009.

⁶⁹ Human Rights Watch interview with John D. (pseudonym), who spent more than two decades in California State prisons, May 2, 2018, Culver City, California.



An 18-year-old moving his belongings into an adult prison. © 2011 Calamari Films

particularly susceptible to manipulation and described his goal as to “brainwash and indoctrinate them into [the gang’s] belief system.”

Gang members with administrative jobs identify a new recruit before he ever walks onto the yard, and when he arrives, the process begins, with weeks of assessment, indoctrination, and being “blanketed” at all waking moments with two or three minders whose presence he cannot leave. “I don’t think there’s an 18-year-old alive that has the sophistication to wiggle his way out...[or] to say, ‘You know what, [I don’t want to be in a gang.]’...It’s a fearful thing, you’ve got everybody there against you, you don’t know anybody, and if you do know someone they’re probably your age and they’ve got no

power.... You're at their mercy...you're told you can't walk away or else we'll kill you.... [W]hat 18-year-old has a chance? Or even a 19- or 20-year-old? [Y]ou feel like you have no other options other than to cooperate.”

Danielle Barcheers, tried as an adult for a crime she committed at 15, described how she turned to the wrong people once in prison. “Many of the women I was surrounded by had lived a lifetime of criminality, were repeat offenders, drug addicts, and alcoholics. These were the role models I chose. I was introduced to heroin, taught how to bring drugs into the prison, and learned how to manipulate...I was becoming criminally sophisticated.” Danielle identified the cycle of violence being played out there: “Older women who grew up in prison, who had been preyed upon when they entered the adult system, were completing the cycle with me.”⁷⁰

Youth sentenced to adult prison terms do not serve their sentence alone. Families with a child who has been tried as an adult and incarcerated undergo emotional and financial hardship with long-term consequences.⁷¹ The direct financial costs are significant: money for legal and court fees, phone calls at inflated rates, commissary accounts, and the time, cost, and coordination required to travel to distant prison facilities.⁷² In a national survey of family members of youth tried as adults, respondents described feelings of hopelessness, shame, and fear regarding their child's incarceration. The lack of communication only serves to heighten the pain family members feel in coping with the separation. The brother of a young person charged as an adult said, “I don't think stress is the right word. I wish there was something stronger than the word stress in my vocabulary because that word don't describe the pain. I'll take stress all day, but pain is when you see your mom breakdown and fall apart... the best way to explain it is heartbreak.”⁷³

⁷⁰ Human Rights Watch interview via email with Danielle Barcheers, who spent 22 years in California State prisons, July 9, 2018, Glendora, California.

⁷¹ Human Impact Partners, “Juvenile Injustice: Charging Youth as Adults is Ineffective, Biased, and Harmful,” February 2017, https://humanimpact.org/wp-content/uploads/HIP_JuvenileInJusticeReport_2017.02.pdf (accessed July 30, 2018).

⁷² Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi, “Who Pays? The True Cost of Incarceration on Families,” a report of the Ella Baker Center, Forward Together, and Research Action Design, September 2015. <https://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf> (accessed July 30, 2018).

⁷³ Human Impact Partners, “Juvenile Injustice,” p. 30.

Conclusion

Just over two decades ago, California began sending 14- and 15-year-olds to adult court. It was a decision made without the benefit of recent research on reducing recidivism or today's scientific knowledge of adolescent development. Prosecuting 14- and 15-year-olds in adult court has had dire effects on the lives of many youth, their families, and communities. As the California Supreme Court stated, the transfer of a youth to adult court is "the worst punishment the juvenile system is empowered to inflict."⁷⁴

The state can change that decision right now by moving forward with a law, SB 1391 that would protect public safety and promote the potential of young people.

⁷⁴ *Ramona R. v. Superior Court*, 37 Cal.3d 802, 810, (1985).

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APPENDIX A

Youth Ages 14 and 15 Years Old Subject to Adult Court Prosecution (2007-2016)

	White	Black	Latino	API	Other	Total
2006-2017 Cumulative Youth Population (14-15 years old)	3,246,685	735,238	5,221,239	1,283,893	60,371	10,547,426
Youth Facing Adult Court Prosecution	94	241	731	42	15	1123
Rate of Youth Facing Adult Court Prosecution	2.9	32.8	14.0	3.3	24.9	10.65
Disparity Gap All Adult Prosecution	1	11.3	4.8	1.1	8.6	
Direct File to Adult Court	49	176	510	37	9	781
Rate of Direct File (per 100,000 youth)	1.5	23.9	9.8	2.9	14.9	7.4
Disparity Gap (times more likely than White) to be Direct Filed		15.9	6.5	1.9	9.9	
Transfer Hearing	45	65	221	5	6	342
Rate of Transfer Hearing (per 100,000 youth)	1.4	8.8	4.2	0.4	9.9	3.2
Disparity Gap (times more likely) to have Transfer Hearing		6.4	3.1	0.3	7.2	
Kept in Juvenile Court after Transfer Hearing	40	25	114	3	4	186
Transferred to Adult Court	5	40	107	2	2	156
Percent Kept in Juvenile	89%	38%	52%	60%	67%	54%
Percent Transferred to Adult Court	11%	62%	48%	40%	33%	46%

FUTURES DENIED

Why California Should Not Prosecute 14- and 15-year-olds as Adults

The decision to try a young person as an adult is undeniably a decision to give up on that youth. Too often California gives up on 14 and 15-year-olds, allowing them to be sent to the adult justice system where they face adult court sentences, including life in prison.

Futures Denied describes the impact of sending youth who are in middle school or early high school to the adult criminal justice system. The report sets forth data showing racial and geographic disparities, includes interviews with juvenile court professionals and young people who have experienced both the juvenile and adult prison systems, and provides an overview of the past two decades of research on the effects of youth being tried in the juvenile versus adult justice system. It shows that California made a mistake when it began trying 14 and 15-year-olds as adults in 1995. California should change this policy and end the prosecution of 14- and 15-year-olds in adult court.



A montage of young people when they were 14 or 15 years old. California tried some of the youth pictured here as adults who then spent decades in prison for a crime committed when 14 or 15, others were kept in the juvenile justice system where they received age-appropriate education and counseling, and some had no contact with the justice system at all. Those pictured are now probation chiefs, lawyers, leaders in restorative justice, county heads of nongovernmental organizations, and among the authors of this report.