

FALLING THROUGH THE CRACKS:

A New Look at Ohio Youth in the Adult Criminal Justice System



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INTRODUCTION

Each year hundreds of youth come into contact with Ohio’s adult court system. On any given night, dozens of children across the state spend the night in Ohio’s adult jails and prisons. Data shows the vast majority of these youth will return to our communities – many in five years or less. However, recent research shows that children face long-lasting harms during their time in the adult system and exit adult court more likely to commit a higher number of offenses, and more serious offenses, than similar youth who are retained in the juvenile justice system.

The United States Supreme Court and many States across the country have taken steps to reduce children’s involvement with the adult criminal justice system. At the same time, research has shed light on how best to work with youth to put them on the right track to become positive, contributing members of society.

Although Ohio has taken a first step toward reducing youths’ contact with the adult criminal justice system, Ohio law still allows many youth to become involved with the adult system. This report focuses on national research and trends regarding youth in the adult system, Ohio’s laws on this issue, and a path forward for Ohio to more effectively respond to youth.

PART 1 RESEARCH AND NATIONAL CONTEXT ON THE EFFECTS OF PLACING YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM

Recent Research on Youth Prosecuted as Adults

Increasingly, research shows that placing children in the adult criminal justice system or in adult facilities, such as jails or prisons, has negative consequences that are both long-lasting and harmful to youth and to the communities to which they return.

Increased Likelihood of Recidivism: Research shows that, on average, youth who are prosecuted as adults are 34% more likely to commit additional felonies than youth who commit similar offenses, but remain in the juvenile justice system.¹ This increase in recidivism is present even if a youth has minimal involvement with the adult court, including youth who receive only community control or probation sanctions; indeed, some studies show that merely *processing* a child in adult court – even if he or she does not receive any adult sanction whatsoever – can increase recidivism.²

This same research also indicates that first-time, violent offenders³ – oftentimes the youth targeted by transfer laws – actually have a greater likelihood to be rehabilitated in the juvenile system than chronic, repeat offenders.⁴

While it is unknown exactly why youth prosecuted as adults recidivate more frequently than youth who are retained in the juvenile justice system, several studies have suggested possible causes, including:

- The *collateral consequences* associated with a felony conviction; research shows that the publicly available adult court records of youth can impose significant, life-long barriers to obtaining employment, housing, and voting rights, which can inhibit the youth’s ability to reintegrate successfully into his or her community.⁵ These barriers – coupled with a lack of education and vocational training in adult facilities – can put youth in adult court even further behind their peers on the path to becoming productive citizens;
- Youth learning about and becoming accustomed to a *criminal environment*; youth in adult prisons “reported that much of their time was spent learning criminal behavior from the inmates and proving how tough they were,” leading researchers to conclude that “incarceration in adult facilities may have brutalizing effects” on youth;⁶ and
- The adult system’s *lack of rehabilitative focus and family support* for youth in adult facilities.

Given these findings, a report by The U.S. Centers for Disease Control and Prevention’s Task Force on Community Preventive Services concluded that transferring youth to the adult system “results in greater subsequent crime, including violent crime, among transferred youth; therefore, transferring juveniles to the adult system is counterproductive as a strategy for preventing or reducing violence.”⁷

Conditions in Adult Facilities: Adult jails and prisons are designed specifically for adults, not youth. As such, many of these facilities are ill-equipped to deal with youth and few have staff specifically trained for dealing with the special needs of youth.

Research shows that youth in adult facilities are:

- *At great risk of physical and sexual assault:* The Bureau of Justice Statistics shows that in 2005 and 2006, youth under the age of 18 were 21 percent and 13 percent (respectively) of all victims of inmate-on-inmate sexual violence in jails, even though youth only made up 1 percent of the jail population.⁸ The National Prison Rape Elimination Commission found that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”⁹ In adult prisons, youth are 5 times more likely to be sexually assaulted and 2 times more likely to be physically attacked by other inmates or injured by staff.¹⁰
- *At a significantly increased risk of suicide:* Youth in adult jails are 36 times more likely to commit suicide than youth housed in juvenile detention facilities¹¹ and youth in adult prisons are 8 times more likely to commit suicide than youth held in a juvenile corrections facility.¹² In addition, youth in adult facilities are less likely to have access to age-appropriate mental health services and mental health staff trained specifically to work with youth.
- *Often unable to access appropriate education services:* Youth in adult jails frequently do not receive educational services, even though they may be eligible for special education services under federal law up to age 22 and may miss a half of a school year or more. Although Ohio school districts are required to provide services for youth in jails, including youth with disabilities entitled to special education, a recent survey of school districts found that well over half (68%) of the 53 school districts who responded did not provide any educational services – including GED classes – to youth in adult jails. If youth do not receive educational services in the jails, they may not be able to make up this time in their home districts if they age out of school eligibility while in jail.
- *Have increased placement in isolation:* If youth are not placed on a juvenile specific unit within a jail, they may be put on isolation for up to 23 hours a day to meet Ohio requirements to keep youth out of reach of adult inmates. This may especially be true in counties that bind over very few children per year. Isolation conditions can cause anxiety, paranoia, and exacerbate existing mental disorders.¹³

The research above shows that adult facilities – particularly jails – struggle with keeping youth safe and providing age-appropriate services, some of which are required by federal law. Though it is often argued that housing youth in adult jails is less expensive compared to juvenile detention centers, any cost analysis must take into account 1) the short-term costs of providing required services to youth in jails, especially when many juvenile detention facilities already provide these services, 2) any potential litigation costs adult facilities may face for harms suffered by youth in these facilities or to come into compliance with providing appropriate programming, and 3) the long-term costs of increased recidivism and collateral consequences for youth housed in these facilities.¹⁴

National Trends Away From The Adultification of Youth in The U.S. Supreme Court and Other States

Across the country, courts and state legislatures are recognizing the harm and the ineffectiveness of transferring youth to adult court, and are shifting away from prosecuting youth as adults.

U.S. Supreme Court: The U.S. Supreme Court has long recognized the dire consequences youth face in adult courts and the need to provide such youth with procedural protections.¹⁵ In the past decade, the Supreme Court has decided a series of cases that recognize the fundamental differences between youth and adults.¹⁶ In these cases, the Court has relied on a growing body of research on adolescent development and neuroscience. The research shows, and the Court has held, that youth are less mature than adults and cannot be as culpable as adults, particularly as key decision-making parts of adolescents’ brains continue to develop into late adolescence and young adulthood.¹⁷

In *Roper*, the Supreme Court abolished the death penalty for all youth under the age of 18 under the Eighth Amendment’s ban on cruel and unusual punishment, finding that “children exhibit ‘a lack of maturity and an underdeveloped sense of responsibility’ that often leads to ‘impetuous and ill-considered actions and decisions.’”¹⁸ The Court also concluded that youth are more “susceptible to negative influences and outside pressures, including peer pressure” and have more potential than adults to change as they grow.¹⁹ Relying on its reasoning in *Roper*, the Court held in *Graham* that youth under the age of 18 could not be sentenced to life without parole in non-homicide cases.²⁰

Just last year in *J.D.B.*, the Court decided that law enforcement officials must take a youth’s age into consideration when determining if a youth understands his or her *Miranda* rights. In *J.D.B.*, the Court noted that although scientific research supports its conclusions regarding differences between children and adults, these differences should be “self-evident to anyone who was a child once himself...” and “commonsense propositions.”²¹

Other States: Across the country, many states are also moving away from prosecuting children in adult court and holding youth in adult facilities.

During the 1990s, much media attention was given to an unfounded fear that a growing wave of American youth were becoming “superpredators” who would drive up violent crime rates.²² However, this wave of superpredator youth never materialized, resulting in the researchers who put forward this theory recanting their original predictions.²³

In the meantime, state legislatures across the country – including Ohio – responded to this fear by revising their juvenile statutes to turn away from rehabilitation and towards a more punitive response, including revisions in state juvenile statutes to make it easier for youth to be tried as adults.²⁴

In the past decade, however, many states have begun relying on current research and turning away from prosecuting youth in adult courts. Since 2005, nearly half of the states have passed or considered legislation moving away from the adultification of youth.²⁵

Four legislative trends have emerged from these states, including laws that:²⁶

- *Remove youth from adult jails and prisons:* Over the past six years, four jurisdictions have changed their laws to either allow or require youth to stay in juvenile facilities while awaiting sentencing in adult court. In addition, several other states have passed laws ensuring that youth in adult facilities are receiving appropriate services, including access to education.
- *Raise the age of majority:* 13 states allow youth younger than 18 to automatically be processed in adult court for any offense. However, three states have raised their ages back to 18. For example, in Connecticut, all youth aged 16 and above were automatically prosecuted as adults, but the state currently is moving 16 and 17 year olds back to its juvenile justice system.
- *Reduce the pathways for youth into adult court:* Several states have reduced or eliminated the ways by which youth can be prosecuted in adult court. For example, three states, including Ohio, have passed reverse waiver provisions that allow youth prosecuted as adults the chance to return to juvenile court. Other states have eliminated their “once an adult, always an adult” provision or limited the number of offenses that make youth eligible for adult court.
- *Reduce sentences for youth:* Some states recognize the unique rehabilitative opportunity for youth and have reduced the sentences for which youth are eligible. For example, both Texas and Colorado have laws that no youth can receive a life without parole sentence for any crime. Other states have cut down on mandatory sentencing for youth.

These trends are in line with both research and public opinion. Recent polls show that the public strongly prefers that transfer only occur on a case-by-case basis as determined by judges, not when the decision is made solely by the prosecutor, such as in mandatory bindover.²⁷ In addition, the public overwhelmingly rejects the placement of youth in adult jails and prisons and strongly favors rehabilitation and treatment approaches instead.²⁸



PART 2

CHILDREN IN THE OHIO ADULT CRIMINAL JUSTICE SYSTEM

Tracks To Adult Court: How Ohio Youth Come into Contact Within The Adult Criminal Justice System

Ohio law allows children as young as 14 to be held in adult facilities, and children as young as 10 to be subject to criminal sanctions. This section describes the following three tracks by which youth come into contact with the adult system: 1) bindover, 2) serious youthful offender (SYO) law, or 3) youth aged 18-21 in juvenile court. The chart below summarizes these three tracks:

Track	Age	Where Tried	Where Sentence Served	Moved to Adult Court Based On
Bindover	14+	Adult Court	Adult System	Age, offense, and other factors
Serious Youthful Offender (SYO)	10+	Juvenile Court	Juvenile System and Potentially Adult System (after age 14)	Age, offense, and other factors
Youth Over 18 in Juvenile Court	18-21	Juvenile Court	Juvenile System and Adult System (after age 18)	Age

Track #1 – Bindover

Bindover law applies when a child 14 or older begins his or her case in juvenile court, but is sent to the adult court before the juvenile court decides whether or not the youth actually committed an offense. Ohio has two types of bindover – mandatory and discretionary.²⁹

Mandatory bindover: A juvenile court judge *must* bind over a youth automatically if a prosecutor accuses a youth of committing a certain offense. In these cases, juvenile judges must send a youth to adult court if they find probable cause – a very low legal standard – that the youth is:

- 16 and older and charged with a Category One Offense or a Category Two Offense¹ with a firearm;
- 16 and older, previously committed to DYS for a Category One Offense or a Category Two Offense with a firearm, and currently charged with the same level of offense;
- Previously convicted of a felony in adult court; or
- From another state and above the age of majority there (ex: In Michigan, all 17 year olds are automatically prosecuted as adults).³⁰

Youth in the first category of mandatory bindover listed above are eligible for Ohio's reverse waiver law.³¹ Under reverse waiver, youth bound over to adult court can be sent back to the juvenile court depending on the offense for which they are convicted in adult court as follows:

Youth Convicted of:	Result:
Non-Bindover Offense	Youth is returned to Juvenile Court
Mandatory Bindover Offense	Youth remains in Adult Court
Discretionary Bindover Offense	Youth is returned to Juvenile Court BUT can return to Adult Court (after prosecutor objection and judicial amenability hearing)

*Discretionary Bindover:*³² In Ohio, discretionary bindover applies when a child is 14 or older and accused of any offense that would be a felony if committed by an adult. Discretionary bindovers consist of 1) a probable cause hearing; 2) an investigation, including a mental health examination, of the youth; and 3) an amenability hearing through which the judge weighs certain factors listed in Ohio law to determine if the child can be rehabilitated in the juvenile system or if community safety requires adult sanctions for the youth. After weighing these factors, the judge has discretion to either keep the youth in the juvenile system or send the youth to adult court.

Housing of Bindover Youth: Ohio law provides a variety of placements for bindover youth.

Pre-Conviction: All youth eligible for bindover who the court determines must be kept in secure confinement are initially placed in **juvenile detention facilities**, where they may spend months before they are transferred to adult court. After a youth is bound over, Ohio law permits – and some counties allow – youth to remain in juvenile facilities while the case proceeds in adult court.³³ However, Ohio law also allows bound over youth to be placed in an **adult jail** during this time. In jails, youth must be kept “beyond the range of touch” of adult inmates and supervised at all times.³⁴

Post-Conviction: A youth who is convicted in adult court can be sentenced to an **adult jail**, a **community-based correction facility** (typically smaller than prisons and located close to the youth’s home), or an **adult prison**. Male bindover youth sentenced to prison are sent to the Youthful Offender Program at the Madison Correctional Facility until they turn 18;³⁵ they are placed in the general prison population upon turning 18. Females are sent to the Ohio Reformatory for Women.

Track #2 – Serious Youthful Offender (SYO)

Ohio’s SYO laws are an example of a blended sentencing law. Unlike bindover, SYO proceedings take place primarily in juvenile court.

In Ohio, children as young as 10 years old can face the possibility of adult repercussions under Ohio’s SYO laws depending on 1) the child’s age; 2) the level of offense for which the child is charged; and 3) whether the offense included an sentencing enhancement, such as use of violence or a firearm or a prior DYS commitment.³⁶ Like bindover, SYOs can be either mandatory or discretionary. In addition, youth sentenced under SYO laws are given certain adult protections, such as the right to post bail and the right to trial by jury.

If a youth receives an SYO sentence, the juvenile court judge gives the youth both a juvenile sentence and an adult sentence for the same offense.³⁷ However, the adult portion of the youth’s sentence is stayed, allowing the youth to serve time in a juvenile facility; the adult sentence can only be invoked if the court finds that 1) the youth commits another act after turning 14 that could be a felony or first degree violent misdemeanor or engages in conduct that creates a substantial risk to the safety or security of the institution, the community, or the victim, and 2) the youth’s conduct demonstrates that he or she is unlikely to be rehabilitated.³⁸

Housing of SYO Youth: SYO youth begin serving their juvenile disposition in a DYS facility. However, if a SYO youth’s adult sentence is invoked, he or she can be transferred to an adult prison, even if the original offense took place when the youth was between the ages of 10-18.³⁹

The History of Ohio’s Adultification Laws

While youth in Ohio can enter the adult criminal justice system through several complex procedural mechanisms, Ohio law was not always so complicated. So how did Ohio’s law get to be this way?

Pre-1995: Before 1995 Ohio had both mandatory and discretionary bindover, but in much more limited forms. The pre-1995 law only allowed mandatory bindovers for youth who were 1) charged with aggravated murder or murder and who had a prior adjudication of one of these offenses in juvenile court; or 2) previously bound over and convicted as an adult for certain offenses. All other bindovers were discretionary and applied to youth 15 or older.⁴²

1996 Changes: In 1996, Ohio – along with many states in the country as described in Part 1 – passed legislation that reduced the minimum bindover age from 15 to 14, expanded mandatory bindover, and changed the discretionary bindover factors a judge must consider.⁴³

1999 Sentencing Commission Report: In 1999, Ohio’s Criminal Sentencing Commission wrote a report on Ohio’s juvenile justice system that recommended limiting mandatory and discretionary bindover, including introducing a “presumptive” bindover category.⁴⁴ In addition, the Commission recommended a blended sentencing structure, recognizing that juvenile courts needed “greater flexibility in dealing with...serious juvenile offenders [and that...b]indover is not the best option for all serious offenders.”⁴⁵

2000 Changes: In response to the Commission’s report, Ohio’s legislature enacted a bill intended to implement many of the Commission’s suggested reforms. However, the bill that passed the legislature further expanded mandatory bindover and created a blended sentencing scheme.⁴⁶ Therefore, instead of creating an alternative to bindover, the bill widened the net by creating an entirely new track to adult court for even younger children to be subject to adult court sanctions.

In its Judicial Impact Statement on the 2000 changes, the Ohio Judicial Conference (OJC) expressed its concerns as follows: “Many judges and prosecuting attorneys have stated that mandatory transfers under...[the 1996 changes] result in inappropriate transfer to adult court and the adult penal system...Retaining and expanding the current mandatory bindover statute nullifies most benefits of the proposed Serious Youthful Offender law, and therefore diminishes the Ohio court system’s ability to best address the problems presented by juveniles to the court.”⁴⁷

2011 Changes: In 2011, Ohio finally began to turn back its transfer laws by allowing some youth who are mandatorily bound over to the adult system to return to the juvenile justice system.

Track #3 – Juvenile Justice System Involved Youth After They Turn 18

Ohio law has “extended juvenile court jurisdiction,” which permits youth to stay in the juvenile system until age 21.⁴⁰ This policy aligns with research and allows youth aged 18-21 to have access to age-appropriate programming and placements in the juvenile court’s more rehabilitative setting. It also recognizes that youth in this age category are better served in a system already designed to meet youth’s needs and that youth aged 18-21 have needs that are more similar to youth in the juvenile justice system than adults.

Housing of Juvenile Court Jurisdiction Youth: Youth ages 18-21 who are under the jurisdiction of the juvenile court can receive a variety of dispositions, such as commitment to a DYS facility, participation in community-based programs, parole or probation, or jail time. However, if they are placed in their communities, these youth can be placed in adult jails – not because they have committed a new offense – but because they have violated the terms of their juvenile court sentence, including probation violations or violating a court order.⁴¹ These violations can include relatively minor infractions like missing a meeting with a probation officer or being in the same house as another youth participating in a juvenile court program. This placement goes against the rehabilitative purpose of the juvenile court and subjects youth to harms in adult jails.

Data and Statistics on Youth in Ohio’s Court Systems Today

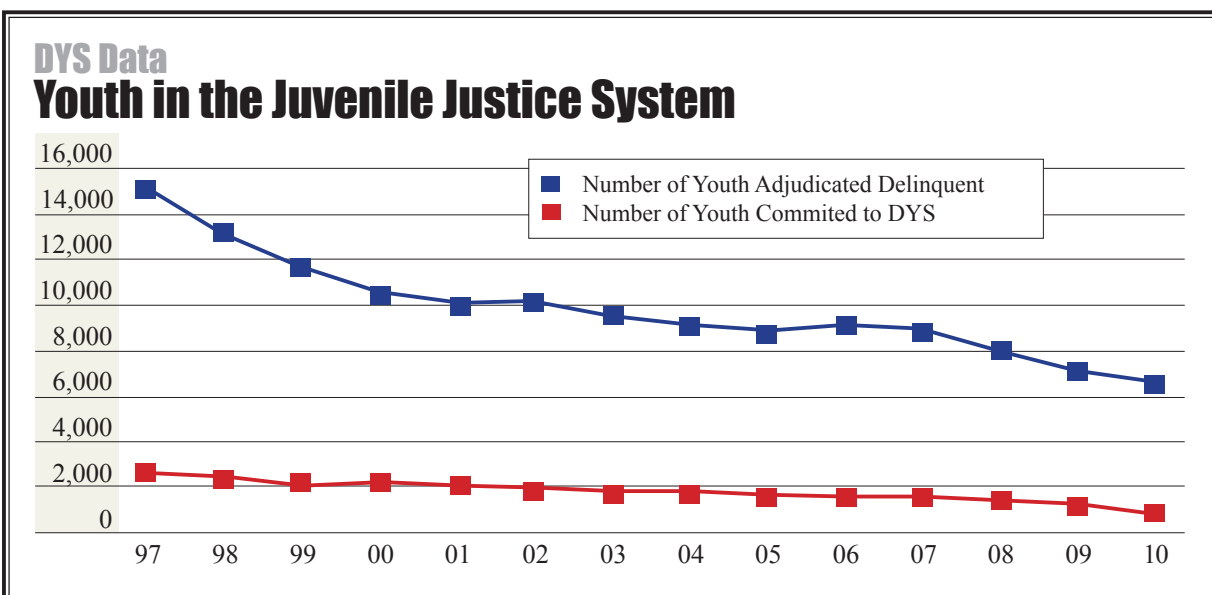
Unfortunately, data on youth who become involved in the adult criminal justice system in Ohio is scarce. This section discusses the limited data available on this population of youth as well as information on youth in Ohio’s juvenile justice system.

Youth in the Juvenile Justice System: Each of Ohio’s 88 counties has its own juvenile court that collects data. Although some of this data is compiled by the Ohio Supreme Court and the Department of Youth Services (DYS), data on youth in Ohio’s juvenile justice system remains piecemeal, making it difficult to get a full picture of youth in the system. However, data on youth in the juvenile justice system is available through the following three sources:

- *County Data:* Ohio law requires each court to maintain records, collect data, and file an annual report with the County Board of Commissioners.⁴⁸ However, it is unclear how many counties comply with these requirements or if these reports are publicly available. In addition, counties that do issue reports may collect varying types of data, making it difficult to compare numbers between counties.⁴⁹

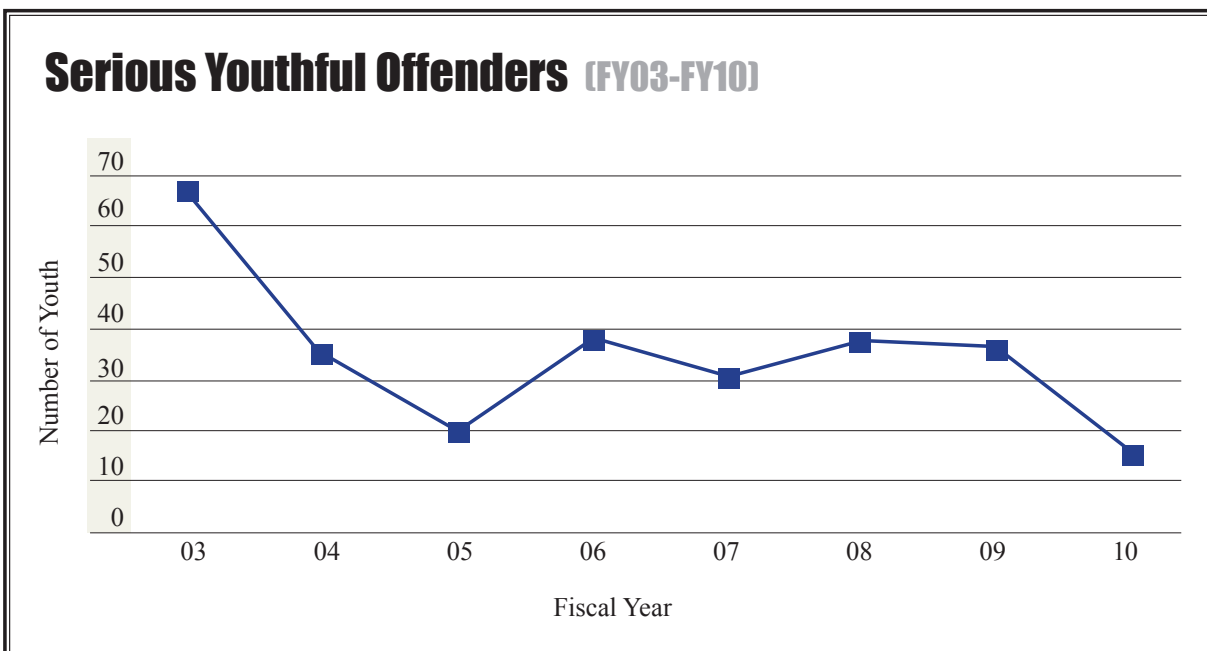
- *Ohio Supreme Court:* In addition to county level reports, the Ohio Supreme Court annually compiles some data from each of the counties’ courts. This data shows that in 2010, Ohio’s juvenile courts handled over 350,000 cases, including nearly 200,000 delinquency, traffic, unruly, and abuse, neglect dependency cases.⁵⁰ Additional data from the Ohio Supreme Court tracks how each county terminated these cases, but does not track more detailed information about the youths’ involvement with the juvenile court.

- *DYS Data:* Data on youth in the juvenile justice system is also collected by DYS, which has jurisdiction over youth who are adjudicated delinquent – or “found guilty” – in the juvenile justice system and committed to DYS. Therefore, the DYS data covers youth who are in the deepest end of the juvenile justice system for felony level adjudications. Since 1997, the number of youth with felony adjudications has dropped from 15,096 to 6,511, more than a 50% decrease.⁵¹ The number of youth with felony adjudications who were committed to DYS has also dropped from 2,521 in 1997 to 831 in 2010.⁵²



Over the past several years, the number of youth in DYS correctional facilities has also dropped significantly. In 1995, DYS facilities housed 2,795 youth;⁵³ by February 2012, this number dropped to 628 youth.⁵⁴ The reasons for these significant declines are discussed in Part 3.

SYO Population: Data on Ohio’s SYO population is also limited. Available data shows that since SYO was introduced in juvenile courts in 2003, only 293 youth have received a blended sentence from the juvenile court, an average of 33 youth per year.⁵⁵ Of these 293 youth, only 24 (8%) have had the adult portion of their sentence invoked.⁵⁶ No further information is available on youth subject to SYO laws in Ohio, including their age, sex, race, ethnicity, or geographic background.

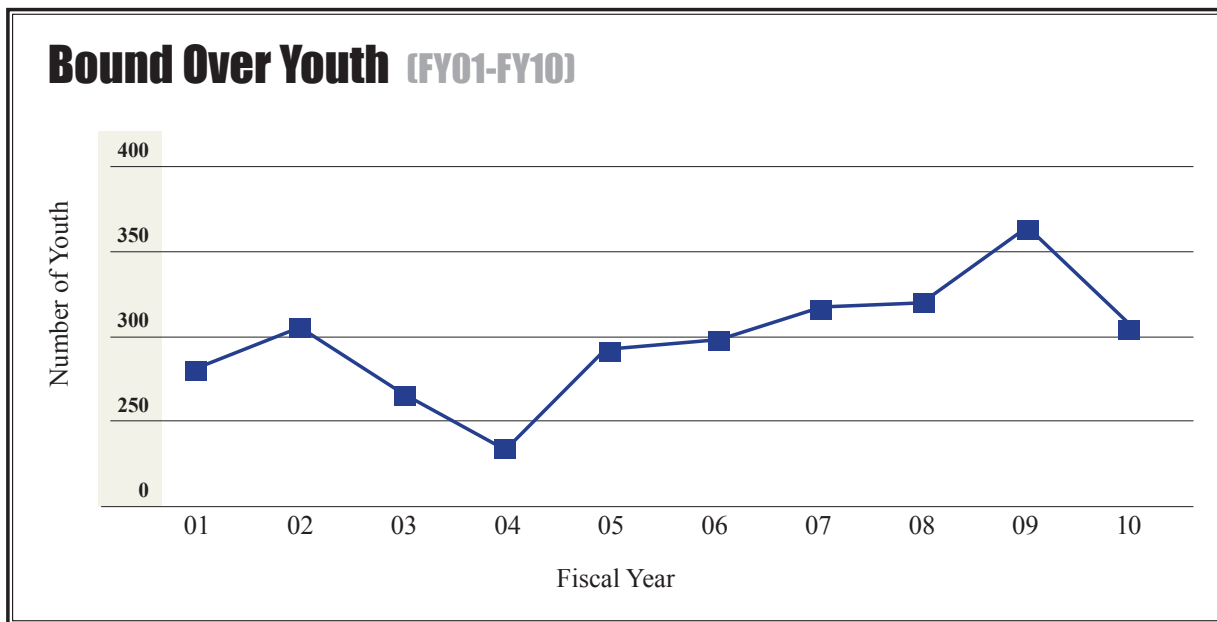


Juvenile Court Jurisdiction Youth Held in Adult Jails: No data is publicly available on youth who are under the jurisdiction of the juvenile court and who are sent to adult jails when they turn 18. This data may be unavailable because youth who are under the juvenile court’s jurisdiction but over the age of 18 are integrated into the general jail population and are not held in a special unit.

Bound Over Youth: Data on bound over youth is available through three sources:

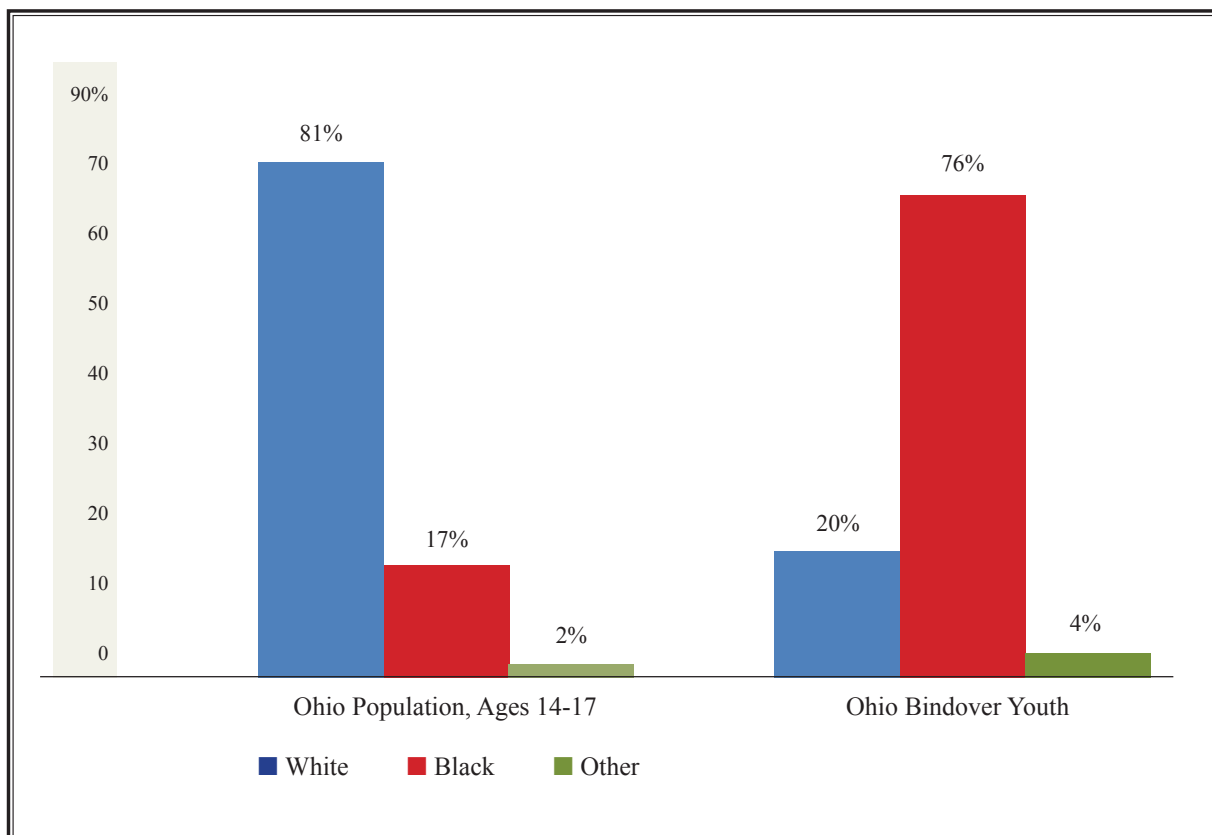
- *DYS Data:* DYS annually reports data on bound over youth, including the total number of bindover youth and data disaggregated by age, sex, race, felony degree, and county. However, DYS data does not include information on:
 - Whether the child is bound over through mandatory or discretionary transfer;
 - The total number of youth who were eligible for bindover, but who stayed in juvenile court, were not indicted in adult court, or had their cases dismissed; or
 - The youth’s outcomes in adult court, including whether the youth is reverse waived to juvenile court.
- *County-level data:* Each county’s adult court system has information on bound over youth available through online public court files. For this report, data was collected for the 303 youth bound over in Fiscal Year 2010 (FY10) and entered into a database with over 40 fields to determine adult court outcomes for bindover youth.⁵⁷
- *Supreme Court of Ohio:* Ohio Supreme Court data indicates that 255 youth were bound over to adult court in FY10.⁵⁸ It is unclear why this number conflicts with DYS data; however, because of the more in depth information collected by DYS, DYS data is utilized in this report.

Data shows that approximately 300 youth are bound over each year.⁵⁹ The graph below shows the number of bound over youth over the past ten years, including a low of 264 youth in 2004 to a high of 362 youth in 2009.⁶⁰



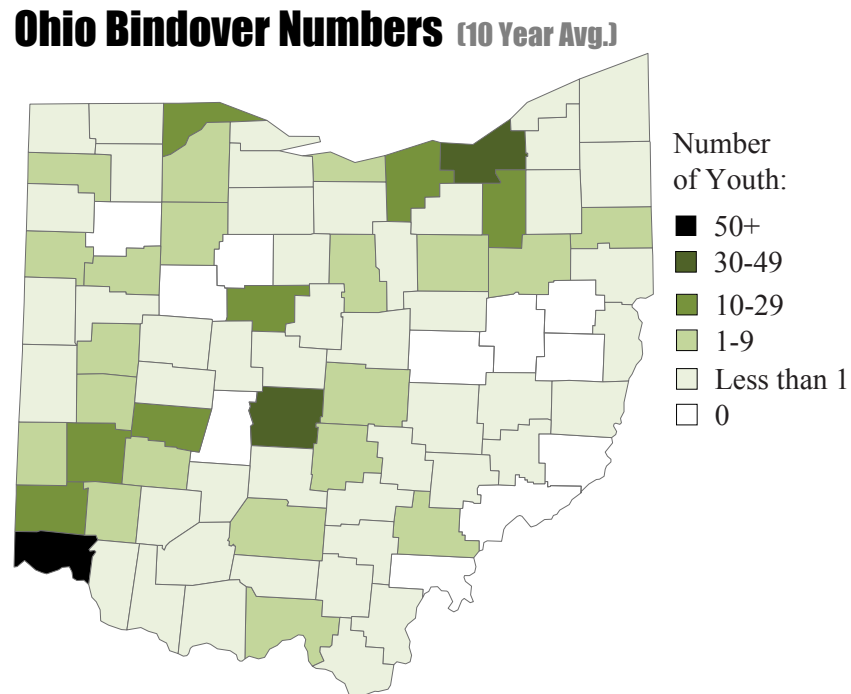
Available data also provides information on the demographics of the average bound over youth in Ohio. In the past five years, data⁶¹ shows that Ohio’s bindover policies:

- *Disproportionately affect Black male youth:* The vast majority – 98% – of bound over youth are male and 74% of bound over youth are Black. It is important to note that DYS only reports data on three categories of race and ethnicity (Black, White, or Other); Black and Other youth make up 76% of bindover cases.⁶² The chart below shows the racial and ethnic breakdown of youth aged 14-17 in Ohio’s population⁶³ versus the population of bound over youth;

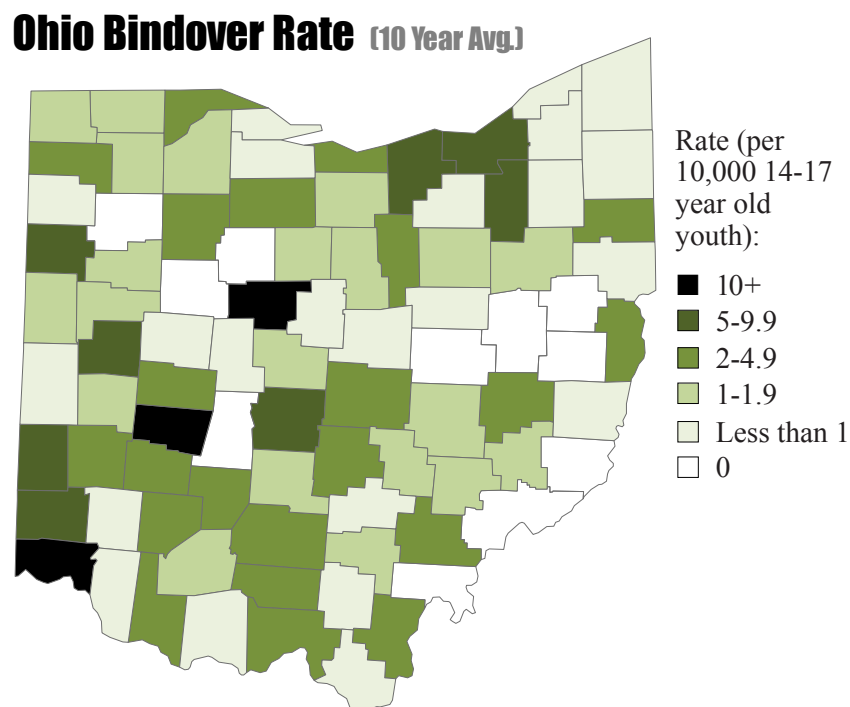


■ *Geographically target certain youth:* Based on geography, bindover in Ohio looks very different depending on if you consider the numbers or rates of bindover.

– *Numbers:* Only 10 counties in Ohio – Hamilton, Cuyahoga, Franklin, Summit, Butler, Clark, Montgomery, Marion, Lorain, and Lucas – have bound over an average of 10 or more youth over the past decade. These counties' bindover numbers have been relatively consistent over the years, except for Cuyahoga County, which saw a major spike in bindovers in the past 5 years. The remaining 78 counties bind over less than 10 youth per year, including 11 counties that bound over zero youth over the past 10 years. Below is a map showing the average number of youth bound over by county:



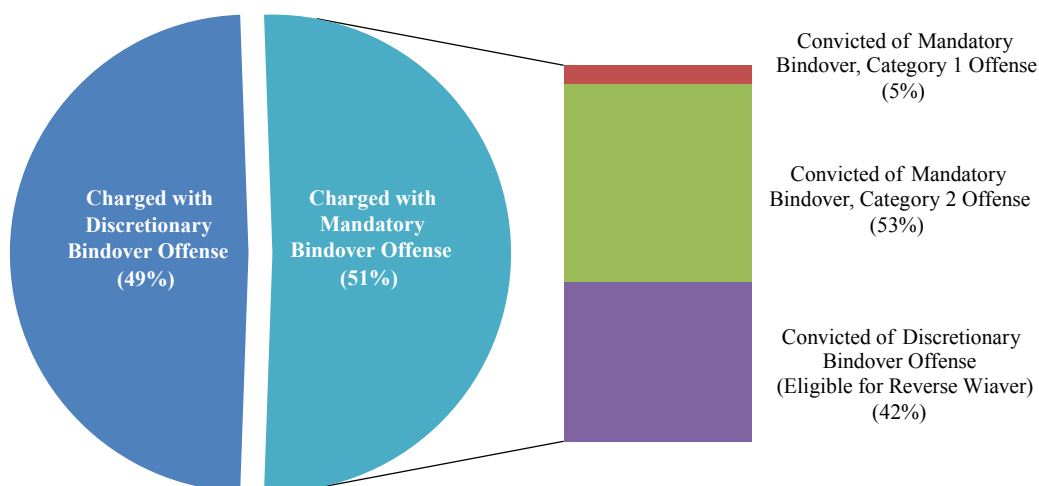
– *Rates:* However, when examining the rate of bindover compared to counties' populations, the map looks significantly different, with many more rural counties showing higher bindover rates when compared to their youth population.



■ **Target older youth accused of committing Felony One Offenses:** 17-year-olds make up nearly 50% of bindover cases, while 14 and 15 year collectively account for only 3% of bindovers. In addition, over half of bound over youth are accused of committing Felony One offenses. While these numbers seem to indicate that Ohio’s bindover laws focus on older youth accused of committing higher level Felony offenses, it is important to distinguish between 1) whether Ohio’s laws are targeting the youth the laws were written to target and 2) whether the underlying policy of transferring youth to the adult court is effective, which research – as outlined in Part One of this report – indicates is not the case.

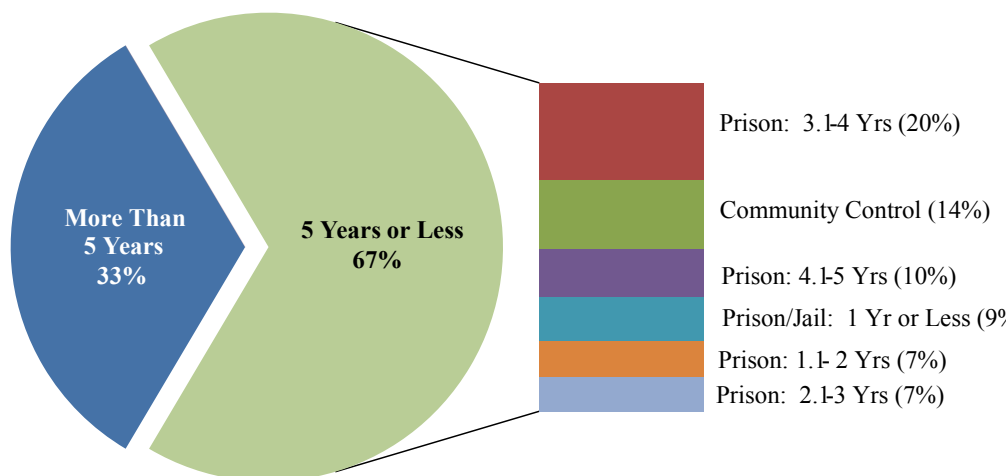
Once a youth is bound over to the adult court system, data on outcomes for youth in the adult criminal justice system shows several trends:

- **Bound over youth spend half a year in adult jails:** The average time bound over youth spend in adult jails from bindover to sentencing is over 5 ½ months. Black youth spend significantly more time in adult jails than White youth. During this time, these youth are subject to the dangers of adult jails for youth detailed in Part One of this report.
- **Black youth are more likely to be subject to the dangers of adult jails:** Data indicates that White youth are significantly more likely to post bail. It is unclear whether this discrepancy stems from whether families can afford bail or differences in the ways judges handle granting or setting bail amounts for White youth.
- **A quarter of bound over youth will be eligible under Ohio’s reverse waiver law:** Data indicates that mandatory and discretionary bindover charges are filed almost equally. However, nearly half of the youth originally charged with mandatory bindover are ultimately convicted of a discretionary bindover offense and therefore eligible, under Ohio’s new reverse waiver law described above, to be sent back to the juvenile court.



■ **Only a very small percentage of Ohio youth are convicted of murder:** Only 7 out of the 303 youth bound over in FY10 were convicted of Aggravated Murder, Murder, or Attempts of these offenses. The remaining 91% of youth convicted of mandatory bindover offenses were convicted of Category Two offenses with gun specifications.

■ **The majority of bound over youth are sentenced to 5 years or less:** Sentencing outcomes for bound over youth are low, with over 67% of bound over youth receiving a sentence of five years or less. Nearly 14% of bound over youth receiving no prison sentence at all, only community control, while only 5% of youth received a sentence of 20 years in prison or more.



PART 3

SHIFTING DIRECTIONS IN OHIO – RESEARCH AND POLICY BEHIND KEEPING KIDS AS KIDS

Research shows that a child's involvement in the adult criminal justice system creates negative consequences for both the child and his or her community. In recent years, considerable research has shown what types of programs work for youth who become involved with the juvenile court system, even youth who commit serious offenses.

Many of these research-based, youth-specific programs specifically designed to help youth safely return to their communities have been integrated into Ohio's juvenile justice system. However, youth who are moved to the adult system do not benefit from these policies.

THE RIGHT DIRECTION: Research-Based Changes in the Juvenile Justice System

Overview: Over the past several years, research in the juvenile justice field has shown that harsh, punitive approaches with youth, including incarceration in correctional facilities and participation in programs like "Scared Straight" or boot camps, can actually increase recidivism in youth.⁶⁴

Instead, research has shown that successful juvenile justice systems reduce reoffending by tailoring their responses to the youth's risk for reoffending.⁶⁵ Research shows the following best practices:

- Youth with a *low recidivism risk* should be diverted out of the juvenile justice system altogether;
- Youth with a *moderate or high recidivism risk* should be given "the minimal level of supervision and control" needed to maintain public safety and "be provided with appropriate, effective therapeutic services."⁶⁶ For youth who must be confined, these youth must be held in humane conditions – ideally in small community-based facilities – and allowed to participate in programming that decreases the likelihood that the youth will reoffend;⁶⁷
- Youth should not be subjected to any more severe punishment than is necessary to maintain public safety, as *harsh punishment* is likely to be "counter-productive to reducing recidivism."⁶⁸

Therefore, it is critical that youth receive a carefully calibrated, individually tailored approach to address their delinquent behaviors so as not to make the youth's behavior worse.

Turning Research into Practice in Ohio's Juvenile Justice System: Over the past several years, Ohio's juvenile justice system has adopted carefully planned initiatives designed to move towards adopting research-based approaches that place youth in the most appropriate, cost-effective programming to reduce their future justice system involvement.⁶⁹ This shift has come about through the implementation of a few broad-based policy changes, as well as efforts of several specific initiatives:

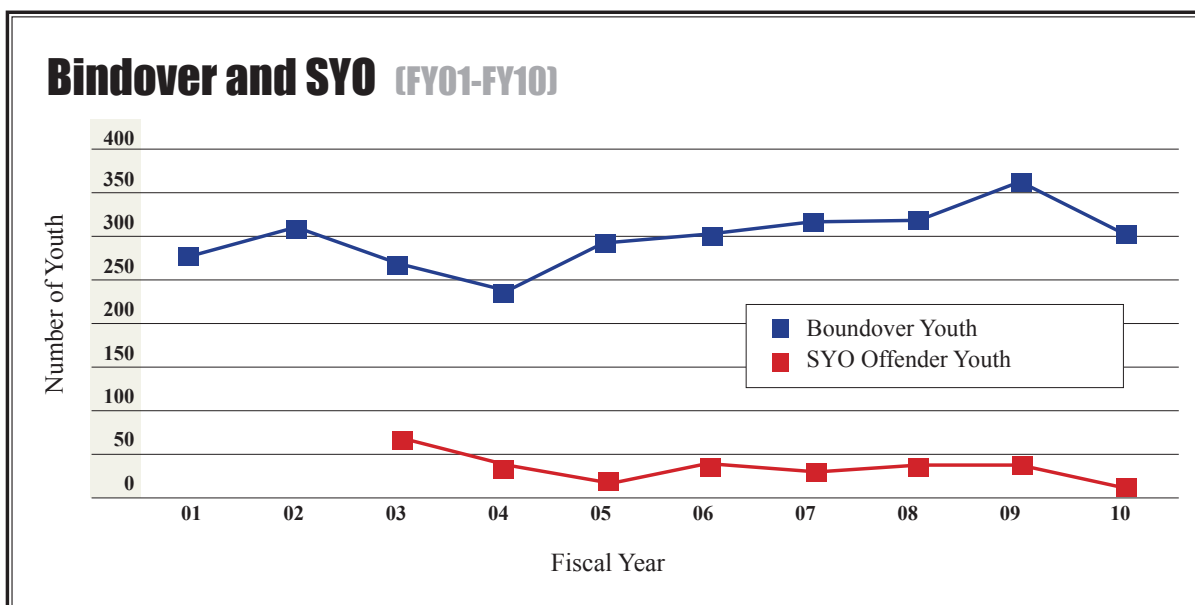
- *Juvenile Detention Alternatives Initiative:* Works to reduce the juvenile detention population;
- *RECLAIM Ohio:* Provides incentives to counties to serve youth in community-based treatment rather than committing them to DYS;
- *Targeted RECLAIM:* Creates evidenced-based programs in the six counties that send the most youth to DYS to further reduce DYS commitments;
- *Behavioral Health/Juvenile Justice Project (BHJJ):* Encourages the placement of youth with mental health needs in appropriate treatment facilities instead of in the juvenile justice system; and
- *Ohio Youth Assessment System:* Implements an instrument designed to assess a youth's relative risk throughout his or her involvement in the juvenile justice system and to help identify the most appropriate program for that particular youth's needs.

Ohio has been recognized nationally for these efforts, which have vastly reduced the number of youth committed to DYS, and resulted in the closure of four DYS facilities.

THE WRONG DIRECTION: The Continued Adultification of Ohio's Youth

As shown throughout this report, research has shown the overwhelming negative effects of transfer on both youth and their communities, including a decrease in public safety, long-lasting physical and mental harms youth can face in adult facilities, and increased educational and employment barriers that prevent youth from becoming productive members of society.

Unfortunately, with the exception of the recent passage of the reverse waiver bill, data shows that Ohio’s policies have trended in the opposite direction as this research. Since 1995, Ohio has been expanding the population of youth eligible to be bound over to adult court. This expansion was compounded by the passage of Ohio’s SYO law, which was initially intended to reduce the number of bindovers to adult court. Instead, this law has cumulatively increased the number of youth subject to adult court jurisdiction.



Practically speaking, youth who are bound over to the adult system in Ohio are no different from youth who are retained in the juvenile justice system. Indeed, under Ohio law, two youth who participate in the same offense, are the same age, and have similar backgrounds can be sent to two different systems – one to adult court and one to juvenile court – depending on a variety of factors. In terms of physical and psychological development, bound over youth are developmentally similar to youth in the juvenile justice system, who can be retained in the system until they are 21. In addition, the vast majority of youth in the adult criminal justice system are released within five years or less, which would be akin to a youth serving a DYS sentence from ages 16 to 21.

When examining what works in the juvenile justice system, it is easy to see why the adult criminal justice system falls short. In the adult system, it is much more difficult for youth to have access to age-appropriate, individually tailored programming, including intensive education, anger management programming, or mental health or substance abuse treatment.

SHIFTING DIRECTION: Where Do We Go From Here

Under current law and policy in Ohio, youth who remain in juvenile court encounter a system driven by research-based, cost-effective policies and programming. However, youth in the adult system do not receive the benefits of these reforms. The recent passage of Ohio’s reverse waiver law is a first step to give bound over youth an opportunity to return to the juvenile justice system, but it does not go nearly far enough to keep youth and their communities safe.

Ohio must begin to shift direction with regard to youth in the adult criminal justice system and move toward a more humane, research-driven approach to these youth. This shift would come at the same time that the juvenile system is shrinking its population, leaving more room in programming and facilities for youth to be served in more appropriate settings.

MOVING FORWARD: Recommendations

In light of the data and analysis presented throughout this report, it is clear that policy changes must be made to further shift Ohio towards a more humane, effective way of dealing with youth who come into contact with the court system. A poll recently showed that many Ohioans would support these types of changes; the poll found that Ohioans 1) believe that youth who come to the attention of the court system should be treated differently than adults (60% of respondents), 2) support the use of judicial discretion instead of prosecutors making decisions about youth (74% of respondents), and 3) overwhelmingly support removing youth from adult facilities (84% of respondents).⁷⁰

These recommendations follow three overarching principles for change in Ohio:

- 1) Reduce the number of youth eligible for prosecution in adult court;

2) Allow all youth to receive judicial review of their cases; and

3) Ensure that youth are in held safe, humane conditions and can receive required, age-appropriate programming that will help them return to their communities as productive citizens.

Recommendation #1: Remove Youth From Adult Jails and Prisons

Given the dangers facing youth and the short and long term costs of holding youth in adult jails and prisons as discussed in Part One, it is critical that youth are housed in juvenile facilities whenever possible, particularly youth under the jurisdiction of the juvenile court. If youth are not held in juvenile facilities, conditions in adult jails and prisons and access to age-appropriate programming for youth must be improved.

- *Legislators:* Change Ohio law to prohibit all youth, including youth ages 18-21 under the jurisdiction of the juvenile court, from being held in adult jails or prisons.
- *Juvenile court judges:* Utilize Ohio law that permits pre-conviction bound over youth to be held in detention facilities while their cases move forward in adult court. Enact local court rules that prohibit holding youth in adult jails prior to conviction and sentencing in adult court.
- *Adult jail administrators:* Ensure that youth held in adult jails:
 - Receive access to youth-appropriate programming, such as education (including special education services up to age 22 as required by federal law) and mental health treatment; and
 - Receive supervision at all times as required by Ohio Revised Code 2152.26(F)(1) by staff specially trained to manage the unique issues facing a youthful population.
- *Adult prison administrators:* Ensure that youth in adult prisons receive age-appropriate programming, including education and vocational training, by staff specifically trained to work with youth.
- *School districts:* Provide educational services in jails, including special education services for youth up to age 22 as required by federal law.

Recommendation #2: Modify and Increase the Usage of Ohio's SYO Law for Youth Who Would Have Been Bound Over

Ohio's SYO law is not serving its original purpose to reduce the number of youth bound over to the adult court system. Instead of eliminating this track to adult court, SYO laws should be improved and should become the only track to adult court in Ohio. This change would allow youth one last chance at the juvenile justice system and ensure that they are only transferred to adult court if they do not succeed in the juvenile justice system.

However, in order for Ohio's SYO laws to become the only vehicle for transferring youth to adult court, the following changes must take place:

- *Legislators:* Ohio's SYO laws must be modified to:
 - Increase the minimum age for which youth can be considered for SYO sentences from 10 to 14 (the age at which youth can be bound over to adult court);
 - Reduce the number of offenses for which youth are eligible for SYO sentences by allowing all youth charged with a non-enhanced Felony Level 2 offense and below remain in the juvenile justice system, which already serves over 5,000 youth with this level of offense;
 - Ensure that the decision to sentence a youth under SYO laws and the decision to invoke the youth's adult sentence is not a decision based solely on the offense for which the youth is accused, but is based on objective, risk-based information for each child; and
 - Guarantee that youth receive full constitutional protections under SYO laws, including the right to challenge the invocation of the adult sentence.
- *Juvenile court judges:* Begin utilizing Ohio's SYO laws more frequently, particularly in discretionary bindover cases.
- *State agencies:* For Ohio's SYO laws to work, youth must have meaningful access to truly rehabilitative programs while in institutional settings in the juvenile justice system and upon re-entry to the community, including education, job training, and mental health treatment. Without a robust juvenile system, youth are set up to fail when given a second chance.

Recommendation #3: Eliminate or Severely Limit Ohio's Mandatory Bindover Law

Both research and public opinion polling indicate that if the decision must be made to bind over a child, a judge should make that decision. Therefore, if Ohio is going to use bindover as a mechanism to send youth to adult court, the state must move toward making all bindovers discretionary.

- *Legislators:* Eliminate or severely limit Ohio's mandatory bindover law by:

- Following the Ohio Sentencing Commission’s recommendation to reduce the offenses for which a youth can face mandatory bindover to only murder and aggravated murder;
- Eliminating the non-offense-based categories of mandatory bindover, such as out of state jurisdiction, prior DYS commitment, and “once an adult, always an adult,” and instead make these factors for the judge to consider when determining whether to bind over a youth; and
- Raising the minimum age required for mandatory bindover to 17.

Recommendation #4: Change Ohio’s Discretionary Bindover Law

While Ohio’s discretionary bindover law at least allows judges to make a decision as to whether a youth should be bound over, research shows that, on the whole, bindover has a negative impact on youth and communities. Therefore, bindover should be significantly reduced or eliminated.

- *Legislators:* Modify Ohio’s discretionary bindover law by:
 - Raising the minimum age required for discretionary bindover to 16; or
 - Creating a presumption that all youth should remain in juvenile court, which can only be overcome by a judicial finding of certain factors.
- *Juvenile court judges:* Consider the research on youth prosecuted in adult court during amenability hearings to determine whether a youth is better placed in juvenile or adult court.

Recommendation #5: Strengthen Data Collection on Youth in Ohio’s Court Systems

As noted throughout this report, data collection in Ohio on youth in both the juvenile and adult court systems is piecemeal at best. In order to ensure that Ohio’s taxpayer dollars are being spent in the most effective, efficient way possible, comprehensive data on these youth must be collected and made publicly available.

- *Juvenile court judges:* Juvenile courts must track youth in juvenile court at each stage in the process to assist the court in understanding how best to address issues youth present to the court. This data should include information on referrals to the juvenile court, detention, adjudications, dispositions, SYO laws, and bindover. Data should be collected both in the aggregate and disaggregated by sex, race/ethnicity, and age. Finally, data should be collected on victims, including the victim’s race/ethnicity, age, sex, and relationship to the youth.

For bindover, courts should collect information on the number of youth against whom bindover motions are filed; the number of youth actually bound over; the reason a youth is bound over (for mandatory bindovers); and the number of youth who are retained in the juvenile justice system versus sent to the adult system (for discretionary bindovers). Information should also be collected on the number of bound over youth returned to the juvenile court under Ohio’s reverse waiver law and the outcomes of these cases.

- *Adult courts:* Adult court systems should track and collect data on the outcomes for bound over youth, including recidivism rates and what services, including re-entry services, are available to youth in the adult system.
- *State agencies - Department of Youth Services (DYS) and Department of Rehabilitation and Corrections (DRC):* Both DYS and the DRC must collect information on youth who come in contact with the juvenile or adult criminal justice system. This data must be collected to show what programming is available to youth, recidivism rates, and the cost – both short and long term – of programs and policies for youth. In order to track this data, both DYS and DRC should “flag” the records of bound over youth to determine how their outcomes differ from individuals strictly involved with either the adult or the juvenile system.
- *The Ohio Supreme Court and State Agencies:* The Ohio Supreme Court and state agencies should be responsible for establishing a uniform set of data reported by courts and the state agencies that deal with youth in the juvenile or adult criminal justice system. This data should be compiled and presented to the public in a centralized data system that is readily accessible.

Conclusion

Youth who become involved in the adult criminal justice system often fall through the cracks. They have been removed from a system specifically designed to deal with youth and placed into a system designed for adults before they have matured physically or mentally. These youth are then expected to return to their communities as law-abiding citizens, having spent their formative years in a system not designed to provide them with the tools they need to succeed.

While Ohio has made strides forward in effectively – and cost efficiently – working with youth who come in contact with the court system, much work is yet to be done, particularly with regard to youth who become involved in the adult court system.

In light of research and national trends, placing youth in adult courts and facilities in Ohio does not make economic sense, it is not in the best interest of public safety, and it does not serve our taxpayers, state, communities, or youth. It is imperative that Ohio reexamine its policies on youth in the adult system and in adult facilities.

Endnotes

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- 18 *Roper*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).
- 19 *Id.*
- 20 *Graham v. Florida*, 130 S.Ct. 2011 (2010)
- 21 *J.D.B.*, 131 S.Ct. at 2403 and at 2403 n.5 [citations omitted]
- 22 See e.g. Elizabeth Becker, *As Ex-Theorist on Young 'Superpredators,' Bush Aide Has Regrets*, N.Y. Times, Feb. 09, 2001.
- 23 *Id.*
- 24 See e.g. Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 8 (June 2010).
- 25 Arya, Neelum, *State Trends: Legislative Victories from 2005 to 2010 Removing Youth from the Adult Criminal Justice System*, Washington, DC: Campaign for Youth Justice. (2011)
- 26 *Id.*
- 27 GBA Strategies, *Campaign for Youth Justice: Youth Justice System Survey*, October 2011.
- 28 *Id.*
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- 31 ORC § 2152.121
- 32 ORC § 2152.10 and § 2152.12 (B)-(E)
- 33 *Id.* – “child may be transferred for detention pending the criminal prosecution in a jail or other facility in accordance with the law governing the detention of persons charged with crime.” [emphasis added]
- 34 ORC § 2152.26(F)(1)
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- 43 *Id.*
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- 52 *Id.*
- 53 Diroll, David, *A Decade of Sentencing Reform: A Sentencing Commission Staff Report Number Seven*, March 2007, p. 8.
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- 55 Merit Brief of Amicus Curiae Office of the Ohio Public Defender In Support of Appellant J.V., In re J.V., Supreme Court of Ohio, Case No. 2011-107, filed August 22, 2011, pg. 12.
- 56 *Id.*
- 57 This data was gathered by searching each county's Clerk of Courts websites and hand entering the information from the docket into a database. As different counties collect different information on each case, the data does not include complete data on all 303 youth; however, every effort was made to make each record as complete as possible. Also, because CLC could not access juvenile court records, it is unclear how many youth were bound over on mandatory or discretionary charges. This was compensated for this by marking all bindovers as mandatory based on the offense (Category One offense or a Category Two offense with a firearm), which over counted mandatory bindover. However, this method also undercounts the number of youth with mandatory bindovers for non-charge based factors (i.e. once an adult, always an adult; prior DYS involvement; and out of state residency).
- 58 The Supreme Court of Ohio, 2010 Ohio Courts Statistical Report, p 139.
- 59 Ohio Department of Youth Services, *Profile of Youth Transferred to Adult Court: Fiscal Year 2010* (February 2011).
- 60 *Id.*
- 61 *Id.*
- 62 These results are particularly alarming in light of self-reported data from youth. Self-report data collected in 2006 by the National Center for Juvenile Justice found that White and Black youth self-reported similar levels of delinquent behavior. For example, similar percentages of White and Black youth self-reported engaging in assaultive behavior (25% of White youth and 33% of Black youth), carrying a handgun (16% of White youth and 15% of Black youth), and theft of an item worth at least \$50 (12% of White youth and 15% of Black youth). McCurley, C. (2006, February). *Self Reported Law Violating Behavior from Adolescence to Early Adulthood in a Modern Cohort*. Pittsburgh, PA: National Center for Juvenile Justice.
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