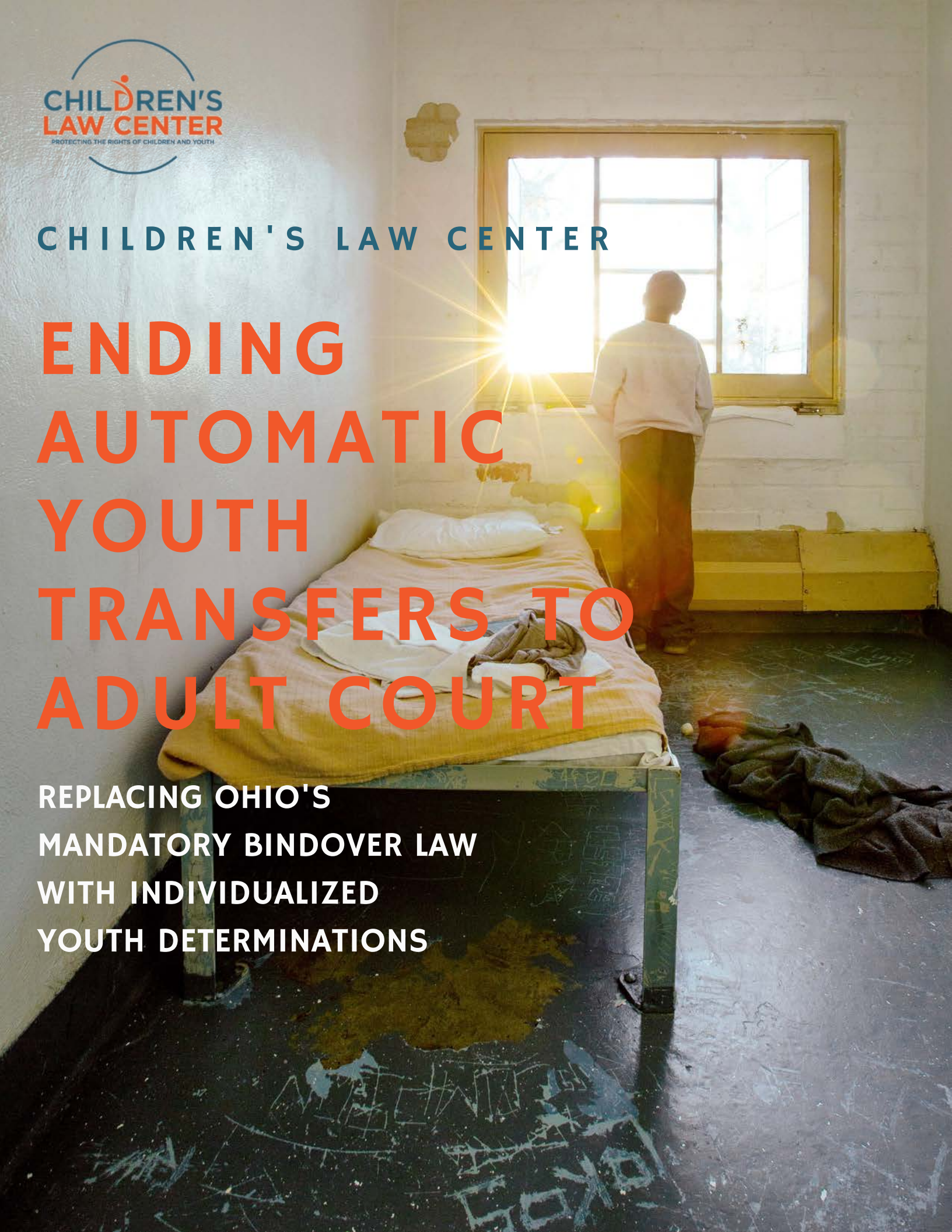




CHILDREN'S LAW CENTER

ENDING AUTOMATIC YOUTH TRANSFERS TO ADULT COURT

REPLACING OHIO'S
MANDATORY BINDOVER LAW
WITH INDIVIDUALIZED
YOUTH DETERMINATIONS



ABOUT US

Children’s Law Center, Inc. (CLC), established in 1989, is a non-profit legal service center protecting the rights of children and youth to help them overcome barriers and transition into adulthood, better advocate for their needs, and successfully contribute to society.

It provides individual legal advocacy to children and youth, and through public policy work, training and education, impact litigation, and youth defender support services, seeks to improve the systems that serve them. CLC offers services in both Kentucky and Ohio, and collaborates with other organizations within the region and nationally on a variety of topics.

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INTRODUCTION

Currently, every state has a statutory mechanism for prosecuting children in the adult criminal justice system. In Ohio, the juvenile court has jurisdiction over any child under age 18. A “bindover” is when a juvenile court in Ohio transfers jurisdiction of a child to the adult court for criminal prosecution. Once transferred, children may be held in adult facilities and are subjected to the same penalties as if they are adults. Essentially, bindover means treating children as if they are adults.

Historically, a bindover decision was primarily within the discretion of the juvenile court judge. Bindovers occurred only for limited offenses after a judge made an individualized determination that the juvenile court would be unable to rehabilitate the child.¹

A drastic shift occurred during the late 1980's and early 1990's. At that time, an increase in youth arrest rates for violent offenses was accompanied by a few isolated, yet highly publicized, cases. Media coverage of youth evoked a sense of “moral panic” in response to the reported wave of impending violent juvenile crime. These warnings were replete with racist undertones, describing youth as “violent, morally deficient, and of color.”² Simultaneously, an unfounded—and eventually debunked—rhetoric warned

of “super-predators,” predicting violence at the hands of “merciless” Black inner-city male youth who would be unresponsive to the juvenile justice system.³

In response to public concern, juvenile courts moved away from treatment- and rehabilitation-focused actions, toward a more-punitive approach. Imposing increasing sanctions, juvenile courts turned to incarceration more often and for longer periods. This shift was presented as a public safety measure.

Against this backdrop, state legislatures across the nation made it easier to prosecute children in adult court and subject children to extreme penalties like life without parole sentences. While judges previously were able to consider the specific characteristics of a child and circumstances surrounding every offense, mandatory bindover shifted the inquiry solely to the age of the child and the specific offense the child allegedly committed.

In 1970, only 8 states had laws that automatically excluded certain children (based on age and offense) from remaining in juvenile court. Today, 26 states, including Ohio, have statutory exclusion laws—mandating that some children be boundover to adult court.⁴

Under Ohio's mandatory bindover scheme, the juvenile judge's only role is to confirm that the statutory requirements are met and, then, to send the case and child to adult criminal court.

This Policy Brief examines Ohio's current bindover scheme and sets forth rationale for eliminating the harmful practice of mandatory bindover.

This Brief explores the stark racial disparities in transfer, the negative impact of adult prosecution on children and public safety, and legislative trends restricting transfer across the nation. It also provides recommendations for eliminating mandatory bindover and restoring the rehabilitative, youth-focused mission of Ohio's juvenile justice system.

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- A.R.⁵



A.R.'s quotation is from CLC's Storytelling Project, featuring stories from youth who have gone through the bindover process and their families.

A.R.'s full story and others can be found in CLC's Publication *[In Their Own Words](#)*.

HOW OHIO TRANSFERS CHILDREN TO THE ADULT SYSTEM

Ohio's children, ages 14 to 17, can be bound over—or transferred—to adult court, where they are prosecuted and sentenced as adults. Under Ohio Revised Code §2152.10 and §2152.12, the bindover process can be either mandatory or discretionary. A child can only be sent to the adult criminal court if the requirements for transfer are met.

Mandatory bindover requires transfer based solely on the child's age and charged offense. There only needs to be a preliminary finding from the juvenile court judge that the child allegedly committed a qualifying offense, and, depending on the offense, the child is at least 14 or at least 16 years old. As long as there was "probable cause" to believe the child committed the act charged (which is a low threshold, meaning "some credible evidence"), the court cannot conduct any inquiry into the weight of the evidence. Additionally, this process forbids the juvenile judge from engaging in any individualized considerations of the child or circumstances surrounding the alleged offense.

Discretionary bindover permits transfer of children who are accused of a felony (with

a finding of "probable cause") and are 14-years or older. Transfer occurs at the juvenile judge's discretion, after an individualized consideration of the child's background and circumstances of the alleged offense. The court is required to order an investigation into the child and hold an additional hearing to determine whether the child should be transferred. The court is provided with a report documenting relevant, individualized circumstances of the child and the alleged offense—including a mental examination, social history, education, and family situation. The child may only be transferred if the court finds that the child is not amenable to the care or rehabilitation within the juvenile system and that the safety and security of the community may require adult sanctions. This determination is made after "amenability hearing," where the judge must consider the report and decide if the statutory factors in favor of transfer outweigh the factors against transfer. (*See Figure 1*).

Prosecutors maintain sole discretion over which charges to bring against a child—felonies or misdemeanors, and which specific offenses. As such, prosecutors

charging decisions directly impact which children are eligible for bindover, and whether bindover is mandatory or discretionary.

Generally, children who are detained pre-trial must be held in a juvenile facility. However, if a child's case is transferred to adult court, in many circumstances the child may be relocated into an adult facility while they await and go through their trial.⁶ This can take months or years.

Any child transferred to the adult system is exposed to the full force of the adult criminal court, including sentencing.

As such, children as young as 14 years old can be sentenced to, and placed in, adult prison in Ohio. In fact, a child *must* be moved to an adult facility upon a conviction in adult court in Ohio. In an adult facility, children must be separated by sight and sound from adults—effectively placing the child into solitary confinement.

Other states provide protections that limit the placement of children in adult facilities. For example, Kentucky requires youth transferred to and convicted in adult criminal court to serve their sentence in a juvenile facility until they reach age 18.⁷

Figure 1

FACTORS AGAINST BINDOVER

OHIO REQUIRES JUDGES CONSIDER THESE INDIVIDUALIZED FACTORS IN DISCRETIONARY BINDOVER CASES

- The victim induced or facilitated the act charged
- The child acted under provocation in allegedly committing the act charged
- The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person
- The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged
- The child previously has not been adjudicated a delinquent child
- The child is not emotionally, physically, or psychologically mature enough for the transfer
- The child has a mental illness or intellectual disability
- There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety

THE HARSHTEST CONSEQUENCE IS LEVIED DISPROPORTIONATELY AGAINST YOUTH OF COLOR

Tremendous racial disparities are evident in bindovers—reflecting a justice system that responds more harshly to Black and brown children at every point of contact, from arrest to conviction to sentencing. Despite research finding that youth of color and white youth engage in delinquent acts at similar rates, youth of color are disproportionately transferred to adult court.

Notably, young people, regardless of race, exhibit similar rates of risk-taking behavior. For example, a 2016 Centers for Disease Control and Prevention study documents that Black and white youth males self-report carrying a firearm at the same rates (9.6%).⁸ Thus, racial disparities in transfer rates are not caused by any intrinsic racial differences in youth, but rather illustrate pervasive issues within the practice of transfer.

Racial disparities in transfer have increased⁹—even as the overall number of youth transferred to adult court has decreased in recent years, and the U.S. is at a 50-year low for youth crime.¹⁰ In 2015, Black youth represented only about 14% of the national youth population, yet they represented

47.3% of youth transferred to adult court.¹¹ Black youth are tried as adults 6 times more often than white youth.¹² The Department of Justice recently issued 2018 data on demographics of youth who were judicially transferred to adult court: 32% were White, 52% were Black, and 14% were Hispanic.¹³

In Ohio, racial disparities are even worse than the national statistics. Black children make up just 14.2% of Ohio's youth population, but make up the vast majority of youth transferred.¹⁴ From 2010 to 2020, between 71.9% and 86.8% of children sent to adult court were Black.¹⁵ In Cuyahoga County, over 90% of youth transferred in 2019 and 2020 were Black, although only 40% of the county's youth are Black.¹⁶

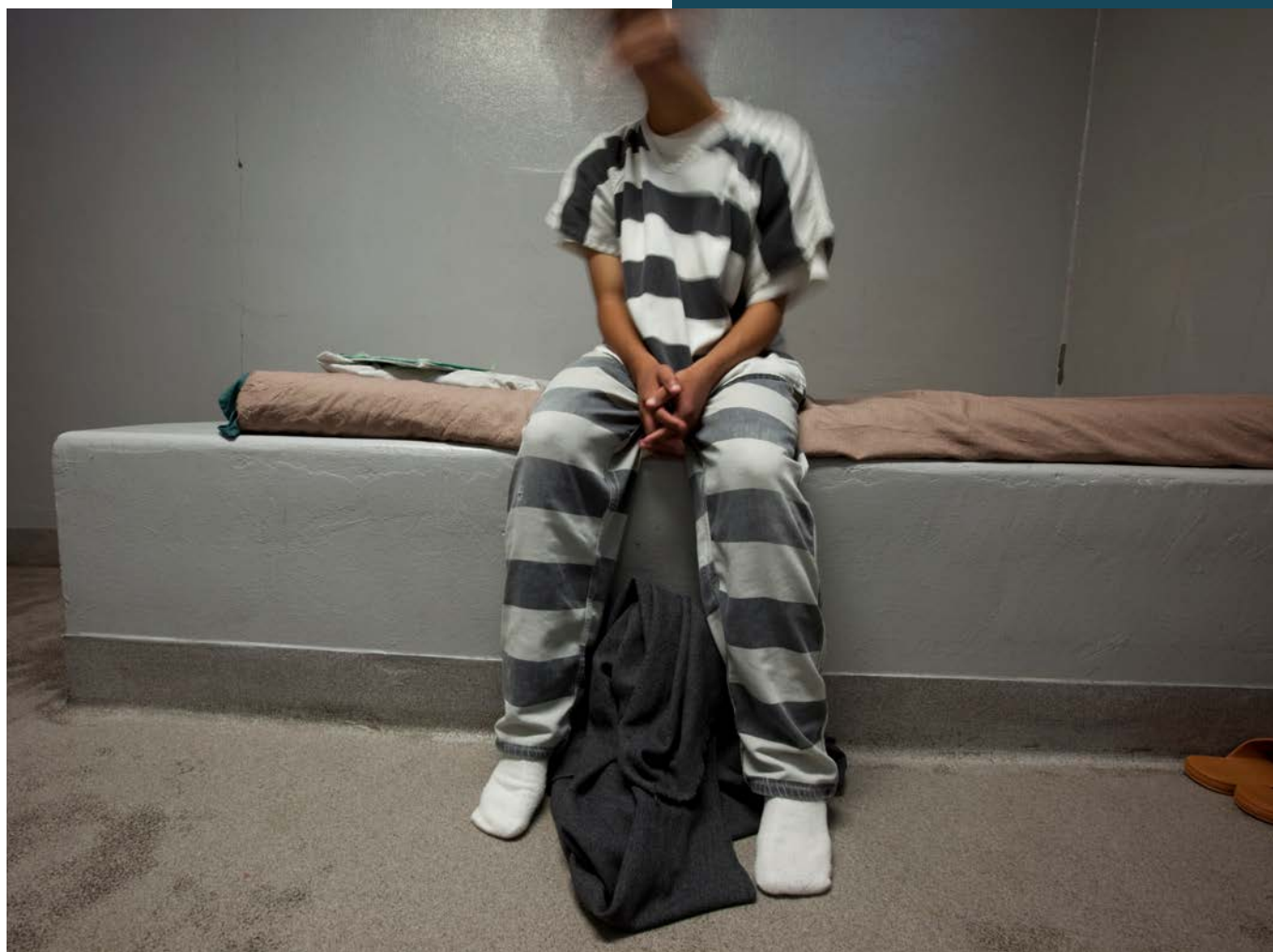
Ohio has been identified as having one of the highest rates of racial disparities in mandatory transfer in the country.¹⁷

Kentucky recently implemented measures to address racial disparities observed in its transfer rates. For example, in Jefferson County, Black youth were 27% of the population under age 18, and yet they were 93% of the children charged as adults between 2016 and 2018.¹⁸ To combat inequities such as this, Kentucky passed

Senate Bill 10, which established a Commission on Race and Access to Opportunity, tasked with achieving research-driven policy solutions. Kentucky went a step further and repealed its mandatory bindover law, and took steps to limit discretionary bindover, meant to eliminate disparate treatment of minority youths.¹⁹

E.C.'s quotation is from CLC's Storytelling Project, featuring stories from youth who have gone through the bindover process and their families. E.C.'s full story and others can be found in CLC's Publication *In Their Own Words*.

"JUVENILE
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WHILE THE ADULT
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SEEM TO MAKE US
BETTER CRIMINALS.
THIS IS MY OPINION."
- E.C.



KIDS ARE DIFFERENT

MANDATORY TRANSFER IGNORES ESTABLISHED SCIENCE

In 1966, the United States Supreme Court in *Kent v. U.S.* recognized youth are entitled to particularly strong due process protections when facing transfer to adult court. Over the course of a decade, the Supreme Court issued a series of decisions reaffirming that children are fundamentally different than adults and, in the justice system, these differences are relevant to their constitutional rights. The U.S. Supreme Court relied upon the growing body of adolescent development and neuroscience research documenting significant differences between youth and adults. The Court emphasized three critical distinctions: lack of maturity, susceptibility to outside influences, and capacity for change.

In *Roper v. Simmons*, the groundbreaking case in this series, the Court held that subjecting children to the death penalty constitutes cruel and unusual punishment, in violation of the Eighth Amendment.²⁰

The reasoning in *Roper* laid the groundwork for the principle that developmental differences in children are associated with diminished culpability, meaning a child's conduct "is not as morally reprehensible as that of an adult," and "renders suspect any

conclusion that a juvenile falls among the worst offenders."²¹

First, the Supreme Court reasoned that children exhibit a "lack of maturity and an underdeveloped sense of responsibility" which often results in "impetuous and ill-considered actions and decisions."²²

Second, the Court explained children are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."²³ Children, "lack the freedom that adults have to extricate themselves from a criminogenic setting," and have less control over their environment.²⁴ The Court emphasized that, "youth is more than a chronological fact. It is a time and a condition of life when a person may be most susceptible to influence and psychological damage."²⁵

Third, the Court distinguished children's character by their increased capacity for change because adolescence is a phase where personality traits are "more transitory, less fixed."²⁶ The Court underscored that the rationale for considering youth as a mitigating factor derives from the fact that juveniles are still struggling to define their identity, even when accused of the most heinous crimes.

The Court reiterated the fundamental concept that youth are different from adults in its series of decisions: *Graham v. Florida* (holding children cannot be sentenced to life without parole in non-homicide cases),²⁷ *J.D.B. v. North Carolina* (holding a child's age must be taken into account when determining whether they were in custody for Miranda rights due to their immaturity and vulnerability),²⁸ and *Miller v. Alabama* (holding mandatory life without parole unconstitutional for children in homicide cases).²⁹

This series of decisions, while focused primarily on sentencing for youth in adult court, suggests that children are constitutionally different from adults. The signature traits of youth demand careful consideration, particularly when children face the harshest of consequences. Indeed, mandatory bindover to adult criminal court

is the harshest consequence a child faces in the juvenile system.

Children are less mature, less responsible, more vulnerable than adults. They have less control and more capacity for change. For these reasons, they deserve individualized determinations before being exposed to the adult criminal justice system and adult penalties.

Mandatory bindover reinforces a blanket rule of transfer that defies well-documented scientific research on development and neuroscience. The mandatory scheme ignores youths' inherently reduced culpability, which is a hallmark feature distinguishing youth from adults. Moreover, mandatory bindover runs afoul of logic underlying the U.S. Supreme Court's decisions in *Kent*, *Roper*, *Graham*, *J.D.B.*, and *Miller*—calling for individualized considerations for youth.

"FROM A MORAL STANDPOINT, IT WOULD BE MISGUIDED TO EQUATE THE FAILINGS OF A MINOR WITH THOSE OF AN ADULT, FOR A GREATER POSSIBILITY EXISTS THAT A MINOR'S CHARACTER DEFICIENCIES WILL BE REFORMED."

- Roper v. Simmons



It is important to note that eliminating mandatory bindover does not mean eliminating all transfer. By eliminating mandatory bindover, Ohio would return discretion to juvenile court judges, who would hopefully make transfer decisions based on informed, individualized considerations that account for fundamental distinctions of youth.

The Ohio Supreme Court has long recognized the significant liberty interest at stake in juvenile transfer proceedings, encouraging courts below to invoke adult

transfer only rarely, particularly given the research documenting the long-lasting and negative impacts caused by transfer.³⁰

Eliminating mandatory bindover also builds on Ohio's recent efforts to align state law with the spirit of U.S. Supreme Court jurisprudence and with developments in neuroscience. In 2020, Ohio passed Senate Bill 256, eliminating life without parole sentences for youth bound over to the adult criminal system.³¹ Currently, 30 states ban juvenile life without parole (or have no children serving such a sentence).³²

TRANSFERRING CHILDREN TO ADULT COURT IS INEFFECTIVE AND CONTRARY TO PUBLIC SAFETY

Proponents of transfer laws argue that such laws work to reduce children from committing future crime through deterrence.³³ Yet, research over several decades has failed to produce data showing that these laws deter juvenile crime generally, or future crime of a specific child transferred. Nationally, no pattern exists between transfer laws and declines in youth violent crime rates. For example, Tennessee and Texas have vastly different transfer rates for violent offenses (54% and 80%, respectively), however, these states experience nearly identical youth arrest rates for violent crimes (7.2% and 7.1%, respectively)—demonstrating that transfer rates do not produce lower crime rates.³⁴

While comprehensive national data is not available (due to variation in each states' laws and a lack of data collection on children in adult systems), the data that does exist contradicts the deterrence theory. Contrary to the rhetoric, research suggests transfer itself may increase future reoffending.³⁵

Research shows that, on average, children prosecuted as adults are 34% more likely to commit additional felony offenses than children retained in the juvenile system for similar offenses.³⁶ Generally, children transferred to adult court experience higher re-arrest rates than their peers who remained in juvenile court for the same offense.

Six large-scale studies funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) revealed a *counter-deterrent* effect.³⁷ In fact, the highest recidivism rates were found in incarcerated youth after being transferred to the adult court system.³⁸ Research also suggests that the average time for reoffending decreases for transferred youth.³⁹

Moreover, data shows an increase in recidivism even when the child experienced only minimal involvement with the adult court. In other words, merely *processing* a child in the adult criminal system may result an increase in recidivism.

For example, a report written by The U.S. Center for Disease Control and Prevention's Task Force on Community Preventive Services concluded that of the youth who did not experience any incarceration for their crimes, transferred youth were 39% more likely to be arrested again later for a violent offense than youth retained in the juvenile court system.⁴⁰

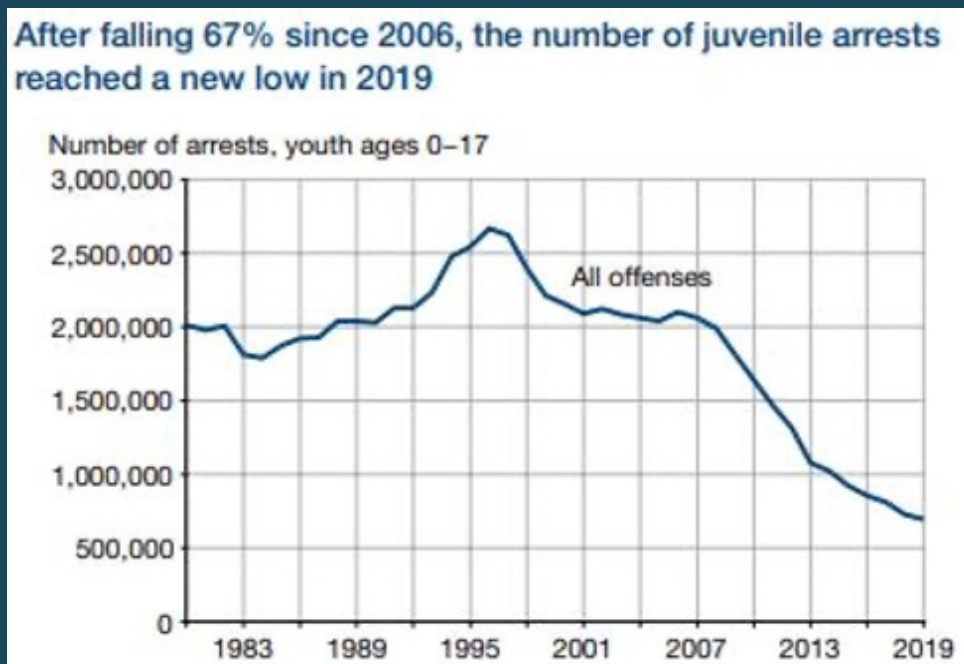
The report also indicated a further increase for violent recidivism when incarcerated youth received longer sentences.

Additionally, research shows that 95% of youth sentenced as adults are released by their 25th birthday and 78% are released by their 21st birthday.⁴¹ These statistics demonstrate that a vast majority of the youth transferred are not a public safety

risk, which begs the question as to whether the charges were serious enough to warrant transfer and how such adult sentences serve as a general deterrent. These statistics also show that a vast majority of youth could have served their full sentence in the juvenile system with a focus on rehabilitation (as all but 6 states extend juvenile jurisdiction to age 21), which would actually increase public safety according to research on recidivism rates.

Recent findings from OJJDP reveal that in 2019, the U.S. hit the lowest number of juvenile arrests in 40 years, including for violent offenses. (See Figure 2).⁴² These statistics show that the U.S. is far from the predicated "crime wave," which served as the justification in the 1990's to expand mandatory juvenile transfer mechanisms.

Figure 2



TRANSFERRING CHILDREN TO ADULT COURT CAUSES LIFELONG AND OFTEN DEVASTATING EFFECTS

CHILDREN IN ADULT FACILITIES MAY FACE BRUTAL CONDITIONS

Research consistently indicates that placing children in the adult criminal system and in adult facilities causes serious negative and long-lasting consequences.

Youth in adult facilities, as compared to those in juvenile facilities, are 5 times more likely to be sexually assaulted, 8 times more likely to commit suicide, and nearly twice as likely to be beaten by staff or attacked with a weapon by another inmate.⁴³ One study found youth held in adult prisons were 36 times more likely to commit suicide than youth held separate from adults.⁴⁴

Exposure to multiple or prolonged traumatic events increases the likelihood and severity of a person's adverse reaction to the trauma. In children, trauma is particularly likely to cause maladaptive behaviors.⁴⁵

Adult prisons often serve as a “school for crime” where children learn and see reinforced norms of domination, exploitation, and retaliation while their adolescent brains are forming and developing.⁴⁶ In fact, research suggests incarceration in adult facilities may have a

brutalizing effect on youth, which in part accounts for their increased recidivism rates after bindover (as discussed above).⁴⁷ The conditions of living within an adult criminal culture forces children to survive by accepting violence in daily life.

CHILDREN RECEIVE HARSHER PENALTIES IN ADULT COURT THAN IN JUVENILE COURT

Children transferred to adult court face the full force of adult penalties and sentencing, with the exception of the death penalty and, in non-homicide cases, life without parole. One out of every 17 persons sentenced to life in adult prison were children at the time of their offense.⁴⁸

A 2008 study found that among youth charged with a felony-level violent offense, only 1% of those who remained in the juvenile system were committed to a juvenile prison, as compared to 51% of youth transferred to adult court sentenced to prison.⁴⁹ In other words, a youth who happened to be selected for transfer is 51 times more likely to be sentenced to prison than his counterpart retained in the juvenile system for the same level felony.

TRANSFERRED YOUTH STRUGGLE MENTALLY

A study published in 2008 found almost no difference in the prevalence of psychiatric disorders between transferred and retained youth, 66% and 68% respectively.⁵⁰

However, researchers did find that the prevalence of psychiatric disorders among youth detained after transfer (66%) is nearly double that of detained adults (35%).⁵¹ Furthermore, transferred youth who received a prison sentence had significantly greater odds than those who received a different sentence to have a psychiatric disorder (74% and 57% respectively). These youth, on average, have more than one psychiatric disorder and 15% have all four major types of psychiatric disorders (affective, anxiety, disruptive behavior, and substance abuse).⁵²

Unfortunately, Ohio youth in adult facilities are less likely to have access to age-appropriate mental health services and treatment. Additionally, corrections staff in adult facilities lack training to meet the mental health needs of youth, which exacerbates the problem. A 2012 survey of Ohio youth in adult facilities revealed youth are less likely to have access to age-appropriate mental health services.⁵³

CHILDREN TRANSFERRED TO ADULT COURT ARE LABELED "FELONS" FOR LIFE

Admittedly, youth adjudicated in juvenile court face barriers as a result of their

case. However, a "conviction" in adult court carries severe and numerous collateral consequences that can be incredibly disabling upon re-entry to the community and will follow the child into adulthood, long after the completion of a sentence.

The stigma of being a convicted felon is accompanied by sanctions in various aspects of daily life that result from a public criminal record. These collateral sanctions create barriers to employment opportunities, public housing and assistance, government loans and contracting, adoption and foster care, immigration, vehicle licensing, and civic and political participation.⁵⁴

With some exceptions, law enforcement and court records pertaining to juveniles are confidential from the public—however, youth transferred to adult court are exempt from this protection. Because Ohio is an open records state, all adult court records are available to the public. Furthermore, eligibility to seal adult convictions is limited in Ohio, regardless of whether the person was a child at the time of the offense. In contrast, all juvenile offenses are eligible to be sealed and expunged in Ohio, with the exception of the most severe offenses (aggravated murder, rape, and murder).

LEGISLATIVE TRENDS ABANDON "ADULTIFICATION" OF CHILDREN

States across the country are limiting mechanisms for prosecuting children in adult courts and placing them in adult facilities. As discussed above, the debunked "super-predator" rhetoric triggered many states, including Ohio, to expand transfer provisions. The predicted crime wave never arrived and many states have embraced advances in adolescent development and neuroscience, trending away from the overly punitive responses to juvenile delinquency. Over the past fifteen years, a majority of states have restricted mechanisms that previously promoted adultification of children. Four legislative trends have emerged.

REMOVING YOUTH FROM ADULT JAILS AND PRISONS

Since 2009, 24 states have passed reforms to reduce or ban placing youth in adult jails or prisons.⁵⁵ According to reports, the number of youth in both juvenile and adult facilities is decreasing, yet, a majority of states still continue to house youth in adult prisons, leaving them vulnerable to victimization and depriving them of age-appropriate services. As such, several states have enacted heightened protections that limit or remove youth from adult jails and prisons.

For example, in Kentucky, youth under 18 are prohibited from being detained or confined in adult facilities, even when transferred to and sentenced in adult court.⁵⁶ Mandating that youth—who were prosecuted and sentenced as adults—be housed in a juvenile facility until reaching the age of majority allows Kentucky youth to receive age-appropriate services and treatment that otherwise would be denied to them in adult prison.

In New Mexico, a child is presumed to be housed in juvenile detention, unless the child has been previously incarcerated as an adult.⁵⁷ In Georgia, all transferred youth are to be held in juvenile detention pretrial.⁵⁸

Two federal laws—the Prison Rape Elimination Act and Juvenile Justice & Delinquency Prevention Act (JJDP)—expanded protections for youth by offering financial incentives to states that limit or remove youth from adult facilities, and ensure youth are "sight and sound separated" from adults. The JJDP was recently reauthorized and, as of December 2021, expanded to include youth charged as adults in its mandate to remove youth from adult jails pretrial.⁵⁹

RAISING THE AGE OF MAJORITY

Since 2007, the vast majority of states that previously excluded 16 and 17 year-olds from juvenile court based solely on age have passed legislation that raises the minimum age of adult criminal responsibility to 18. Only three states still allow all 17-year-olds to be charged automatically in adult court, regardless of offense.⁶⁰

Proposals in several states to raise the age of juvenile jurisdiction beyond 18 are receiving attention as well.

REDUCING THE PATHWAYS FOR CHILDREN INTO ADULT COURT

Nearly half the states (24) have passed reforms to reduce or eliminate automatic transfer to adult court, increasing judicial discretion and review in the transfer process.⁶¹ For example, 29 states, including Ohio, have passed or expanded reverse waiver provisions that allow youth prosecuted as adults the chance to return to juvenile court.⁶² Other states have eliminated their “once an adult, always an adult” provision or limited the number of offenses that make youth eligible for adult transfer. Additionally, many states have changed their mandatory or automatic transfer provisions over the past decade—either raising the requisite age or narrowing the offenses eligible for mandatory transfer—and, in some cases, repealing automatic transfer provisions entirely despite the fact that these provisions generally involve the most serious offenses.⁶³

REDUCING EXTREME SENTENCES FOR YOUTH

Many states, including Ohio, recognize the unique rehabilitative opportunity of youth and have enacted reforms that reduce or mitigate the harsh sentences youth can receive in the adult system. To date, 32 states and D.C. have banned juvenile life without parole (or have no one serving such a sentence), and several states have revised life without parole statutes.⁶⁴

Other states have cut down on mandatory sentencing for children tried as adults.

Several states enacted legislation that allows for judges to reassess youths’ sentences once they reach a certain age or after serving a specified number of years on their sentence. Ohio made tremendous strides in recognizing the unique capacity of youth in passing Senate Bill 256 in 2020, by a wide margin of bipartisan support, eliminating life without parole sentences for youth, with limited exception.

These reforms reflect the changing tide in public opinion. In 2014, 65% of voters agreed that youthful offenders should be treated differently than adults.⁶⁵ In a 2017 poll, the vast majority (78%) endorsed shifting the focus of the justice system from punishment and incarceration to prevention and rehabilitation.

RECOMMENDATIONS

ELIMINATE MANDATORY TRANSFER OF CHILDREN TO ADULT COURT

Preventing unnecessary bindover of youth to adult court is a significant step for justice in Ohio. Treating children in age-appropriate, rehabilitative settings with programs and services that support youths' mental and physical development increases the likelihood of successful entry into adulthood and reduces recidivism. Scientific research is clear—children are fundamentally different from adults, and, as such, should be treated differently.

Eliminating mandatory transfer will allow courts to conduct, in each case, a full investigation that due process demands. Instead of blanket mandatory transfers, courts should give individualized consideration to each child's circumstances and needs, as well as the risk of harm associated with transfer and placing children in adult facilities. Juvenile courts are able to utilize Ohio's youth corrections facilities, which, unlike adult facilities, were designed to handle the most serious cases while providing interventions for young people.

The mandatory transfer provision, expanded as part of a punitive, tough on crime response to the sensationalized "super-predator" era, can no longer be justified as a viable policy choice to address delinquency. This law has served to undercut the rehabilitative mission of Ohio's youth justice system while exposing young people to increased danger, harm, and trauma in the adult criminal system. Mandatory bindover cannot be reconciled with the recent strides Ohio has made, nor the U.S. Supreme Court mandates, to recognize that youth are fundamentally different from adults.

PRIORITIZE RETAINING CHILDREN IN THE JUVENILE JUSTICE SYSTEM

The adult criminal system and adult prisons were not developed to, and indeed do not, meet the needs of children. Juvenile courts were created because adult courts were an inadequate and inappropriate forum to address delinquent behaviors of youth. The adult system fails to provide age-appropriate, rehabilitative interventions for children and placing them in the adult system

causes critical disruptions in development. Retaining children in the juvenile system ensures they remain in facilities and access interventions that were designed to serve and habilitate young people. In contrast, transferring youth to adult court has been shown to increase future re-offending, which burdens taxpayers and crime victims and makes communities less safe. For these reasons, Ohio should prioritize investments in prevention and restorative strategies, addressing root causes of delinquency, and in stronger youth-focused responses to offending behaviors. Justice-system responses should be grounded in research, trauma-informed, and proven effective to address children's unique needs and promote their healthy development.

INVEST IN DATA COLLECTION AND ANALYSIS

Accurate statistical information, both locally and statewide, is essential to monitor the extent and nature of crime in our state. Likewise, to evaluate effectiveness of interventions that are meant to reduce delinquency, we need data on youth in Ohio's juvenile and adult justice systems, as well as the impacts that system-involvement has on children and families. Currently, Ohio lacks any uniform or coordinated data collection. Ohio must invest in data collection and analysis, including outcomes for youth transferred, that is easily accessible to the public.

Attempts to gather data in Ohio dates back decades. In the early 1990s, the state formed the Ohio Sentencing Commission to gather sentencing data, and 20 years ago the Ohio Supreme Court assembled the Ohio Commission on Racial Fairness. Since then, several additional commissions, task forces, and committees have called for the establishment of sentencing database. Additionally, Ohio Supreme Court Justice Maureen O'Connor has engaged in intentional efforts to encourage data collection and analysis in Ohio. Justice O'Connor stated, "Technology has evolved and now we have the tools to do this. Before, people had other priorities, other places to put money. There were lots of excuses. Now we have the political and social will in our country to do this." ⁶⁶ It is past time for Ohio to make this commitment.

ELIMINATE RACIAL DISPARITIES

Tracking and analyzing data – including outcomes – is a vital component of determining the impact of racial bias within the juvenile and adult justice systems. While eliminating mandatory transfer is one mechanism to address these disparities, systemic changes must occur simultaneously. A 2018 Social Justice Brief sets forth specific recommendations: “Racial and ethnic disproportionality cannot be resolved at the point of transfer to the adult system without a holistic approach to addressing the systemic and individual factors that lead black youth to the justice system. Federal, state, and local officials must aggressively collect data and review their policies and practices regularly to identify systemic issues in order to implement effective changes.”⁶⁷

Ohio can address these profound disparities by requiring transparent reporting from all jurisdictions and by developing targeted goals to address disproportionality at each point in the justice system where it is found to exist. Of note, a one-county pilot program in Ohio will begin gathering information to analyze whether sentences imposed by judges are racially skewed. This information will help flag any instance of persons with nearly identical backgrounds and set of facts receiving different sentences from judges for reasons that could be rooted in race, wealth, or other factors. Moreover, Justice O'Connor has repeatedly stated that "standardized data and collection methodology" on racial fairness in arrests and sentencing was needed. "Truly adequate figures just are not there. So, it's time for us to answer the call of so many task forces and commissions and blue-ribbon panels and get something done."⁶⁸

Alongside this data collection, Ohio should invest in training prosecutors to refrain from filing unnecessary requests for bindover and, likewise, judges to minimize the number of youth transferred and prioritize retaining youth in the juvenile system. Ohio should develop culturally competent responses to youth misbehavior and to the pipelines that disproportionately feed youth of color into the juvenile justice system. Additionally, by collaborating with existing national partnerships (i.e.: Juvenile Detention Alternatives Initiatives), Ohio should invest in building a more robust, and racially fair, youth justice system.



ENDNOTES

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