

Washington State Partnership Council on Juvenile Justice

November 2014

BULLETIN

A Summary of Washington State Data and Recent Study Findings: The Transfer of Youth (under age 18) to the Adult Criminal Justice System

Washington State Partnership Council on Juvenile Justice

The WA-PCJJ is Washington's state advisory group on juvenile justice, and is tasked with ensuring the state is meeting the core requirements of the federal Juvenile Justice and Delinquency Prevention Act. Also, by Executive Order 10-03 is "designated as the primary advisory state planning group for matters pertaining to juvenile justice in the state of Washington." A guiding principle of the Council is to **recognize the fundamental developmental differences between young people and adults, and retain responsibility for all youth capable of benefiting from rehabilitation and treatment in the juvenile justice system.**

This Bulletin provides a summary of data and recent study findings regarding the transfer of youth to the adult criminal justice system.

Juvenile offenders have strengths, are capable of change, can earn redemption, and can become responsible and productive members of their communities; brain science has established that there are fundamental developmental differences between adolescents and adults which must be taken into account in designing programs of prevention and intervention.
--WA-PCJJ

According to a 2013 publication from the Campaign for Youth Justice,¹ over the past eight years 23 states have enacted 40 pieces of legislation to reduce the prosecution of youth in adult criminal courts and end the placement of youth in adult jails and prisons. Washington State is one of eight states that changed their mandatory minimum sentencing laws to take into account the "developmental differences between youth and adults, allow for post-sentence review for youth facing juvenile life without parole, or other sentencing reform for youth sentenced as adults."

Recent Washington State Legislation

SB 5064 was signed by the Governor and passed into law in Washington State, effective **June 1, 2014.**² The bill provides that in setting a minimum term, the court must take into account mitigating factors including the diminished culpability of youth, as provided in *Miller v. Alabama*. Included in the bill's provisions: a youth who was sentenced to a term of life without the possibility of parole for an offense committed prior to their 18th birthday must be returned to the sentencing court or the sentencing court's successor to set a minimum term consistent with the provisions of the act; further, that any person convicted of one or more crimes prior to their 18th birthday can petition the Indeterminate Sentence Review Board for early release after serving a minimum of 20 years of total confinement, provided they have not been convicted for a crime after their 18th birthday.

Additionally, the legislation required that a task force be convened to examine juvenile sentencing reform, with prescribed membership. The Juvenile Justice Sentencing Task Force will "undertake a thorough review of juvenile sentencing as it relates to the intersection of the adult and juvenile systems and make recommendations for reform that promote improved outcomes for youth, public safety, and taxpayer resources."³ The task force has a deadline of December 1, 2014, to report its findings and recommendations to the Governor and appropriate Committees of the State Legislature.

This bill (5064) supports national policy work (and WA-PCJJ guiding principles) around understanding adolescent brain development and sentencing reforms that take into account the behavioral differences between adolescents and adults. The bill follows 2009 legislation⁴ that amended the state's juvenile code to restrict one aspect of the state's automatic transfer law – by eliminating the once an adult always an adult rule in cases where the youth was found not guilty – the amendments allow the juvenile court to have jurisdiction over a juvenile, even if the juvenile has previously been the subject of adult court jurisdiction as a result of a decline hearing, if in adult

court the juvenile was either acquitted of the offense, or charged or convicted of a lesser offense. The state legislature also amended the automatic transfer provision (that is triggered by certain offenses) to allow a youth age 16 or 17 to be transferred back to juvenile court upon agreement of the defense and prosecution. It also excluded 15 year olds from the mandatory decline hearing provisions in RCW 13.40.110.

Background- Washington's Transfer Laws

While our state has made progress in enacting legislation to reduce the prosecution of youth in adult criminal (Superior) court, according to 2012 statistics from the Juvenile Justice Geography, Policy, Practice & Statistics (JJGPS) website,⁵ Washington is one of 29 states that has in effect an automatic decline of jurisdiction law (statutory exclusion laws give adult criminal courts exclusive jurisdiction over certain classes of cases involving juvenile-age offenders). In our state, youth who are age 16 or 17 and are charged with certain crimes are automatically transferred to adult Superior Court jurisdiction. These auto decline provisions were enacted in 1994 and 1997 after a historical peak in the rates of juvenile arrests for violent crimes – "Legislators were motivated by the prospect that increased penalties would reduce violent crimes committed by youth."⁶ This was consistent with national trends in transferring youth to the adult criminal justice system at that time.⁷

According to the latest information available from the JJGPS providing a comparison of jurisdictional boundaries, Washington remains one of only three states that **does not have in effect an age restriction** for the transfer of a youth charged with any criminal offense from the juvenile court system to the adult criminal court system.⁸ Hence, a Juvenile Court Judge can waive jurisdiction and transfer a case to adult criminal court for any youth (under age 18) charged with committing a criminal-type offense, following a discretionary decline hearing per RCW 13.40.110 (1)(3). Also, this state law provides provisions for mandatory decline hearings – which must be held in Juvenile Court under specific prescribed circumstances when a youth is age 16 or 17 (RCW 13.40.110(2)). Hence, youth in our state may be transferred to adult Superior Court jurisdiction via Statutory Exclusion (original adult criminal court jurisdiction or "auto decline"); or through Judicially Controlled Transfer (following a discretionary or mandatory decline hearing in Juvenile Court).

"By setting the filters for "any criminal offense" and "no age specified", we see that only Alaska, Delaware and Washington have discretionary waiver laws that are broad not only in terms of age but in terms of offense as well." From the Juvenile Justice Geography, Policy, Practice & Statistics website, comparing policy boundaries.

Data Findings

Youth Charged and Sentenced in the Adult Court

System in Washington: According to recent data provided by the WA State Statistical Analysis Center,⁹ over the 5-year period of SFY 2009 through 2013,¹⁰ there were 672 youth who were transferred to adult criminal court jurisdiction. Approximately 42 percent of these youth were auto declines (under exclusive original adult criminal court jurisdiction), while 58 percent were transferred by the Juvenile Court to adult criminal court after a discretionary or mandatory decline hearing (judicially controlled transfers). Per the chart below, annually between 113 and 162 youth were sentenced in adult court. These data provide only youth whose cases were filed/charged in adult criminal (Superior) court while under the age of 18 years, and who were sentenced and convicted in adult court.

	2009	2010	2011	2012	2013	5-Year Period	% of Total
Exclusive Original Adult Criminal Court Jurisdiction-- Auto Decline (Statutory Exclusion):	57	73	52	56	43	281	41.8
Discretionary Decline of Jurisdiction (Judicially Controlled Transfer):							
Original Juvenile Court Jurisdiction - Transferred by the Juvenile Court to Adult Criminal Court after a Discretionary Decline Hearing	81	84	65	60	63	353	52.5
Original Juvenile Court Jurisdiction--Transferred by the Juvenile Court to Adult Criminal Court after a Mandatory Decline Hearing	14	5	8	4	7	38	5.7
Total Judicially Controlled Transfers	95	89	73	64	70	391	58.2
Total # of Juveniles Charged and Sentenced in Adult Criminal Court	152	162	125	120	113	672	100.0

Data Source: Forecasting Division, Office of Financial Management, WA State Statistical Analysis Center, August 2014.
* These person-level data provide only youth whose cases were filed/charged in adult criminal (Superior) court while under the age of 18 years, and who were convicted in adult court.

Research on Adolescent Brain Development:

A recent study summarized:¹¹ “The concordant evidence from both behavioral science and neuro-science research shows that there are changes in both behavior and brain development during adolescence that are transient rather than persistent. Most criminal conduct in adolescence is driven by developmental influences that will change with maturity. Moreover, most adolescent offenders desist during adolescence and many more desist during young adulthood.” The federal OJJDP commissioned the National Research Council (NRC) to conduct this study, to review recent advances in behavioral and neuroscience research, and to extract the implications for juvenile justice reform. The analysis of the research on adolescent brain development included the following conclusion from the NRC-convened Committee on Assessing Juvenile Justice Reform: *...the committee concludes that the basic contribution of the fast-developing body of brain development research is that it has provided plausible and informative neurobiological grounding for well-documented behavioral differences between adolescents and adults, and that these differences are sufficiently well established to provide a sound basis for juvenile justice policy making and for consideration in developing juvenile justice interventions.*

Type of Transfer or Waiver	Age of Youth at Date of Filing in Adult Court							5-Year Period Total
	11	12	13	14	15	16	17	
Exclusive Original Adult Criminal Court Jurisdiction-- Auto Decline (Statutory Exclusion):	0	0	0	0	0	107	174	281
Discretionary Decline of Jurisdiction (Judicially Controlled Transfer):								
Original Juvenile Court Jurisdiction - Transferred by the Juvenile Court to Adult Criminal Court after a Discretionary Decline Hearing	2	2	2	5	31	91	220	353
Original Juvenile Court Jurisdiction--Transferred by the Juvenile Court to Adult Criminal Court after a Mandatory Decline Hearing	0	0	0	0	3	11	24	38
Total Judicially Controlled Transfers	2	2	2	5	34	102	244	391
Total # of Juveniles Charged and Sentenced in Adult Criminal Court by Age at Date of Filing	2	2	2	5	34	209	418	672

Data Source: Forecasting Division, Office of Financial Management, WA State Statistical Analysis Center, August 2014.
* These person-level data provide only youth whose cases were filed/charged in adult criminal (Superior) court while under the age of 18 years, and who were convicted in adult court.

Age of Youth at Date of Filing in Adult Court:

According to the WA State Statistical Analysis Center data set, youth as young as ages 11 and 12 years old are being transferred to adult court jurisdiction (their case is transferred – via the discretionary decline process – from Juvenile Court to the Superior Court). See the information presented in the table below that shows the youth’s age at the time of filing in adult criminal court. Washington state law (RCW 9A.04.050) defines people capable of committing crimes as follows: “Children under the age of 8 years are incapable of committing crimes. Children of 8 and under 12 years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong.”

Youth of Color Findings:

Of significant concern is the disparity in the percentage of youth of color transferred to the adult system. In fiscal year 2013 in Washington State, the highest percentage of youth -- by race and ethnicity -- who were transferred and sentenced in adult criminal court were youth of Hispanic ethnicity. In FY 2012, the highest percentage of youth -- by race and ethnicity -- who were transferred and sentenced in adult criminal court were Black youth (non-Hispanic). Data on race and ethnicity findings show that over the 5-year period from FY 2009 through 2013, approximately two-thirds (65%) were youth of color. In comparison, youth of color comprise approximately one-third (34%) of Washington’s age 10-17 population.¹²

It should be noted that youth of color are significantly impacted by Washington’s automatic decline law (exclusive original criminal court jurisdiction) – in FY 2013, 74.4% of the youth who were automatically transferred to adult criminal court jurisdiction and convicted in adult court were Black or Hispanic youth. In comparison, the percentage of Black and Hispanic youth in FY 2013 whose case was transferred to adult court via the discretionary decline process (judicially controlled transfers) was 55.7% of the total discretionary transfers. While there is significant disparity for youth of color in both pathways to the adult court system, the data show the race and ethnicity of youth meeting the criteria for Washington’s auto decline law have been predominantly youth of color from FY 2010 through 2013.

Gender Data Findings:

During the five-year period (July 2008 through June 2013), 43 of the youth charged and sentenced in adult criminal court were girls, while 629 were boys. Annually, the percentage of girls transferred to adult court jurisdiction ranged from 4.6 percent to 8.3 percent during the 5 year time period.

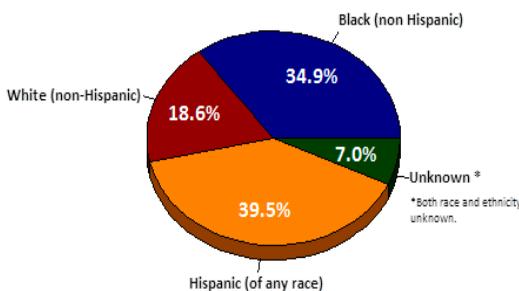
“The well-being of minority communities and of our whole society requires affirmative steps to reduce disproportionate minority contact with the justice system.” -- WA-PCJJ

Race/Ethnicity of Youth and WSIPP Study Results

Juveniles Charged and Sentenced in Adult Criminal Court * by Race/Ethnicity from FY 2009 - 2013												
Race/Ethnicity	2009		2010		2011		2012		2013		5-Year Total	5-Year % of Total
	#	%	#	%	#	%	#	%	#	%	#	%
Asian/Pacific Islander (non-Hispanic) **	4	2.6%	4	2.5%	9	7.2%	8	6.7%	2	1.8%	27	4.0%
Black (non-Hispanic) **	33	21.7%	59	36.4%	29	23.2%	43	35.8%	28	24.8%	192	28.6%
Native American (non-Hispanic) **	14	9.2%	2	1.2%	3	2.4%	3	2.5%	2	1.8%	24	3.6%
White (non-Hispanic) **	69	45.4%	41	25.3%	38	30.4%	24	20.0%	33	29.2%	205	30.5%
Hispanic (of any race)	28	18.4%	42	25.9%	41	32.8%	37	30.8%	43	38.1%	191	28.4%
Race & Ethnicity Unknown	4	2.6%	14	8.6%	5	4.0%	5	4.2%	5	4.4%	33	4.9%
TOTAL	152		162		125		120		113		672	100.0%
Total and Percentage of Youth of Color	79	52.0%	107	66.0%	82	65.6%	91	75.8%	75	66.4%	434	64.6%

Data Source: WA State Statistical Analysis Center, Forecasting and Research Division, Office of Financial Management, August 2014.
 * Data includes both youth transferred from juvenile court to adult court (Discretionary declines) and Exclusive Adult Jurisdiction (automatic declines). These person-level data provide only youth who were filed/charged in adult criminal (Superior) court while under the age of 18 years, and who were convicted in adult court.
 ** Note: Youth designated with "unknown" ethnicity are included in this race category (e.g., both Asian non-hispanic and Asian "unknown ethnicity" are included).

Youth Automatically Declined to Adult Criminal Court Jurisdiction by Race and Ethnicity in FY 2013



Data Source: Forecasting Division, Office of Financial Management, WA State Statistical Analysis Center, August 2014.

WSIPP Study Results

In 2012, the Washington State Institute for Public Policy (WSIPP) was asked to evaluate the effectiveness of Washington's decline laws -- to include an outcome evaluation, a review of the national literature on the effectiveness of transferring juveniles to the adult system, and to estimate the costs and benefits associated with the policy. This project was initiated by the WA-PCJJ, and was approved by WSIPP's Board of Directors in September 2012.¹³

The report, *The Effectiveness of Declining Juvenile Court Jurisdiction of Youth*, was completed in December 2013 (Elizabeth Drake, principal researcher).¹⁴ The study focused on automatic decline of jurisdiction, as the recidivism rates of youth who were automatically declined after implementation of the 1994 law could be compared to a group of youth prior to the

law -- who met the eligibility requirements to be automatically declined had the law been in existence. It was found that since 1994, about 1,300 Washington youth were processed in the adult system under the automatic decline law.

The researchers were unable to construct a valid comparison group for youth who were transferred to adult court due to a discretionary decline; therefore, the study focused on automatic declines. The report summary states: "Recidivism is higher for youth who are automatically declined jurisdiction in the juvenile court. These findings are similar to other rigorous evaluations conducted nationally by other researchers." Even when controlling for time trends, it was determined that youth who were automatically declined had higher recidivism rates.

It should be noted that while the WSIPP researchers concluded these differences were not found to be statistically significant, a meta-analysis was also conducted as part of the study. A systematic review of the literature was conducted to locate all studies that evaluated the impact juvenile decline laws had on crime or recidivism. Three studies total¹⁵ were found to be rigorous enough to be included in the meta-analysis. "All three studies in the meta-analysis found that declining youth to adult court is associated with an increase in recidivism." **This effect was found to be statistically significant by WSIPP.**

Due to limitations in available juvenile justice literature, WSIPP was not able to empirically investigate the potential benefits (or costs) of avoided crimes due to an increased length of stay in confinement for automatically declined youth (i.e., to calculate the savings for taxpayers and crime victims when crime is avoided or averted through confinement—the "incapacitation" effect). Youth in the decline study group were confined an average of 33 months compared with youth in the pre-auto decline group who were confined an average of 13 months.

The additional cost to taxpayers and crime victims to confine declined youth for a longer period of time was estimated to be: \$72,585 per youth who were automatically declined; the increase in recidivism was estimated to be an additional \$2,168 to taxpayers and \$8,071 to crime victims per offender (\$10,239 per youth total). This provides a combined total cost estimate of \$82,824 per juvenile offender. WSIPP did not calculate a benefit-to-cost ratio since the monetary benefits from the increased use of confinement for declined youth could not be estimated.

Summary of Findings and Conclusions

Summary of Findings from Analysis of the WA State Data and from the WSIPP Study:

- From state fiscal year 2009 through 2013, approximately 42 percent of the youth charged and sentenced in adult criminal court were automatic declines, while 58 percent were under original juvenile court jurisdiction but were transferred and charged in adult criminal court following a discretionary or mandatory decline hearing.
- 672 youth were charged and sentenced in adult criminal court over the five year time period.
- A high percentage of youth of color are transferred to adult criminal court jurisdiction, more so pursuant to the automatic decline law (exclusive original adult court jurisdiction), contributing to significant racial and ethnic disparities.
- Washington is one of only three states that does not have an age restriction for judicially controlled transfers to adult criminal court for any criminal offense -- allowing any youth under age 18 to be transferred from Juvenile Court to adult (Superior) court jurisdiction for a criminal offense.
- According to the data for the FY 2009 – 2013 time period, youth were as young as 11 years old **at the time their case was filed** in adult criminal court.
- A December 2013 WSIPP study found that recidivism is higher for youth who are automatically declined jurisdiction in the juvenile court (who are charged in adult criminal court). These research findings are consistent with other rigorous evaluations conducted nationally by other researchers.
- According to the study, youth automatically declined were confined an average of 33 months in comparison to youth in the pre-auto decline group who were confined an average of 13 months.

¹ Campaign for Youth Justice, Removing Youth from the Adult Criminal Justice System, State Trends: Legislative Victories from 2011-2013,” 10/10/2013.

² 2SSB 5064, An Act relating to persons sentenced for offenses committed prior to reaching 18 years of age; signed into law by Governor Inslee on March 28, 2014, effective 6/1/2014.

³ 2SSB 5064.PL, Section 13 (3).

⁴ ESSB 5746, became effective July 2009.

⁵ Available online from the “Juvenile Justice Geography, Policy, Practice, & Statistics” website, jurisdictional boundaries section, at <http://jjgps.org/jurisdictional-boundaries> (developed by the NCJJ with funding from the John D. and Catherine T. MacArthur Foundation).

⁶ Juvenile Justice Subcommittee of the Race and Criminal Justice Task Force, “Preliminary Report and Recommendations to the Supreme Court to Address the Disproportionately in Washington’s Juvenile Justice System,” March 28, 2012.

⁷ “State transfer laws in their current form are largely the product of a period of intense legislative activity that began in the latter half of the 1980s and continued through the end of the 1990s;” “...legislatures in nearly every state revised or rewrote their laws to lower thresholds and broaden eligibility for transfer, shift transfer decision-making authority from judges to prosecutors, and replace individualized discretion with automatic and categorical mechanisms.” From “Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting,” September 2011, National Report Series Bulletin, OJJDP.

⁸ According to a 2012 comparison of policy boundaries, Alaska, Delaware and Washington State have discretionary waiver laws for any criminal offense and with no age specified (i.e., no age restriction).

WA-PCJJ Conclusions:

• Automatic Decline Law Results in Higher Recidivism for Youth:

Transferring youth under age 18 pursuant to the automatic decline law in our state is not effective in decreasing future criminal offending, but has the counter effect of increasing reoffending. The additional cost to taxpayers was estimated to be \$82,824 per youth due to the increase in length of stay and recidivism.

• Significant Impact on Racial and Ethnic Disparities:

The automatic decline law (exclusive original criminal court jurisdiction) has a significant impact on minority youth as more youth of color are declined for adult prosecution in our state. Youth of color comprise the majority of youth who are transferred to the adult court system, both for automatic declines and judicially controlled transfers.

• The Lack of a Minimum Age Restriction in the Statute for Declination Results in Children of Any Age Being Prosecuted as Adults; youth as young as 11 have been declined:

Washington State is one of only three states that does not have in effect an age restriction and has broad eligibility (for any criminal offense) for discretionary waivers from juvenile court to adult court. Not having a set age restriction for judicially controlled transfers to adult criminal court per RCW 13.40.110 has allowed youth as young as 11 years old to be found by a Juvenile Court to be capable of committing a criminal offense, and be transferred and charged in adult court (even though the court must hold a capacity hearing to overcome the presumption of incapacity for youth ages 8 to 11).

⁹ WA State Statistical Analysis Center, Office of Financial Management (OFM) Forecasting and Research Division.

¹⁰ July 2008 through June 2013.

¹¹ “Reforming Juvenile Justice: A Developmental Approach,” a study undertaken by the National Research Council at the request of the Office of Juvenile Justice & Delinquency Prevention; National Academies Press, 2013.

¹² “2012 Age 10-17 Youth Population by Race/Ethnicity by County,” Table 15, WA-PCJJ 2013 Juvenile Justice Report, Office of Juvenile Justice, DSHS, Olympia, WA. Bridged-race population estimates derived from data collected by the U.S. Census Bureau and modified by the NCHS, available from “Easy access to juvenile populations: 1980-2012”; Puzanchera, Sladky, and Kang.

¹³ This research project was a follow-up to a January 2003 study conducted by WSIPP to examine the effectiveness of the changes made in the exclusive original jurisdiction of juvenile court over juvenile offenders (the automatic decline of jurisdiction law); the 2003 study findings “were inconclusive, however, since the law had not been implemented long enough to examine its impact on recidivism” -- from the December 2013 WSIPP report.

¹⁴ Drake, E. (2013). The effectiveness of declining juvenile court jurisdiction of youthful offenders (Doc. No. 13-12-1902). Olympia, Washington State Institute for Public Policy.

¹⁵ Drake, 2013; Fagan, 1995; and Fagan et al., 2007, were the three studies in the meta-analysis.

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