

# Reducing Pathways to Adult Court: Ending Mandatory Transfer in Kentucky



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## Background

Currently every state has a statutory mechanism for transferring children to the adult criminal justice system. “Transfer” is a legal term in Kentucky that signifies when the juvenile court “transfers” jurisdiction to the Circuit Court where adults are criminally prosecuted. Although children who are transferred to adult court are not housed in adult facilities, they are otherwise treated as if they are adults. Historically, this decision was primarily within the discretion of the juvenile court judge.<sup>1</sup> Transfers occurred only for limited offenses after the judge determined that the juvenile court would be unable to rehabilitate the child.

A drastic shift occurred in the 1990’s with juvenile courts moving away from treatment and rehabilitation focused missions into juvenile systems that imposed significant sanctions, specifically punishment and incarceration, as their mission. This was in response to public concern about increasing crime and a growing distrust in the juvenile justice system to ensure public safety. During the late 1980’s and early 1990’s, a drastic increase in juvenile arrest rates for violent offenses was accompanied by a few isolated, yet highly publicized cases as well. Simultaneously, as an unfounded (and eventually debunked) rhetoric warned of youth “superpredators,” who would be unresponsive to the juvenile justice system.<sup>2</sup>

It was against this background that statutory provisions were enacted across the nation, causing transfer to adult court to evolve from the rarity it once was to what it is today—a common occurrence for America’s youth. With time, these statutes expanded who could be sent to adult court while simultaneously limiting the court’s discretionary role in the determination. In 1970, there were only 8

states that had automatic exclusion laws based on age and offense. Today there are 26 with statutory exclusion laws.<sup>3</sup> While judges were previously able to consider the specific characteristics of the child and the situation surrounding the offense, transfer laws began focusing the inquiry solely on the age of the child and the specific act the child allegedly committed.<sup>4</sup>

Proponents of transfer laws argue that such laws work to reduce the number of children from committing future crime through deterrence.<sup>5</sup> There is no clear data that supports the deterring effect. Nationally, no pattern exists between transfer laws and reductions in juvenile violent crime rates. A comprehensive picture does not exist due to a lack of data about children in adult systems across the states. The data that is collected fails to demonstrate a correlation between high transfer rates and a decline in crime rates.<sup>6</sup> Some researchers found that, despite being widely publicized by the media, New York’s transfer statute had no deterrent effect on the state’s overall juvenile crime rate.<sup>7</sup>

Kentucky Senate Bill 200 (“SB 200”) signed in 2014, significantly improved Kentucky’s juvenile justice system, and the reforms that followed were nationally recognized. Yet, children may still be sent to adult court without more than a mere preliminary probable cause determination. Probable cause is a reasonable basis for believing that a crime may have been committed. It is the lowest standard of proof in criminal law. Although SB 200 emphasizes the treatment of Kentucky’s youth rather than their punishment, the current system still allows for this punitive treatment of children. Kentucky should continue on the trend of juvenile justice reform and modify its laws regarding the transferring of children to adult court.

## How Kentucky's Children Meet the Adult Criminal Justice System

Kentucky's law that guides the transfer of children to adult court for trial and sentencing is codified at KRS §§ 635.020 and 640.010. Kentucky's children can be prosecuted as adults through: mandatory transfer, in which the judge has no discretion in the decision and is required to transfer the child after a simple finding; discretionary transfer, in which the judge has the option to transfer a child to adult court.

Mandatory transfers are often referred to as automatic transfers. The court conducts a probable cause hearing where the judge is *required* to transfer the child after a simple finding that the child's age and charged offense meet the basic criteria. In Kentucky, children as young as 14 are required to be transferred to adult court if they are "charged with a felony in which a firearm, whether functional or not, was used in the commission of the offense...."<sup>8</sup>

In cases of discretionary transfers, the court conducts a preliminary probable cause hearing and then an additional hearing, wherein the court considers and weighs several factors to determine whether the child *should* be transferred. *See Figure 1.*

Discretionary transfers come before the court in four situations. (1) if a child is 14 years old and charged with a capital offense, or a Class A or Class B felony; (2) if a child is 16 years old and charged with a Class C or Class D felony and "has on one prior separate occasion been adjudicated a public offender for a felony offense; (3) if the child was previously convicted as a youthful offender;

and (4) If a person is over eighteen (18) but the offense charged occurred before they turned 18."<sup>9</sup>

Despite the manner in which a child is transferred to adult court, Kentucky law does not allow children to be held in adult facilities until they turn 18. Pursuant to Kentucky's sentencing laws, KRS § 640.030, any child convicted under the age of 18 remains in the custody of Kentucky's Department of Juvenile Justice ("DJJ"). If a portion of the child's sentence still remains once the child reaches the age of 18, then the child is returned to the sentencing court for a resentencing hearing. At this hearing, the court will make one of the following determinations: (1) place the child on probation; (2) return the child to DJJ to complete a treatment program; or (3) send the child to the adult Kentucky Department of Corrections to await parole or serve out the remainder of their sentence.

### Factors for Discretionary Transfer

1. *Seriousness of offense*
2. *Whether the offense was against persons or property, with greater weight being given to offenses against persons*
3. *The maturity of the child as determined by his environment*
4. *The child's prior record*
5. *The best interest of the child and community*
6. *The prospects of adequate protection of the public*
7. *The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system*
8. *Evidence of the child's participation in a gang.*



## Children are not Adults

**Mandatory Transfer of Children to Adult Court Ignores Established Science.** Over the past decade, the United States Supreme Court issued a series of cases identifying the fundamental differences between children and adults. The Court focused on the growing body of research on adolescent development and neuroscience indicating that children are less mature than adults and, therefore, are less culpable than adults. In *Roper v. Simmons*, the groundbreaking case in the series, the Supreme Court held that subjecting children under the age of 18 to the death penalty is cruel and unusual punishment in violation of the Eighth Amendment.<sup>10</sup>

According to the Court, children exhibit a “lack of maturity and an underdeveloped sense of responsibility” that often leads to “impetuous and ill-considered actions and decisions.”<sup>11</sup> The Court noted that children are more “susceptible to negative influences and outside pressures, including peer pressure” and have more potential than adults to change as they grow.<sup>12</sup> *Roper* laid the groundwork for *Graham v. Florida*, in which the Court held that children under the age of 18 could not be sentenced to life without parole in non-homicide cases.<sup>13</sup> More recently, the Court in *J.D.B. v. North Carolina* held that a law enforcement officer must take a child’s age into account when determining whether the child understands his “Miranda” rights.<sup>14</sup> The Supreme Court looked to new evidence documenting three scientifically proven, distinguishing traits of children that make them inherently less culpable than adults:

*A lack of maturity and an underdeveloped sense of responsibility.* The Court stated that these qualities often result in “impetuous and ill-considered actions and decisions.”<sup>15</sup> The Court noted, “the susceptibility of [children] to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’”<sup>16</sup>

*Vulnerability to negative influences and outside pressures.* The Court quoted the American Psychologist Journal: “as legal minors, [children] lack the freedom that adults have to extricate themselves from a criminogenic setting,”<sup>17</sup> and then went on to state: “[t]heir own vulnerability and comparative lack of control over their immediate surroundings mean [children] have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.”<sup>18</sup>

*The transitory nature of children’s personality traits.* The Court stated, “[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a [child] is evidence of irretrievably depraved character. 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.”<sup>19</sup>

After examining these differences between children and adults, the Court concluded that [children] are inherently less culpable than adults, and, therefore, the death penalty for [children] would not serve any retributive or deterrent purpose.<sup>20</sup> The same reasoning used in *Roper* can be applied when considering the mandatory transfer of children to adult court.



Because children are less mature, less responsible, more vulnerable to peer pressure, and have less fixed personalities, they deserve *individualized* determinations of culpability before being subjected to the adult criminal justice system and adult penalties. Before transfer to adult court, children should be entitled to a hearing during which a judge considers scientifically relevant factors, including their greater potential for reform, which inherently distinguish them from adults.

Children should not be transferred to adult court solely because of their chronological age or their alleged offense. The mandatory transfer statutory scheme ignores the inherent reduced culpability of children. Entrusting judges with the discretion to decide whether a particular child, after an individualized hearing, meets the requirements to be transferred to adult court is a significant step towards aligning Kentucky law with the spirit of the recent United States Supreme Court decisions.

### **Transferring Children to Adult Court is Ineffective and Contrary to Public Safety.**

Contrary to the rhetoric, transfer laws do not deter children from committing serious offenses, nor do they ensure public safety or reduce 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 juvenile arrest rates for violent crimes (7.2% and 7.1%, respectively)—demonstrating transfer rates do not produce lower crime rates.<sup>21</sup> Research consistently indicates that transferring children to adult court causes serious and long-lasting consequences.

Research indicates that, on average, children transferred to adult court are 34% more likely

to commit additional felony offenses than children retained in the juvenile system for similar offenses.<sup>22</sup> Generally, children transferred to adult court experience higher re-arrest rates than their peers who remained in juvenile court after committing the same crime. In fact, the *highest* recidivism rates were found in incarcerated children after being transferred to the adult court system.<sup>23</sup> Research also suggests that the average time for reoffending decreases for children transferred to adult court.<sup>24</sup>

Data shows an increase in recidivism even when the child experienced only minimal involvement with the adult court. Merely processing a child in the adult justice system may result in negative consequences and an increase in recidivism. A report written by The U.S. Center for Disease Control and Prevention's Task Force on Community Preventive Services concluded that compared with children who did not experience incarceration for their crimes, children transferred to adult court were 39% more likely to be arrested again later for a violent offense than children retained in the juvenile court system.<sup>25</sup> The report also indicated a further increase for violent recidivism when incarcerated children received longer sentences.

The majority of the empirical evidence suggests that transfer laws have little to no general deterrent effect.<sup>26</sup> This means that it is unlikely that transfer laws prevent juvenile crime or work to deter any would-be juvenile offenders. Research also shows that 95% of children transferred to and sentenced in adult court are released by their 25th birthday and 78% are released by their 21st birthday.<sup>27</sup> These statistics demonstrate that a vast majority of children transferred to adult court are not a public safety risk, which begs the question as to whether the charges were



serious enough to warrant transfer to adult court and how such sentences serve as a general deterrent. These statistics also show that a vast majority of children 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 based on research of recidivism rates.

It should be noted that the limited empirical research on this issue is somewhat inconsistent. It is possible that the reason for these inconsistencies across studies is that most children are not aware of laws allowing transfer to adult court, or, if they are, they do not believe they will be enforced against them.<sup>28</sup> That said, children's psychosocial immaturity, including their tendency to focus on the short-term benefits of their choices, may reduce the likelihood that they will perceive the substantial risk of being arrested or punished as an adult.<sup>29</sup> Therefore, it is possible that even well-publicized transfer laws would still have little general deterrent effect on children.

### **Transferring Children to Adult Court Causes Lifelong and Often Devastating Effects.**

***Children receive harsher penalties in adult court than they would in juvenile court.*** Children transferred to adult court are subject to all adult penalties, with the exception of the death penalty and life without parole.<sup>30</sup> In contrast to adult penalties, juvenile penalties focus on rehabilitation. While children adjudicated in the juvenile system may still be sentenced to a secure detention facility, they have the chance to be "re-sentenced" at age 18 where the judge may decide that they should be released, put on probation, sent back to the juvenile facility for a specified amount of time, or transferred to an adult facility. Some less restrictive penalties

offered by the juvenile system include home confinement, payment of a fine, counseling, electronic monitoring, and community service. It is important to note that commission of a similar crime does not guarantee a similar outcome in adult court and juvenile court. A 2008 study comparing children transferred to adult court to children retained in juvenile court found that, of those charged with a felony-level violent crime, only 1% of youth retained in the juvenile system were sentenced to a secure detention facility, as compared to 51% of children transferred to adult court.<sup>31</sup> To put this in context, a child who happened to be transferred to the adult system is *51 times more likely* to be sentenced to a secure detention facility than his counterpart retained in the juvenile system for the *same* level of felony.

***Children transferred to adult court are labeled "felons" for life.*** A "guilty" result in juvenile court is called an "adjudication," as opposed to a "conviction" in adult court. This is a key difference, because a "conviction" carries several collateral consequences which can be incredibly disabling to a child transferred to adult court reentering society. A convicted felon faces significant obstacles in various areas including employment, public housing and assistance, federal student loans, adoption and foster care, immigration, voting, and jury service.

***Transferred children struggle mentally.*** A study published in 2008 found almost no difference in the prevalence of psychiatric disorders<sup>32</sup> between youth transferred to adult court and youth retained in juvenile court — 66% and 68%, respectively.<sup>33</sup> However, researchers did find that the prevalence of psychiatric disorders among youth transferred and detained in the adult court system (66%) is nearly *double* that of





detained adults (35%).<sup>34</sup> Furthermore, children transferred to adult court 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).<sup>35</sup> These children, 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).<sup>36</sup>

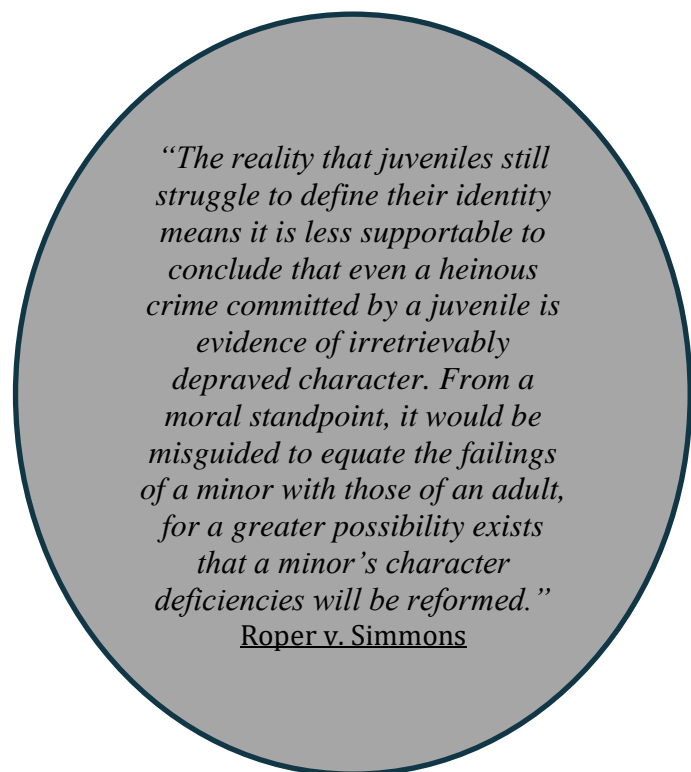
***Adult court records are not confidential.***

With some exceptions, all law enforcement and court records regarding juveniles are confidential from the public—however, children transferred to adult court are exempt from this protection. Because Kentucky is an open records state, all adult court records are open to the public, meaning that anyone – including a child’s school, current or potential employers, creditors, housing authorities, etc. – can inspect those records at will, except under limited circumstances. They can discover details of the alleged crime, court transcripts, law enforcement interviews, and anything else that could be potentially very detrimental to the child. This lack of confidentiality could result in the loss of jobs or housing, or unfair treatment from school administrators, whereas a child retained in juvenile court, for the same or similar offense, would enjoy the protection of confidentiality. This differential treatment can create a sense of resentment and injustice in children transferred to adult court, which may lead them to re-offend.

***Adult court records are more difficult to expunge.***

In Kentucky, juvenile court records are eligible for expungement two years after the date of termination of the court’s jurisdiction over the person or their unconditional release from commitment, though the two-year period may be waived

under extraordinary circumstances. In contrast, adult court records are only eligible for expungement five years after completion of the person’s sentence, probation, or parole. There are additional factors that apply to adult convictions that can prohibit expungement. Public records are accessible to potential employers, school administrators, public housing authorities, and immigration authorities who may use a person’s record against them, resulting in potentially dire consequences for that person.





## Legislative Trends in Other States

**Trending Away from “Adultification” of Children.** States throughout the country are pushing away from transferring children to adult court and holding them in adult facilities. The 1990’s superpredator myth led many states, including Kentucky, to revise their statutes. This meant less rehabilitation services and more punitive consequences for children, including expanding the ways in which children could be transferred into adult court. In the past decade, however, many states have accepted current research and moved away from this mindset. Over the last fifteen years, a majority of states have made legislative changes to restrict adultification of children. Four legislative trends have emerged across the country as set forth below.

**Removing Children from Adult Jails and Prisons.** Twenty-four states have passed reforms reducing or eliminating holding children in adult facilities.<sup>37</sup> Two federal laws expanded protections to children offering financial incentives to states to encourage limiting or removing children from adult facilities.<sup>38</sup> In 2001, Kentucky, through a federal consent decree, revamped the juvenile justice system removing children from adult facilities, among other reforms. This put Kentucky at the forefront as a leader in the development of a model juvenile justice system.

**Raising the Age of Majority.** A majority of states have passed laws raising the age for juvenile court jurisdiction, recognizing that 18 should be the minimum age of adult criminal responsibility. Only three states still

allow 17-year-old children to be transferred automatically to adult court for any offense.<sup>39</sup>

**Reducing the Pathways for Children into Adult Court.** Nearly half the states have passed reforms to reduce or eliminate automatic transfer to adult court, increasing judicial discretion and review in this process.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> 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 the automatic transfer provisions.<sup>43</sup>

**Reducing Sentences for Children.** Some states recognize the unique rehabilitative opportunity of children and have enacted reforms that reduce or mitigate the harsh sentences children can receive in the adult system. Thirty states have prohibited juvenile life without parole, and several other states have revised life without parole statutes.<sup>44</sup> Other states have reduced mandatory sentencing for children transferred to adult court.<sup>45</sup> Indiana, Oregon, Washington, D.C., and California passed recent legislation allows for children’s sentences to be reassessed once they reach a certain age or after serving a specified number of years on their sentence.<sup>46</sup>



## The Greatest Racial Disparity Exists for the Harshest Consequence

### Children of Color are Disproportionately Impacted by Transfer to Adult Court.

Despite findings that white children and children of color engage in acts of violence at similar rates, children of color are treated harsher, and they are increasingly transferred to adult at a time when transfer to adult court is happening less often on a national level.<sup>47</sup> This disparity reflects a general and longstanding trend of the justice system generally. The criminal justice system responds more aggressively to children of color at each point of contact (from arrest to sentencing) and, as a result, the greatest racial disparities are observed at the deepest end of the system with the gravest of consequences—transfer to adult court.

After implementation of SB 200, there was a decrease in the number of out-of-home placements and an increase in the number of diversions. However, black children did not experience these benefits as compared to white children. *See Figure 2.* According to data from the Kentucky Administrative Office of the Courts, although black children make up 11% of the child population in the Kentucky, they represent 60% of children transferred to adult court. Conversely, white children make up 81% of the child population, but only 35% of children transferred to adult court.

Nationally, the trend is the same. While the overall number of children transferred to adult court nationwide has decreased in the

past 25 years, the racial disparities have increased.<sup>48</sup> Stark and persistent racial disparities in the rates of in both automatic and discretionary transfers to adult court for black children.<sup>49</sup> In 2015, black children represented about 14% of the national child population, yet they represented 47.3% of children transferred to adult court.<sup>50</sup> Although national data for transfers to adult court is incomplete, the data that does exist demonstrates profound racial disparities, especially considering the U.S. is at a 50-year low for youth crime.<sup>51</sup>

National data shows that in 2017, judicial (discretionary) transfers were more racially disparate than the past 40 years.<sup>52</sup> A 2016 Centers for Disease Control and Prevention study documents that black and white child males self-report carrying a firearm at the same rates (9.6%).<sup>53</sup> Research shows children, regardless of race, exhibit the similar rates of risk-taking behavior—accordingly, the racial disparity in the rates of transfers to adult court is not a result of black children offending at greater rates but rather illustrates pervasive issues with the practice of transfer.

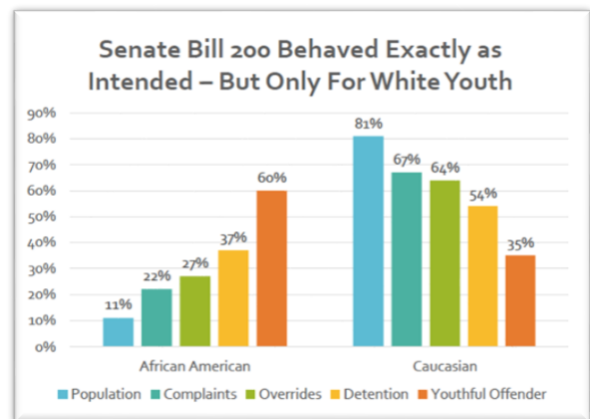


Figure 2

Provided by the Kentucky Administrative Office of the Courts (2018)



## Recommendations

### 1. Eliminate Mandatory Transfer

The research and science are clear – children are different from adults and should be treated as such. Eliminating mandatory transfer of children to adult court would ensure that a judge is given all relevant information to make an informed decision before subjecting children to the harms of adult court. Examining and reassessing laws regarding discretionary transfers to adult court is also vital for the success of Kentucky’s children. For example, raising the age of transfer or limiting transfer to only cases involving an offense against a person. Improvements to data collection would help inform these potential policy changes in the future.

### 2. Invest in Accessible and Transparent Statewide Data

Accurate statistical information, both statewide and locally, is essential to monitor the extent and nature of crime and victimization in Kentucky. Data about the Kentucky juvenile justice system, the children involved in it, and the results of our efforts to reduce delinquency are crucial in developing effective programs. The Kentucky Administrative Office of the Courts has made intentional and significant efforts to improve data collection and analysis, with an emphasis on identifying racial disparities. Unfortunately, current data collection systems are outdated and disjointed, precluding any meaningful evaluation of local juvenile justice system impacts. Data is collected by multiple sources, and often those sources do not track identical information, or do not track information the same way. The process to request the data can be difficult and time-consuming. Kentucky *must* invest in data collection and analysis. This would involve both system upgrades and creating a statewide body with the authority to collect, analyze, and disseminate data across all systems that serve children.

### 3. Target Racial and Ethnic Disparities with Improved Data Collection

Tracking 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.”<sup>54</sup> Kentucky can begin to address these disturbing trends by providing for discretion in the transfer process and requiring jurisdictions to be transparent with data to address disproportionality where it is found to exist.



## Endnotes

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- <sup>1</sup> Edward P. Mulvey and Carol A. Schubert, *Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court*, at 2, *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency Prevention, December 2012, available at: <https://www.ojjdp.gov/pubs/232932.pdf>.
- <sup>2</sup> *Id.*
- <sup>3</sup> Brian Evans, *Winning the Campaign: State Trends in Fighting the Treatment of Children As Adults in the Criminal Justice System 2005-2020*, at 25, Washington, D.C.: Campaign for Youth Justice (2020).
- <sup>4</sup> *Id.* at 2-3.
- <sup>5</sup> *Id.* at 6.
- <sup>6</sup> *The Child Not the Charge: Transfer Laws Are Not Advancing Public Safety*, at 12, Washington, D.C.: Justice Policy Institute and Campaign for Youth Justice (2020).
- <sup>7</sup> *Id.* at 6; Simon I. Singer, and David McDowell, Criminalizing delinquency: The Deterrent Effects of the New York Juvenile Offender Law. *Law & Society Review* 22:521-535.
- <sup>8</sup> KRS § 635.020(4).
- <sup>9</sup> KRS § 635.020(3).
- <sup>10</sup> *Roper v. Simmons*, 543 U.S. 551, 569 (2005).
- <sup>11</sup> *Id.* (*Johnson v. Texas*, 509 U.S. 350, 367 (1993)).
- <sup>12</sup> *Id.* (*Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)).
- <sup>13</sup> *Graham v. Florida*, 130 S.Ct. 2011 (2010).
- <sup>14</sup> *J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011) citing *Miranda v. Arizona*, 384 U.S. 436 (1966).
- <sup>15</sup> *Roper, supra*, at 569.
- <sup>16</sup> *Id.* at 570 (*Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).
- <sup>17</sup> *Id.* at 569, quoting Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 *Am. Psychologist* 1009, 1114 (2003).
- <sup>18</sup> *Roper, supra*, at 570.
- <sup>19</sup> *Id.* at 570.
- <sup>20</sup> *Id.* at 571-72.
- <sup>21</sup> *The Child Not the Charge: Transfer Laws Are Not Advancing Public Safety*, *supra*, at 12.
- <sup>22</sup> Centers for Disease Control and Prevention, *Effects on Violence and Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, *MMWR* 2007; 56 (No. R-9) (2007), available at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>, p.6.
- <sup>23</sup> Richard Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, at 4 (June 2010).
- <sup>24</sup> *Id.* at 4.
- <sup>25</sup> CDC, *supra*, note 7, at 6.
- <sup>26</sup> *Id.* at note 8, at 2.
- <sup>27</sup> *Id.* at 1-2.
- <sup>28</sup> *Id.* at 3.
- <sup>29</sup> *Id.* at 4 (quoting Beckman, M., *Crime, Culpability, and the Adolescent Brain*, 305 *SCIENCE* 596–99 (2004); Scott et al. *Evaluating Adolescent Decision Making in Legal Contexts*, 19 *L. & HUM. BEH.* 221–44 (1995); Steinberg & Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decisionmaking*, 20 *L. & HUM. BEH.* 249–72 (1996); Schneider & Ervin, *Specific Deterrence, Rational Choice, and Decision Heuristics: Applications in Juvenile Justice*, 71 *SOC. SCI. Q.* 585–601 (1990)).
- <sup>30</sup> See *Roper, supra*; *Graham, supra*.
- <sup>31</sup> Washburn, et al. *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59(9) *Psychiatric Serv.* 965–73 (2008).
- <sup>32</sup> The study looked at four major categories of psychiatric disorders: affective disorders (major depression, dysthymia, mania, and hypomania), anxiety disorders (generalized anxiety, separation anxiety, obsessive-compulsive, over-anxious, and panic disorders), disruptive behavior disorders (conduct, attention-

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deficit/hyperactivity, and oppositional defiant disorders), and substance abuse disorders (alcohol, marijuana, and drug use disorders other than marijuana). See Washburn, *supra*, note 21, at 4.

<sup>33</sup> Washburn, *supra*, note 21, at 13.

<sup>34</sup> *Id.* at 6; Teplin, *Psychiatric and Substance Abuse Disorders Among Male Urban Jail Detainees*, 84 Am. J. of Pub. Health 290–293 (1994).

<sup>35</sup> Washburn, *supra*, note 21, at 15.

<sup>36</sup> *Id.* at 6.

<sup>37</sup> Maine (2008); Virginia (2010); Pennsylvania (2010); Hawaii (2011); Idaho (2011); Texas (2011); Colorado (2012); Indiana (2013); Nevada (2013); Kansas (2015); Maryland (2015); Montana (2015); Washington (2015); New Jersey (2016); Arizona (2016); Vermont (2016); District of Columbia (2017); New York (2017); Oregon (2018); California (2018); Delaware (2018); Tennessee (2018); North Carolina (2019); and North Dakota (2019). Neelum, *supra*, note 21; Daughterty, *supra*, note 21; Thomas, *supra*, note 21; Evans, *supra*, at 16-20.

<sup>38</sup> Prison Rape Elimination Act: Youthful Inmate Standard (2012); Juvenile Justice Reform Act: Reauthorization of the Juvenile Justice and Delinquency Prevention Act (2018). Evans, *supra*, at 16-17.

<sup>39</sup> Georgia, Texas, and Wisconsin. Evans, *supra*, at 14.

<sup>40</sup> Evans, *supra*, at 8.

<sup>41</sup> Only 4 states charge kids directly in adult court without judicial review or reverse waiver (Florida; Louisiana; Michigan; and Washington, D.C.). Evans, *supra*, at 21, 23.

<sup>42</sup> Virginia (2007, changed “once an adult, always an adult” provision to apply only to youth convicted), Indiana (2008), Washington (2009, same as Virginia). Neelum, *supra*, note 21.

<sup>43</sup> Nevada (2013); Connecticut (2015); New Jersey (2015); Illinois (2016); Arizona (2018); Delaware (2018); Rhode Island (2018); Washington (2018); Florida (2019); Oregon (2019); Vermont (2019); Utah (2020); and Virginia (2020). Daughterty, *supra*, note 21; Thomas, *supra*, note 21; Evans, *supra*, at 28-30.

<sup>44</sup> Evans, *supra*, at 31; *Graham v. Florida*, 130 S.Ct. 2011 (2010) prohibited life without parole sentences for youth convicted of nonhomicide crimes.

<sup>45</sup> Washington (2005); Georgia (2006); North Carolina (2012); California (2013); Wyoming (2013); Massachusetts (2018); and Virginia (2020). Daughterty, *supra*, note 21; Evans, *supra*, at 31.

<sup>46</sup> Daughterty, *supra*, note 21; Evans, *supra*, at 31.

<sup>47</sup> *The Child Not the Charge: Transfer Laws Are Not Advancing Public Safety*, *supra*, at 12.

<sup>48</sup> Evans, *supra*, at 21

<sup>49</sup> *Id.* at 21, 26.

<sup>50</sup> Thomas, Jeree, & Wilson, Mel, *The Color of Youth Transferred to the Adult Criminal Justice System: Policy & Practice Recommendations*. Washington, DC: National Association of Social Workers, at 2 (2017).

<sup>51</sup> *Id.* at 35-36.

<sup>52</sup> *Id.* at 11, 16.

<sup>53</sup> Laura Kann, Tim McManus, William A. Harris, et.al., *Youth Risk Behavior Surveillance—United States, 2015*, Centers for Disease Control and Prevention, at 7 (2016).

<sup>54</sup> Thomas and Wilson, *supra*, at 16.

