



ISSUE BRIEF

Keeping the Promise of Juvenile Court:

The Failed Experiment of Trying and Sentencing Children in Adult Court in Illinois

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- LIMIT DISCRETIONARY TRANSFER TO EXCEPTIONAL CASES: Raise age for discretionary transfer to 15, which aligns it with presumptive transfer. Add weighing factors to discretionary transfer language to put more emphasis on a child's developmental, individual factors, and ability to benefit from juvenile system interventions rather than on the offense. Add that transfer to adult court should be an “exceptional practice”. Consider removing language about “prior juvenile record” from the factors to be considered since it leads to disproportionate representation of black and brown children in transfer because those youth are more likely to have a prior record. 18

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Post 2015 and the Alvarez v Howard Decision In April 2015, the Illinois Senate Committee on Criminal Law amended HB 3718, raising the minimum age of automatic transfer from 15 to 16 years of age. In addition, the amendment deleted automatic adult prosecution in charges of armed robbery with a firearm, and/or aggravated vehicular hijacking with a firearm, although it left intact automatic transfer for 16 and 17 year olds charged with murder, aggravated criminal sexual assault, and/or aggravated battery with a firearm. The amendment also provided a provision for circuit clerks to track youth prosecuted in adult court, whether by automatic transfer, discretionary transfer, habitual offender or Extended Jurisdiction Juvenile provisions. 21

ISSUE BRIEF

Automatic Transfer of Children to Adult Court: A Failed Experiment

Introduction

Automatic transfer bypasses individualized juvenile court review.

Illinois was the international leader in juvenile rights over a century ago, with the establishment of the world's first juvenile court in 1899.

Today, however, Illinois stands outside the rest of the developed world due, in part, to expansive and complex provisions transferring children under the age of 18 into adult court — a practice prohibited by international standards and rarely utilized in developed nations outside the U.S.

This radical expansion of transfer, the practice of trying children in adult court, began in the 1980s and has led to numerous legislative revisions (both expanding and reducing transfer to adult court) over the past four decades. **Illinois now has one of the most complicated sets of transfer laws in the world, and one of the most ineffective.**

Research consistently concludes that transfer of children to adult court fails to protect the public and is costly to maintain. In short, Illinois' experiment expanding transfer to adult court by eliminating/reducing juvenile court review has been a resounding failure.

Ironically, the Illinois juvenile court was the first separate court for children in the world, and from its early years it had a provision allowing the prosecutor to petition the juvenile court judge to fully review the case and decide whether to prosecute a child in the adult court. For over 80 years, this provision served to provide an outlet for adult prosecution and sentencing of children in particularly egregious cases. The profile of children

transferred by the juvenile court judge was predominantly teens aged 16 and older charged with murder.¹

The national “get tough on crime” movement in the early ‘80s led to a rapid shift to give the decision-making on transfer to the prosecutor rather than the juvenile court judge. Beginning in 1982, the Cook County prosecutor began pushing a series of “automatic” transfers, classes of charges that would automatically be prosecuted in the adult court, bypassing the juvenile court judge. Today, Illinois still has the traditional “discretionary” transfer in juvenile court, but also has a number of “automatic” transfers, as well as presumptive transfers and dual adult/juvenile sentences (EJJ).

The decision to transfer a child to adult court “is one of the most consequential choices made by the state about a young person’s life, determining not only how they are tried, but also where they are incarcerated, the opportunities they will have for rehabilitation, and the path their lives will take after incarceration.”²

The most egregious practice is that of automatic transfer of children to adult court, which affords no juvenile court review, and undermines the purpose of the juvenile court to rehabilitate through individual review and decision-making. It has negative implications on community safety and on the youth who are subject to the practice. Data demonstrates that more than half of young people automatically transferred to adult court were subsequently convicted and sentenced to lesser offenses — offenses which themselves would not have triggered transfer to adult court. Young people tried in the adult system have some of the longest stays in detention, which research has established is harmful to young people. Automatic transfer also impacts children of color at alarming rates compared to their white peers.

A review of the research clarifies that transfer fails to promote public safety. On the contrary, the evidence indicates that “transferred children” commit more violent crimes as a result of their experience in the adult justice system: youth transferred to the adult court system are almost twice as likely to reoffend as are their counterparts sent to the juvenile court system for the same type of offense and with similar prior records;³ and they also are more likely to commit more serious new offenses than their counterparts, and at a faster rate.⁴ Data also indicated that young people tried in the adult system have a host of poor outcomes compared to their peers processed in the juvenile system, including higher recidivism rates.

¹ *Needed: Serious Solutions for Serious Juvenile Crime: A Report on the Results of Transferring Serious Juvenile Offenders to Criminal Court for Trial in Cook County, Illinois from 1975-1981*; David Reed with Michelle Johnson, Kevin Karales, and Anne O’Brien Stevens; Chicago Law Enforcement Study Group, 1983.

² <https://www.hrw.org/report/2025/02/11/kids-you-throw-away/new-jerseys-indiscriminate-prosecution-children-adults>

³ Fact Sheet: Trying Youth as Adults, 2, available at www.campaignforyouthjustice.org/fact_sheets.html

⁴ The Consequences Aren’t Minor, 14, available at: www.campaignforyouthjustice.org/Downloads/NEWS/National_Report_consequences.pdf.

This **research** documenting poor outcomes for public safety **clarifies** that **the decision to prosecute and sentence a child in adult court should be the exception**, and made only after thorough individual review of the background of the child as well as the circumstances of the offense and likelihood for rehabilitation in the juvenile system. It's time for Illinois to join the rest of the developed world by shifting back to the pre-1980 system for transfer, leaving the extraordinary transfer decision to a juvenile court judge following a full hearing with individual review of the child's background and potential, the circumstances of the offense, and the opportunities for rehabilitation in the juvenile system.

How children in Illinois end up in adult court

The drafters of the world's first juvenile court allowed some discretion for a handful of especially serious cases to be considered for adult prosecution, but only after a hearing in juvenile court. Beginning in the late '80's, Illinois legislators began to require that certain cases, based on age and offense, be "automatically" removed from juvenile court at the time the charge was filed.

Over the next decade, legislators expanded the categories of "automatic" transfer to adult court with the goal of "getting tough" on youth. *(For a more detailed history of Illinois juvenile transfer laws see Appendix A.)* Some of the provisions, especially automatic transfer to adult court based on drug charges, were shown to have fallen disproportionately on children of color in Chicago and gradually the legislature began dismantling some of the transfer provisions. Yet, what remains is an expansive and confusing array of provisions to send a case involving a child under the age of 18 to adult court for trial and sentencing.

Today, in Illinois, minors can be transferred (prosecuted and sentenced in adult court) through two primary mechanisms under the Juvenile Court Act (705 ILCS 405): discretionary transfer or automatic transfer.

DISCRETIONARY (Juvenile Court) TRANSFER allows prosecutors to petition for a juvenile as young as 13 to be tried in adult court. A hearing is held in juvenile court and a juvenile court judge considers a range of aggravating and mitigating factors, including the seriousness of the offense, the minor's age, criminal history, and the likelihood of rehabilitation (705 ILCS 405/5-805(3)). The judge then has discretion to decide whether the case should remain in juvenile court or be transferred to adult court for trial and sentencing based on the evidence in the hearing.



AUTOMATIC TRANSFER or excluded jurisdiction applies to certain offenses (first degree murder, agg crim sexual assault, or agg battery with a firearm) committed by minors aged 16 or 17. Under this mechanism, **cases are automatically filed in adult court without a hearing in juvenile court** and with no way for the child to petition for any court review of the adult court jurisdiction (705 ILCS 405/5-130). The Act states:

Sec. 5-130. Excluded jurisdiction.

(1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least **16** years of age and who is charged with: **(i) first degree murder, (ii) aggravated criminal sexual assault, or (iii) aggravated battery with a firearm** as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012. These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.



Additional Ways Juveniles Can Get Adult Sentence:

405/5-805(2) **Presumptive Transfer** - 15 or older and forcible felony charges - upon proof of presumption, case sent to adult criminal court for trial/plea and sentencing.

405/5-810 **Extended Jurisdiction Juvenile** - a juvenile sentence with a suspended adult sentence - applies to youth 13 or older & charged with a felony offense. Includes right to jury trial in juvenile court.

405/5-815 **Habitual Juvenile Offender** - 13 or older & 3rd felony offense. Includes right to jury trial in juvenile court.

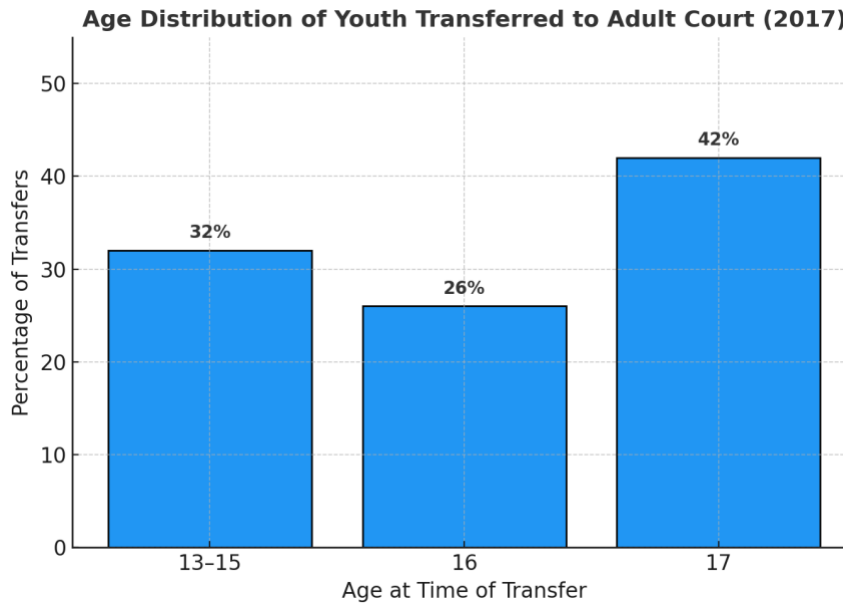
405/5-820 **Violent Juvenile Offender** - 13 or older & second class 2 felony or higher. Includes right to jury trial in juvenile court.

Snapshot of children tried as adults

The most recent data sets (for 2017), as reported by the Illinois Juvenile Justice Commission, show that 119 youth were subject to transfer to adult court.⁵ Of these, about 23% were subject to automatic transfer (excluded jurisdiction). Almost all of these children transferred to adult court were boys (only 6 were girls), ranging in age from 13-18:

- 42% were 17 years old
- 26% were 16 years old
- 22% were 15 years old
- 10% were 13 or 14 years old

⁵ https://ijjc.illinois.gov/wp-content/uploads/2021/08/IJJC-Trial-and-Sentencing-of-Youth-as-Adults-in-the-Illinois-Justice-System-Transfer-Data-Report-Calendar-Year-2017_0.pdf



As of July 2025, there were 69 children with adult criminal convictions in the Department of Juvenile Justice, comprising 36.7% of the population of the overall DJJ population.⁶ These young people tend to be serving longer sentences than their peers who are committed for similar offenses, but processed through juvenile court, demonstrating that transfer continues to be a persistent issue.

Children transferred to adult court were disproportionately children of color (see detailed section below) — 50% of kids were identified as children of color and only 12% of kids were identified as White, but race data is incomplete. Meanwhile, for automatic transfer 76% of the children transferred to adult court without juvenile court review were children of color.

Only 23 of Illinois' 112 counties reported any transfer cases, 44% of which were in Cook County.

The failures of prosecuting children in adult court in Illinois

Before the transfer experiments of the 1990's in Illinois, transfer of children to adult court was an exceptional practice, generally limited to older children (16 and up) charged with murder - and **only occurred after a hearing in juvenile court**. Despite the rollback of several transfer provisions, Illinois continues to overuse transfer and has a complex web of transfer laws.

⁶ <https://idjj.illinois.gov/content/dam/soi/en/web/idjj/2025-reports/Quarterly%20Report%20-%20July%202025.pdf>

Fails both the children and public safety

Even though there has been a decline in the numbers of young people tried as adults, we're still faced with the question of whether transfer — especially automatic transfer that bypasses review in juvenile court — is good policy. As JJI's previous reports on this topic demonstrated, research consistently demonstrates that children are less likely to repeat offend if given individualized treatment in juvenile court rather than given a punitive sentence in adult court.⁷

*"Beyond procedural flaws, the consequences of prosecuting children as adults are severe and well-documented. Research shows that waived youth— regardless of their sentence length—experience significantly higher rates of depression, suicidal ideation, and suicide than those adjudicated in the juvenile system. They are also at greater risk of victimization while incarcerated and, in many cases, more likely to reoffend upon release."*⁸

Past practices in the transfer of juveniles to adult court proved ineffective in reducing crime. For instance, JJI's past reports demonstrated that when the practice of automatic transfer in drug prosecutions to adult court ended, drug related juvenile crime numbers went down, not up. This history around transfer practice suggests that transfer to adult court — and automatic transfer in particular — fails to deter or reduce juvenile crime. (See Appendix A for a more detailed explanation.)

While the changes in transfer provisions for drug offenses marked a positive change in the handling of juvenile cases, problems persisted in Illinois transfer practice. The transfer laws in Illinois were out of step with the intent of the laws themselves, resulting in nonsensical outcomes for the system and the child. JJI previous data review from 2014 found that instead of children being convicted for "egregious offenses" for which they were transferred to adult court, 54% were convicted and sentenced for lesser offenses; these lesser offenses would not even have led to a transfer to adult court.⁹

Time has shown that harshly punishing youth by trying them in the adult system has failed as an effective deterrent and in fact, produces worse outcomes. Several large-scale studies have found higher recidivism rates among juveniles tried and sentenced in adult court than among youth charged with similar offenses in juvenile court.¹⁰ The **34% higher recidivism rate** is a broad national finding based on multiple comparative studies; youth transferred to adult court are significantly more likely to reoffend.¹¹ These results persist even when controlling for offense severity, age, prior history, and

⁷ Kooy, E., (2001). *The Status of Automatic Transfers to Adult Court in Cook County*. Chicago, IL: Law Office of the Cook County Public Defender.

⁸ <https://www.hrw.org/report/2025/02/11/kids-you-throw-away/new-jerseys-indiscriminate-prosecution-children-adults>

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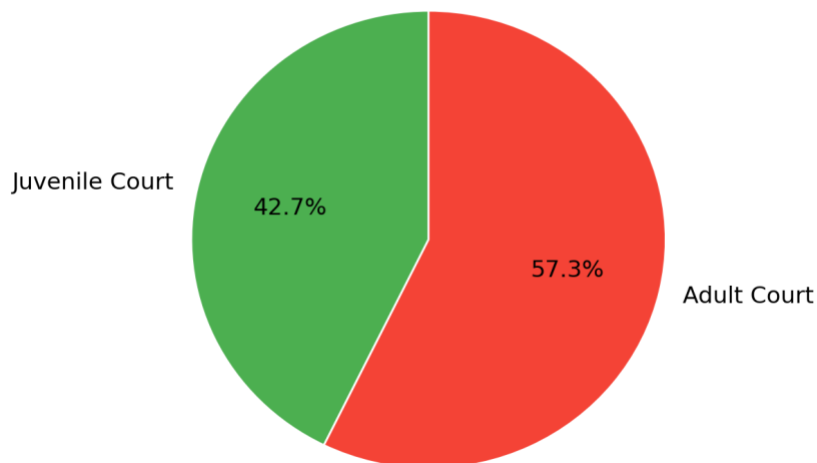
<https://static1.squarespace.com/static/63d1611dce49d866f7193ab1/t/63dbd1ce7815fb0772360335/1675350479737/ILtransferReport.pdf>

¹⁰ https://humanimpact.org/wp-content/uploads/2018/10/HIP_JuvenileInJusticeReport_2017.02.pdf

¹¹ [Cook Countyspac.icjia-api.cloud](https://cookcountyspac.icjia-api.cloud); [County Health Rankings+2Illinois State Bar Association+2Teen Vogue+2ojj.la.gov](#); law.northwestern.edu; pathwaysstudy.pitt.edu+2OJJDP+2PMC+2.

demographics, strengthening the conclusion that processing youth in adult systems increases public safety risks rather than deterring crime.¹²

Share of Recidivism Risk: Juvenile vs Adult Court (Indexed)



Procedurally flawed

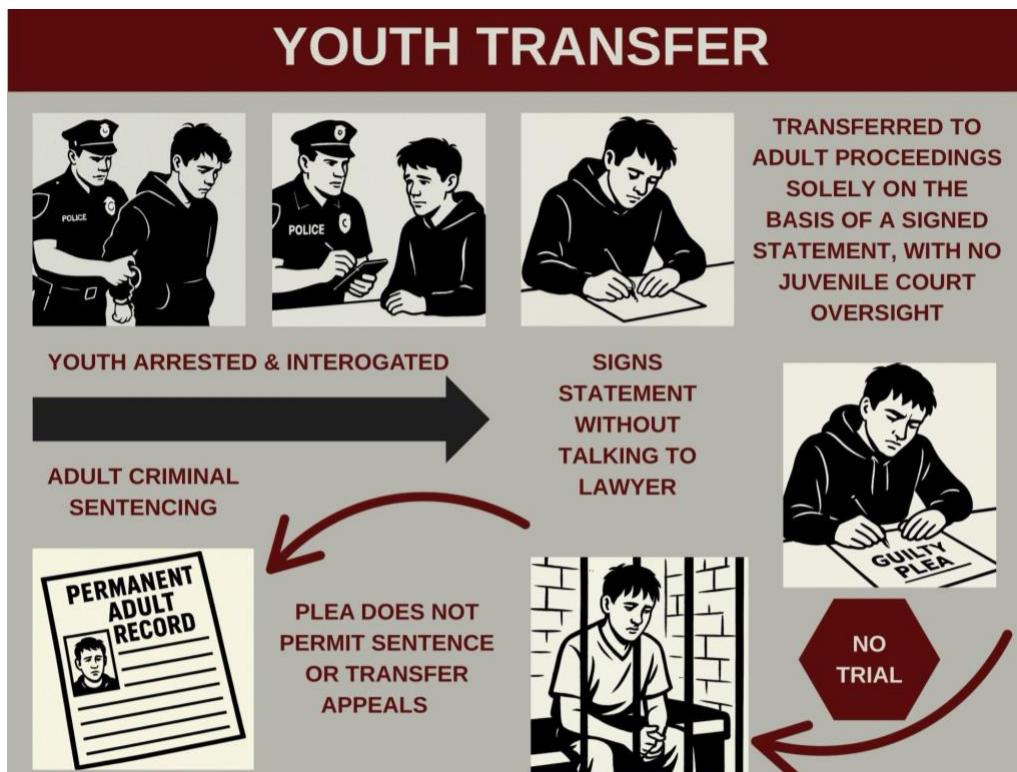
Automatic transfer also denies the young person the opportunity for their case to be thoroughly reviewed by the juvenile prosecutor (automatic transfer occurs upon the filing of the charge) and a hearing in front of a juvenile court judge — which contravenes the entire purpose of having a juvenile court. In a report in 2008, JJI reported that a full 90% of the youth automatically charged in adult court pleaded guilty rather than stand trial and thus had no opportunity for their individual circumstances to be considered by the judge in any court.¹³ Not only does this put the juvenile at risk for a long adult sentence, but it also guarantees them an adult criminal record.

No court review of background, individual circumstances - Other considerations when assessing the deficiencies of the automatic transfer process include the issues around juvenile confessions and pleas. If a young person is interrogated without a lawyer (only children under age 15 in cases involving serious offenses are required to have a lawyer throughout interrogation - but children age 15, 16 and 17 are just given standard Miranda warnings and most waive their right to a lawyer) and confesses to a crime that triggers automatic adult prosecution, they have no recourse and end up in the adult system without the benefit of prior legal counsel. When a young person takes a plea in the adult system, they never get a review of their background and any determination of best treatment/intervention approaches.

¹² oij.la.gov.

¹³

<https://static1.squarespace.com/static/63d1611dce49d866f7193ab1/t/63dbd1ce7815fb0772360335/1675350479737/ILtransferReport.pdf>



Under discretionary transfer, the review in juvenile court includes a full evaluation of a variety of factors, weighing the nature and seriousness of the alleged offense against the age and history of the child and the value of available services within the juvenile system. In 2023, the transfer statute was amended to include additional factors that the juvenile court judge must consider, including any involvement in the child welfare system, whether the child was subject to outside pressure (peer, family, or other negative influences), and the minor's degree of participation in the offense.¹⁴ This full evaluation of the factors should be available to all young people before any transfer to adult court is made. **It's time to return to basics – transfer to adult court only after a full hearing in juvenile court.**

However, discretionary transfer also has its own procedural challenges. In particular, **under discretionary transfer procedures, the State has the right to appeal the denial of transfer, but the child cannot appeal until after they are sentenced in adult court.** If the child takes a plea in adult court, he/she can't appeal unless they first withdraw their plea. If the child's case is eventually overturned on appeal on the basis of the initial transfer decision, the court/judicial resources committed to the adult trial were potentially wasted — to say nothing of the harm inflicted on the child.

Following a reform in 2015, which raised the minimum age for automatic transfer from 15 to 16 and the subsequent Alvarez v. Howard decision that applied the law retroactively, 186 transfer cases were sent to juvenile court. A review of the outcomes of these cases demonstrate that individual consideration by prosecutors and juvenile court

¹⁴ 705 ILCS 405/5-805(3)(b).

judges result in a massive reduction in the number of cases being transferred to adult court. Less than 5% of these cases ended up returning to the adult system. (*For a more detailed discussion of the impact of the Alvarez v. Howard decision see Appendix A.*)

The analysis of cases post-Alvarez also indicates that both the prosecutor and the juvenile court believed most cases subject to automatic adult prosecution could be handled through the juvenile court process, if given sufficient time for independent review. When the juvenile system reviews juvenile cases all the factors can be taken into account — especially adolescent development and the importance of focusing on the value of rehabilitation of young people involved in the justice system — it makes a profound difference in outcomes of cases of children in conflict with the law.

Highly racially discriminatory

Importantly, public policy is also not well served by the racially discriminatory impact of transfer policies.

“Youth of color are overrepresented at every stage of the juvenile court system. Rampant racial inequities are evident in the way youth of color are disciplined in school, policed and arrested, detained, sentenced, and incarcerated. These inequities persist even after controlling for variables like offense severity and prior criminal record. Research shows that youth of color receive harsher sentences than White youth charged with similar offenses. Youth of color are more likely to be tried as adults than White youth, even when being charged with similar crimes.¹⁵ A recent study by the Campaign for Youth Justice found that African-American, Latino, and other non-white youth represent as many as seven out of 10 youth tried as adults in the states studied, despite the fact that youth of color represent a minority of the youth population in these states.¹⁶

The data on racial disparities in transfer cases helped spur reforms in the early 2000’s. The Cook County data from 1999-2000 showed that out of 393 youth automatically transferred to adult court and detained in Cook County from October 1999--September, 2000, virtually all (99.6%) of the youth subject to automatic transfers in Cook County were minorities – only one Caucasian was automatically charged as an adult with a drug offense during the two-year period.¹⁷

More recently, the Illinois Juvenile Justice Commission released a report in 2020 based on data from 2016-2017, *Trial and Sentencing of Youth as Adults in the Illinois Justice System: Transfer Data Report*. Although the data on race in transfer cases is not entirely complete as almost 33% of cases were identified as “race unknown,” it is clear that children of color still represent a disproportionate number of cases transferred to

¹⁵ https://humanimpact.org/wp-content/uploads/2018/10/HIP_JuvenileInJusticeReport_2017.02.pdf

¹⁶

<https://static1.squarespace.com/static/63d1611dce49d866f7193ab1/t/63dbd1ce7815fb0772360335/1675350479737/ILtransferReport.pdf>

¹⁷ Kooy, E., (2001). *The Status of Automatic Transfers to Adult Court in Cook County*. Chicago, IL: Law Office of the Cook County Public Defender.

adult court. For example, in 2017 there were 119 young people transferred to adult court statewide of which only 12% were white..¹⁸

The practice of prosecuting children in adult court is outside the norms of international standards

Most developed nations do NOT prosecute children in adult court because they adhere to the standards set out in the UN Convention on the Rights of the Child. International human rights standards prohibit the prosecution of children under age 18 in adult court.

The Convention on the Rights of the Child, and Committee Comment No 10:

37. The Committee wishes to remind States parties that they have recognized the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in accordance with the provisions of article 40 of CRC. This means that every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.

The 2018 Report from the InterAmerican Commission on Human Rights – *The Situation of Children in the Adult Criminal Justice System in the U.S.* – based on their investigation which included visits to NY and Colorado and D.C. in 2014 stated:

*“As a result of its visits and of the information it received, the IACHR observes that **a significant number of children are being consistently treated as adults in the U.S. criminal justice system, in violation of their basic right to special protection and to be tried in a specialized juvenile system.** This issue is the main focus of this report. The IACHR has also observed that this phenomenon of child criminal defendants being treated as adults is part of a broader nationwide pattern in the United States of failure to protect and promote the rights of children, and failure to uniformly define “child” under the law in order to protect the fundamental human rights persons under the age of 18.”¹⁹*

The United States worked to establish international standards for the human rights and protection of children with its significant contribution to the drafting of the United Nations Convention on the Rights of the Child (CRC), adopted in 1989. However, although the United States signed the CRC, it remains the only nation worldwide that has not yet ratified this important instrument for the protection of the fundamental rights of children. “The Commission urges the United States to fully recognize in its domestic legislation the special status of children under the law, including a clear and nationwide definition of children as being all persons under the age of 18, pursuant to its obligations under

¹⁸ https://ijjc.illinois.gov/wp-content/uploads/2021/08/IJJC-Trial-and-Sentencing-of-Youth-as-Adults-in-the-Illinois-Justice-System-Transfer-Data-Report-Calendar-Year-2017_0.pdf

¹⁹ <http://www.oas.org/en/iachr/reports/pdfs/Children-USA.pdf>

international human rights law.”²⁰ The adoption of this standard would require that all young people under 18 be processed in juvenile court.

Not only is adult court trial/sentencing of youth under age 18 nearly unheard of outside the U.S., some nations such as Germany use juvenile court sentencing for young adults into their early 20’s because juvenile sentencing is more effective for public safety.

Several states have made steps to **restrict** transfer to adult court through age limits, offense restrictions, or by eliminating automatic transfers. For instance:

- **California:** Ended *direct file* by prosecutors in 2016 (Proposition 57). Now, only a judge can approve the transfer of a youth after a hearing.
- **Oregon:** In 2019, passed SB 1008, which ended automatic transfer of 15-, 16-, and 17-year-olds for certain crimes. Youth must now have a transfer hearing.

Illinois should add itself to the list of states that are moving to better address human rights standards for children in conflict with the law and to fulfill the promise of the purpose of juvenile courts - individualized review based on the understanding of adolescent development and the ability of a young person to change.

Conclusion

It’s time to return to the original transfer process requiring a full review of individual cases in juvenile court to ensure transfer is the exceptional practice based on what the research and data tells us and to more fully align with international standards on human rights.

The Inter-American Commission on Human Rights 2018 report, *Children and Adolescents in the United States Adult Criminal Justice System*,²¹ concluded that the United States was required to respond to youth in conflict with the law through the juvenile justice system based on international law and treaties signed by the U.S.:

“The Commission notes that when ratifying the ICCPR in 1992, even though it co-sponsored the provision to treat children separately according to their age and status, the United States maintained a reservation “to treat juveniles as adults” in **exceptional circumstances**. However, as concluded by the Human Rights Committee in its observations on the United States’ compliance with this treaty, **the United States does not limit its treatment of children as adults to exceptional circumstances**. The Commission observes that the ambiguity of this reservation has been converted into an expansive gap in juvenile justice systems across the U.S., **resulting in the violation of children’s human rights on federal, state, and local levels.**” (Page 132)

As the data reveals, automatic transfer provisions result in larger numbers of children being prosecuted in adult court than would be **if given individual review by the**

²⁰ <http://www.oas.org/en/iachr/reports/pdfs/Children-USA.pdf>

²¹ <http://www.oas.org/en/iachr/reports/pdfs/Children-USA.pdf>

prosecutor and juvenile court. Consequently, automatic transfer provisions violate the U.S. reservation to the ICCPR to treat juveniles as adults only in “exceptional” cases.

In urging the legislature to end automatic transfer in 2015, the Director of the Cook County Justice Advisory Council concluded: “**Regardless of the crime they are accused of, every child in Illinois deserves a chance to prove that they are suitable for the rehabilitative mission of the juvenile justice system.** We ask that you.....work with us to end the automatic transfer of juveniles to adult court and restore juvenile court judges’ discretion as they are the best positioned party to make these decisions.”²²

As Human Rights Watch noted in its recent report, “research and landmark US Supreme Court cases such as *Miller v. Alabama* and *Graham v. Florida* underscore that even children who commit the most serious acts possess a unique capacity for change and rehabilitation. These decisions, along with developmental science, affirm that the severity of a crime does not define who a young person will become, nor does it erase their potential for growth and positive transformation.”²³

It is now time to follow the research and international standards in order to protect public safety by returning to the original practice of a full individual review of each case in juvenile court.

²² <https://jjjustice.org/wp-content/uploads/Testimony-Cook-County-Judicial-Advisory-Council-IL-House-Cmte-3-10-15.pdf>

²³ <https://www.hrw.org/report/2025/02/11/kids-you-throw-away/new-jerseys-indiscriminate-prosecution-children-adults>

Recommendations:

- **REQUIRE LAWYERS FOR ALL CHILDREN THROUGHOUT POLICE INTERROGATION:**
Disallow the use of a minor’s statement made during a custodial interrogation as evidence against the minor in any adult criminal proceeding or when an adult criminal sentence can be imposed if the statement is made without the presence of and advice of counsel.
- **END AUTOMATIC TRANSFER:** Require juvenile court review for all transfer cases. Automatic transfer goes against the purpose of the juvenile court and is inconsistent with international standards.
- **LIMIT DISCRETIONARY TRANSFER TO EXCEPTIONAL CASES:** Raise age for discretionary transfer to 15, which aligns it with presumptive transfer. Add weighing factors to discretionary transfer language to put more emphasis on a child's developmental, individual factors, and ability to benefit from juvenile system interventions rather than on the offense. Add that transfer to adult court should be an “exceptional practice”.
- **IMPROVED DATA COLLECTION:** Improve data collection on juvenile transfer to adult court, including all types of transfer, charges, and outcomes (convictions, pleas, sentences, etc.).
- **EQUAL JUSTICE - EQUAL ACCESS TO IMMEDIATE APPEAL OF TRANSFER DECISION:**
Advocate for process change that allows for the transfer decision to be appealed at the time of the decision instead of only after conclusion of the adult court proceedings.

APPENDIX A

History of Transfer in Illinois

From Inception to 2000

Since its inception, the juvenile court has always had provisions to transfer young people charged with the most serious offenses to adult court. In 1903, four years after the inception of the separate system, Cook County transferred 14 youthful offenders to the adult system.²⁴ From 1903 to the 1980s, all transfers to adult court in Illinois were done via discretionary transfer, with a juvenile court judge reviewing the State's petition to transfer to adult court.

The “tough on crime” policy shifts in the 1980s and 1990s led to more stringent approaches to juvenile crime, including the enactment of automatic transfer laws. The wave of transfer expansion was spurred, at least in part, by the 1990's “superpredator” myth, a debunked prediction of Princeton professor Dilulio Jr., that “a wave of ‘radically impulsive, brutally remorseless’ youth — a description that became a racialized euphemism for Black and brown children — committing violent crimes”.²⁵ By 2000, the Illinois transfer laws were among the most complicated in the nation. There were 22 different ways for children to be tried and/or sentenced as adults.

- From 1982 to 2000, the Legislature enacted “**automatic**” transfer laws — automatically charging certain crimes committed by youth of specific ages in the adult court. In 1982, when the first automatic transfer provisions were enacted by the Legislature, they only included murder, rape, deviant sexual assault, and armed robbery with a firearm.²⁶ Gradually, the Legislature added offenses to the automatic transfer statute.
- In 1990, the Legislature added **mandatory** transfer provisions, requiring the juvenile court judge to transfer juvenile cases to adult court based on certain facts. In 1995, the Legislature added **presumptive** transfer statutes creating a presumption of transfer based on certain factors.
- In 1999, the Legislature added provisions for **Extended Jurisdiction Juvenile** where a juvenile would get a juvenile sentence and an adult sentence to be used if the juvenile did not do well under the juvenile system.

²⁴ Kooy, E., (2001). *The Status of Automatic Transfers to Adult Court in Cook County*. Chicago, IL: Law Office of the Cook County Public Defender.

²⁵ <https://www.hrw.org/report/2025/02/11/kids-you-throw-away/new-jerseys-indiscriminate-prosecution-children-adults>

²⁶ Ishida *et al.*, (2014)

Recent History

More recent research and history highlight the pitfalls and failures of expanding transfer. In 2000, a study by the Juvenile Transfer Advocacy Unit of the Law Office of the Cook County Public Defender examining 393 children automatically transferred to adult court in Cook County between 1999-2000 helped focus attention on the need to reform the state's transfer laws.²⁷ The data exposed several key points that led to the first roll-back of transfer laws:

- two-thirds of the automatic transfers were for nonviolent drug offenses;
- youth “automatically” tried in adult court on drug offenses received minor sentences – more than 90 percent of the youth convicted of a drug offense received either a sentence of probation or boot camp. All, however, suffered the consequences of a criminal conviction;
- virtually all (99.6%) of the youth subject to automatic transfers in Cook County were minorities – only one Caucasian was automatically charged as an adult with a drug offense during that period;
- close to two-thirds of the juveniles had not been afforded any juvenile court rehabilitative services prior to the automatic transfer;
- only two youths outside of Cook County were transferred for drug offenses.²⁸

In 2003 when the General Assembly agreed to a reverse waiver provision for youth charged with non-Class X drug offenses and then in 2005 moved the Class X drug offenders to a presumptive transfer provision and expanded the provision of aggravated battery with a firearm (PA95-0574).

Further expansion of transfer came to a close on August 12, 2005 with the passing of Public Act 94-0574, repealing Illinois' automatic transfer for drug offenses.²⁹ With the passage of that Act, Illinois registered another significant “first” in juvenile justice: becoming the first state to take a serious step to reverse the expansionary transfer policies of the 1980s and 1990s, and to begin to restore and “right-size” the original jurisdiction of its juvenile court.³⁰

Rolling back transfer provisions in 2005, as a result of JJI's advocacy and research efforts, had a significant impact for young people in conflict with the law while not showing negative outcomes for the system. In the first year after adoption of PA-94-0574, the number of automatic transfers in Cook County decreased by almost two-

²⁷ Kooy, E., (2001)

²⁸ Unpublished research by the Juvenile Justice Initiative for first rollback of transfer provisions showed that the vast majority of automatic transfers were from Cook County. During October 1999 through September 2000, the Juvenile Transfer Advocacy Unit in the Law Office of the Cook County Public Defender found 393 youth automatically transferred to adult court from Cook County. Less than 1% of automatic transfers in Cook County came from suburban Cook County zip codes. In 2001, the Juvenile Justice Initiative found 14 youth from all other 101 Illinois counties were automatically transferred to adult court. Thus, 97% of all youth automatically transferred to adult court in Illinois were from Cook County.

²⁹ Public Act 94-0574 available at www.ilga.gov/legislation/publicacts/fulltext.asp?Name=094-0574&GA=094

³⁰

<https://static1.squarespace.com/static/63d1611dce49d866f7193ab1/t/63dbd1ce7815fb0772360335/1675350479737/ILtransferReport.pdf>

thirds, from 361 to 127. With drug offenses mostly back in juvenile court, automatically transferred cases were almost entirely limited to violent offenses, as opposed to drug offenses.³¹

In the second year post- PA 94-0574 there were 103 transfers -- a two-thirds decrease over 2003 data. Only 2 percent involved drug offenses, while 92 percent of automatically transferred youth were charged with violent offenses. Cook County experienced no increase in discretionary, presumptive, mandatory, or extended jurisdiction juvenile prosecutions in either the first or second year. The caseload in Cook County also showed no increase in petitions despite the change in law. From a 10-year period on delinquency petitions in Cook, the first full year of change in the law (2006) shows a decrease in delinquency petitions filed in Cook County.³²

In 2014, the Juvenile Justice Initiative published its findings from three years worth of transfer data in Cook County, Illinois.³³ During the three-year span, 257 children under the age of 17 were automatically tried as adults without any consideration for their age, lack of maturity, or involvement in the offense. The research once again showed that the transfer laws in Illinois were out of step with the intent of the laws themselves. Instead of children being convicted for egregious offenses, 54% were convicted and sentenced for lesser offenses; these lesser offenses would not even have led to a transfer to adult court. A full 90% of the youth pleaded guilty rather than stand trial and had no opportunity for their individual circumstances to be considered by the judge in adult court.

Post 2015 and the Alvarez v Howard Decision In April 2015, the Illinois Senate Committee on Criminal Law amended HB 3718, raising the minimum age of automatic transfer from 15 to 16 years of age. In addition, the amendment deleted automatic adult prosecution in charges of armed robbery with a firearm, and/or aggravated vehicular hijacking with a firearm, although it left intact automatic transfer for 16 and 17 year olds charged with murder, aggravated criminal sexual assault, and/or aggravated battery with a firearm. The amendment also provided a provision for circuit clerks to track youth prosecuted in adult court, whether by automatic transfer, discretionary transfer, habitual offender or Extended Jurisdiction Juvenile provisions.

Illinois Statutes on trying or sentencing children as adults went from 22 exemptions and thousands of children to six exemptions and hundreds of children over the course of 12 years of legislative revisions.

As an outgrowth of the 2015 law change there was a group of cases pending in adult courts that would otherwise be tried in juvenile court following the reform. Luis M., a 15-year-old pending trial on murder sought to have his case moved back to juvenile court

³¹ Id.

³² Id.

³³ Ishida *et al.*, (2014)

for a discretionary hearing. The Honorable Carol Howard of Cook County granted his request and Cook County State's Attorney Anita Alvarez sought a writ of mandamus or prohibition directing Judge Howard to rescind the order. In **Alvarez v. Howard** the Illinois Supreme Court rejected S.A. Alvarez's mandamus, concluding that the juvenile transfer statute was procedural in nature and therefore applied retroactively unless the case had been transferred to adult court pursuant to a discretionary transfer hearing.

There were 181 youth with 186 cases pending in the adult court that fell under the Alvarez v. Howard ruling that were sent to juvenile court. Of those cases:

- **89.9% (165 cases) remained in juvenile court** (were never petitioned to adult court)
- Given time to thoroughly review the 186 cases, the prosecutor petitioned for adult prosecution/sentencing in only 21 cases (10.1%).
- Following a hearing in juvenile court, 9 of the 21 cases were sent to adult court or granted extended jurisdiction (juvenile).³⁴ In 11 cases the prosecutor's petitions were not granted and the cases remained in juvenile court.

Thus, only 9 of 186 cases (less than 5%) ended up back in adult court or with suspended adult sentencing (EJJ), upon thorough review by the prosecutor and the juvenile court. The handling of this cohort of cases following the *Alvarez* decision gives a window into the value of prosecutorial discretion, due process, and juvenile court judicial oversight. It further demonstrates that both the prosecutor and the juvenile court believed most cases of youth under the age of 18 subject to automatic adult prosecution could be handled through juvenile court programs and sanctions, if given sufficient time for independent review.

³⁴ Extended Jurisdiction Juvenile in Illinois was another attempt to have more children punished under the adult system in an effort to appease those wanting to be tougher on crime. Youth who were subject to Extended Juvenile Jurisdiction were given a sentence in juvenile court and a sentence in adult court that was stayed pending that the youth complies with his/her juvenile sentence. The youth under EJJ is afforded a jury trial and the trial is public. EJJ remains in effect in the statutes for any child 13 and over charged with any felony. It is used across Illinois but there is no set rationale for when a prosecutor requests EJJ nor what is considered non-compliance with the juvenile sentence.