

JUSTICE REDIRECTED

The Impact of Reducing the Prosecution
of Children as Adults in Colorado and the
Continuing Need for Sentencing Reform



EXECUTIVE SUMMARY

QUICK DIRECT FILE FACTS

- 100 cases were prosecuted in adult court in Colorado from April 20, 2012-April 20, 2015
- 98% of Children Prosecuted in Adult Court are Male
- Nationally, in 2013, there were still 1,200 youth in adult prisons and approximately 3,400 youth in adult jails on any given day
- 60% of Children Prosecuted in Adult Court are Youth of Color
- Adams, Douglas, Denver & El Paso county account for 75% cases in which youth are prosecuted in adult court.
- Homicide cases account for 37% of Cases prosecuted in adult court
- The average length of a transfer or reverse transfer hearing is 2 days
- Nationally, Between 2009 and 2013, the rate of youth violence was cut almost in half to 160 arrests per 100,000 juveniles

*A SPECIAL REPORT BY THE
COLORADO JUVENILE DEFENDER CENTER*

EXECUTIVE SUMMARY

Colorado solidified its commitment to youth in 2012 when the legislature fundamentally changed the way children can be prosecuted as adults. Before this change, prosecutors could file criminal charges against certain juveniles directly in adult court — a process referred to as “direct file” — and judges had no power to send the case back to the juvenile court. Under the old system, if a “direct-filed” child was found guilty in adult court, a judge was required to impose an adult sentence. The legislature’s 2012 reforms reduced the number of children who could be “direct filed,” or charged directly by the prosecutor in adult court, and created judicial oversight, allowing children charged as adults to request a hearing in front of a judge and permitting judges to send cases back to juvenile court so that, when appropriate, children could be sentenced in juvenile delinquency court.

The Colorado Juvenile Defender Center (CJDC) collected and examined data from cases filed against juveniles in adult court between April 20, 2012 and April 20, 2015 — the three years following the reform of Colorado’s “direct-file” statute. We interviewed defense attorneys who represented children in direct-file proceedings during that time period. Based on that information, our new report, “Justice Redirected: The Impact of Reducing the Prosecution of Children as Adults in Colorado and the Continuing Need for Sentencing Reform,” looks at the impact of the ground-breaking 2012 reforms, examining how many children remain in Colorado’s adult prisons and jails and analyzing the sentencing structure direct-filed youth currently are subject to. The 2012 reforms reflect an approach to juvenile justice that’s both restorative to the child as well as the community as a whole. Although the number of children being prosecuted in adult court has dropped significantly, there’s still more work to be done. The full report outlines all of the data, as well as detailed recommendations for future reforms.

Prosecuting Kids as Adults in Colorado

The report first outlines the history of Colorado’s “direct-file” statute — from the early days of the state’s juvenile court system when only 16- and 17-year-old children charged with the most serious offenses could be prosecuted as adults through reforms made in the 1970s, 80s, and 90s that allowed younger children charged with a variety of offenses to be prosecuted in adult court without judicial oversight. After the most severe changes made to the law in 1993, which gave prosecutors discretion to charge even more children as adults, the number of children in Colorado’s adult prisons swelled from only three in 1994 to 265 in 2002.

The report then details the reforms made to the “direct-file” process. It outlines how adolescent brain and developmental research prompted scientists and judges to recognize that teens have diminished culpability and heightened capacity for change, and that the criminal system must treat them differently than adults.

Efforts to reform Colorado’s “direct- file” process between 2008-2012 — including the release of CJDC’s 2012 report, “Re-Directing Justice: The Consequences of Prosecuting Children as Adults and the Need for Judicial Oversight” — resulted in massive direct-file reforms later that year. Those reforms raised the age for direct filing from 14-years-old to 16-years-old, removed several crimes from direct file eligibility, allowed a child charged in adult court to request — through a hearing — that the court return the case to juvenile court, and required the judge to consider certain criteria at that proceeding. The reforms also allowed judges to give juvenile sentences to certain children who were charged as adults, and permitted increased punishments for teens charged in juvenile court as aggravated juvenile offenders (AJO), providing an alternative, in serious cases, to charging the child in adult court. Reforms also limited the pretrial detention of children in adult jails, requiring them to be held in juvenile facilities absent a request from the Division of Youth Corrections (DYC) for a child to be removed to an adult facility and a judicial finding that the child presents an imminent danger to other children or staff.

Key Findings

- 1. Since direct-file reform, fewer Colorado children are detained in adult jails while their cases are pending in adult court.**

Since House Bill 1139 passed, pre-trial detention of Colorado children in adult detention centers has dropped by 99%.

- 2. The number of children prosecuted in Colorado’s adult court system has dropped substantially since efforts to reform direct file began in 2010.**

NUMBER OF CHILDREN PROSECUTED IN ADULT CRIMINAL COURT¹

2009 Cases	2010 Cases	2011 Cases	2012 Cases	2013 Cases	2014 Cases	2015 Cases
Direct File Veto (HB 08-1208)	Direct File Reform (HB 10-1413)		Substantial Direct File Reform (HB 12-1271)			January 1, 2015 – April 20, 2015
144	76	62	27	37	43	6

- 3. The cases filed against children in adult court are filed almost exclusively against boys.**

Ninety-eight percent of direct filings are against male children. Of the 100 cases prosecuted in adult court between April 20, 2012 and April 20, 2015, only two cases — both filed in 2015 – were brought against girls.

- 4. Since direct-file reform, the age of children prosecuted as adults has increased.**

For the cases prosecuted in adult court between April 20, 2012 and April 20, 2015, the average age at the time of the alleged offense was 16.82 years old, and the average age at the time of direct filing or transfer to adult court was 17.54 years old. During this period, only three children were transferred for crimes occurring when they were under the age of 16 (of those, two were 15 at time of offense and time of filing). Since the 2012 reforms, the youngest child to be prosecuted in adult court was 13 at the time of the alleged offense and 14 at the time of filing.

- 5. Children of color are disproportionately charged as adults in Colorado.**

Only 4.4 percent of the population in Colorado are Black, while Hispanic or Latino residents make up 21.2 percent. For fiscal years 2004-2008, the state of Colorado reported that 16 percent of direct-filed children were Black, 18 percent Hispanic and 62 percent white. According to judicial data for the cases prosecuted in adult court between April 20, 2012 and April 20, 2015, 30 percent of children prosecuted in adult court were Black, and 27 percent were Hispanic.

It's clear from the data that Black children are disproportionately charged as adults in Colorado. While the disparity seems to be lower for Hispanic or Latino children, incomplete data regarding the racial and ethnic identity of children tried as adults in Colorado makes the analysis of racial and ethnic disproportionality difficult because children who identify as Hispanic often are miscategorized in judicial data as "white."

6. Children are charged as adults most often in Adams, Douglas, Denver, and El Paso counties, with Denver County charging by far the most children in adult court.

There are 64 counties in Colorado. In 48 of them, no children were prosecuted in adult court between April 20, 2012 and April 20, 2015. Adams County, Douglas County, Denver County and El Paso County account for 75 percent of the cases involving children prosecuted as adults in the state.

The data shows that Denver County prosecuted more children as adults than Adams County, El Paso County and Jefferson County combined. Denver also prosecuted more than three times as many children as adults than El Paso County, despite the counties' similar populations.

7. Since direct-file reform, most of the cases filed in adult court are for serious offenses.

The majority of cases that are directly filed in Colorado involve homicide, robbery, assault or kidnapping.

Since April 20, 2012, 37 percent of children prosecuted in adult court face a homicide charge. Prior to the reform, homicides cases constituted only 12 percent of youthful prosecutions in adult court. Proponents of direct-file reform argued that only the most egregious cases should be considered for direct file. Now, thanks to the substantial reform efforts of state lawmakers, a greater percentage of children prosecuted in adult court are indeed prosecuted for the most serious offenses.

8. Most cases brought against children in adult court are directly filed by prosecutors rather than transferred from juvenile court by a judge.

Post-reform, the vast majority – 83 percent — of children charged as adults reached adult court via the prosecutorial direct-file process. In the remaining 17 percent of cases, a juvenile judge transferred the case from juvenile court to adult court.

9. Most cases that are filed in or transferred to adult court resolve without a “reverse transfer” or “transfer” hearing before a judge.

Of the 79 children whose cases were either direct filed or judicially transferred between April 20, 2012 and April 20, 2015, only 29 percent of their cases went to a hearing before a judicial officer. This dispels concern among direct-file opponents that direct filing would lead to lengthy hearings that would re-victimize crime victims. The average length of the reverse transfer and transfer hearing was two days. Out of the 27 cases that went to hearing, none lasted longer than five days.

10. Most children charged as adults entered a guilty plea.

Once a child’s case is filed in adult court, the child is generally subject to the adult sentencing scheme. Faced with the possibility that they will be sent to prison for lengthy terms mandated by sentencing structures that were originally contemplated for adult offenders, the majority of children plead guilty. Of the 100 cases brought against children as adults between April 20, 2012 and April 20, 2015, 64 entered a guilty plea, and seven cases were dismissed as part of a plea involving other cases. Only four cases resulted in a guilty finding at trial.

11. Despite reforms, most children found guilty as adults are sentenced to an adult prison sentence.

The majority of children convicted in adult court are sentenced to the Youthful Offender System (YOS) within the Department of Corrections (DOC). YOS is an adult prison, which houses DOC inmates age 14 to 25. YOS offers programming geared toward the needs of youthful offenders. The second most common sentence for direct-filed children is a prison sentence to be served in an adult Department of Corrections prison. However, only 8 percent of direct-filed children have been sentenced to a non YOS DOC facility since the law changed in 2012.

Nonetheless, 53 percent of children direct filed between April 2012 and April 2015 are serving their sentences in the adult corrections system, which includes DOC and YOS. Prior to direct-file reform, 39 percent of

direct-filed kids were sentenced to serve time in adult prison through the Department of Corrections (including YOS). Only 10 percent of direct-filed children have had their cases transferred back to juvenile court or otherwise received a juvenile sentence.

12. Children sentenced to the Youthful Offender System (YOS) are sentenced for serious charges including homicide.

Of the 41 cases in which a juvenile was sentenced to the Youthful Offender System (YOS), 31 were sentences for a Class 2 or Class 3 felony. Some 18 of the 41 cases had a guilty finding for a homicide offense and ten of the 41 cases had a guilty finding for a robbery offense.

Supplemental Findings

1. There is no statutory protection for confidential information disseminated at reverse transfer and transfer hearings.

During reverse transfer and transfer hearings, the court is required to consider a number of factors about a child, including his or her maturity, environment, emotional attitude, pattern of living and the likelihood of rehabilitation. Records about the child must be collected and evaluations of the child are often conducted. In order to effectively represent a juvenile client during the hearing, defense counsel is motivated to disclose information that would have been protected by attorney-client privilege or is otherwise confidential. This results in sharing with the prosecution relevant information that otherwise would be confidential.

Neither the direct-file statute nor the transfer statute specify whether this confidential information may be used in the future by the prosecution, or whether the information obtained during the production of a mental health assessment would be admissible at a trial or hearing after the reverse-transfer or transfer hearing. As a result, it's currently common practice for defense counsel to have to file a motion asking the court to issue a protection order that prevents the future use of confidential materials that are disclosed during the transfer or reverse transfer hearing. Prosecutors and judges have varied reactions to this request, resulting in different protections for each child charged in adult court, between and within Colorado's judicial districts.

2. Children charged as adults remain unable to expunge or seal their public criminal records.

The majority of children who are tried in juvenile court have the ability to expunge their records, which limits their exposure to lasting collateral consequences such as difficulty applying for college or jobs as adults. Children prosecuted in adult court, however, are convicted of adult felonies that cannot be expunged, and therefore have a publicly-accessible criminal record looming over them throughout their lives. Those records can block their access to public benefits such as housing, food stamps and federal student loan eligibility. A criminal conviction also may limit the chance of being accepted into institutions of higher learning, as well as the opportunity to join a number of professions, including peace officer, public school teacher and health care professional.

3. Children with adult prison sentences remain at risk for mental health issues and suicide.

When sentenced to an adult facility, children miss the opportunity to have the more positive, mentor-style interactions offered by appropriately trained staff in juvenile justice facilities that were designed with the child's maturation process in mind. Instead, children report that much of their time in adult prison is spent "learning criminal behavior from the inmates and proving how tough they [are]." As a result, children who are housed in adult facilities have higher rates of mental health issues later in life, including paranoid ideation, depression, psychoticism and post-traumatic stress disorder. Even worse, they are eight times more likely than children sentenced to juvenile facilities to commit suicide.

4. Children remain subject to adult sentencing schemes.

The 2012, direct-file reform expanded options for sentencing children prosecuted in adult court. When a child is charged with a direct-file eligible offense but is only convicted of a misdemeanor offense, the statute mandates that the child be adjudicated as a juvenile and sentenced in juvenile court. If the child is found guilty of a felony offense that would not, independently, have been direct-file eligible, the court has the discretion to sentence a child in either juvenile or adult court. When a child is convicted of a direct-file eligible offense, the adult criminal court must hand down an adult sentence, however, mandatory minimum prison sentences. do not apply to children who are prosecuted as adults.

Nonetheless, children who are convicted of felonies as adults face the same possible penalties as adults convicted of those felonies. This includes increased maximum penalties for crimes of violence and the possibility of

consecutive sentences for multiple counts filed in a single case. Even with the eradication of mandatory minimum sentencing in situations other than Class 1 felonies and sexual assault convictions, children face prison terms that are two to three times longer than the number of years they've been alive.

The wide range of sentencing options available to a judge when sentencing a child convicted of a direct-file eligible offense can make it difficult for a defense attorney to advise the juvenile client and for the child to understand the possible outcomes and make decisions about whether to plead guilty. For example, a 17-year old convicted of attempted murder – which is a Class 2 felony — faces zero to 48 years in prison, between two and seven years in YOS, or probation. While expanding the sentencing options available to the court was an important step forward, the practice of allowing courts to impose on children the same sentences that apply to adults — large ranges of years in adult prison — is not supported by law or science.

5. The transfer and reverse-transfer statutes provide inconsistent sentencing schemes.

The sentencing reforms specifically spelled out in the reverse-transfer statute during the 2012 reforms are not included in the transfer statute. So, a 16 year-old filed directly by a prosecutor in adult court is not subject to the mandatory minimum sentences that apply to adults, but a 12-year-old transferred from juvenile to adult court could conceivably be bound by the adult mandatory minimum sentencing structure.

6. Even though studies show that children convicted of sexual offenses are unlikely to reoffend, children remain subject to lifetime supervision when charged with a sex offense in adult court.

The Colorado Sex Offender Lifetime Supervision Act of 1998 (LSA) makes it mandatory for all adults convicted of a felony sex offense to receive an indeterminate sentence. The parole board is left to decide if and when release will come. Children convicted of sex offenses in adult court are also subject to this adult sentencing structure.

Children who've been convicted as adults of sex offenses and then released into the community are required to register as sex offenders — sometimes for the rest of their lives. If they fail to register, they're subject to prosecution. They also remain under lifetime supervision by a parole officer, and may return to prison if they violate even minor and/or technical conditions of parole. The parole requirements for sex offense crimes are extensive and can include provisions that restrict access to the Internet, require permission to attend church and even limit grocery store visits to certain hours.

The idea that adults convicted of a sex offense should be subjected to a possible lifelong sentence and remain under lifelong supervision is rooted in the belief that adults who offend sexually are likely to do so again. Applying these standards to children, however, is inconsistent with the fact that children who commit sexual offenses are *not* likely to reoffend. The National Center on Sexual Behavior of Youth reports that only 5 percent to 14 percent of juvenile sex offenders re-offend (compared to approximately 40 percent of adults, as reported by the Bureau of Justice). The re-offense rate for sex offenses is substantially lower than are the recidivism rates for other adolescent delinquent behavior. Studies show that youthful offenders convicted of sexual offenses — unlike adult sexual offenders — are not prone to repeat offending, partially because developmental issues play a dominant role in adolescent sexual misconduct. A child, unlike an adult offender, may grow out of his or her deviant sexual behavior, “cured” naturally with maturation rather than by extensive treatment and lengthy terms of incarceration. Further, studies have found that the majority of adults convicted of sexual offenses were not known to have committed sexual offenses as juveniles. Sexual offense treatment providers warn that “sanctions and treatment approaches developed for adults should not be applied to adolescents except in rare cases.” According to the National Center on Sexual Behavior of Youth, most child sex offenders can be treated successfully through weekly outpatient group treatment lasting eight to 28 months. Study after study makes it starkly clear that the draconian adult sentencing paradigm for sexual offenses is inappropriate when applied to childhood sexual assault offenders.

7. Other states have reformed the way that juveniles are sentenced in adult court.

In 2015, several states passed legislation reforming the way children are sentenced in adult court. In Nevada, for example, the court is now required to consider the differences between juvenile and adult offenders when determining an appropriate sentence for a child convicted as an adult. Under Nevada law, a child sentenced as an adult and serving a prison sentence for an offense that did not result in death is eligible for parole after the prisoner has served 15 calendar years. Similarly, in West Virginia, a child convicted as an adult and serving a prison sentence is eligible for parole after 15 years (if not earlier) — even for homicide offenses. West Virginia also requires the judge to consider a list of factors related to age and maturity before sentencing a child as an adult. Much like Nevada and West Virginia, Connecticut now requires a court sentencing a juvenile as an adult to consider the defendant’s age at the time of the offense, the hallmark features of adolescence and any scientific and psychological

evidence showing the differences between a child’s brain development and an adult’s brain development.

Unlike Colorado’s youth-in-adult-court sentencing schemes, these sentencing statutes mandate that the court take into account individualized characteristics of adolescence when sentencing children in adult court, and provide the possibility of early parole for children convicted as adults. These sentencing models reject the use of adult court sentencing models when sentencing children in adult court, and instead mandates that the child’s characteristics of youthfulness be taken into account.

Key Recommendations for Future Reform in Colorado Include:

2015 RECOMMENDATION
<ul style="list-style-type: none"> • Raise the age of eligibility for judicial transfer from 12 years to 14 years.
<ul style="list-style-type: none"> • Create a uniform sentencing statute for children in adult court that: <ol style="list-style-type: none"> (1) eliminates disparities between the direct-file and judicial-transfer statute (2) eliminates mandatory lifetime sex offender sentencing and lifetime sex offender registration (3) creates sentence ranges that are consistent with the ability of children to be rehabilitated and requires judges to consider the characteristics of children before imposing an adult sentence (4) and offers all children sentenced to adult prison — including those sentenced to life — a meaningful chance for release after a developmentally appropriate amount of time (at most, 15 years)
<ul style="list-style-type: none"> • Due to the severe collateral consequences triggered by an adult conviction, create the opportunity for children convicted as adults to seal their criminal records, especially for children who complete probation or the Youthful Offender System
<ul style="list-style-type: none"> • Collect more complete data for future policy analysis including: <ol style="list-style-type: none"> (5) on children sentenced to YOS (6) transfer cases that result in juvenile jurisdiction (7) cases in which prosecutors threaten to transfer children from juvenile court into adult court, but that result in juvenile plea agreements (8) and take steps to ensure race and ethnicity of children in juvenile justice system is accurately collected

- Create a provision through law or rule that specifically limits the use of information provided during the reverse-transfer and transfer proceedings in future proceedings
- Evaluate factors to be considered at these hearings to ensure an undue burden is not placed on the child, and overemphasis is not placed on the details of the alleged incident

Methodology

Throughout this report, the terms “child,” “juvenile” and “youth” refer to any person under the age of 18.

For this report, the Colorado Juvenile Defender Center (CJDC) requested data from the Office of the State Court Administrator (SCAO) on all adult criminal cases in Colorado in which the defendant was under the age of 18 at the time of the offense(s) charged between April 20, 2012 and April 20, 2015. The raw data, obtained by the ICON/Eclipse database, was provided electronically to CJDC, which then created the tables, charts and graphs included in this report.

Several cases included in the raw data provided by SCAO are not included in the data set analyzed for this report. They includes 18 cases in which the defendant’s date of birth was entered incorrectly and 16 cases that were erroneously filed in adult court.

Furthermore, SCAO was unable to provide CJDC with any information on at least 12 cases that have been sealed or suppressed. So, the actual number of direct file cases is higher than what is reported here.

Based on the data provided by SCAO, CJDC reviewed court case files and identified the defense attorneys who represented direct-filed children since the direct-file law changed in 2012. In-person or phone interviews were conducted with a number of these attorneys who were able to provide additional information included in this report. At all times, the privacy of the children was maintained.

Finally, at the time of the drafting of this report, 12 cases in Colorado were still pending disposition. Another eight were awaiting sentencing.

Due to the limited timeframe this report covers — from April 20, 2012 to April 20, 2015 — data was organized by calendar year rather than fiscal year. Data obtained and analyzed for “Justice Redirected: The Consequences of Prosecuting Children as Adults and the Need for Judicial Oversight” was organized by fiscal year, as is the data included in the majority of state and federal reports.

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The Colorado Juvenile Defender Center is a non-profit organization dedicated to excellence in juvenile defense and advocacy, and justice for all children and youth in Colorado. CJDC seeks to protect the rights and improve the treatment of children and youth in the juvenile justice system by engaging in collaborative reform efforts, coalition building and non-partisan research and legislative advocacy. CJDC also strives to elevate and support the practice of juvenile defense by providing continued legal education seminars and resources for juvenile defense attorneys and advocates.

“Justice Redirected: The Impact of Reducing the Prosecution of Children as Adults in Colorado and the Continuing Need for Sentencing Reform” was prepared by Hannah Seigel Proff, CJDC’s director of juvenile policy, and Elise Logemann, CJDC’s interim executive director.

