# JUSTICE REDIRECTED

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



### **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

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PART I: INTRODUCTION TO THE PRACTICE OF PROSECUTING

### INTRODUCTION

In 2012, Colorado reformed the way children can be prosecuted as adults by changing the law that previously allowed prosecutors to press charges in adult court without judicial review. The changes to the law reduced the number of children who could be "direct filed," — or charged — in adult court by the prosecutor, and put in place a system of oversight by allowing a judge to review the prosecutor's decision to prosecute a juvenile in adult court.



#### PART I: INTRODUCTION TO THE PRACTICE OF PROSECUTING CHILDREN IN ADULT COURT IN COLORADO

#### How Children can be Charged as Adults in Colorado

Today, there are two ways a child may be prosecuted in adult court. The prosecutor may file a case directly — a process referred to as "direct filing." Since Colorado's 2012 direct-file reform, if a prosecutor chooses to file a case against a child directly in adult court, the defense may ask the judge to transfer the case back to the juvenile court and request a hearing on the matter, which is referred to as a "reverse transfer" hearing.

In certain cases that aren't eligible to be directly filed by the prosecutor in adult court, the prosecutor may file a case against a child in juvenile court, but ask the juvenile judge to transfer the case from juvenile court to adult court. That process is known as a "juvenile transfer." In such cases, there is also a hearing, referred to as a "transfer hearing."

This report focuses on the history of the direct-file statute — the law that allows prosecutors to file charges against a child directly in adult court before any hearing is held — and the results of reforms to that statute. We also refer to the judicial transfer statute throughout the report because this second method for charging children as adults has an impact on direct-file reform as it is the other avenue by which youth are prosecuted in adult courts in Colorado.

#### Eligibility under Direct File Law in Colorado Prior to 1993

Colorado's juvenile court system was created in 1903 on the premise that children are fundamentally different from adults and, for that reason, shouldn't be treated as criminals for their youthful transgressions. Created by Denver Judge Benjamin Lindsey, who was appointed to the bench in 1901, the juvenile courts system in Colorado was founded on a philosophy of rehabilitation rather than punishment.<sup>2</sup>

Since its creation in the early Twentieth Century, the Colorado juvenile court system statutorily allowed the prosecution of children in adult courts under limited circumstances. During the early history of the Colorado juvenile court system, the practice of prosecuting children as adults was limited to situations in which a 16- to 17-year-old child was charged with the most severe offenses, including the crime of first-degree murder. Between 1968 and 2010, lawmakers in Colorado passed several laws expanding the circumstances under which children could be directly prosecuted in adult court, and started to require that children who are prosecuted as adults receive adult sentences.

The creation of the Colorado Children's Code in 1968 expanded prosecutors' discretion in direct-file cases. It cast a broader net by allowing the filing of cases against children 14 years of age and older directly in adult court for charges of first-degree murder.<sup>3</sup>

During the 1970s, the law changed to allow prosecutors to charge children alleged to be involved with other types of felonies (including Class 2 and 3 felonies if the child had previously been found guilty of a felony as a juvenile) as adults.<sup>4</sup> At that time, even when children were found guilty of adult charges, criminal court judges were permitted to sentence children to juvenile sentences or to send their cases back to juvenile court altogether.<sup>5</sup>

Judicial discretion was cut back significantly in the 1980s when the legislature made adult sentences mandatory for children convicted of first-degree murder,<sup>6</sup> children convicted as adults of violent crimes<sup>7</sup> and children 16 years old with prior juvenile adjudications for which they served their sentence in the Department of Youth Corrections.<sup>8</sup>

In the 1990's, portrayal by the mass media of youth violence and the misguided assertions of several academics perpetuated the concept of the juvenile "superpredator," further fueling the general public's fear of the out-of-control teenage criminal. This, combined with an escalation in crime rates — including an increase in violent crimes perpetrated by adolescents — led to yet another increase in the number of children who could be prosecuted as adults in Colorado. 10

Until 1993, a prosecutor's ability to charge a child in adult court was limited to two situations. Prosecutors could direct file children who were 14 years or older and charged with a Class 1 felony (the most serious type of felony charge in Colorado, where felony charges range from Class 6, the least serious, to Class 1, the most serious, including homicide). Prosecutors could also direct file children 16 years or older if they were charged with a Class 2 or 3 felony and previously had been found guilty of a felony.<sup>11</sup>

In the first half of 1993, the legislature significantly changed the law in two ways. First, lawmakers allowed all 16- and 17-year-olds accused of Class 2 or 3 felonies that were violent crimes to be charged as adults, even if they hadn't previously been found

guilty of a felony as juveniles. Second, lawmakers mandated judges to hand down adult sentences to more children found guilty as adults. Whereas before, an adult sentence was only required for children found guilty of first-degree murder, judges were required to give adult sentences to all children prosecuted in adult court.<sup>12</sup>

The regular 1993 legislative session ended in May of that year. During the summer of 1993, Colorado's news media significantly increased coverage of violent crimes in Colorado, triggering public outcry about a perceived higher rate of youth violence. In reaction to news about the so-called "Summer of Violence," Governor Roy Romer convened a special legislative session on September 7, 1993. Lawmakers acted rapidly to the hyped-up threat, and over five days they passed bills that again raised the number of children who could be prosecuted as adults in Colorado. These changes resulted in 14-year-old children being direct filed as adults for qualified offenses, including all violent crimes and attempted violent crimes. The legislature also created a new sentencing option for children prosecuted in adult court — the Youthful Offender System (YOS), a prison facility under the adult Department of Corrections.

Colorado wasn't alone in enacting juvenile "tough on crime" policies that expanded juvenile direct file laws during this period. All across the country, states were making it easier for kids to be prosecuted in adult courts.<sup>17</sup>

Prosecutors in Colorado now had complete discretion and a larger pool of eligible cases when deciding which children to prosecute as adults. Nothing in the law required a prosecutor to consider the individual characteristics of the young person when making this decision. <sup>18</sup> After a prosecutor had made the unilateral choice to file a juvenile's case directly in adult court, there was no way to appeal or review that decision. The judge didn't have the power to override the prosecutor and send the child back to juvenile court, and the defense attorney didn't have the ability to ask for a hearing on the matter. <sup>19</sup> This level of prosecutorial power was unparalleled. Because the prosecutor decided which children would be charged in adult court and the law required judges to sentence any child found guilty of adult charges to an adult sentence, the determination of who was appropriate for an adult sentence was completely without judicial discretion and was left solely in the hands of the individual prosecutor.

As a result of the policies enacted during Colorado's special legislative session in 1993, the number of children in adult prisons and jails swelled between 1993 and 2008. The average daily population of children in Colorado's Youthful Offender System — a Department of Corrections prison where children served prison sentences — grew from only three in 1994 to 265 in 2002.<sup>20</sup>

TABLE 1:
AVERAGE DAILY POPULATION (ADP) YOUTHFUL OFFENDER SYSTEM POPULATION BY YEAR<sup>21</sup>

YEAR	ADP
1994	3
1995	76
1996	265
1997	247
1998	278
1999	295
2000	282
2001	274
2002	265

#### The Development of Science on the Adolescent Brain: a Work in Progress

While children in Colorado and elsewhere in the U.S. increasingly were being charged and sentenced as adults, scientists, doctors and psychologists were learning more than ever about the adolescent brain. This research, and what we now know about how children develop, would affect the law as we entered the 21st Century.

It is self-evident that children are in the process of developing, both mentally and physically. Increasing recognition of this growth period was the impetus for the creation, at the turn of the 20th Century, of a separate justice system for juveniles. The necessity for the specialized treatment of children by the criminal justice system has become even more apparent over the last two decades as neuroscientists have discovered much more about how the brain develops and functions. Research shows that the human brain doesn't fully develop to look like an adult brain until people reach their mid 20s.<sup>22</sup>

While their adolescent brains are still growing, children and young adults are prone to participate in risky behavior, which they outgrow over time.<sup>23</sup> We now know that reward pathways in teen brains are under developed and, thus, teens are more likely to make split-second decisions that lead to long-term negative consequences. Although children may know that a behavior is "wrong," they are less able to control their impulses and, due to the maturation of their brains, may therefore engage in the risky or illegal behavior.

As the adolescent brain (specifically, the prefrontal cortex) matures, people develop more control over impulses and can reason to make better judgments — all abilities necessary to make careful decisions when involved in "high stress" situations.<sup>24</sup>

Despite the recent and ongoing research on adolescent brain function and development, more science is needed to understand the connection between brain

maturity and behavior. Given that children react to situations in vastly different ways than adults, the recent studies of adolescent brain development cannot simply be seen as an excuse for negative behaviors, but rather an opportunity to understand why some children behave in certain ways. The science of brain development was barely understood at the time the juvenile justice system was created at the turn of the 20th Century. More than a hundred years later, a wealth of science about the malleability of the juvenile — and young adult brain add further weight to the paradigm behind that system — that it makes sense to rehabilitate children rather than punish them.

Brain research has influenced laws over the past two decades. Four recent United States Supreme Court cases embraced this research and emphasized that children must be treated differently than adults. In 2005, the Supreme Court held that juveniles could not be sentenced to the death penalty.<sup>25</sup> In 2010, the Court ruled in Graham v. Florida<sup>26</sup> that mandatory life sentences without the possibility of parole for juveniles is unconstitutional in cases that don't involve a homicide. In 2011, the Court underscored children's lack of brain development by finding that a child's age must be considered in the context of a criminal interrogation.<sup>27</sup> And in 2012, the Court decided Miller v. Alabama, 28 finding that children charged with committing a homicide before their 18th birthday could not receive mandatory life sentences without the possibility of parole. In finding that a mandatory life sentence for homicide was a violation of the 8th Amendment prohibition against cruel and unusual punishment, the Court highlighted juveniles' "diminished culpability and heightened capacity for change."29 Since Miller, Courts must now evaluate an offender's age and maturity along with the attendant circumstances of youth before assessing the penalty of life in prison.<sup>30</sup>

#### **Reform Begins in Colorado**

After the tough-on-crime era of the late 1980s and early 1990s, as the panic triggered by the short-lived spike in juvenile crime rates began to ebb, policy makers started to shift their thinking about prosecuting children as adults. Across the country, states began to remove children from the adult criminal justice system. As the director of the criminal justice program at the National Conference of State Legislatures tells it, the shift stemmed from concerns about the cost of adult prisons, a decline in juvenile crime and a growing understanding of adolescent brain development to support the argument that kids have a great potential for rehabilitation.<sup>31</sup>

In 2008, certain Colorado lawmakers started to question the policy of direct filing. Rep. Claire Levy (D-Boulder) introduced a bill that would have limited the crimes eligible for direct filing and would have offered children being charged as adults a chance to petition the judge to return them to juvenile court through "reverse-transfer" hearings.<sup>32</sup> The bill provided a list of factors to be considered at a reverse transfer hearing, including the maturity of the juvenile and the likelihood of rehabilitation through programs offered in juvenile facilities.<sup>33</sup> Levy's bill passed

both the state Senate and House of Representatives, but was vetoed by Gov. Bill Ritter, a former longtime Denver District Attorney.<sup>34</sup>

In 2010, a bipartisan direct-file reform bill was passed and managed to become law.<sup>35</sup> This compromise measure removed 14-and 15-year olds from the direct-file statute except in cases that involved allegations of murder, attempted murder and violent sexual assault.<sup>36</sup> It set factors for prosecutors to consider in deciding whether to direct file a child's case in adult court. And it required prosecutors to give notice in certain cases before filing adult charges. This notification process gave the child's defense attorney a chance to try to persuade the prosecution not to file the case in adult court.

The 2010 reform didn't go far enough because the child's attorney had very limited time – only two weeks, under the law — to collect information about the child (whom the defense lawyer had likely just met), or to investigate the circumstances of the alleged crime. If, after the two-week period, a prosecutor decided to direct file in adult court, the 2010 law required the prosecutor to file a largely boilerplate statement to explain what factors affected the decision.<sup>37</sup> There was no mechanism for a judge to review the individual prosecutor's reasons for filing a case directly. Thus, the "statement of reasons" required of prosecutors fell on deaf ears, failing to provide a true check on a prosecutor's filing discretion. The notice also had a coercive effect on plea bargaining. Children often would plead guilty to juvenile charges, accepting sentences to incarceration in juvenile facilities in the Division of Youth Corrections as a way to avoid having their cases directly filed in adult court.

#### Colorado's First Substantial Reform: Direct-File Reform in 2012

In 2012, the Colorado Juvenile Defender Center (formerly known as the Colorado Juvenile Defender Coalition) issued a comprehensive policy report, "Re-Directing Justice: The Consequences of Prosecuting Children as Adults and the Need for Judicial Oversight." The report examined the history of prosecuting and incarcerating children as adults in Colorado, analyzed the data of more than 1,800 cases over an eleven-year period, and made recommendations for reform. It framed arguments for more research-based, data-driven policies to support children, advance procedural due process in their criminal cases and re-establish judicial discretion over the direct-file process.

In 2012, following the release of CJDC's policy report, the law was changed to further reduce the number of juvenile cases eligible for direct file in adult court. It also gave children the right to a hearing in front of a judge to decide whether a case should be heard in juvenile court. As a result of these changes, children who are direct filed in Colorado now have the right to a reverse transfer hearing in which the child may request that his or her case be dismissed from the adult court and re-filed in the juvenile court. This proposed bill, which eventually passed, sparked substantial debate over whether it should be the prosecutor or a judge who ultimately decides if a child is to be tried in adult court.

#### **Arguments For and Against Direct File Reform**

#### **Arguments Against House Bill 1271**

Opponents of the bill wanted to retain prosecutorial discretion. They argued that the adult prison system — particularly the Youth Offender System (YOS) — was the appropriate placement for repeat juvenile offenders. They warned that if repeat offenders were housed within the Division of Youth Corrections (DYC), then youth in DYC would be exposed to more violent juveniles. Opponents to the reform also expressed concern that with fewer children being sentenced as adults; the population of YOS would shrink, leaving the expensive prison facility well below capacity. Highlighting the history of teenage violence and violent crimes committed by juveniles, they warned the bill would endanger the public. A particularly contentious debate was triggered by opponents' assertion that the measure would result in long and costly transfer and reverse transfer hearings that could re-victimize crime victims.<sup>39</sup>

Opponents of the reform also argued against shifting direct-file decisions from the local prosecutor to the judge, saying the shift would require the court to effectively make a sentencing determination before hearing all of the facts and evidence. They said that the 2010 law requiring prosecutors to consider certain factors before direct filing was working because, they asserted, prosecutors were using discretion appropriately. What's more, opponents argued that direct filing isn't a political decision, and therefore there was no need to take it out of the hands of elected prosecutors and put it into the hands of non-elected judges.

#### Winning Arguments for House Bill 1271:

Proponents of the bill argued that a judge rather than a prosecutor is best able to decide whether a child should be charged as an adult. They decried the law on the books at the time, which gave the prosecutor — with no oversight — sole discretion to choose not only the charge but also which court system (and which set of sentencing laws) in which to try the case.

At the time, Colorado was one of only four states that didn't allow a judge to weigh in on a direct-file decision made by the prosecution. Proponents pointed out that prosecutors have an incentive to exaggerate charges to gain leverage in plea bargaining, and that prosecutors are elected and are more politically motivated than judges, who are subject to the scrutiny of judicial evaluations.

Proponents testified about the low rates of juvenile recidivism and cited research showing that direct-file laws have no deterrent effect on violent juvenile crime and, in fact, possibly threaten public safety by making it more likely that children released from adult sentences will reoffend. They pointed out that direct-file laws unnecessarily strain families and have a disproportionate impact on young men of color. They also cited brain development research showing that children are less criminally culpable than adults and are more likely to respond to rehabilitation.

They said they support the idea of holding children accountable for their actions – but only in a criminal justice system that understands them and the challenges posed by their developing brains.

#### **Provisions of the Reformed Direct File Law in Colorado**

Ultimately, the 2012 reform law passed, changing the eligibility criteria for charging Colorado kids as adults and restoring judicial oversight to the direct-file process. In some cases (outlined below), the law allows prosecutors to directly file a case in adult court. But the law lets the child file a motion (a "reverse transfer" motion) to request a hearing and ask the judge to send the case back to juvenile court. If the child's attorney requests a reverse-transfer hearing, the court must set the reverse transfer hearing and permit the prosecution to file a response. 40

#### Table 2:

### Under the new law, a child who is 16 years of age or older may be charged by direct file in adult court if:

- (1) The child is charged with a class 1 or 2 felony
- (2) The child is charged with a sexual assault that is a crime of violence or pursuant to 18-3-402(5)(a)
- (3) The child has previously been found guilty of a felony as a juvenile AND is now charged with a crime of violence other than those above, OR, sexual assault on a child, or sexual assault on a child by one in a position of trust
- (4) The child has been direct filed/transferred to adult court before

There are two exceptions:

- If the child was charged in adult court before but was found not guilty, the prior charge in adult court cannot be the basis to direct file charges
- if the child was charged in adult court before but was not convicted of the felony crime charged, but was instead found guilty of a lesser offense that could not have been direct filed, the prior charge in adult court cannot be the basis to direct file charges

(See APPENDIX A)

Additionally, the law raises the age for direct-file eligibility from 14- to 16 years of age. It also removes several crimes from direct-file eligibility. Children can no longer be direct filed for vehicular homicide, vehicular assault or felonious arson. And children labeled "habitual juvenile offenders" can no longer be direct filed for any felony.<sup>41</sup>

The law provides that if the court doesn't find probable cause after a preliminary hearing for the direct-file eligible crime charged, or if the direct-file eligible charge is later dismissed, the case must return to juvenile court.<sup>42</sup> The law removes the requirement that the prosecutor consider certain criteria in deciding whether to

direct file in adult court, replacing it with the requirement that the judge consider certain criteria at the reverse-transfer hearing.

#### Table 3:

#### In determining whether a child and the community would be better served by juvenile proceedings, the court shall consider:

- (1) the seriousness of the offense
- (2) whether the offense was aggressive, violent, premeditated or willful
- (3) whether the offense was one against a person or property, greater weight being given to offenses against persons
- (4) the age and maturity of the child
- (5) the child's prior criminal/adjudicative history
- (6) the child's mental health status
- (7) the likelihood of the child's rehabilitation
- (8) the interest of the community in punishment commensurate with the gravity of the offense
- (9) any impact on a victim of the offense
- (10) whether the child has been previously committed to the Department of Human Services for a felony adjudication
- (11) whether the child used, possessed or threatened the use of a deadly weapon during commission of the offense.<sup>43</sup>

The law allows more children who are charged as adults to receive less severe sentences than under the old legislation. Children convicted as adults are no longer subject to mandatory minimum sentencing under the crime of violence statute (though this does not apply to convictions for Class 1 felonies, nor eliminate indeterminate sentences on sex offense convictions). Children who are convicted as adults of a felony offense that's not eligible for direct file may be sentenced as juveniles or as adults. Children convicted of misdemeanor offense(s) only must be prosecuted as juveniles and sentenced as juveniles.

#### **Juvenile Transfer Laws in Colorado**

Another way a child's case can end up in adult court is by a judicial transfer from the juvenile court.<sup>44</sup> For a judicial transfer, a petition must be filed in juvenile court, followed by an investigation and a transfer hearing.<sup>45</sup>

A case is eligible for a transfer petition if the child is 12 or 13 years old and is alleged to have committed a Class 1 or Class 2 felony or a crime of violence, or if the child is at least 14 years old and is alleged to have committed any eligible felony. Some cases that aren't eligible to be directly filed by the prosecutor into adult court could be transferred to adult court by a judge after a transfer hearing.

After a petition to transfer is filed, the juvenile court must hold a transfer hearing

to decide if there is probable cause to believe that the child committed the offense, and to decide "if it would be contrary to the best interests of the juvenile or of the public" to keep the case in juvenile court. The child has the right to be represented by counsel during this hearing. The statute lists fourteen factors for the judge to consider when determining where case should be heard. If the juvenile court transfers the case, the juvenile court waives jurisdiction and the child's case is handled by the adult district court.

## 2012 Reforms to Expand Juvenile Sentencing Terms for Children Charged as Juveniles Under the Aggravated Juvenile Offender Statute

There is no situation in which direct file or judicial transfer is mandatory in Colorado. The juvenile delinquency court may maintain jurisdiction over any child who is accused of committing a crime while 10 to 17 years of age. In 2012, the legislature increased the possible punishments available if a child is charged in juvenile court as an aggravated juvenile offender (AJO), providing an alternative, in serious cases, to charging the child in adult court.<sup>51</sup>

The 2012 changes allow children found guilty in juvenile court as aggravated juvenile offenders to be sentenced to consecutive juvenile sentences, which was not previously permitted. This allows the judge to "stack" one sentence for each charge in the case on top of another to make the juvenile sentence longer. The reforms also provide that a child in juvenile detention will have a hearing before turning 21 and could receive, upon reaching the age of 21, a variety of changes in his or her sentence, outlined below. These options are a departure from prior laws requiring that children convicted as aggravated juvenile offenders either be released or transferred to an adult prison once they turn 21. The reformed statute works as follows:

- When a child is adjudicated as a juvenile delinquent for first or second-degree murder in juvenile court, the court may sentence consecutively or concurrently for any crime of violence or aggravated juvenile offender count arising in that case. (Consecutive sentencing is only permitted in cases involving first- or second-degree murder.)
- When a young adult turns 20 ½ years old in the custody of the Division of Youth Corrections on any aggravated juvenile offender case, the court must hold a hearing. The court shall reconsider the length of the remaining sentence and a list of factors such as risk, history, education and progress in custody. The young adult is to be evaluated by a psychologist before the hearing. At the hearing, the judge can decide to:
  - 1) Transfer the young adult to the adult Department of Corrections for placement in prison
  - 2) Transfer the young adult to the adult Department of Corrections for placement in the Youthful Offender System
  - 3) Transfer the young adult to the adult Department of Corrections for

placement in community corrections (a halfway house program)

- 4) Place the young adult on adult parole for five years (or, in first-degree murder cases, 10 years)
- 5) Authorize the early release of the young adult
- 6) Order that the young adult remain with the division of youth corrections until age 21.

The reformed aggravated juvenile offender statute, with its consecutive sentencing options and expanded placement review hearing, was created to offer a more serious sanction within the juvenile justice system.

#### The Safety of Children in Adult Facilities

#### The Prison Rape Elimination Act (PREA)

In the early 2000s, conditions of confinement in adult prisons gained national attention and juvenile justice advocates became increasingly concerned about the danger and severe isolation faced by children locked in adult facilities. The federal government enacted the Prison Rape Elimination Act (PREA), which was unanimously passed by Congress in 2003. This federal statute addresses sexual assault and victimization in prisons, jails, lockups and other detention centers – all facilities that, incidentally, may house children. The law created the National Prison Rape Elimination Commission (PREA Commission) to examine the extent and scope of the problem and directed the Department of Justice (DOJ) to promulgate national standards to prevent, detect and respond to sexual abuse in detention facilities. With respect to the treatment of children in the adult system, the PREA regulations state that "as a matter of policy, the Department [of Justice] supports strong limitations on the confinement of adults with juveniles."

The PREA Commission found that "more than any other group of incarcerated persons, children incarcerated with adults are probably at the highest risk for sexual abuse." Accordingly, the PREA regulations include a "Youthful Inmate Standard" to protect children in adult facilities. Specifically, the standard (§115.14) provides that youthful inmates – defined as "any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail" — must be housed separately from adult inmates in a jail or prison, but may be managed together outside of a housing unit if supervised directly by staff. This standard also applies to adult jails.

The youthful inmate standard includes four requirements. First, no child may be placed in a housing unit where he or she will have contact with any adult inmate through the use of a shared day room or other common space, shower area or sleeping quarters. Second, outside of housing units, agencies must either maintain "sight and

sound separation" between children and adult inmates — i.e., prevent adult inmates from seeing or communicating with youth — or provide direct staff supervision when children and adult inmates are together. Third, agencies must make their best efforts to avoid placing children in isolation to comply with this provision. Finally, absent exigent circumstances, agencies must comply with this standard in a manner that affords children daily large-muscle exercise and any legally required special education services, and provides access to other programs and work opportunities to the extent possible.<sup>55</sup>

Nationally, on any given day in 2013, there were 1,200 children in adult prisons and approximately 3,400 children in adult jails. That marks nearly a 70% decrease from 2000.<sup>56</sup> Since the number of children in adult facilities is easily dwarfed by the number of adult prisoners, PREA compliance and enforcement is imperative to keeping this small population of children safe.

## 2012 Reforms to Laws Limiting the Pretrial Detention of Children in Adult Jails in Colorado

Tragedy was the catalyst for change in Colorado when, in the fall of 2008, 17-year-old James Stewart hanged himself while in solitary confinement in Denver. James, who had never been in jail before, was held in an adult jail rather than a juvenile facility while he awaited trial because he had been direct filed on the charge of vehicular homicide.<sup>57</sup> At the time, children whose cases were directly filed were automatically transferred from juvenile custody to adult jail without a hearing in front of a judge or a statement of reasons by the prosecution.

In response to James' suicide, Colorado Rep. Claire Levy introduced a bill that would have mandated a hearing in front of a judge prior for any child being transferred to adult jail.<sup>58</sup> However, the bill was amended to create a list of factors that a prosecutor should consider before such a transfer, leaving the decision with each individual prosecutor rather than with the judge.<sup>59</sup>

Just six months after the amended version of the bill passed, another 17-year-old, Robert Borrego, committed suicide in solitary confinement in the adult jail in Pueblo while awaiting trial. Robert had also been transferred to an adult jail without having a hearing.

As Rep. Levy pointed out in an editorial in The Denver Post:

Neither of these young men was in jail because they had behavior problems in detention. They weren't in jail to protect the public; juvenile detention facilities are locked and secure. They weren't in jail because of a considered decision that jail was where they belonged. No one had assessed their psychological condition, criminal history, risk of flight, seriousness of the offense, and other factors particular to them before putting them in jail. They were in jail because they were being charged as adults. 60

In 2012, House Bill 1139<sup>61</sup> changed the law to prohibit the detention of juveniles in adult jails unless the Division of Youth Corrections (DYC) — the agency overseeing juvenile detention facilities — filed a request with the court to remove the child from a juvenile detention facility. The new law also permits placement of the child in adult jails only in the limited situation when he or she presents an imminent danger to other children or staff. Under the new law, the presumption is for children to be held in a juvenile facility until age 18 unless a judge makes a finding that an adult jail is the more appropriate placement. If the district court determines that the child should be transferred to an adult jail, the child has the right to request reconsideration of the court's decision. House Bill 1139 was supported by Peg Ackerman of the County Sheriffs of Colorado as well as by Tamar Wilson, who represents the Colorado District Attorney Counsel.

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

TABLE 4:
PRE-TRIAL DETENTION OF CHILDREN IN ADULT JAILS

2009 <sup>64</sup>	FY 2010-2011 <sup>65</sup>	FY 2011-2012 <sup>66</sup>	FY 2012-2013 <sup>67</sup>	FY 2014-2015
100 (estimated)	42	26	1	Report Pending

HB- 1139 LEAD TO A 99% REDUCTION IN ADULT JAILING OVER FIVE YEARS

Although children whose cases are pending have, for the most part, been removed from adult jails in Colorado, there are still children being sentenced to adult prisons. As long as we continue to incarcerate juveniles in adult facilities in Colorado, it's imperative for the Department of Corrections (DOC) to continue to make the safety of these children a priority.

#### **Children in Solitary Confinement**

Because of the requirement that juveniles be separated from adults in adult prisons, they are at particular risk of being housed in solitary confinement. For children and adults alike, solitary confinement is extremely stressful and produces significant levels of anxiety and discomfort. Young people are at particular psychological risk of adverse effects from being confined in isolation. Children have fewer psychological resources to manage the sensory deprivation of longtime solitary confinement. For at-risk children in particular, developmental immaturity is often compounded by mental disabilities and histories of trauma, abuse and neglect. These factors often dramatically exacerbate the negative mental health effects of solitary confinement

for children,<sup>69</sup> and they at least partly explain why, as the Department of Justice has found, "the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement."<sup>70</sup>

The United Nations Special Rapporteur on Torture has deemed solitary confinement of children to be cruel, inhumane and degrading treatment and, in some cases, torturous. The U.S. Department of Justice has found that even for adult inmates a "State's use of isolation in non-emergency circumstances and for long periods of time – i.e. as punishment – is a violation of due process." Courts also have found the use of isolation in juvenile facilities, even for a period of twenty-four hours, to violate the Due Process Clause.

In Colorado, the Department of Youth Corrections refers to solitary confinement as "administrative seclusion." On October 1, 2015, DYC released a policy reiterating that solitary confinement may not be used against a juvenile as punishment, and can only be used in cases of emergency as defined by statute, and is limited, in the majority of cases, to a maximum of a four hours. <sup>74</sup> However, this policy applies only to children incarcerated in the Department of Youth Corrections, not to those housed with the general, adult population in the broader Department of Corrections.

## The Transition of a Juvenile Prison into a Young Adult Prison from 2009-2015

Criteria for entry into the Youthful Offender System (YOS) — a prison facility within the Colorado Department of Corrections — is mandated by statute.<sup>75</sup> All children sentenced to YOS are convicted as adults, and they are never permitted to expunge their criminal records.

In 2009, state law expanded the eligibility criteria for admission to the Colorado Department of Corrections' Youth Offender System (YOS) to include offenders ages 18 and 19 who commit Class 3 through Class 6 violent felony offenses, provided they are sentenced prior to their 21st birthdays. The law resulted in an increase in the age of admission to YOS. The average age in 2014 was 19.4 years old.<sup>76</sup>

In 2015, due to the reduced YOS population resulting from direct-file reform, Senate Bill 15-182 was proposed to allow the Department of Corrections (DOC), in its discretion, to transfer inmates up to age 24 from DOC to YOS. This amended the previous law, which required that YOS participants be housed separately and not have daily physical contact with other DOC inmates.<sup>77</sup>

DOC argued in support of the bill, saying it would allow the department to house offenders with similar needs together, and offer the benefit of YOS to young adult offenders in DOC.<sup>78</sup> Corrections officials also argued that it would allow offenders under age 18 sentenced to DOC to remain in Colorado rather than being sent to juvenile facilities out of the state.

A representative from the Colorado Juvenile Defender Center argued against the bill because of the lack of clarity about which DOC inmates would be transferred to YOS.

Opponents also argued for keeping YOS and DOC distinct because introducing young adults to YOS would essentially establish a singular two-tier system for housing juveniles and young adults. YOS is part of the adult Department of Corrections (DOC), and children serving sentences there are subject to DOC rules. However, those sentenced to YOS as a result of a direct file or transfer from juvenile court do not receive the "earned time" credits that are often awarded to adult prisoners in other DOC facilities. Inmates sentenced to any Department of Corrections facility other than YOS can earn up to a ten-day-per-month deduction from their sentence if they meet certain criteria such as attendance at work or counseling sessions. Under the new law, young adults serving their DOC sentence in YOS still receive this earned time deduction from their sentence. This means that juveniles are required to serve every day of their sentences, no matter how they've behaved or what they've accomplished in the program, while adults sentenced to YOS — and receiving the exact same programming — may earn a substantial reduction in their sentence as a result of the earned time statute. That's a significant glitch in the system.

Further, the YOS statute requires that each juvenile sentenced to YOS receive not only a sentence to a certain term of years within YOS, but also a suspended prison sentence. This suspended sentence is only imposed by a judge revoking the child's YOS sentence for failure to comply with the rules of YOS. The statute offers no guidance as to the appropriate length of the suspended prison sentence, so it's up to the individual prosecutor's office or the judge to decide on the suspended sentence on a case by case basis. Most of the suspended sentences imposed are three times the length of the imposed YOS sentence. For example, a child whose case is direct filed could be sentenced to five years in YOS with 15 years of prison suspended (See Appendix C). So, if revoked from the YOS program and transferred to DOC, a child will be sentenced to 15 years in prison. Once in prison, he or should is eligible to earn "good time" – or credits prison time. Yet, young adults sentenced to DOC, but serving their time in YOS, don't receive a suspended sentence. So, if a young adult offender fails to meet the terms and conditions of the YOS agreement for transfer offenders and is sent back to DOC, he or she continues serving the original sentence.

Senate Bill 15-122 passed in 2015. The final measure required that the Department of Corrections develop policies and procedures for transferring inmates to YOS that will not compromise the delivery of services. It also requires that DOC include in its annual report the policies and procedures developed, the characteristics of those transferred from DOC to YOS, and the impact of those transfers on YOS programming or DOC programming.<sup>84</sup> The Corrections Department released the policies and procedures on August 1, 2015.<sup>85</sup> On September 21, the first two young adults graduated from the Intake Diagnostic Orientation (IDO) Unit within YOS, and they are currently serving their sentence at YOS. Young adults continue to be

recruited into this new YOS program, and time will tell how this population will change the Youthful Offender System.

Children's advocates argue that for the juvenile justice to reflect a modern understanding of the complexities of a young person's transition into adulthood, juvenile court jurisdiction should be expanded to include young people up to 21 years old, with allowances to serve people ages 24 and 25 who have diminished levels of capacity. This goal will be effectuated not by warehousing children in facilities such as YOS, but instead by reimagining how the system treats all young adults as they go through the complex process of maturation.

As children develop, their brains are primed to learn new skills and to embrace the kind of rehabilitative tools offered by the juvenile justice system. Removing children from the rehabilitative juvenile system and throwing them into the adult system ignores the fact that kids are different from adults. Rather than being disregarded and ignored in a system designed for adults, they have a right to be incarcerated in a setting that supports their development.

#### PART II: THE IMPACT OF DIRECT FILE REFORM IN COLORADO

Three years after direct-file reform, this report explores the outcomes of that reform by examining the impact on Colorado's juvenile and criminal justice systems from April 20, 2012 through April 20, 2015. Due to the relatively short time-frame assessed and to limitations on access to data, the full implications of the direct-file reform will become clearer in years to come, when more data is available for review.

From the data that's accessible now, it's clear that the number of children prosecuted in Colorado's adult court system started decreasing as soon as the direct file reform movement began in 2009. In 2005, 163 cases were directly filed. During Fiscal Year 2009, 144 cases were directly filed in to adult court.<sup>87</sup> After the 2012 reforms, only 37 cases were direct filed in the 2013 calendar year. That amounts to a 74 percent reduction in filings.

Table 5: NUMBER OF CHILDREN PROSECUTED IN ADULT CRIMINAL COURT\*8

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
1//	-/	(2	. ,	2=	/2	
144	76	62	27	37	43	6

#### Colorado Counties in which Children are Charged as Adults

An analysis of data for all children charged in adult court — either by direct file or by judicial transfer — allows us to see which Colorado jurisdictions are charging children as adults most often. Over a three-year period, from April 20, 2012 to April 20, 2015, there were 79 children in 100 cases who were either directly filed or transferred into adult court in Colorado. Some were charged in multiple cases, which were all prosecuted in adult court. (Note: Due to lack of access to juvenile court data, it is impossible to know how many juvenile delinquency cases prosecutors threatened to transfer to adult court during the plea bargaining process, or how many cases were originally filed in juvenile court in which a transfer hearing took place and the judge determined that the child would be better served by remaining in the juvenile court system).

Table 6: CHILDREN YOUTH PROSECUTED IN ADULT COURT BY JUDICIAL DISTRICT SINCE 2012 REFORM

County	2012*	2013	2014	2015*	Total
Adams	1	3	5	2	11
Arapahoe	1	2	3	0	6
Boulder	1	2	0	0	3
Denver	3	12	21	1	37
Douglas	0	0	2	1	3
Eagle	0	1	1	0	2
El Paso	1	7	4	0	12
Jefferson	3	0	5	1	9
La Plata	1	0	0	0	1
Larimer	0	1	0	0	1
Las Animas	0	1	0	0	1
Mesa	0	2	0	0	2
Pueblo	0	5	0	0	5
Summit	0	0	1	0	1
Weld	3	1	0	1	5
Yuma	0	0	1	0	1
Total Cases	14	37	43	6	100

\*2012: 4/20-12/31; 2015: 1/1-4/20

There are 64 counties in Colorado. Of those, 48 of them prosecuted no children 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. The data shows that Denver County is

by far the most frequent direct filer – having 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 two counties' similar populations. <sup>89</sup>

#### Types of Charges Brought Against Children as Adults

According to the data, the majority of cases that are direct filed in Colorado involve a high charge of homicide, robbery, assault or kidnapping.

Table 7:
DIRECT FILE & JUDICIAL TRANSFER CASES BY TYPES OF CHARGE APRIL 20, 2012 TO -APRIL 20, 2015

Highest Charge	Number of Prosecutions in Adult Court Account- ed by Offense
Assault	14
Burglary	7
Drug Offense	3
Escape	2
Homicide	36
Kidnapping	10
Robbery	14
Sex Offense	7
Theft	2
Vehicular Assault	1
Vehicular Homicide	1
Other	3
Total	100

Since April 20, 2012, homicide cases have accounted for 37 percent of children prosecuted in adult court. Prior to the reform, homicides cases constituted 12 percent of youthful prosecutions in adult court. (See Appendix D). 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 the lawmakers in Colorado, a greater percentage of children prosecuted in adult court are indeed prosecuted for the most serious offense — murder.

#### Which Children are being Prosecuted as Adults in Colorado?

#### **Gender of Children Prosecuted in Adult Court**

Ninety-eight percent of direct filings are against male children. Of the 100 cases statewide, only two cases — both filed in 2015 — involved children who were girls.

Figure 1: Number of Direct File Cases by GENDER 4/20/2015-4/20/2015

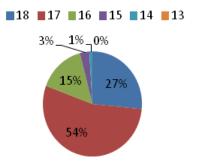


#### **Age of Children Prosecuted in Adult Court**

The average age at the time of the alleged offense is 16.82 years old, and the average age at the time of direct filing or transfer to adult court is 17.54 years old. From April 20, 2012 to April 20, 2015, only three children were transferred for crimes occurring when they were under the age of 16. Two of them were 15 at time of offense and time of filing. Since the 2012 reform, 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. International human rights organizations recommend that no child under the age of 18 ever be prosecuted as an adult.<sup>91</sup>

Figure 2:

### Number of Direct File Cases by Age at Time of Case Filing April 20, 2012-April 20, 2015



## Race of Children Prosecuted in Adult Court: Direct File Disproportionately Impacts Kids of Color

Racial and ethnic disparities pervade at every stage of the criminal and juvenile justice systems.

In 2008, Blacks and Hispanics comprised 58 percent of all prison inmates in the United States, while making up only one-quarter of the total population. While Black juveniles make up 17% of their age group within the general population in the U.S., they represent 46% of juveniles arrested, 31% of children referrals to juvenile court, and 41% of cases with waivers to adult court. Nationally, Black children are arrested at a rate more than two times that of white youth. Additionally, 58% of Black children who are sentenced in adult court are sent to state adult prison.

Unfettered prosecutorial discretion in 15 "direct file" states adds to these vast racial and ethnic disparities. Recently, Illinois, Michigan and Florida have studied the issue and concluded that prosecutorial discretion is inconsistent within each of those states, disproportionally affecting children of color. Research found that while Black boys make up 27.2 percent of children arrested for crimes in Florida, they account for 51.4 percent of children sent to adult court. White boys, in contrast, make up 28 percent of children arrested and account for only 24.4 percent of children tried in adult court. Similar disparities have been found in direct-file cases in Illinois and Michigan. The states of the states of the states and account for only 24.4 percent of children tried in adult court. Similar disparities have been found in direct-file cases in Illinois and Michigan.

Incomplete data regarding the racial and ethnic identities of children tried as adults in Colorado makes the analysis of disproportionality difficult. Often, children who identify as Hispanic are categorized in judicial data as "white." Children's race or ethnicity often is identified based on the judgment of the professionals involved in the case rather than by self-reporting by the child or the child's family. Or, if self-reporting is available, children sometimes report their race as white, and since they are never asked to identify their ethnicity, they never report that they also consider themselves to be Hispanic. Attorneys who have represented direct-file children in Colorado say many who identify as Hispanic are mis-classified as "white" by state judicial data. Those misclassifications skew the numbers, making it look like more of the children prosecuted in adult court are white when it's possible that they identify as Hispanic, but were misclassified. Still, even with flaws in the data set, it's clear that children of color — particularly African American and Hispanic children — are more likely than whites to be directly filed into adult court in Colorado.

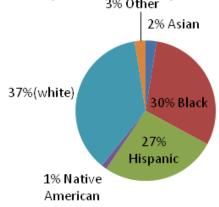
Table 8: RACE & ETHNICITY OF THE 79 CHILDREN PROSECUTED IN ADULT COURT IN COLORADO 4/20/2012-4/20/2015

Race	Total
Asian	2
Black	24
Hispanic	21
Native American	1
White	29
Other	2
Total	79

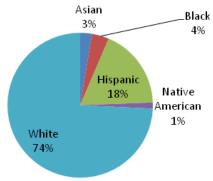
Colorado is one of the 12 states that report statistics about racial and ethnic disparities in its juvenile justice system. However, the statistics haven't been updated since 2008-2010.<sup>99</sup> For fiscal year 2004-2008, the state of Colorado reported that 16 percent of direct-filed children were Black, 18 percent Hispanic and 62 percent white.<sup>100</sup> Based on 2014 Census estimates, Blacks only make up 4.4 percent of the population in Colorado while Hispanic or Latino residents make up 21.2.<sup>101</sup> As evidenced by the data collected by CJDC for the drafting of this report, 30 percent of children prosecuted in adult court were Black, and 27 percent were Hispanic.

Figure 3: Number of Youth Prosecuted in Adult Court by RACE from April 20, 2012 to April 20, 2015

3% Other



Race of Colorado Residents Based on Colorado Census Estimates from 2014



#### **Transfer and Reverse Transfer Hearings**

#### **How Children are Charged in Adult Court**

Post reform, the vast majority — 83 percent — of children youth in adult court cases reached adult court via the prosecutorial direct file process. In the remaining other 17 percent of cases, a juvenile judge transferred the case from juvenile court to adult court.

Table 9: DIRECT FILE VS. TRANSFER: THE MECHANISM BY WHICH CHILDREN'S CASES ARRIVE IN ADULT COURT

	2012	2013	2014	2015	Total
Directly filed	13	33	33	4	83
Direct file: Charged with an F1 or F2	7	19	21	2	49
Direct file: other criteria	6	14	11*	2	33
Transferred from juvenile court	1	4	10	2	17
Transfer waived	0	0	2**	1**	3
Transfer after hearing	0	3	7	0	10
Total Cases	14	37	43	6	100

<sup>\*</sup>Charges in one case in the sample set are unknown.

#### **Number and Length of Hearings**

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, thus dispelling the concerns of direct-file opponents that direct filings 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.

#### **Results of Reverse Transfer Hearings**

In the 27 cases in which a reverse transfer hearing was held between April 20, 2012 and April 20, 2015, the reverse transfer was granted in only three cases, and the child's case was re-filed in juvenile court. In 24 cases, the hearing was held, but the judge denied the request and the case remained in district court.

Table 10:
OF THE 83 CASES WHICH WERE DIRECTLY FILED IN ADULT COURT:

Reverse Transfer Hear- ing Held and Granted	Reverse Trans- fer Hearing Held and Denied	Reverse transfer hear- ing never held	Cases pending a Reverse Transfer	Cases where it is unknown if a hearing was request-
			Hearing	ed or held
3	24	49 (in 20	6	1
		cases one		
		was never		
		requested)		

<sup>\*\*</sup> In two instances, the data is unclear whether the case was transferred via waiver or hearing.

While the 2012 direct-file reform reinstituted judicial discretion into the direct-file process by granting children the right to request a reverse-transfer hearing, the majority of cases are being resolved without a hearing taking place.

#### The Transfer and Reverse-Transfer Hearing Process

The statute mandates the judge to consider eleven factors when determining whether a child and community will be better served by the juvenile delinquency process rather than prosecution in adult court. (See Table 3) Five of the eleven factors concern details of the charged offense and the opinion of the crime victim. Juvenile defense practitioners and advocates argue that this focus on the details of the alleged criminal offense leads to hearings in which the prosecutors reiterate the facts of the crime multiple times, making the focus of the proceeding about the alleged criminal behavior rather than about the individual circumstances of the child.

Another factor instructs the court to take into consideration whether the crime was against a person or property. Given that the majority of direct-file or transfer eligible offenses are crimes against persons, this factor tips the scales against the child.

The statute fails to specify which party bears the burden of proof during the transfer or reverse transfer hearing. Under the transfer statute, a hearing is triggered when the district attorney files a petition in juvenile court. However, a reverse-transfer hearing is triggered when the defense files a request for the hearing. Both statutes fail to define standard of proof to be applied during the hearings. This lack of clarity can lead to disparate hearing procedures across the state. Juvenile defense advocates argue that in order to pass constitutional muster and ensure a child's due process rights, the statute should require the prosecution to bear the burden of proving that the child is not amenable to treatment in the juvenile system by clear and convincing evidence.

#### Plea Bargaining in Direct File Cases

Juvenile and adult court systems alike have come to rely on plea bargaining to dispose of cases without lengthy and costly trials. <sup>106</sup> Prior to 2012, 95 percent of direct-file cases were settled by plea bargains. <sup>107</sup> The majority of direct-file cases continue to be resolved with plea agreements today.

Once a child's case is filed in adult court, the child is subject to the adult sentencing scheme. While direct-filed children are explicitly excluded from adult mandatory minimum sentences pursuant to the statute, <sup>108</sup> the transfer law doesn't specify whether or not mandatory minimums apply to children who are transferred from juvenile to adult court. Common sense dictates that children protected by the transfer hearing process would similarly be protected from the majority of the mandatory minimum sentencing guidelines created for adults. However, the statute lacks guidance on the issue. <sup>109</sup> Even if mandatory minimum sentences don't apply, children are 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.

Most children lack the maturity necessary to make rational decisions about their cases when confronted with the reality of a lengthy prison sentences. Adolescents are predisposed to resolve their cases with plea agreements because they are less able than adults to weigh the risks inherent in the choice of whether to plead guilty or take their cases to trial. Teens often fail to consider long-term consequences and focus instead on the immediate consequences of their legal decisions. Although a child always has the option to reject a plea bargain offered by the district attorney, the possibility of being sentenced to a lengthy adult prison sentencing ranges often is overwhelming and encourages the acceptance of plea agreements with the promise of a stipulated term of years to the Youthful Offender System (YOS) or the Department of Corrections (DOC). Further, juveniles often are asked by prosecutors to waive their right to transfer or reverse-transfer hearings in exchange for a plea agreement, or "offer."

Considering the risk inherent in the decision to take a direct-file case to trial, it's not surprising that between April 2012 and April 2015, the majority of children in adult court cases resolved with a plea agreement.

Table 11:
DIRECT FILE AND TRANSFER CASE OUTCOMES

Disposition	Total
Dismissed	7
Dismissed as part of plea involving other	
cases	7
Plead Guilty	64
Trial-found guilty	4
Transfer to juvenile	
court*	6
Pending disposition	12
Total	100

<sup>\*</sup>As stated above, three cases were returned to juvenile court after a reverse-transfer hearing was granted. The other cases were returned to juvenile court as a result of negotiations with the prosecution.

#### What Happens to Direct-Filed Children after Conviction?

The majority of children convicted in adult court are sentenced to the Youthful Offender System within the Department of Corrections (See Table 10). 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 eight 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).<sup>111</sup> Only 10 percent have had their cases transferred back to juvenile court or otherwise received a juvenile sentence.

Table 12: NUMBER OF CHILDREN SENTENCED BY TYPE OF SENTENCE APRIL 20, 2012-APRIL 20, 2015

Sentence	Number of Juveniles
DOC	7
YOS*	35
Jail	3
Juvenile Sentence	8
Probation	4
Sex Offender Pro-	
bation	3
Dismissed**	4
Pending sentence	15
Total	79

<sup>\*35</sup> children sentenced to YOS on 41 direct-file cases.

#### **YOS Sentences:**

Thirty-five children were sentenced to YOS between April 20, 2012 and April 20, 2015. Nine of the children sentenced to YOS were 16 years old when the offense was committed, and twenty-six were 17 years old at the time of offense.

Table 13: TYPES OF CHARGES IN CASE RESULTING IN YOS SENTENCE

Case type	# of YOS sentences
Assault	5
Burglary	2
Drugs	1
Homicide	18
Kidnapping	4
Robbery	10
Theft	1
Total	41

<sup>\*\*</sup>Direct-file cases were either dismissed fully or dismissed as part of a plea in a juvenile delinquency case.

Table 14: CLASS OF OFFENSE IN CASES RESULTING IN A YOS SENTENCES

Class	# of YOS sentences			
F1	3			
F2	19			
F3	12			
F4	6			
F5	1			
Total	41			

Table 15: HIGHEST CRIME CHARGED IN CASES THAT RESULTED IN A SENTENCE TO YOS

Highest Offense Charged *	# YOS sentences
Assault 1-Serious Bodily Inury (SBI) w/ deadly weapon	2
Assault 2-cause injury w/ deadly weapon	1
Assault 2-cause injury w/ deadly weapon-attempt	1
Assault 2-in custody/peace Officer	1
Burglary 1-armed w/explosives/weapon	1
COCCA-Pattern Of Racketeering	1
Controlled Substance-distribute Schedule 1	1
Kidnapping 2-seize/carry victim-robbery robbery	1
Kidnapping 2-victim sex offense/robbery	3
Murder 1-after deliberation	2
Murder 1-after deliberation-attempt	13
Murder 1-after deliberation-complicity	1
Murder 2-attempt	2
Robbery	1
Robbery-agg-possess real/simulated weapon	2
Robbery/aggravated-menace victim with deadly weapon	4
Robbery/aggravated-menace victim with weapon-attempt	1
Robbery/aggravated- with intent kill/maim/wound with weapon	1
Robbery/aggravated-menace victim with weapon-attempt	1
Theft/series-\$1,000-\$20,000	1
Total	41

<sup>\*</sup>This is the most serious crime charged, not necessarily what the child plead guilty to.

#### **Department of Youth Corrections Population**

Arrest rates for violent offenses committed by children continue to fall. According to data evaluated by John Jay College of Criminal Justice in New York, the rate of youth violence nationwide dropped almost by half between 2009 and 2013, plummeting to about 160 arrests per 100,000 juveniles.<sup>112</sup>

Opponents of Colorado's 2012 direct-file reform argued that the population of the Department of Youth Corrections (DYC) would swell due to fewer cases being direct filed in adult court, leaving the juvenile system to contend with a great number of juvenile cases. But current DYC population statistics as well as population forecasts by the State of Colorado show a steady decline in the DYC population over the next three years.

Table 16: DEPARTMENT OF YOUTH CORRECTIONS POPULATION AND POPULATION FORECAST<sup>113</sup>

Fiscal Year	Year to Date Average Daily Population (ADP) Forecast	Annual Growth	Annual DYC Admissions	Annual Growth
2013*	851.0	-13.4%	488	-8.4%
2014	811.2	-4.7%	496	1.6%
2015	784.8	-3.2%	495	-7.4%
2016	729	-7.1%	420	-8.5%
2017	678.8	-6.9%	389	-7.5%
2018	623.3	-8.2%	336	-13.6%

<sup>\*</sup>Actual Data

#### PART III: SUPPLEMENTAL FINDINGS

#### **Unprotected Confidential Information Disseminated at 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 likelihood of rehabilitation. Records about the child must be collected, and evaluations of the child are often conducted. Naturally, this process raises confidentiality concerns.

Often, a defense attorney's duty to protect the confidentiality of information about a juvenile client conflicts with his or her duty to provide diligent and effective representation when litigating transfer and reverse-transfer hearings. 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.

This results in disclosing relevant information that would otherwise be confidential to the prosecution.

Both the direct-file statute and the transfer statute fail to address whether such documentation — including mental health screenings, psychological assessments, information obtained by the prosecution, or evidence presented by the defense for the purpose of the transfer or reverse-transfer hearing — may be used in the future by the prosecution. The statutes are similarly silent as to whether the information obtained during the production of a mental health assessment, or any information relied upon by an expert to complete such an assessment or form an opinion, would be admissible at a trial or hearing after the reverse-transfer or transfer hearing. Consequently, it's common practice for defense counsel to file a motion requesting 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.

In some jurisdictions, prosecutors stipulate to the entry of a protection order limiting the future use of the information presented, and prohibiting the use of the evidence by the prosecution during a later trial. However, prosecutors in other jurisdictions are not only objecting to the entry of a protection order, but also using the transfer or reverse transfer hearing as an opportunity to request that the court grant them unfettered access to a child's records, including school-, probation-, social services-and medical records. They're fishing expeditions. In some cases, prosecutors have argued that, by requesting a reverse-transfer hearing, the client waives any privilege to the contents of their historical records, including records deemed confidential by federal law.

Without protective provisions limiting the use of the information presented at a transfer or reverse transfer hearing, children charged in adult court and their defense counsel face a conflict. During the transfer phase, being an effective advocate requires presenting the court with as much information about the client as possible to convince the court that juvenile jurisdiction is appropriate. Without protection of the disclosed information, however, defense counsel has to also consider whether disclosure would diminish any rights the child has in later stages of the case, or whether disclosure would eliminate potential defenses at trial. If the legislative intent of the direct-file statute is to take into consideration the best interests of the child, the victim and the community while assisting the child in becoming a productive member of society, a fair and substantial opportunity to have an open and honest transfer- or reverse transfer hearing without risking misuse of the information revealed should be a basic protection.

Judicial oversight was restored when the right to a reverse transfer hearing was added to Colorado's direct-file process. This change was intended to provide children with additional procedural protections when facing adult prosecution under the law. The silence of the statute on affording additional procedural protections should not be interpreted to leave the child without the privileges afforded by the Fifth and Sixth Amendments to the United States Constitution. Without guidance from

the legislature, a limited number of Colorado judges have read the statute to allow otherwise inadmissible or inaccessible information to be obtained by the prosecution and later used against the child in court. A judicial rule or statute should be crafted that specifically limits the ways in which evidence presented at a transfer or reverse transfer hearing can be used against children in future proceedings.

#### **Collateral Consequences of Adult Convictions**

The juvenile justice system has two main goals: to protect public safety and to protect the welfare and rehabilitation of children who are accused of breaking the law.

The majority of children who are adjudicated as delinquents in juvenile court have the ability to expunge their records, <sup>116</sup> which limits their exposure to lasting collateral consequences like 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 <sup>117</sup>– which can block their access to public benefits such as housing, food stamps and federal student loan eligibility – looming over them throughout their lives. <sup>118</sup> A criminal conviction also may also 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. <sup>119</sup>

Children who serve adult prison sentences also face collateral consequences that are unrelated to their criminal record and result in the inability to obtain work, education, housing and other benefits. 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 housed in adult facilities have higher rates of mental health issues later in life, including paranoid ideation, depression, psychoticism and post-traumatic stress disorder. Worse, they are eight times more likely to commit suicide than those sentenced to juvenile facilities. The collateral consequences for a child sentenced as an adult last a lifetime, often making it difficult for children to realize their full potential as adults.

In light of those consequences, Colorado should reform its laws to permit the expungement of records in cases in which children are convicted as adults, particularly for children who've completed probation or a sentence to the Youth Offender System.

#### **Children in Adult Court Sentencing Paradox**

#### **Adult Sentencing Schemes are Being Applied to Children**

Now that the number of children prosecuted in adult court has decreased, Colorado needs to focus on the types of rehabilitative measures that are appropriate for the treatment of children who are still prosecuted in adult court.

The 2012, direct-file reform expanded options for sentencing children who are prosecuted as adults. When a child is charged with a direct-file eligible offense but is subsequently convicted of only a misdemeanor offense, the statute mandates that the conviction be treated as a juvenile adjudication and the child be sentenced pursuant to the Children's Code. It the child is convicted of a felony offense that would not, independently, have been direct-file eligible, the court has the discretion to sentence him or her as either a juvenile or an adult. When a child is convicted of a direct-file eligible offense, the adult criminal court must hand down an adult sentence, but is not bound by the mandatory minimum prison sentences adults face pursuant to the crime-of-violence sentencing statute.

Because of the discrepancy between the transfer and reverse transfer statutes, a 12-year-old judicially transferred from juvenile to adult court could conceivably be bound by the adult mandatory minimum sentencing structure of the adult crime of violence statute<sup>126</sup> — the same mandatory structure that the direct file statute clearly limits for older direct-file children.<sup>127</sup> The Youthful Offender System (YOS) remains a sentencing option for children convicted as adults.<sup>128</sup> Upon the request of either the defense attorney or the prosecutor, a child's pre-sentence report must include a determination by the warden of YOS as to whether the child is acceptable for a YOS sentence.<sup>129</sup>

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, 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, allowing courts to impose on children the same sentences that apply to adults — large ranges of years in adult prison—isn't supported by law or science.

In the last ten years, the U.S. Supreme Court has issued several decisions emphasizing that children should be treated differently than adults when it comes to sentencing. The Court banned the juvenile death penalty in 2005, 130 abolished life without possibility of parole in non-homicide cases in 2010 131, and most recently ruled in Miller v. Alabama that mandatory life without parole sentences for juveniles is unconstitutional. The Court relied on psychological, neuroscience and social science research on adolescence to make the determination that teens are fundamentally

different from adults, and they must be treated differently for sentencing purposes.

Despite repeated reminders both from court rulings and scientific studies that children are different from adults, Colorado's direct-file and transfer statutes continue to rely on the adult sentencing model rather than crafting a sentencing structure unique to children in adult court. 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. These lengthy sentences intimidate children into pleading guilty, and don't serve a deterrent or rehabilitative purpose. A unique sentencing scheme for children in adult court – one that takes into consideration recent changes in the law based on scientific studies — should be created.

#### **Children in Adult Court Sex Offender Sentencing**

The Colorado Sex Offender Lifetime Supervision Act of 1998 (LSA) was created by House Bill 98-1156. The law makes it mandatory for all adults convicted of a felony sex offense to receive an indeterminate sentence — meaning the judge hands down a range of time in prison, from a minimum number of years to a maximum of natural life in prison (for example, six years to life). Anyone convicted as an adult is therefore sentenced to prison for an unknown amount of time, dependent on the parole board to decide when release will come.

At no point during the creation of Colorado's Lifetime Supervision Act did the legislature address the law's application to children prosecuted in adult court. However, children convicted of sex offenses in adult court are subject to the adult sentencing structure. A person sentenced to an indeterminate sentence must undergo evaluation and treatment to be eligible for parole, and it's up to the adult Parole Board to determine if and when these individuals are prepared for release. Once released into the community, juveniles convicted as adults of sex offenses are required to register as sex offenders — sometimes for the rest of their lives. He they fail to register, they are 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, limit grocery store visits to the hours of midnight to six a.m., and require permission to attend church or start a romantic relationship.

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 postulation that adults who offend sexually are likely to do so again. Applying these standards to children, however, is inconsistent with the known fact that children who commit sexual offenses are not likely to reoffend. Studies show that youthful offenders — unlike adult sexual offenders — aren't prone to repeat offending, partially because developmental issues play a dominant role in adolescent sexual misconduct.<sup>137</sup> This means that a child may grow out of his or her deviant sexual behavior, "cured"

naturally with by maturity 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. The National Center on Sexual Behavior of Youth reports that only five 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, which range from eight percent to 58 percent.

Current policies mandating stringent sentencing structures for children charged with sexual offenses in adult court are not supported by the literature, which suggests that children who offend sexually are different from their adult counterparts because they do not reoffend sexually. The Association for Treatment of Sexual Abusers recommends individualized interventions and treatment for adolescents who have abused sexually, using evidence-based, holistic approaches created according to family risk factors, intervention needs and learning style and capacity. 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 is inappropriate when applied to childhood sexual assault offenders.

#### **National Sentencing Models for Children in Adult Court**

In 2015, some states passed legislation reforming the way juveniles 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 person convicted as an adult for an offense committed when the person was younger than 18 years of age. A juvenile 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). However, unlike Nevada's statute, West Virginia's law applies even to children convicted as adults of causing the victim's death. <sup>145</sup> West Virginia also reformed its parole board process for children convicted in adult court. During the parole hearing, the parole board is required to take into consideration the diminished culpability of adolescents as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner during incarceration. <sup>146</sup>

Prior to determining the sentence for a child charged and convicted of a felony as an adult, the courts in West Virginia are now required to consider the following factors: age at the time of the offense, impetuosity, family and community environment,

ability to understand the risks and consequences of the conduct, intellectual capacity, the outcomes of a comprehensive mental health evaluation, peer or familial pressure, level of participation in the offense, ability to participate meaningfully in his or her defense, capacity for rehabilitation, school records and special education evaluations, trauma history, faith and community involvement, involvement in the child welfare system, and any other mitigating factor or circumstance. West Virginia's statute also requires the court to consider the outcomes of any comprehensive mental health evaluation conducted by a mental health professional licensed to treat adolescents. The statute requires the evaluation to include family interviews, prenatal history, development history, medical history, history of treatment for substance abuse, social history and a psychological evaluation.<sup>147</sup>

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. The Connecticut law requires the Court Support Services Division of the Judicial Branch to compile reference materials relating to adolescent psychological and brain development to assist courts in sentencing children. The Connecticut is sentencing children.

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. At a minimum, Colorado should consider enacting similar reforms.

#### PART IV: RECOMMENDATIONS FOR CONTINUED REFORM

Nearly all of the children who are prosecuted in adult court in Colorado will one day return to Colorado's communities. As we continue to learn more about adolescent brain development and juvenile recidivism, it's imperative that we form a justice system that allows young people to move beyond mistakes made during adolescence so they can transition into a productive and law abiding adulthood. The reforms of 2012 were admirable, and they dramatically reduced the number of children charged as adults and housed in adult jail facilities without overburdening the juvenile justice system. This report can serve as a tool to confirm those successes, and also to reassess the prosecution of children as adults so that more progress may be made. It's our hope that our system will continue to explore the research, laws and policies that provide fair and evidence-based sentencing to children charged with crimes before they have fully developed. In order for Colorado to act as a model of fairness and justice for children, we must continue to make necessary reforms.

### **Key Recommendations for Future Reform in Colorado include:**

#### **2015 RECOMMENDATION**

- Raise the age of eligibility for judicial transfer from 12 years to 14 years.
- Create a uniform sentencing statute for children in adult court that:
  - (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 attributes of juveniles before imposing an adult sentence
  - (4) and offers all children sentenced to adult prison including those sentenced to life a meaningful opportunity for release after a developmentally appropriate amount of time (at most 15 years)
- 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
- Collect more complete data for future policy analysis including:
  - (1) on children sentenced to YOS
  - (2) transfer cases that result in juvenile jurisdiction
  - (3) cases in which prosecutors threaten to transfer children from juvenile court into adult court, but that result in juvenile plea agreements
  - (4) 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

# Where We Have Been→And Where We Are Going

2012 Recommendation	Status of Implementation	2015 Recommendation
1. Restore authority over whether a child should be tried in criminal court to juvenile court judges to ensure constitutional due process and better outcomes for children and families.	PARTIAL Implementation  All children 15 years of age and younger begin their cases in juvenile court where they are subject to judicial transfer to adult criminal court	Raise the age of eligibility for judicial transfer from 12 years to 14 years.
2. If direct-file laws are maintained, raise the age limit to 16 and over, restrict criteria to the most serious cases, and provide juveniles an opportunity to request transfer back to juvenile court.	FULL Implementation The direct file statute now limits eligibility to 16 years old and older for the most serious offenses, and provides "reverse- transfer" hearings.	Maintain current statute
3. Create a separate sentencing scheme for juveniles in adult court.	MINIMAL Implementation  Children in adult court have broader sentencing options than before. However, more is necessary to iron out disparities, eliminate mandatory provisions, and provide individualized sentencing discretion in all cases.	Create a uniform sentencing statute for children in adult court that:  (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 adolescents to be rehabilitated and requires judges to consider the attributes of youth before imposing an adult sentence; (4) and offers all children sentenced to adult prison—including those sentenced to life,—a meaningful opportunity for release after a developmentally appropriate amount of time, at most 15 years.

4. Keep children out of adult jails	FULL Implementation	Maintain current statute, and eventually end the practice of solidarity con- finement of children in juvenile detention facilities.
5. Provide opportunities for children convicted as adults to earn the ability to seal criminal convictions.	NO Implementation	Create opportunity for children convicted as adults to seal their criminal record — especially for children who complete probation or the Youthful Offender System — due to the number of severe collateral consequences that arise out of an adult conviction.
6. Improve data collection. Provide comprehensive reports on the impact, cost and effectiveness of prosecuting children as adults.	MINIMAL Implementation  No data is collected on cases that prosecutors attempt to transfer, but the judge keeps in juvenile court.  No data is collected on cases where prosecutors threaten to transfer in the course of plea bargaining.	Collect more complete data on children sentenced to YOS, transfer cases that result in juvenile jurisdiction and cases in which prosecutors threaten to transfer children from juvenile court into adult court. And take steps to ensure race and ethnicity of children in juvenile justice system is accurately collected.
7. Improve Judicial Discretion and Hearing Process	PARTIAL Implementation  The transfer and direct file statutes do not specify how information provided during the transfer and reverse transfer process can be used in future proceedings.	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.

## **CONCLUSION**

Colorado was at the forefront of youth-in-adult-court reform when its 2012 laws were passed.

Building on efforts from the last decade, states throughout the nation continue to roll back harmful statutes and policies created in the 1990s that placed thousands of children in the adult criminal justice system. In 2015 alone, advocacy, research, and fiscal analysis all led to the introduction of more than thirty bills nationwide to remove children from the adult criminal justice system and give them an opportunity to receive rehabilitative services. Changes are occurring in all regions of the country lead by state and local officials of both major parties and supported by a bipartisan group of governors. Policy makers are leading the way and accepting the conclusions drawn from research and data — that kids are different than adults, and that they're more likely to succeed if given a chance at rehabilitation rather than severe punishment.

Studies demonstrate that prosecution of children in adult court is linked to an increase in recidivism rates, as those prosecuted in adult court are more likely to reoffend than those whose case is prosecuted by the juvenile justice system." 152 Studies show that even teens who committed violent crimes do not engaged in criminal activities once they reached adulthood — strong evidence that children do in fact "age out" of crime. 153 Children deserve particularized treatment. The courts have recognized a diminished culpability among juveniles and have traditionally categorized punishments and laws accordingly. The national reform effort in recent years has been successful in modifying transfer- and direct-file laws across the country, and Colorado was at the forefront of reform efforts. 154 The reformed laws in Colorado reflect the belief that kids are different from adults and this was the reason behind the creation of the juvenile court system. The number of children prosecuted in adult court has been substantially reduced thanks in part to the reforms discussed in this report. Yet, certain counties in Colorado continue to prosecute children in adult court at a substantially similar rate as they did prior to the direct-file reform effort. Justice for the victims of crimes is, of course, essential, but the research cannot be ignored. Nationally, approximately 200,000 children under age 18 are treated as adults, some as young as 12.155 We're harming our kids and our communities when we lock children up in adult prisons.

Thanks to new understanding about adolescent brain development, we now know that locking children away to serve lengthy prison sentences doesn't amount to justice for anyone. We must continue to reform our juvenile justice system to reflect an approach that's restorative to the juvenile and the community as a whole. We should congratulate ourselves on the reform yet continue to evaluate the data to ensure Colorado maintains its position as a national leader on issues of juvenile justice reform and the decarceration of children.

### **Acknowledgements**

The Colorado Juvenile Defender Center (CJDC) is a non-profit organization dedicated to excellence in juvenile defense and advocacy. Our goal is to ensure access to justice for all children of Colorado.

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### Methodology

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. This includes 18 cases in which the defendant's date of birth was entered incorrectly and 16 cases that were erroneously filed in adult court and, the majority were filed in juvenile court.

Furthermore, SCAO was unable to provide CJDC with any information on at least 12 cases that have been sealed or suppressed. Thus, 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 Re-Directing Justice: 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.

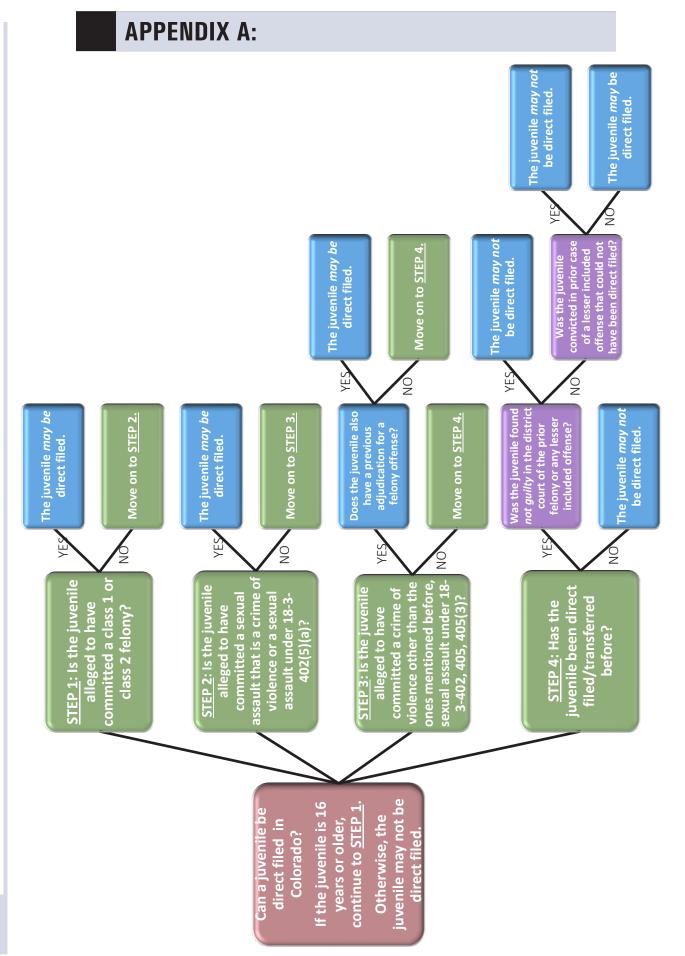
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# **APPENDIX B:**

### **NUMBER OF JUVENILE CASES PROSECUTED IN ADULT COURT 1999-2015**

Year	Number of Juve- nile Cases Filed in Adult Court	Reform Enacted	
1999	237		
2000	162		
2001	173		
2002	161		
2003	184		
2004	150		
2005	163		
2006	106		
2007	143		
2008	111		
2009	144	Direct File Veto	
		(HB 08-1208)	
2010	76	Direct File Reform	
		(HB 10-1413)	
2011	62		
2012	27	Substantial Direct File Reform	
		(HB 12-1271)	
2013	37		
2014	43		
2015	6	January 1, 2015 – April 20, 2015	

# **APPENDIX C:**

## YOS SENTENCES IMPOSED BETWEEN APRIL 20, 2012-APRIL 20, 2015

Length of YOS Sentence	Number of Years Suspended (DOC)
3	9
5	15
5	15
2	10
6	18
6	18
4	6
6	20
4	12
4	10
4	12
6	18
7	24
6	20
3	12
6	15
6	20
4	12
4	12
2	4
6	18
5	10
5	10
6	15
4	10
6	16
5	15
7	26
7	26
4	10
2	4
6	18
6	16
6	14
5	15

4	12
4	6
4	4
6	18
6	18

# **APPENDIX D:**

Year	Homicide Cases	Total Cases	Percent homicide
1999	18	237	7.6%
2000	14	162	8.6%
2001	26	173	15%
2002	16	161	10%
2003	20	184	11%
2004	13	150	8.7%
2005	23	163	14%
2006	27	106	25%
2007	40	143	28%
2008	23	111	21%
2009	23	144	16%
2010	11	76	14%
2011	16	62	26%
Total	272	1810	15%
2012	7*	27	26%
2013	14	37	37%
2014	16	43	37%
2015	1**	6	17%
Total	36	113	32%
Combined total	308	1923	16%

<sup>\*5</sup> between 4/20/2012 and 12/31/2012

<sup>\*\*</sup> between 1/1/2015 and 4/20/2015

