

Executive Summary

What should be done with young children who commit very serious crimes? This report examines the plight of pre-adolescent children—primarily those who are 12 and under—who are caught up in the adult criminal justice system.

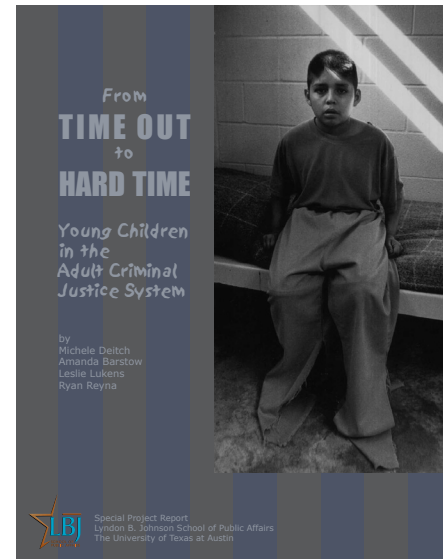
In the United States, children are treated as different from adults, except when it comes to criminal law: Most laws and policies acknowledge that children are different from adults. Children cannot drive, vote, drink, or even obtain a rental membership from a video store. We see them as in need of protection from the outside world and as insufficiently mature to justify being treated as adults. But the one glaring exception to this rule comes in the context of criminal law. Children who commit crimes are often perceived as “adults” and suddenly become “adults” for purposes of prosecution, trial, sentencing, and punishment.

Various high-profile cases have drawn recent attention to the issue of pre-adolescents in the adult criminal justice system, including the cases of the 8-year old in Arizona who allegedly shot and killed his father and another man; 11-year old Jordan Brown in Pennsylvania, accused of killing his father’s pregnant girlfriend; and 12-year old Christopher Pittman in South Carolina, who received a 30-year mandatory sentence without possibility of parole for killing his beloved grandparents following a bad reaction to anti-depressant drugs.

This report provides the first-ever comprehensive look at how the nation treats young children who commit serious crimes, analyzes the available data with regard to the transfer of young children to adult criminal court, documents the extremely harsh and tragic consequences that follow when young children go into the adult criminal justice system, examines international practices, and offers policy recommendations to address this situation.

Harsh and arbitrary outcomes for pre-adolescent children in adult court: More than half the states permit children under age 12 to be treated as adults for criminal justice purposes. In 22 states plus the District of Columbia, children as young as 7 can be prosecuted and tried in adult court, where they would be subjected to harsh adult sanctions, including long prison terms, mandatory sentences, and placement in adult prison. Certain states have transfer policies that increase the likelihood that young children will end up in the adult criminal justice system for their offenses. In some of these states, those transfer policies and severe adult sentencing laws combine to create particularly disturbing outcomes for these pre-adolescent offenders. Among the states with the most problematic theoretical and actual outcomes for young children who commit serious crimes are Florida, Michigan, Pennsylvania, and South Carolina. Children as young as 7 could receive a mandatory sentence of life without parole in Florida and Pennsylvania. Indeed, the United States Supreme Court is poised to consider the case of a 13-year old from Florida who received a life without parole sentence for a non-capital crime.

The vast majority of crimes committed by young children are handled in juvenile court, including a large number of serious offenses including murder. But this is not always the case. In fact, every year nearly 80 children aged 13 and younger are judicially transferred to adult court. Between 1985 and 2004, 703 children aged 12 and under, and 961 children aged 13 were judicially transferred to adult court. The total numbers of young children in adult criminal court are actually much higher than this because the data can-



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not capture the numbers of children sent to the adult system via automatic transfer laws or laws allowing the prosecutor to file cases directly in adult court.

Particularly troubling is the fact that these are not necessarily “headline-worthy” cases: many of these young children are being treated as adults for relatively minor offenses. There are almost as many youth treated as adults for property crimes as for crimes against persons. The statistics analyzed in this report demonstrate the extreme arbitrariness, unpredictability, and racial disparities in determinations about when and whether a young child will be treated as an adult. Our research shows that more than 50% of young children waived to adult court for person crimes were Black.

What’s more, in many states a child charged with a crime in adult court may be held in an adult jail while awaiting trial and may be sent to an adult prison upon conviction. On a single day in 2008, 7,703 children under age 18 were held in adult local jails and 3,650 in adult state prisons. In these adult facilities, the youth face vastly higher risks of physical and sexual assault and suicide than they would face in juvenile facilities. The youngest children would be at particular risk. These adult facilities are also poorly equipped to meet their needs for special programming, education, supervision, and treatment.

The rest of the world treats children differently when they commit serious crimes: In allowing pre-adolescent children to be treated as adults for criminal justice purposes, the United States is severely out-of-step with international law and practice. Most countries—including those Western nations most similar to the United States, countries in the developing world, Islamic nations, and even countries that we often consider to be human rights violators--repudiate the practice of trying young children as adults and giving them long sentences. All countries except for a handful of non-peer nations have laws that would prevent such severe sentencing outcomes for juveniles as have occurred in our own country. What’s more, we have found no examples anywhere in the world where juveniles under age 18 had received sentences as long as the 20- and 30-year sentences imposed on some 12-year old children in the United States. Our report provides charts detailing the relevant laws in the vast majority of countries around the world.

Young children need to be treated differently: Scientific research demonstrates that children’s brains are still developing in ways that affect their impulse control and their ability to choose between antisocial and acceptable courses of action. Researchers argue that children—and especially very young children—are therefore less blameworthy than adults, and are highly amenable to rehabilitation as they get older. They are also less competent to stand trial as adults. The United States Supreme Court recognized that “children are different” when it ruled in *Roper v. Simmons* (2005) that children who committed murders before age 18 should not be subjected to the death penalty.

The adult criminal justice system does not work for children: There are numerous ways in which the adult criminal justice system is incompatible with the needs of young children. Adult criminal courtrooms are ill-equipped to handle these young defendants; these children are too young to actively participate in proceedings and to assist in their own defense; criminal judges and public defenders often have little experience dealing with young offenders; a child’s physical appearance often changes drastically between the time of the offense and the time of trial as the child goes through puberty; and the simple fact of conviction in adult court can subject the child to a permanent loss of privacy, rights, and privileges, including permanent loss of the right to vote or to hold certain jobs.

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The practice of treating children as adults for criminal justice purposes also poses serious public safety risks, as well as risks to the individual child. The research unequivocally shows that children prosecuted as adults are more likely to re-offend and to pose a threat to society. According to a recent report by a Task Force appointed by the Director of the Centers for Disease Control, the transfer of youth to the adult system not only has no deterrent value but typically increases rather than decreases their rates of violence.

Juvenile Courts are better suited to handle young offenders: The contrasts in sentencing practice between juvenile court and adult criminal court are striking. Juvenile judges have considerable leeway in deciding how to handle young offenders, and the courts aim for individual sentences that promote rehabilitation. In the case of the most serious crimes, more than half the states even offer judges the flexible option of blended sentencing, which typically provides a combination of a juvenile sentence followed by time in an adult prison if a judge determines that the youth's progress in the juvenile system is inadequate. But if a young child is sent to adult criminal court to be tried as an adult, judges often lose their discretion to structure an appropriate sentence. Most states have some mandatory sentencing schemes that set a statutorily mandated lower end of a sentencing range. Some states even require judges to impose a life without parole sentence upon conviction for certain crimes, regardless of the child's age.

In contrast to the failures of the adult criminal justice system when it comes to managing young offenders, the juvenile justice system is capable of handling the most serious offenses, of holding youths accountable for their actions, and at helping youth become productive members of society. The long-term benefits of returning children to the juvenile justice system has financial benefits for taxpayers as well. One researcher found a \$3 savings benefit for the correctional and judicial systems for every \$1 spent on juvenile justice. The report profiles both juvenile programs that work and several individuals who turned their lives around as a result of juvenile programs.

Policy recommendations: Children—especially those pre-adolescents under age 12—do not belong in the adult criminal justice system, regardless of the seriousness of their offense. Both Congress and state legislatures need to take immediate action to address this fundamentally important juvenile justice issue that raises both moral and practical concerns. We urge lawmakers to reconsider policies that allow for the trial and harsh sentencing of pre-adolescent children in the adult criminal justice system, and offer the following specific policy recommendations:

1. Keep young children in the juvenile justice system.
2. Eliminate automatic transfer laws and direct files laws as they apply to young children in favor of judicial waiver.
3. Enact reverse transfer laws allowing criminal court judges to return a young child to juvenile court at any stage in the trial or sentencing process.
4. Allow procedural accommodations for juveniles tried in adult criminal court.
5. Disallow mandatory sentencing of young children in adult criminal court.

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6. Require judges to take a “second look” at the age of majority for young children sentenced in adult court.
7. Always provide an opportunity for parole for young children transferred to the adult criminal justice system, regardless of the length of the sentence.
8. Young children in the adult criminal justice system should be housed in juvenile facilities.
9. Require any adult correctional facility holding juveniles to comply with professional standards and subject these facilities to independent oversight of the conditions in which these young children are held.
10. Improve data collection on young children in the adult criminal justice system.