

# Campaign for Youth Justice

## AUTOMATIC TRANSFER

Wins & Future Opportunities

May, 2020





To end the practice of  
prosecuting, incarcerating &  
sentencing youth (Under 18)  
as adults.

Mission



# State & National Strategies

Raise the Age



Remove Youth from Adult Jails &  
Prisons

End/Reduce Automatic Transfer

Anchor Campaigns



40 states & DC have  
changed more than 100  
laws to keep kids out of the  
adult system

WINS



Two Federal Laws exist to remove youth from adult jails & prisons (JJDP/PPA/PREA) encouraging states to reduce transfer in order to comply

WINS





The # of youth charged  
as adults has decreased  
**70%** from 250,000 to  
76,000/year

WINS

# Automatic Transfer

The transfer of children to the adult court with limited or no judicial review; applied to children of certain ages, for certain offenses

9 states have repealed an automatic transfer provision

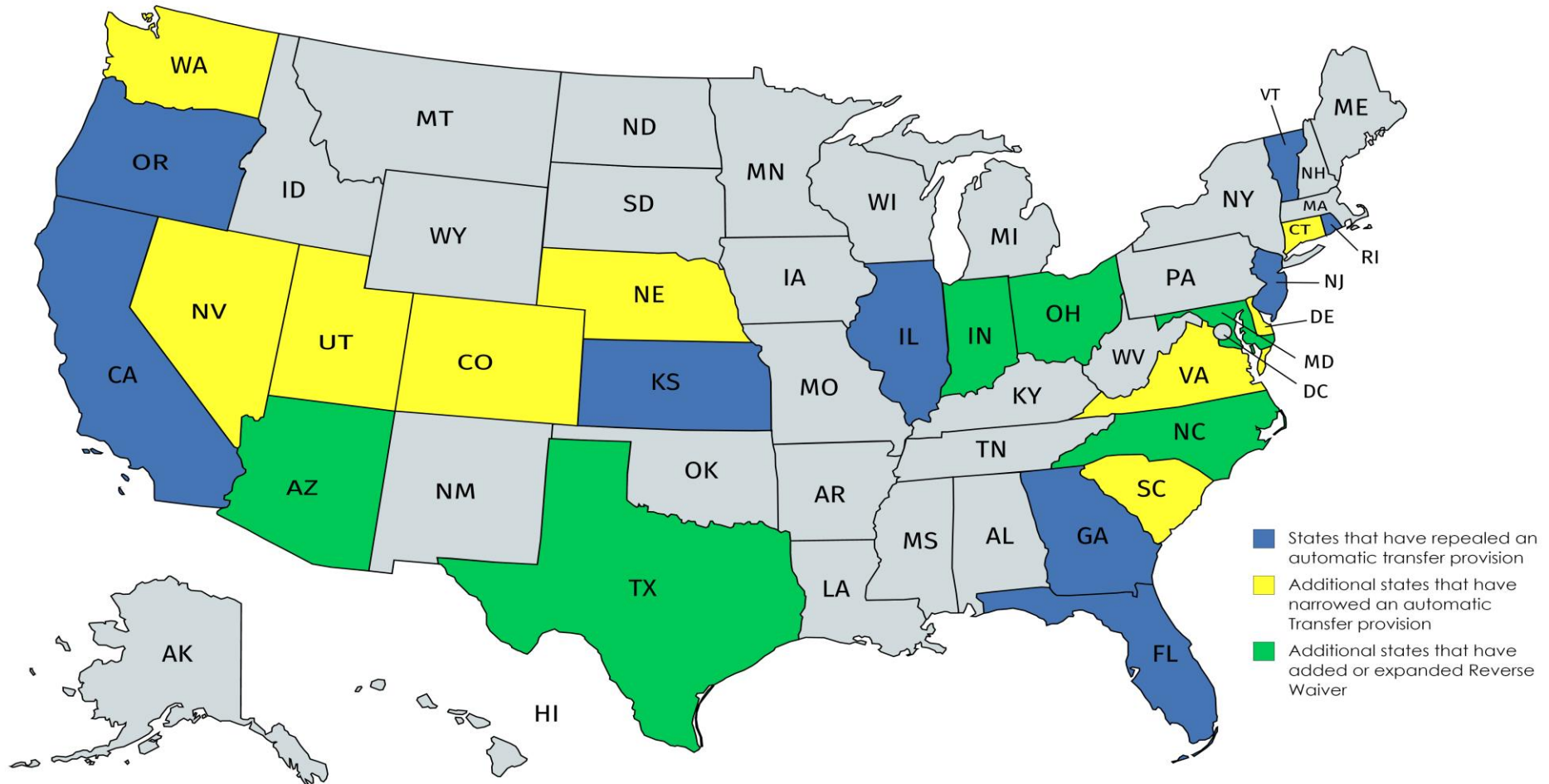
9 other states have narrowed an automatic transfer provision

6 other states have added or expanded a reverse waiver provision





# Automatic Transfer Campaigns





- \*Presumptive Waiver
- \*Mandatory Waiver
- \*Statutory Exclusion
- \*Prosecutor Discretion
- \*Once/Always Adult

TYPES OF AUTOMATIC TRANSFER

# \*Presumptive Waiver

On a continuum between discretionary and mandatory, places the burden of proof on children to prove they should not be transferred.

Three states have repealed their Presumptive Waiver provisions in recent years:  
CA (2016), KS (2015), NJ (2015)



Two others have narrowed their Presumptive Waiver provisions:

- NV – raised the floor of eligibility for Presumptive Waiver to age 16 in 2009
- UT – expanded the factors a judge can consider in 2015, and narrowed the list of eligible offenses in 2020

Currently 11 states + Washington, DC use Presumptive Waiver.

## TYPES OF AUTOMATIC TRANSFER

# \*Mandatory Waiver

A juvenile court judge must transfer a child for adult prosecution upon a finding of probable cause.



Three states have repealed their Mandatory Waiver provisions in recent years:

GA (2013), IL (2015), RI (2018)

Two others have narrowed their Mandatory Waiver provisions:

- CT - raised the floor of eligibility for Mandatory Waiver to age 15 in 2015
- NJ - raised the floor of eligibility for Mandatory Waiver to age 15 in 2015

There are currently 12 states that use Mandatory Waiver.

## TYPES OF AUTOMATIC TRANSFER

# \*Statutory Exclusion

Sometimes known as “direct file” or “mandatory direct file”, children charged with certain crimes at certain ages are excluded from the juvenile court and tried in adult court.

Three states have repealed their Statutory Exclusion provisions in recent years:

CA (2016), FL (2019), OR (2019)



Six others have narrowed their Statutory Exclusion provisions:

- DE – narrowed the list of eligible offenses in 2017; raised floor for some offenses to age 16 in 2018
- IL – narrowed the list of eligible offenses and raised the floor of eligibility to age 16 in 2015
- NV – raised the floor of eligibility to age 16 in 2013
- SC – raised the floor of eligibility to age 17 in 2016
- UT – narrowed the list of eligible offenses in 2015 and again in 2020
- WA – narrowed the list of eligible offenses in 2018

There are currently 26 states that use Statutory Exclusion.

## TYPES OF AUTOMATIC TRANSFER



# \*Prosecutor Discretion

Sometimes known as “direct file”, under this provision prosecutors are given the power to decide whether to prosecute a child in adult or juvenile court.

Two states have repealed their Prosecutor Discretion provisions in recent years:

CA (2016), VT (2016)



Three others have narrowed their Prosecutor Discretion provisions:

- CO – narrowed the list of eligible offenses and raised the floor of eligibility to age 16 in 2012
- NE – narrowed the list of eligible offenses and raised the floor of eligibility in 2015
- VA – raised the floor of eligibility to age 16 in 2020

Currently 12 states + Washington, DC use Prosecutor Discretion.

## TYPES OF AUTOMATIC TRANSFER

# \*Once and Adult ... Always an Adult

Under this provision, once a child has been convicted as an adult (or in some states merely transferred to the adult court), that child is thereafter excluded from the juvenile court.



One state has repealed its Once/Always Adult provision in recent years: **IL (2015)**

Two others have modified their Once/Always Adult provisions to require an adult conviction: **VA (2007), WA (2009)**

Currently **34 states + Washington, DC** use Once/Always Adult provisions, 6 of which do not require conviction: **DE, HI, IN, MI, NV, OR** [research this]

## TYPES OF AUTOMATIC TRANSFER

# \* Reverse Waiver

This provision allows a child to challenge their transfer and be waived back to juvenile court. They vary widely from state to state, depending on what can be challenged, the standard of proof, and the factors a judge can consider.



Six states have added Reverse Waiver provisions in recent years:  
IN (2016), NC (2019), NJ (2016), OH (2012), TX (2015), WA (2009)

Three others have expanded their Reverse Waiver provisions:  
AZ (2011), MD (2014), VT (2018)

There are currently 30 states that use some form of Reverse Waiver.

MITIGATING AUTOMATIC TRANSFER

Judicial transfers are tracked by OJJDP, but automatic transfer data is spotty:

- It is not tracked in all states
- The terminology varies
- Counts can be based on charges, cases, or children



The number of 2015 **cases** in adult court via Statutory Exclusion or Prosecutor Discretion is estimated to be around **6,000**

- About double the number judicially transferred
- Less than one tenth the number transferred because of an upper age below 18

At the time of the 2015 estimate, ten states accounted for 2/3 to 3/4 of the 6,000 total estimate: **AL, AZ, CA, FL, IN, MD, NJ, OH, OR, PA**

**NATIONAL DATA ON AUTOMATIC TRANSFER**

Since California and Oregon have ended their use of automatic transfer, these 8 states currently account for the majority of children automatically transferred:

Children transferred (year)

AL: ~600 (per year, reported in 2017)

AZ: 312 (2018)

FL: 926 (2018)

IN: 112 (2019)

MD: 641 (2016)

NJ: 161 (2016)

OH: 205 (2018)

PA: >400 (reported in 2017)



STATE DATA ON AUTOMATIC TRANSFER



\*Every state retains some form of automatic transfer.

\*Six states retain only a Once/Always Adult provision:  
CA, HI, KS, MO, OR, TN



\*Such states can still be responsible for large numbers of transfers.

\*Tennessee sent 217 cases to the adult court in 2014 (94 from Shelby County alone), and 192 in 2016

STATES WITHOUT AUTOMATIC TRANSFER



**CALIFORNIA** – Prop 57, passed in 2016, eliminated Presumptive Waiver, Statutory Exclusion, and Prosecutor Discretion. In 2018 the state raised the floor for Judicial Transfer to age 16. Transfers have dropped from several hundred a year to under 100.

**UTAH** – In 2015, narrowed Statutory Exclusion and expanded the factors a judge can consider under Presumptive Waiver; followed up with further narrowing of Statutory Exclusion and Presumptive Waiver in 2020.


**CONNECTICUT** – In 2015, After passing its “Raise the Age” law, raised the floor for Mandatory Waiver eligibility to age 15.

**ILLINOIS** – In 2015, after passing its “Raise the Age” law, repealed Mandatory Waiver and Once/Only Adult and narrowed the list of eligible offenses and raised the floor of eligibility for Statutory Exclusion to age 16.

**NORTH CAROLINA** – In 2017, as part of its “Raise the Age” law, added Reverse Waiver; in 2019 passed a law ending the practice of holding children in adult jails.

**SOUTH CAROLINA** – In 2016, as part of its “Raise the Age” law, raised the floor for Statutory Exclusion to age 17.

## SUCCESSFUL STATE STRATEGIES

- 
- \*American Academy of Child and Adolescent Psychiatry
  - \*American Psychiatric Association
  - \*Council of Juvenile Correctional Administrators
  - \*Major Cities Chiefs Association
  - \*National Association of Counties
  - \*National Association of Criminal Defense Lawyers
  - \*National Sheriffs' Association

ASSOCIATIONS IN SUPPORT OF ENDING AUTOMATIC TRANSFER

## FOR EACH TRANSFER PROVISION

- Repeal
- Restrict (narrow the list of eligible offenses, raise the floor of eligibility to a higher age)
- Reverse (add or expand Reverse Waiver provisions)
- Require an adult conviction (for Once/Always Adult)

## LOCAL FOCUS

### Cuyahoga County, Ohio:

- 158 youth transferred in 2014 (50 from Cuyahoga County, 31.6%)
- 205 youth transferred in 2018 (89 from Cuyahoga County, 43.4%)

### Jacksonville, Florida (4th judicial circuit):

- 84 adult transfer youth in 2015
- 80 adult transfer youth in 2016
- *New Prosecutor took office January 2017*
- 45 adult transfer youth in 2017
- 37 adult transfer youth in 2018



# WORK REMAINING

## COLLECT DATA TO ADDRESS DISPARITIES

As of 2018, only 35 states + Washington, DC collected data on automatic transfers, and only 18 of them disaggregated that data by race.

States that do provide this data show stark racial disparities:

**AZ** 2018 – Automatic transfers – 48% Hispanic, 28.5% African American, 18.3% White, 2.5% Native American, .6% Asian/Pacific Islander, 2% Unknown

**FL** 2018 – Youth Adult transfers – 63% Black, 24% White, 13% Hispanic

**IN** 2019 – Automatic transfers – 66% Black, 29% White

**MD** 2016 – Juveniles charged as adults – 79.5% Black, 13.3% White, 7.2% Hispanic

**OH** 2018 – Youth transferred – 82% Black, 15.6% White, 2.4% Other

Indiana law passed in 2018 (HB 1228):

Requires the annual publication of demographic data on youth statutorily excluded and transferred to the adult system, including age, sex, race, county of prosecution, offenses charged, convictions received, sentence received.



## WORK LEFT TO DO



\*What strategies are working to reduce automatic transfer and its inherent disparities? **What needs to be documented?**

\*What national **data/research** is needed to help move the needle?

\*What **TA or resources** are needed to help states with automatic transfer?

\*Can detention/jail reductions during COVID-19 help leverage reforms in 2021 that restrict or repeal automatic transfer laws?

**What is needed to continue this work?**



\* Is continued national leadership around automatic transfer necessary?

\* What barriers exist to repealing automatic transfer laws in your state?

\* What stakeholders do you need support from?

\* Other questions/ideas?



What is needed to continue this work?



- \* Gather needs from the field (June)
- \* Develop resources for field (July-Sept)
- \* Identify supports for remaining states (Oct-Dec)
- \* 2021 Fellowship at the Sentencing Project to focus on 4-5 states

## CFYJ Next Steps

\* March 24: Webinar on Raise the Age (archived)



\* April 21: Webinar on Jail & Prison Removal (archived)

Next Steps

Childhood Convicted: The Waiver of Iowa's Youth to the Adult Criminal Justice System (CFYJ, 2018) - [http://cfyj.org/images/Childhood\\_Convicted\\_Report\\_-\\_FINAL.pdf](http://cfyj.org/images/Childhood_Convicted_Report_-_FINAL.pdf)

The Color of Juvenile Transfer: Policy & Practice Recommendations (NASW, 2017) - <https://www.socialworkers.org/LinkClick.aspx?fileticket=30n7g-nwam8%3D&portalid=0>

National Policy Statements & Recommendations (CFYJ) - <http://cfyj.org/national-policy-statements-resolutions>



Raising the Floor: Increasing the Minimum Age of Prosecution of Youth as Adults (CFYJ, 2019) - [http://cfyj.org/images/Raising\\_the\\_Floor\\_Final.pdf](http://cfyj.org/images/Raising_the_Floor_Final.pdf)

Souls of Young Folk: The Disproportionate Prosecution of Black Youth as Adults in New Jersey (NJPC, 2019) - [http://cfyj.org/images/FINAL\\_Souls\\_of\\_Young\\_Folk\\_Report-compressed.pdf](http://cfyj.org/images/FINAL_Souls_of_Young_Folk_Report-compressed.pdf)

Youth younger than 18 prosecuted in criminal court: National estimate, 2015 cases (NCJJ, 2018) - <http://www.campaignforyouthjustice.org/images/Transfer-estimate.pdf>

## RESOURCES