

**MORE HARM  
THAN GOOD**



# MORE HARM THAN GOOD

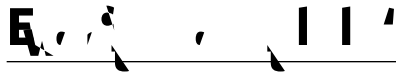
HOW CHILDREN ARE UNJUSTLY TRIED AS ADULTS IN NEW ORLEANS

a report by the southern poverty law center © 2016



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The Orleans Parish district attorney is prosecuting children as adults in unprecedented numbers.

Although nothing in the law requires Louisiana prosecutors to charge children as adults, District Attorney Leon Cannizzaro chooses to transfer children to adult court in almost every possible instance. He transfers children who have no prior delinquency record or played a minor role in the alleged crime. He transfers children who have a mental illness or developmental disability. He even transfers children accused of nonviolent offenses. Some of the children he transfers are found innocent of any crime – but only after enduring the stress and danger of the adult system.

Prosecuting children as adults is, in fact, Cannizzaro's default practice. Between 2011 and 2015, his office has transferred more than 80 percent of cases involving 15- and 16-year-olds charged with certain offenses where there was an option to prosecute in either juvenile or adult court. Under state law, a judge has no say in these decisions. Discretion rests solely with each parish's district attorney.

Cannizzaro has sent 200 children to adult court since assuming office in 2009, but it has not made us safer. Arrests for offenses eligible for transfer to adult court are up. Recent data also show that teenagers prosecuted in Louisiana's juvenile justice system are less likely to reoffend than those prosecuted in the adult system. The district attorney's practice is wrong for New Orleans' children, their families and the community. It does more harm than good.

This report by the Southern Poverty Law Center examines the Orleans Parish district attorney's approach to the prosecution of juveniles and the process known as juvenile transfer. It shows that Cannizzaro's use of default transfer is unfair and ineffective – it fails to protect public safety, conserve public dollars, or respond appropriately to juvenile crime.

Experts agree that adult prosecution is often the wrong response to juvenile delinquency. Research consistently demonstrates that prosecuting children as adults *increases* the like-



The difference in case-processing times means it costs more to detain a child facing transfer to the adult system. When the district attorney attempts to transfer a 14-year-old – the rare exception in which a judge is involved in the decision – that child spends an average of 409 days in pre-trial detention awaiting a transfer hearing, costing New Orleans taxpayers more than \$96,000.

Choosing to prosecute a child in the juvenile system, which has a greater likelihood of diverting the child from future crime, can have significant long-term savings. Criminologists estimate that preventing just one adolescent from becoming a serial offender saves society between \$2 million and \$5 million over a lifetime.

While statistics demonstrate that district attorneys in other parishes often choose to keep transfer-eligible children in juvenile court, the numbers in Orleans Parish tell a very different story. Defense attorneys who negotiate with Cannizzaro's office also indicate that offering mitigating information about their young clients very rarely results in a decision to keep them in juvenile court.

This default practice of juvenile transfer must end. Adult prosecution must be used sparingly, with consideration of the circumstances surrounding the case and the child, and deliberate thought about which justice system will better deter him from crime.

This report recommends that the district attorney's office consider a child's maturity, mental health, delinquency history and prospect for rehabilitation in the juvenile system before sending a child to adult court.

The City Council should create and fund a committee that allows stakeholders in the criminal justice system a process to provide information and expertise to the district attorney's office when it considers children for adult prosecution. The district attorney's office should also maintain statistics on its juvenile transfer practices and publicly report them every quarter to ensure transparency and accountability.

Defense attorneys and the accused child's family members can help make this process successful by working quickly after the child's arrest to gather records and personal information about the child to provide the district attorney's office with a basis to keep the child in juvenile court.

The stakes for New Orleans' children and the safety of the city's communities couldn't be higher.

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## Juvenile Justice in Louisiana

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Moving certain children from juvenile court to adult court is not a complicated process under Louisiana law. In the majority of cases, the most important factors under the law are a child's age and his alleged offense. Very little evidence of a crime needs to be presented by the prosecution before a child can be transferred. Only 14-year-olds receive a hearing in which a judge considers the child's individual characteristics before ruling on the district attorney's motion to transfer.

Once a child is transferred to adult court, a judge cannot transfer the child back to juvenile court. While 24 states have a process called "reverse waiver," allowing for a hearing before an adult court judge to determine the child's suitability for the adult system,<sup>1</sup> this important safeguard does not exist in Louisiana. Instead, in almost every instance, the law has entrusted the prosecutor with the grave responsibility of determining if a child should be in the adult system. The Orleans Parish district attorney has used his power to transfer children to adult court in the supermajority of cases.

### Here is how that process works for children of different ages:

#### ➤ Children who are 14

Children who are 14 and charged with one of a small number of offenses – including murder, first-degree rape, aggravated kidnapping, and armed robbery – can be transferred to adult court only after an evidentiary hearing in juvenile court.<sup>2</sup>

In that hearing, a judge must decide "by clear and convincing proof, [that] there is no substantial opportunity for the child's rehabilitation" after examining the child's alleged offense and "whether the protection of the community requires transfer."<sup>3</sup> The judge also evaluates the child's maturity and sophistication – both physical and mental – and whether the alleged act might be related to a physical or mental problem. The judge must further consider previous acts of delinquency, past treatment efforts, and rehabilitative resources available to the child in the juvenile system. When a child is transferred under these circumstances it is known as a "judicial waiver" because the judge has waived the juvenile court's original jurisdiction.

#### ➤ Children who are 15 or 16

A small number of 15- and 16-year-olds are transferred to adult court based solely on their charges. Children charged with murder, first-degree rape or aggravated kidnapping are automatically transferred after a juvenile court judge has found probable cause for arrest or after a grand jury has returned an indictment.<sup>4</sup> When probable cause is found for these offenses, a child is automatically moved to "the appropriate adult facility."<sup>5</sup> This type of transfer to adult court is known as a "legislative waiver" because the legislature has determined that the specified offenses merit adult prosecution once probable cause is determined.

A greater number of children in this age group are subject to discretionary transfer



by the district attorney, who

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was expanded again.<sup>23</sup> The Legislature also created the first prosecutorial waiver system, allowing prosecutors to charge certain juveniles directly in adult court once a juvenile court judge or a grand jury in adult court found probable cause for their arrest.<sup>24</sup>



The list of offenses prosecutors could use to send a 15- or 16-year-old to adult court was long.<sup>25</sup>

This change had an enormous impact. It essentially transferred from judges to prosecutors the decision of whether a child should be prosecuted in adult court. Where the decision to transfer a child to adult court once came after a juvenile court evaluated the child and the charges, it could now occur before the child was even charged in juvenile court. The judicial waiver system was gutted.<sup>26</sup> It now effectively applies only to 14-year-olds.

As legislators debated making these changes, they focused on ensuring that children charged with certain offenses could be transferred to adult criminal court as quickly as possible. To justify the changes, they offered anecdotes of juvenile crime, some originating in other states – or even other countries – as well as the potential for some young adolescents to achieve adult physical maturity long before adult sanctions could be imposed.<sup>27</sup> They also expressed fear that repeat offenders would be undeterred by juvenile punishment.<sup>28</sup>

Legislators did not debate many of the points that are currently thought to be relevant to the unique nature of juvenile crime.<sup>29</sup> None of the policymakers acknowledged that juveniles are more capable of rehabilitation than adults. They didn't discuss the harm that adult convictions and incarceration can inflict on a young person, or that such penalties can increase the likelihood a young person will reoffend. They also failed to acknowledge the benefit of providing high-risk youth with age-appropriate interventions to deter them from future delinquent behavior.

In the absence of such considerations, the Louisiana Legislature adopted a law that gives prosecutors broad powers to send a child into the adult system without requiring any specific findings about the child beyond his age and offense.

Expanding transfer laws “did not flow from or build on careful research,” observes Dr. Donna Bishop, a professor of criminology and criminal justice and a leading expert on these policies. “Recent research demonstrates convincingly that if changes in transfer policy [in the 1990s] had been contingent on scientific evidence of their efficacy, they would have been rejected.”<sup>30</sup>

Notably, even as the Legislature sought to expand the availability of the adult court to prosecutors, it did not eliminate the option of juvenile court. District attorneys maintained the ability to prosecute a child in the juvenile system even if he was charged with a serious crime.

**A** In the decades since these expanded transfer laws were introduced, scientists and the courts

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Before 2009, the use of juvenile transfer in Orleans Parish was rare. However, since Leon Cannizzaro became district attorney in 2009, his administration has used juvenile transfer with an alarming frequency. He has prosecuted 200 children in adult court.<sup>37</sup> Nine more are detained and awaiting a transfer decision at the time of the writing of this report.<sup>38</sup> Between 2011 and 2014, the district attorney’s office prosecuted 83 percent of eligible 15- and 16-year-olds charged with certain offenses in adult court.<sup>39</sup>

By contrast, when the district attorney’s office has had to seek judicial waiver for 14-year-olds accused of serious offenses a judge has approved that transfer only once since 2011.<sup>40</sup> It’s reasonable to question, therefore, just how many 15- and 16-year-olds would have been transferred if those children’s individual characteristics had been examined by a neutral party.

services are provided in the adult system, which means these young people emerge from adult facilities as convicted felons without the benefit of programs or developmental opportunities that can help them succeed when they return to the community.

Although 87 percent of New Orleans' transferred children are convicted of some offense in criminal court, this statistic is misleading without context.<sup>48</sup> Ninety-six percent of these convictions come from guilty pleas.<sup>49</sup> Young people have been shown overwhelmingly to accept plea deals, even when they are innocent, to avoid the risk of trial and longer adult sentences.<sup>50</sup>

Seventy-five percent of transferred youths who plead guilty plead to lesser offenses – most of which would not have been transferrable – including nonviolent offenses and even misdemeanors.<sup>51</sup> In some cases, the charges pled to may be more accurate descriptions of conduct of which the young defendant was actually guilty – and where these charges were not eligible for transfer, this trend is particularly troubling. In others, especially with offers of pleas to nonviolent or misdemeanor charges, these pleas may indicate weak evidence of guilt of any offense.

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juvenile system.<sup>56</sup> In other words, nearly 60 percent of the children transferred had either no or minimal delinquency history.

Corroborating this numerical evidence is Cannizzaro's refusal to commit to the City Council not to transfer certain children: those with nonviolent offenses, those who are incompetent, or those who have no criminal record.<sup>57</sup> The American Psychiatric Association explicitly calls for the prohibition of such transfers.<sup>58</sup>

Cannizzaro's remarks to *The New Orleans Advocate* in March 2015 also confirm that default transfer is his standard practice. He stated that for *any* armed robbery allegation, "adjudication in Criminal District Court is more appropriate."<sup>59</sup> Ultimately, all that is important to the district attorney is the alleged crime. When making a transfer decision, "[w]e look at the subjective evidence of the risk they pose ... based upon *the acts of which they stand accused*."<sup>60</sup>

This approach is completely out of step with the recommendations of the National Council of Juvenile and Family Court

Judges – a widely respected national group whose mission is to "provide all judges, courts, and related agencies handling juvenile, family, and domestic violence cases with the knowledge to improve the lives of the families and children who seek justice."<sup>61</sup> The Council has affirmed that "transfer and waiver decisions should only be made on an individual, case-by-case basis, and not on the basis of the statute allegedly violated. . . . [Waiver decisions] should be rare and only [occur] after a very thoroughly considered process."<sup>62</sup>

Defense attorneys who have attempted negotiations to keep their clients in juvenile court agree that transfer appears to be the default – if not the universal – practice of the district attorney's office.<sup>63</sup> These attorneys report that they regularly have offered information to the office about their clients that a judge would find relevant to a transfer decision – a disability, severe trauma, psychiatric medications taken by the child, a minor role in the alleged offense, a lack of previous contact with the justice system – but that information very rarely prevents the district attorney's office from sending a child into adult court.

Cannizzaro's default approach to juvenile transfer conflicts with the National District Attorneys Association's National Prosecution Standards. These standards insist that "the screening decisions [about whether to prosecute a person and for what] are the most important made by prosecutors in the exercise of their discretion in the search for justice."<sup>64</sup>

The standards lay out 13 relevant considerations in screening, which include "the characteristics of the accused that are relevant to his or her blameworthiness or responsibility ... the defendant's relative level of culpability in the criminal activity ... [and] any other aggravating or mitigating circumstances,"<sup>65</sup> such as the maturity, mental health, and personal circumstance of the defendant.

Quite simply, it is an abdication of a district attorney's ethical responsibility to fail to

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consider the child's circumstances that may have led him or her to be arrested. A district attorney should be concerned with the same facts about a child as a judge making a decision to transfer. If this information is not independently available to a district attorney, he should solicit it from the defense attorney. At the very least, when it is presented to him, he should seriously consider it. Cannizzaro's practices make clear that he does not take this approach.

Cannizzaro has repeatedly said that his decision to transfer youths accused of transfer-eligible offenses is motivated by the desires of victims to whom he feels accountable.<sup>66</sup> While a district attorney should take the desires of victims into consideration, it is a violation of prosecutorial ethics to allow victims to dictate prosecutorial decisions.<sup>67</sup>

As the National District Attorneys Association has explained, "a prosecutor does not represent individuals or entities, but society as a whole. In that capacity, a prosecutor must exercise independent judgment in reaching decisions, while taking into account the interest of victims, witnesses, law enforcement officers, suspects, defendants and those members of society who have no direct interest in a particular case, but who are nonetheless affected by its outcome."<sup>68</sup>

By failing to objectively consider what approach to prosecuting a child will balance the interests of *all* of those entities, the district attorney ignores his responsibilities as the city's chief elected law enforcement officer.

➔ Cannizzaro's statements demonstrate that he is out of touch with the community he serves and indifferent to the standards and best practices of his profession.

The district attorney has said, "It is the job and purpose of a juvenile's family, community, church, school, and psychologist to prevent the individual from resorting to violent crime. The district attorney's office comes to the table when these institutions have already failed."<sup>69</sup>

His attitude is dangerously out of touch with the reality of New Orleans, where 39 percent of children live in poverty.<sup>70</sup> Many of the children accused of serious crimes don't have access to any of the resources that Cannizzaro presumes are at their disposal. And, as discussed above, many of the children he transfers have had no previous contact with the juvenile system or any other system that might have provided therapeutic or rehabilitative services.

By focusing on the failure of families, service providers and religious leaders to prevent crime, Cannizzaro is missing an opportunity and a responsibility to intervene on behalf of children who are at a crossroads. This intervention is the express purpose of the juvenile justice system. The district attorney's abdication of responsibility is especially troublesome







programs, treatments and re-entry resources that help children succeed as they mature into adulthood. They are also exposed to adult offenders in prison from whom they are likely to learn criminal behaviors. The punitive adult criminal justice system doesn't scare kids into good behavior. It fundamentally undermines the possibility that they will ever become stable and productive.

**A**fter returning to their families and communities, young people with adult convictions find immediate obstacles to achieving stability. Youth who have been involved with the adult criminal justice system often lack important vocational and job-readiness skills necessary to secure and maintain employment.<sup>102</sup> For young adults, these deficits are particularly acute. They have few vocational skills and most have little or no job experience, making it even more difficult to find and retain employment.<sup>103</sup>

Housing can be another challenge. The Housing Authority of New Orleans broadly

In Orleans Parish, the average period of pretrial detention for all children being tried as adults is 414 days.<sup>113</sup> That's more than a year of taxpayer-provided food, housing and medical expenses. This expense becomes even more questionable when one considers that 14-year-olds in Orleans Parish awaiting a transfer hearing spend such a long time in pretrial detention yet are almost never transferred.<sup>114</sup> At the cost of approximately \$236 per day, a 14-year-old detained in the Youth Study Center awaiting an unlikely transfer costs taxpayers an average of \$96,524.<sup>115</sup> Of the 14-year-olds currently being detained, only one is charged with a homicide.<sup>116</sup>

There is yet another cost associated with juvenile transfer in New Orleans – the cost of construction. The district attorney's default transfer practice has pushed New Orleans to commit \$7 million dollars to expand the juvenile detention facility,<sup>117</sup> a facility that wouldn't be necessary if the same children were prosecuted in the juvenile system. That system's faster case-processing time would have meant that the original Youth Study Center could have accommodated them.

Criminologists also have determined that preventing just a single adolescent from becoming a serial offender saves society between \$2 million and \$5 million in "victim costs, criminal justice costs (police, courts, and prisons), and lost productivity of offenders who are incarcerated."<sup>118</sup> Under the current practices of the district attorney's office, New Orleans taxpayers could be expected to foot that bill as well.

## ➔ Default transfer ignores scientific truths about children

The District Attorney's practice overlooks fundamental realities about young people that science and the law recognize as fact. As outlined above, a youth's brain is physiologically different than an adult brain.

Young people have a significantly higher capacity for rehabilitation than adults, which must be a factor in decisions about their prosecution.<sup>119</sup> Prosecuting children as adults, particularly without examination of their individual characteristics, ignores this reality. In a system of default juvenile transfer, where mitigating factors affecting these youth are ignored, unjust outcomes are inevitable.

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Remarkably, the Orleans Parish district attorney has refused to promise to halt the transfer of youths once the possibility of incompetency is raised in juvenile court. In fact, Cannizzaro declared to the City Council that he would charge as adults children who were legally incompetent to stand trial.<sup>147</sup>

The New Orleans City Council, to its credit, has resolved to remove all children in Orleans Parish currently housed in pre-trial detention facilities shared with adults.<sup>148</sup> Those plans, however, will not be fully implemented until 2018.<sup>149</sup> Meanwhile, unless current practices change, the district attorney's office will continue to seek to transfer children, some of whom will be detained in Orleans Parish Prison for months – if not years.

Regardless of where they are held before trial, many of New Orleans' transferred youth will end up in adult prisons. Because the experience of being imprisoned in the adult correctional system can make it even more difficult for children to re-enter society, the district attorney's failure to carefully consider whether children can be better served in the juvenile system is also dangerous and counterproductive.

**A** Children in adult facilities face significant dangers due to their status as minors and their physical vulnerability. The risk of sexual assault for children in adult facilities is five times greater than it is for children in juvenile detention.<sup>150</sup>

Research has also found that while children under 18 were just 1 percent of the prison population in 2005 and 2006, they accounted for 21 percent and 13 percent of the victims of inmate-on-inmate sexual violence in jails in those years, respectively.<sup>151</sup> They are also twice as likely as young people in juvenile detention to be physically assaulted by staff.<sup>152</sup> They are eight times as likely to commit suicide as those detained in juvenile facilities.<sup>153</sup>

The view that adult institutions endanger children is endorsed by the American Jail Association; American Psychiatric Association, the American Academy of Pediatrics; the National Association of Counties; the American Bar Association; and the National Commission on Correctional Healthcare, all of which oppose holding juveniles in adult facilities.<sup>154</sup>

Beyond dangers to their physical safety, children are vulnerable to the negative influences that surround them in adult facilities. They are "likely to learn social rules and norms that legitimate domination, exploitation, and retaliation."<sup>155</sup> A young person who spends his transition to adulthood in a prison with adult inmates misses critical developmental opportunities – including the assumption of adult social roles, improving one's prospects for employment and seeking financial stability through work and education.<sup>156</sup> These factors contribute to an overall mortality rate for people who were transferred to the adult system as teens that is nearly 50 percent higher than for people who were prosecuted in the juvenile system.<sup>157</sup>

**L** The U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention

recently found that “transferred youth sentenced to prison have not only greater needs for behavioral rehabilitation to address disruptive behavior and substance use disorders than transferred youth who receive less severe sentences but also greater needs for psychiatric treatment of major affective and anxiety disorders.”<sup>158</sup> But access to resources necessary to address these needs is minimal in the adult system.

The Research Network on Transitions to Adulthood describes programs that reduce recidivism as programs that emphasize “interpersonal skill-building and cognitive-behavioral counseling. Such programs develop positive social patterns of reasoning by maintaining a focus on managing anger, assuming personal responsibility, taking an empathetic perspective, solving problems, setting goals, and acquiring life skills.”<sup>159</sup>

Yet Louisiana Department of Corrections (DOC) programming is largely focused on vocational training and GED programs.<sup>160</sup> These programs have not been shown to be effective interventions in criminal behavior, especially for youths with serious offenses.<sup>161</sup> Furthermore, the DOC’s programs have a limited capacity, and only half of Louisiana’s state inmates are housed in DOC facilities at all; the other half held in parish jails<sup>162</sup> where programming is often nonexistent.

The DOC has a “youthful offender program” at Dixon Correctional Facility in Jackson. It offers some age-appropriate programming to youth under 19, but the program has significant limitations.<sup>163</sup> It does not comply with federal laws that require “sight and sound” separation of children under 18 from older inmates.<sup>164</sup> Young people housed there have reported arbitrary and violent disciplinary tactics.<sup>165</sup> These tactics include the use of pepper spray and segregated placement in a cell block on the main compound with adults in plain sight. When they are held in these cells, youth receive no programming at all.<sup>166</sup> Children are frequently ejected from the program, and completion rates are exceedingly low.<sup>167</sup>

## Effective Juvenile Justice

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Effective juvenile justice systems do not coddle young offenders. They maintain facilities with the capacity to safely house children convicted of violent offenses. They rely on evidence-based practices to effectively encourage positive behavior and prevent recidivism while teaching accountability for one's actions.<sup>168</sup> They also produce better outcomes for children, their families and the community than the adult system.

Louisiana's Office of Juvenile Justice (OJJ) is better-suited to address the needs of serious young offenders. Louisiana's juvenile prisons – known as “secure care” facilities – are made of cement and surrounded by barbed wire, just like adult prisons. Sentencing schemes in the juvenile system are similar to those in the adult system. Serious, violent offenses require incarceration in juvenile facilities just as they do in the Department of Corrections.<sup>169</sup> In the juvenile system, young people may be incarcerated until their 21<sup>st</sup> birthdays,<sup>170</sup> which could mean years in prison for some.

Unlike the DOC, the Office of Juvenile Justice is explicitly bound to “protect the public by providing safe and effective individualized services to youth, who will become productive, law-abiding citizens.”<sup>171</sup> It uses treatment techniques known to result in the most successful outcomes: smaller facilities, keeping young people closer to their homes, and following a model of programming called the Louisiana Model for Secure Care, or LAMOD.

This model, based on the nationally recognized model of youth corrections from Missouri, “focuses on a therapeutic, child-centered environment versus a traditional adult correctional/custodial model.”<sup>172</sup> It places an emphasis on “relationship-building that affords youth the opportunity to belong and contribute to a group, make meaningful choices, develop transferable skills and mentor their peers.”<sup>173</sup> While in custody, young people take part in group therapy. The staff, who are arranged in teams, conduct regular meetings to “discuss progress and ways to support the youth.”<sup>174</sup>

OJJ's juvenile probation and parole department is charged with helping young people succeed when they return to their communities. OJJ officers are responsible for fulfilling more than 40 functions, including collecting health and school records; developing an individual services plan; building a relationship with the youth's family; coordinating educational, vocational, and health-related services the youth needs; and “serv[ing] as the link between home, community, school and the juvenile justice system.”<sup>175</sup>

In contrast, a DOC probation and parole officer monitors the probationer's behavior, enforces the rules and laws against her, and ensures she is returned to custody if she violates those rules or laws.<sup>176</sup> A child whose supervisor is dedicated to helping him or her navigate life outside the system is far more likely to succeed than a child whose supervisor is simply waiting to lock him up again.

There are additional advantages to supervising children through the juvenile system. Children in that system are entitled to representation by attorneys while they serve their sentences – the “post-disposition” phase of the case; children processed through the adult system are not.<sup>177</sup>

Juvenile judges also maintain jurisdiction over cases while children are in the post-disposition phase. This means they can ensure the programming and duration of the sentences are tailored to the needs of the children and the interests of public safety – the kind of vital attention to each individual person that does not happen for children in the adult system.

As this report has illustrated, the Orleans Parish district attorney has adopted an expensive, ineffective, and misguided practice of default juvenile transfer that has pushed far too many children into the adult justice system. He has prosecuted children as adults without evidence that it makes our communities safer or will help children to contribute positively to society.

In fact, all available evidence indicates that default juvenile transfer has the opposite effect.

As a result of adult prosecution, many young people have lost opportunities that could help them get their lives on a productive course. Those who return to the community are far less likely to avoid reoffending. They're casualties of an adult justice system that was never intended to rehabilitate a young person who has made a mistake. The district attorney must end the practice of routinely sending young people to adult court without real inquiry into whether it is the right decision for the child.

The following recommendations are intended to ensure reasonable, just and effective prosecution policies for children eligible for adult prosecution in Orleans Parish.



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## **Evaluate cases for transfer according to specific criteria**

The district attorney's office should always consider:

- ➔ The age, mental and physical maturity, and sophistication of the child.
- ➔ The nature and seriousness of the alleged offense to the community and whether the protection of the community requires transfer.
- ➔ The child's prior acts of delinquency, if any, and their nature and seriousness.
- ➔ Past efforts at rehabilitation and treatment, if any, and the child's response.
- ➔ Whether the child's behavior might be related to physical or mental problems.
- ➔ Techniques, programs, personnel, and facilities available to the juvenile court which might be competent to deal with the child's particular problems.

These findings – the same ones that judges in transfer hearings are legally required to make – are central to a transfer decision, whether it is made by a judge or by a prosecutor.

If, according to these factors, there appears to be a reasonable opportunity for rehabilitation in the juvenile system, the district attorney should not transfer the child.

Nonviolent offenders, first-time offenders and children who are incompetent or whose competency has been called into question should never be transferred to adult court. The district attorney's office should not attempt to transfer 14-year-olds except in the most extraordinary cases - and never in cases that do not involve homicide.

### **Collect outcome data and make it easily accessible to the public**

The district attorney and the public have a vested interest in the outcome of the cases his office prosecutes. Prosecutors and the public would benefit from access to data about New Orleans' transfer-eligible young people and the public safety consequences of the decision where to prosecute them.

The district attorney should collect and track information about the children he decides to transfer as well as the transfer-eligible children he prosecutes in juvenile court. For each transfer-eligible youth the office elects to prosecute, the following information should be retained and made available to the public:

- ➔ The youth's age, gender and race;
- ➔ Whether the youth was ultimately transferred;
- ➔ Offense for which the youth was arrested;
- ➔ Offense with which the youth was charged;

- ➔ Offense for which the youth was convicted (or, in juvenile court, adjudicated delinquent), and whether that conviction is the result of a plea or a trial;
- ➔ If the youth was not convicted (or adjudicated), whether he was found not guilty, incompetent, or his charges were dismissed or refused;
- ➔ If the youth was convicted (or adjudicated), the sentence imposed; and,
- ➔ Information about the youth's prior and subsequent arrests or convictions, if any.

### **Be an advocate for Louisiana's juvenile justice system**

A prosecutor should view the juvenile justice system as an important tool in the fair administration of justice. The juvenile justice system works best when the prosecutor supports its methods and goals. The district attorney for Orleans Parish has substantial influence with state government entities to ensure that the resources necessary to help him effectively prosecute children through the juvenile system are available. The district attorney should encourage the Office of Juvenile Justice, the Louisiana Juvenile Detention Association, and the Legislature to do everything possible to serve children in the juvenile system well and ensure they emerge ready to succeed.





transferred to adult court.

Recommended committee members include an assistant district attorney, a current or former juvenile judge who will not otherwise review the child's case, a current or former adult court judge who will not otherwise review the child's case, a board-certified child psychologist, an expert on juvenile risk and recidivism, a juvenile mitigation specialist, and the defense attorney representing the child in question. The defense attorney should be relied upon, with the client's permission, to present information relevant for evaluation by the task force.

As each transfer arises, committee members should review materials about each child and make recommendations to the district attorney about that child's case. The committee should be required to report its activities to the Council annually while keeping identifying information about the children confidential.

## F DEFENSE ATTORNEYS

### **Gather records and other information early**

Defense attorneys and their client advocates are well positioned to help the district attorney make the decision to keep a child in juvenile court. They should make their best effort to collect medical and school records and gather any relevant personal information from clients as soon as possible after arrest. This practice will help ensure that defense attorneys are armed with valuable information when negotiating for their clients to stay in juvenile court.

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## **Assist the defense team with putting together a full picture of the child**

The defense attorney is likely to be the person communicating directly with the screening district attorney about the child. But family members of the arrested child can also play an important role in whether their loved one is transferred to adult court. Families can assist defense attorneys in gathering records and can also offer to the attorney valuable personal information about the child that might affect the decision to transfer.

Family members can also collect letters of support for the child from teachers, pastors, and community members who can attest to his or her character. Family members are in the best position to put together a full picture of the child, which can help the prosecutor see more than the crime of which the child is accused.



(Endnotes)

1



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54 City Council Hearin s on 2016 Proposed Bud et, supra note 52, at 4:19:50.

55 La. Ctr. for Children's Ri hts, supra note 37, at 1.

56 Id. at 10.

57 City Council Hearin s on 2016 Proposed Bud et, supra note 52, at 5:14:52-5:20:58.

58 Am. Psychiatric Ass'n, supra note 35, at 1.

59 Reckdahl, supra note 41, at 6A.

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