Automatic Adult Prosecution of Children in Cook County, Illinois. 2010-2012

Over 30 years of poor outcomes from "automatic" adult prosecution of children.

A Special Report from the Juvenile Justice Initiative.

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The Juvenile Justice Initiative is a non-profit, non-partisan statewide advocacy organization working to transform the juvenile justice system in Illinois. We advocate to reduce reliance on incarceration, to enhance fairness for all youth and to develop a comprehensive continuum of community-based resources throughout the state.

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EXECUTIVE SUMMARY

In 1982, Illinois removed juvenile court approval of the critical decision to try a child under age 17 [2] as an adult. Under the "automatic transfer" law, children age 15 or 16 charged with certain felony offenses are "automatically" tried and sentenced in adult court. In other words, the legislature removed the ability of a juvenile court judge to consider each case individually, and eliminated any consideration of factors including background, degree of participation in the offense, mental and physical health, educational issues, and availability of resources unique to juvenile court for rehabilitation. Instead, within hours/days, upon arrest and charge, the child was stuck in adult court. If convicted, a child can receive a lengthy adult sentence or end up with a criminal record that can impact their ability to go to school, get a job and be a productive member of their community.

More than 30 years' of studies have consistently demonstrated that categorical treatment of children as adults prevents rehabilitation and positive development, fails to protect public safety and yields profound racial, ethnic and geographic disparities.

This report looks at three years of data on 257 children under the age of 17, who were held in juvenile detention in Cook County but prosecuted and sentenced in adult court from 1/1/2010 – 12/31/2012.

OVERLY BROAD

- The majority of cases automatically transferred end up convicted for lesser offenses, offenses that could not have trigged transfer – the three-year study revealed **54 percent of all convictions were for lesser offenses**. Another 4 percent were found not guilty or thrown out (nolle prossed).
- Contrary to popular belief that "automatic" transfer is used only on the most serious cases, only 13 percent of automatic transfers were charged as first-degree murder during a recent three-year review. By contrast, when juvenile court judges made the transfer decision in a court hearing, almost half of cases (48%) involved first degree murder.

NO COURT REVIEW AND NO TRIAL – NO CONSIDERATION OF CHILDREN

- The vast majority of automatic transfer cases result in guilty pleas – the recent three-year review revealed **90 percent of automatic transfer cases were pled guilty.** At no point is there any opportunity to take into consideration immaturity – the young age of the child, his/her potential for rehabilitation, or any aspects of his/her background.

DISCRIMINATORY

- **Automatic transfer disproportionately affects children of color.** In three years of "automatic" trial of children in adult court, there was only one white child.

POOR OUTCOMES

- Slow and costly process – eliminating the juvenile court transfer hearing actually slows down the case. The average time for a child awaiting trial as an adult ranged from 377 days up to 572 days. By contrast, half of the children charged in juvenile court spend a month or less in detention.
- Adult sentence not always "tougher" – 18 percent of those children sentenced to adult prison received five years or less – by contrast, a juvenile sentence to prison is up to age 21, so a 15 or 16 year old could spend five to six years in prison.

CONTRARY TO PUBLIC SAFETY

- National research solidly establishes that children tried in the adult court are more likely to repeat offend, than children similarly situated who are tried in juvenile court. A 2007 survey of existing studies by the U.S. Centers for Disease Control and Prevention concluded that **children who are tried as adults are 34 percent more likely to commit crimes** than children who were kept in the juvenile court system.

CONTRARY TO RESEARCH

- **Routinely prosecuting youth as adults runs contrary to youth development research.** A strong and growing body of research on adolescent development indicates that youth are especially prone to impulsive and risky behavior, and hampered in their ability to foresee and weigh the consequences of their actions. At the same time, youth are capable of tremendous positive change and most youth mature out of delinquent conduct. Automatic transfers of youth ignore these facts and, in treating teenagers the same as adults, waste opportunities for rehabilitation through the services and supervision of the juvenile system.

OUTLIER

- Illinois is now one of only 14 states with no ability for a judge to provide individual review, either in juvenile or adult court, of the decision to try a child in adult court. Further, ***the U.S. stands alone in the widespread prosecution of juveniles in adult court.*** In March of 2014, the United Nations Human Rights Committee urged the U.S. to end adult court prosecution of juveniles – to end juvenile life without parole, separate all juveniles from adults, and end the practice of transferring juveniles to adult courts.

RECOMMENDATION:
Illinois should restore authority over whether a child under 18 should be tried in adult criminal court to juvenile court judges. This will bring Illinois in line with the majority of states, and will ensure better outcomes for children, for victims, for taxpayers, and for public safety.

"[Transfer] is simply a means of identifying how they are to get into the system and basically who is to make the decision. It's a choice between the charging officer or the juvenile judge. And philosophically, it seems to me that there ought to be some review by the presiding juvenile judge."
Then Senator Dawn Clark Netsch, Senate Floor debate
May 26, 1982.

"[I]t doesn't make sense for us to transfer, indiscriminately, young people to adult court."
Then Senator Barack Obama, Senate Floor debate
Jan. 29, 1998.[3]

"These are failed policies."
Former U.S. Senator Paul Simon.[4]

"Judges should be the ones to decide whether a child should be transferred to adult court, not a one-size-fits-all law." Chicago Tribune editorial
November 21, 2000.

BACKGROUND ON U.S. TRANSFER LAWS

In the late 18th century, children as young as seven who were accused of committing crimes were prosecuted as adults throughout this country, receiving prison sentences and even the death penalty if convicted.[5] During the 19th century, a movement emerged to reform the system dealing with juvenile offenders. In 1899, the first juvenile court was established in Chicago, Illinois; by 1925, all but two states had followed suit, and today the Chicago juvenile court has been replicated across the globe. [6] The purpose of the juvenile court was to treat juveniles differently from adults by providing treatment and guidance—not punishment—to enable juvenile offenders to become fully rehabilitated members of society.[7]

In rare cases, juvenile court judges would waive jurisdiction when they decided children were not amenable to treatment. In such cases, the children were "transferred" to adult criminal court for prosecution. These transfer decisions were made on an individualized basis using a "best interests of the child and public" standard. [8]

By the 1980s and 1990s, public fears about violent juvenile crime, as well as a widespread belief that juvenile offenders were being treated too leniently, led many states to enact laws — in the name of public safety—that dramatically increased the number of children prosecuted as adults.[9] Although juvenile crime rates have since fallen to historic lows, most of the laws passed in the wake of the predictions of a persistent increase in violent juvenile crime remain in effect today. [10] All states allow children to be tried as adults. The mechanisms, however, vary by state and in most states there is more than one process to try and sentence a child in adult court. Many states require automatic prosecution in adult court based on the presence of certain circumstances, such as the age of the juvenile offender, the type of offense, or the offender's prior criminal record – but most states include some mechanism for individual review. Other states allow judges to exercise their discretion in determining whether to waive juvenile jurisdiction and provide criteria upon which to base these decisions. Some states grant prosecutors discretion in determining whether to file a case in juvenile or adult court.

Regardless of the statutory scheme, the widespread prosecution of juveniles in adult court is a U.S. practice that is specifically prohibited by international law, and rarely followed in other nations.

The U.S. stands alone in the widespread prosecution of juveniles in adult court. In March of 2014, the UN Human Rights Committee urged the U.S. to end adult court prosecution of juveniles - to end juvenile life without parole, separate all juveniles from adults, and end the practice of transferring juveniles to adult courts. [11]

HISTORY OF ILLINOIS TRANSFER LAWS

Four years after the establishment of the world's first juvenile court in 1899, Illinois began transferring children to the adult court in limited cases. Prior to 1973, transfers to adult court were initiated by the prosecutor.

Judges began making the transfer decision in Illinois in 1973. The legislature amended the juvenile transfer provisions in 1973 in order to comply with the U.S. Supreme Court's due process requirements in *Kent v. US*, by requiring a hearing in juvenile court, thereby giving discretion to the juvenile court judge. Under the Illinois provisions, the prosecutor initiated the hearing with a petition to transfer the child to adult court. Pursuant to these transfer provisions, any child age 13 and older could be tried in the adult court on any charge, subject to discretion of the juvenile court judge following a full due process hearing (i.e., discretionary transfer). These transfer provisions remain in effect today and are occasionally used throughout the state.

In 1982, the Legislature created Automatic Transfer. This legislation was initiated by then Cook County State's Attorney Richard Daley and followed a series of hearings around the state by the Senate Judiciary Committee. The legislation, Senate Bill 1231, was presented as a Senate Committee Bill, and began with a lower age of 14 and an extensive list of offenses – eventually, it was modified to apply to 15 & 16 year olds charged with murder, rape, deviate sexual assault and armed robbery with a firearm. Included was a provision allowing juvenile court sentencing for those youth convicted of a lesser offense, with the understanding that this provision could be waived as part of a plea deal.

During Senate debate on May 26, 1982, Sen. Dawn Clark Netsch attempted unsuccessfully to amend the bill to require an automatic hearing in juvenile court, rather than automatic adult court prosecution. Senator Netsch clarified that the issue was not whether to try juveniles in adult court, but "*…simply a means of identifying how they are to get into the system and basically who is to make the decision.*

It's a choice between the charging officer or the juvenile judge. And philosophically, it seems to me that there ought to be some review by the presiding juvenile judge."[11]

In the House, Rep. Michael Getty offered an amendment to turn the automatic transfer proposal into rebuttable provisions, based on data showing that one-fourth of the transfers initiated by the prosecutor failed to result in a conviction.[12] He also expressed concern that automatic transfer would increase the number of children tried in the adult court, resulting in greater costs to the county in detention bed days. Rep. Woods Bowman expressed concerns that this change was similar to the philosophical shift to determinate sentencing, and would also drive up state costs in prison beds. Rep. Lee Daniels noted that he expected the prosecutors to use reasonable judgment and cited State's Attorney Daley's concern about crime as reason to pass the bill.

The Chicago Law Enforcement Study Group reviewed juvenile transfer decisions both pre- and post- automatic transfer. Its study of judicial transfer decisions prior to automatic transfer looked at 346 youth judicially transferred to adult criminal court in Cook County between 1974 and 1981.[13] Of the 346 youth the majority were male (only 4 females); and nearly half (48.8%) of the judicially transferred cases were based on murder, with 14.2 percent based on charges of rape/deviate sexual assault, and 22 percent on charges of armed robbery. The study further found that about a quarter of the youth (25.8%) were never convicted in criminal court. This study did not examine the race of the youth.

After passes of automatic transfer, the Chicago Law Enforcement Study Group reported an increase in the number of youth prosecuted in criminal court (more than twice the number prosecuted as adults during the previous two and a half year period).[14] The researchers also reported a difference in the type of offense prosecuted – prior to automatic transfer, murder was the most common offense, but following automatic transfer armed robbery with a firearm became the most frequently transferred offense (55%). Finally, the researchers reported that the automatic transfer provisions had a disproportionate impact on minority youth, and concluded that the increase in armed robbery prosecutions in criminal court contributed to the over-representation of African-Americans in the transfer population. ***The authors noted the automatic transfer provisions increased prosecutions and had a disparate impact on minority youth, yet failed to improve efforts to control serious offending juveniles; thus, the researchers recommended that a modified version of judicial transfer be the method for determining adult prosecution of juveniles.***

Challenges to the automatic transfer provisions in the Illinois Supreme Court were unsuccessful. In *People v. J.S.,* 103 Ill.2d 395 (1984), the Court rejected the argument that the automatic transfer offenses constituted an arbitrary and irrational classification and held that the violent nature of the offenses selected and their frequency distinguished them from other Class X offenses.

During the mid-1980s, the automatic transfer provisions were substantially expanded. In 1985, the Legislature passed the "Safe School Act", Public Act. 84-1075, automatically transferring youth age 15 and older for drug and weapon violations on or within 1,000 feet of a school. [15] The Illinois Supreme Court upheld this expansion in *People v. M.A.,* 124 Ill. 2d 135 (1988) on the limited basis that since attendance at school was mandatory, the State had a corresponding duty to guarantee students' safety.

Gang-related offenses were the next offense category to be added to automatic transfer, followed by drug and weapon violations within 1,000 feet of public housing. In *People v. R.L.,* 158 Ill.2d 432 (1994), the Illinois Supreme Court upheld the public housing automatic transfer provisions despite evidence documenting a serious disproportionate impact on minority youth. The evidence presented to the *R.L.* Court revealed that within a one year period all 34 transfers in Cook County under this public housing provision were African-American.

Still, the rush to add more offenses continued. In the fall of 1995, Illinois added to the automatic transfer provisions a new category of minors age 13 or older charged with first degree murder in the course of a sexual assault or aggravated kidnapping. Presumptive transfers for most of the Class X offenses were also added in 1995.

Studies consistently revealed that the automatic transfer laws had poor outcomes with a profound impact on children of color. **The Illinois Supreme Court's Special Commission on the Administration of Justice (the "Solovy Commission") reported in December of 1993, that an increasing number of juveniles were transferred to criminal court over the past 10 years without a corresponding deterrent effect, and with unintended negative consequences such as an overwhelmingly disproportionate impact upon African-Americans and other minorities.**[16]

Dissatisfaction with the automatic transfer provisions led the Illinois Supreme Court's Solovy Commission to recommend in 1995 that the Illinois Legislature consider legislative alternatives such as "waiver back" and the elimination of mandatory minimum sentences for juveniles convicted and sentenced in adult criminal court.

A series of research projects and newspaper reports continued to demonstrate increasing numbers of children of color transferred to the adult court due to the automatic drug transfer laws. For instance, Nelson's (1992) Chicago Sun-Times series, Bogira (1993), Clarke (1996) and Karp (2000) all reported consistent results, with overwhelming disproportionate impact on minority youth, and poor outcomes with little benefit to public safety. [17]

Ultimately, a study by the Juvenile Transfer Advocacy Unit of the Law Office of the Cook County Public Defender, examining the children automatically transferred to adult court in Cook County from 1999 to 2001, helped focus attention on the need to reform the state's transfer laws. [18] The data revealed that out of 393 youth automatically transferred to adult court and detained in Cook Country from October 1999-September, 2000, virtually all (99.6%) of the youth subject to automatic transfers in Cook County were minorities – only one Caucasian was automatically charged as an adult with a drug offense during the two-year period. Two-thirds of the automatic transfers were for nonviolent drug offenses. Moreover, close to two-thirds had not been afforded any juvenile court rehabilitative services prior to the automatic transfer. The study demonstrated that the youth "automatically" tried in adult court on drug offenses were receiving minor sentences (not prison) if sentenced at all – more than 90 percent of the youth convicted of a drug offense received either a sentence of probation or boot camp. All, however, suffered the consequences of a criminal conviction.

This research further demonstrated that this was a Cook County issue. Automatic transfers outside of Cook County were far fewer, despite higher arrest rates outside Cook County. Only two youth outside of Cook County were transferred for drug offenses.

Newspapers reported the Illinois Drug Transfer Law was called the "worst" youth drug law in the nation because of its racial disparities. *Drug Law Biased, study says,* Mike Dorning, Washington Bureau, 4/26/2001.

A Chicago Tribune editorial, *Youth Justice, Separate and Unequal,* urged that the transfer decision be returned to judges.

Chicago Tribune editorial, Youth Justice, Separate and Unequal, 11/21/2000

Over the last year, 393 Cook County youths arrested for serious crimes automatically were transferred from juvenile court into adult court.
Three were white.

It is hard to imagine that this glaring statistic doesn't reveal two separate and unequal systems of juvenile justice – one for whites and one for minorities.
…
A decade ago Illinois, like the rest of the country, was reeling from sharp spikes in the frequency and severity of juvenile crime. … Transfer laws were designed to deal with offenders in their older teens who were violent and chronic. They also were developed at a time the juvenile system lacked the ability to handle the most serious violent crimes. ….

But now the Cook County juvenile system, the first and oldest in the country, is better equipped to handle even the most seemingly intractable cases, with youth detention centers, or appropriate penalties, education programs and counseling. …why….are we giving up on these young people?

Reality is that many [youth] respond well to the kind of attention the juvenile system can provide. Some may not completely thrive or reform themselves, but all deserve at least a chance. Once in adult court, their convictions will be public record and their future decidedly more grim. Anyone convicted in adult court will find it nearly impossible to pursue higher education, …And certainly, one's ability to land a well-paying job will be forever diminished.

Judges should be the ones to decide whether a child should be transferred to adult court, not a one-size-fits-all law.

Based on these studies, in 2005 Illinois agreed to allow children charged with drug offenses to begin cases in juvenile court; in cases where children were on school grounds and sold drugs to someone under age 17, the cases became presumptive transfers. The Legislature also standardized a list of factors for judicial discretion for transfer on discretionary transfer, presumptive transfer, and extended jurisdiction juvenile prosecutions, and expanded automatic transfer for those charged with aggravated battery with a firearm, by deleting the "zone" provision limiting transfer to offenses within 1,000 feet of a school, while prohibiting transfer of those charged under the theory of accountability. The compromise legislation was passed unanimously in both chambers becoming Public Act 94-0574.

The first year after PA 94-0574, a study revealed the number of children automatically transferred in Cook County went down by approximately two–thirds, from 361 in 2003 to 127 in 2005-2006. [19] Moreover, the same study found no adverse effect on public safety.

With Illinois in the lead, states across the U.S. are rethinking these ineffective "get-tough" transfer policies. Illinois was the first state to scale back automatic transfer; it has since been joined by a number of other states. Colorado, Nevada, Mississippi, and Utah are among the states that have begun shifting transfer decisions to the juvenile court. [20]

POOR OUTCOMES – NATIONAL RESEARCH CONFIRMS NEGATIVE OUTCOMES FROM TRANSFER

In 2007, the U.S. Centers for Disease Control and Prevention (CDC) reviewed the existing research examining the effects of juvenile transfer on subsequent violent offending. According to this extensive review of the literature on transfer by the CDC, ***children prosecuted as adults are more likely to re-offend than their counterparts prosecuted as juveniles for the same type of offense and with similar prior records.*** [21] ***They also are more likely than their counterparts to commit more serious new offenses, and at a faster rate.*** [22] Further, criminal court processing itself, even without any criminal sentences, has been found to increase recidivism. [23]

This national study corresponds to the research results in Illinois, noted in the previous section. In 1988, the Chicago Law Enforcement Study Group concluded that automatic transfer failed to improve efforts to control serious juvenile offending and recommended a modified version of judicial transfer. [24] The Illinois Supreme Court Special Commission on the Administration of Justice (The Solovy Commission) found that from early 1980s to early 1990s, increasing numbers of juveniles had been transferred to criminal court over the previous decade without a corresponding deterrent effect and with unintended negative consequences, and recommended the legislature consider alternatives.

Research also shows that laws providing for the prosecution of juveniles as adults disproportionately affect children of color in certain geographic area across the U.S. In Connecticut, for example, from 1997 to 2002, 40 percent of all transfer cases were of African-American children, although African-Americans made up only thirteen percent of the 14- to 17-year-olds in 2002. [25] In Florida, in 2005-2006, while 24 percent of the youth population was African American, they accounted for 57 percent of all the children transferred to adult court. Non-white young people accounted for about seven out of 10 children transferred to the adult system in Florida. [26]

Racial disparities are much more profound in Illinois. African-Americans represent 44 percent of the youth population in Cook County, but from 2000 to 2002, 99 percent of children automatically transferred to adult court in Cook County were African American or Latino. [27] Further, research showed that transfer laws were used primarily in Cook County in Illinois. In 2001, only 14 children were automatically transferred outside of Cook County. The research documents that automatic transfer provisions have been applied disproportionately in cases involving children of color in Cook County.

Automatic transfer to adult court leaves no opportunity to take adolescent brain development into account. According to new scientific research, critical areas of the human brain, particularly those affecting decision-making and judgment, are not developed fully until a person has reached his or her early 20s. [28] This evidence informed the U.S. Supreme Court's decisions in *Roper v. Simmons*, holding unconstitutional the execution of offenders who committed their crimes when they were under the age of 18 [29] and *Miller v. Alabama*, requiring an individualized review prior to imposition of juvenile life without parole. [30] In his concurrence in *Graham*, Justice Roberts cautioned that "[o]ur system depends upon sentencing judges applying their reasoned judgment to each case that comes before them." [31]

Children transferred to adult court face both short-term and long-term collateral consequences.

According to the study conducted by McGowan et al. (2007), children prosecuted as adults are much more likely to commit suicide. [32]

Children incarcerated in adult prisons are five times more likely to be sexually assaulted and twice as likely to be attacked by fellow inmates or beaten by staff. [33]

Children prosecuted and convicted as adults carry life-long consequences. Depending upon the underlying offense and the state in which a child was convicted, a felony conviction could result in the loss of a number of civil rights and privileges. Felony convictions could deprive children of the right to vote and eligibility for federal student financial aid, public housing and federal welfare benefits. Children could also be denied jobs and may have their driver's license automatically suspended or revoked, which further reduce the opportunities for employment and community integration. [34] Also, although juvenile records remain confidential, adult criminal records are public. [35]

The consequences of transfer on the communities of these children can also be significant. Children with diminished education, housing, and employment opportunities may find it more difficult to be productive members of our communities. In the short and long term, it may be more costly in both human and fiscal terms than handling cases appropriately through the juvenile court processes designed to rehabilitate and reduce recidivism.

CURRENT TRANSFER LAWS IN ILLINOIS

Illinois has one of the nation's broadest arrays of transfer laws.

First, Illinois has judicial transfer, where a juvenile judge reviews a petition by the prosecutor to transfer a child to adult court. The prosecutor can seek transfer for any child age 13 or older charged with any offense. Under judicial transfer provisions, the juvenile court judge conducts an individualized hearing reviewing the background, charges, mental health, education and resources available for rehabilitation in the juvenile court.

Illinois also has three additional types of transfer mechanisms: mandatory, presumptive, and statutory exclusion (automatic). [36] See *Appendix A* for offenses that trigger each kind of transfer in Illinois.

Illinois has one of the most extreme "automatic" prosecutorial transfer mechanisms. Most states require an individualized hearing either in juvenile court or a "reverse waiver" hearing [37] in adult court to try a child as an adult. Illinois, however, has no "safety valve," no hearing in either juvenile or adult court to review whether trial in adult court is appropriate in an individual case. Only 14 states use such an extreme process to make this critical decision without any safety valves. [38] In Illinois, a child is transformed into an adult through the mere filing of a charge, and the child remains stuck in adult court with no legal mechanism to trigger a hearing to consider his/her background to determine the appropriateness of adult court jurisdiction. If found guilty of a lesser offense, the child has a right to be sentenced as a juvenile unless the state requests a hearing on the issue, but this right can be waived as part of the plea bargain.

Automatic transfer also applies to children as young as 13 years of age if charged with first degree murder committed during the course of either aggravated sexual assault, criminal sexual assault, or aggravated kidnapping [705 ILCS 405/ 5-130(4)(a)]. This research found no example of exclusion under this section in the three-year period.

Finally, children of any age can be automatically transferred to criminal court if they are charged with a violation of bail bond or escape. This transformation from a child to an adult happens swiftly based only on age, and initial charge at the time of arrest and/or initiation of formal prosecution.

Automatic Statutory Exclusion Offense (Age)
First degree murder (15&16)
Aggravated criminal sexual assault (15&16)
Aggravated vehicular hijacking (15&16)
Aggravated battery with a firearm (15&16)
Armed robbery with a firearm (15&16)
Unlawful use of a weapon on school grounds (15&16)
Murder in course of aggravated criminal sexual assault (13 & 14)
Previous Transfer (any)
Violation of bail (any)

In light of the serious ramifications of policies prosecuting children in adult court, it is imperative to monitor the use of transfer in Illinois. This study aims to shine a light on the children automatically excluded from juvenile court and detained in Cook County, Illinois, CY2010-2012.

METHODOLOGY

There is no official government entity that tracks and makes public information on children tried in adult court in Illinois. Occasionally, the Illinois Criminal Justice Information Authority releases some statistics on this population, but not on a regular basis. There have been studies over the more than 30-year life span of automatic transfer policies, but most have been conducted by non-governmental organizations and limited to Cook County.

This study involved an examination of individual cases of 257 children under the age of 17 who were held in juvenile detention in Cook County, and prosecuted and sentenced in adult felony court in Cook County from January 1, 2010 to December 31, 2012. [39]

Once taken in police custody and placed under an arrest, the age of the child and the charged offense determines whether the child will be processed as a juvenile or automatically transferred to adult court at the point of arrest.

Children prosecuted as adults are eligible for bond. It is possible that some children who were charged with automatic exclusion offenses during this time period (Calendar Year 2010-2012) received and made bond. Children who were released on bond were not included in this report. There is no public data on the number of children tried as adults and released on bond.[40]

Children age 15 and 16 between CY2010 and CY2012 who were charged as adults and did not receive or could not make bond were placed in the Cook County Juvenile Temporary Detention Center (JTDC). These children passed through the JTDC Intake Unit for processing and were labeled as "automatic transfer." The list of the children labeled as "automatic transfer" in the JTDC Digital Solution Inc, the JTDC's in-house resident management information system, from January 1, 2010 to December 31, 2012 was provided by the JTDC. The information provided included zip code, date of birth, race, ethnicity, date of JTDC admission, criminal case number, municipal case number, and IR number (finger print number). The Juvenile Justice Initiative pulled up each individual criminal case number in the Cook County Circuit Court Clerk System to gather additional data.

The Juvenile Justice Initiative reviewed information on each individual case in the Clerk's System including actual charges, previous convictions if any, disposition, sentence, starting date of criminal case and disposition date. The Juvenile Justice Initiative used the IR number (i.e., finger print number), which gives a list of previous and new adult court referrals, in order to gather previous adult convictions. Previous juvenile court referrals were subject to juvenile confidentiality restrictions, so the Juvenile Justice Initiative was unable to review this information.

Information on the zip code/address and race/ethnicity is self-reported by the children during the intake process. Zip codes used for the analysis do not necessarily match with the zip codes of the incidents or the children's current residency. When children identify themselves as Hispanic, the Intake Unit codes them as Hispanic and if they identify themselves as Mexican, the Intake Unit codes them as Mexican.

Children could be charged with more than one automatic adult transfer offense (e.g., 1st degree murder, aggravated criminal sexual assault and armed robbery with a firearm). When a child was charged with multiple offenses in the same felony class, the first charge in the Clerk's system was selected as a top charge for this report. [41] When a child was charged with offenses in different felony classes, the charge in the more serious offense class was selected for the report. Children admitted to the Cook County Juvenile Temporary Detention Center in CY2010 were counted as a CY2010 case for this report. For instance, a case of a child who was admitted to the JTDC in 12/30/2010 could have started in 1/20/2011 in adult court, but this case would have been counted as a CY2010 case.

Anecdotal evidence indicates that there was only one non automatic transfer petition filed (discretionary), which later was denied, during CY2010-CY2012 in Cook County. [42] Given the lack of public data on this population, this study represents a very modest effort to shed some light on this critical issue of public policy.

FINDINGS

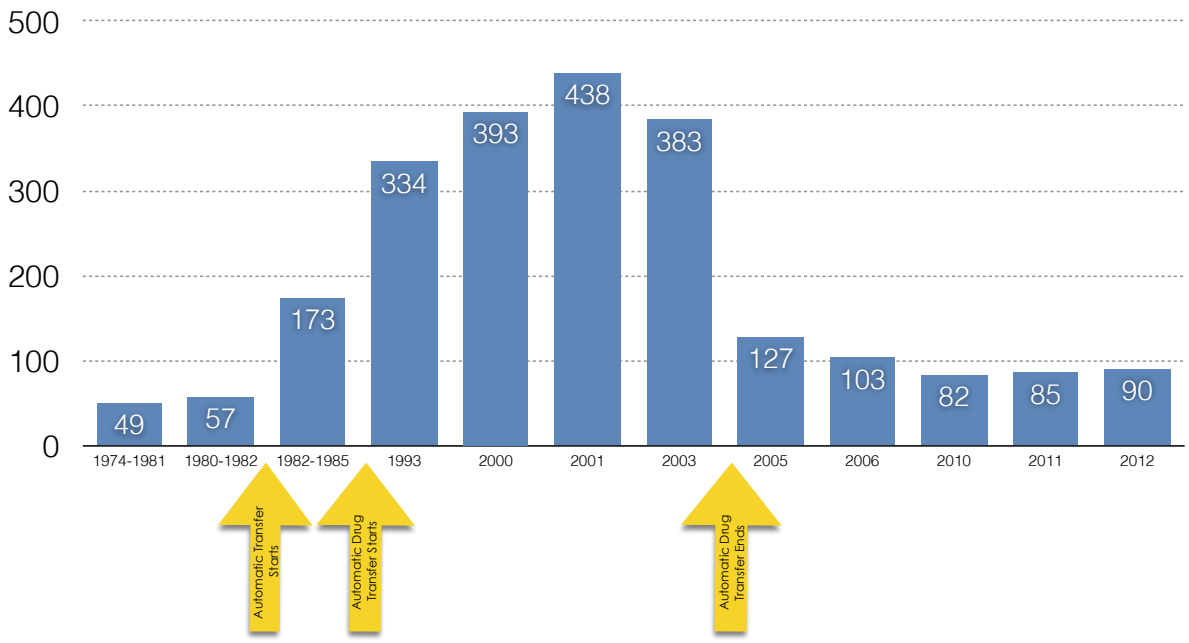
In order to understand the findings in this study, it is helpful to review the data on transfer prior to, and subsequent to automatic transfer.

Prior to 1982, juvenile court judges made transfer decisions on an individual basis, reviewing detailed background information on each youth prior to deciding the critical issue of whether to try a child in adult court. On average, 57 children were transferred annually to adult court prior to 1982 with about half for murder (48%), and 68 percent Black. From 2010 to 2012, an average of 86 children were

Table 1. Comparison Youth Profile Before and After the Automatic Transfer Provisions

	Judicial Transfer (1975-1981)	Automatic Transfer (2010-2012)
Average Annual # of Transfers in Cook	57	86
% of Black Children in Transferred Children	68%	83%
% of Transfers for Murder	48%	13%
% of Transfers for Armed Robbery with a Firearm	22%	30%
Decision Maker	Juvenile Court Judge	Prosecutor

Chart 1. Change in the Number of Children Automatically Prosecuted as Adults



prosecuted as adults annually, and 83 percent of them were Black. Only 13 percent of the children automatically transferred in 2010-2012 were prosecuted as adults for murder. See *Table 1* above.

The number of children automatically excluded from juvenile court has decreased compared to previous years. [43] Specifically, the number dropped by two-thirds after the elimination of automatic drug transfers in 2005. This study examined individual cases of 257 children under the age of 17 who were held in juvenile detention in Cook County and automatically prosecuted and sentenced in adult felony court in Cook County from January 1, 2010 to December 31, 2012.

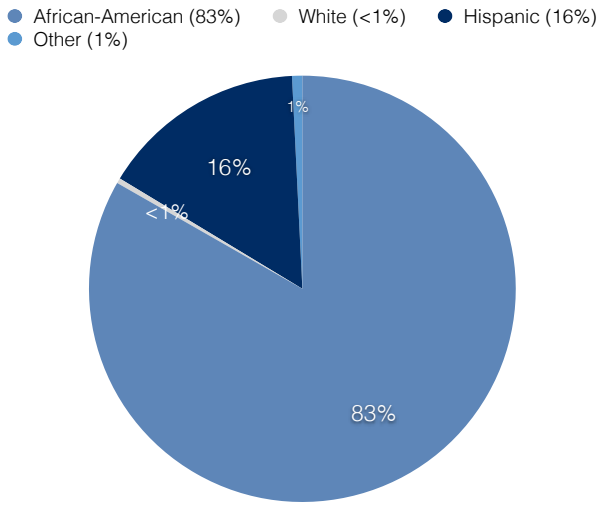
DEMOGRAPHICS

Sixty two percent of the 257 automatically transferred children were 16 years old, and 36 percent were 15 years old at the point of admission to the Juvenile Temporary Detention center. Two percent of the children were 17 years old at the point of admission to the detention center. [44] There were no children younger than 15 who were automatically excluded from the juvenile jurisdiction during CY2010-CY2012.

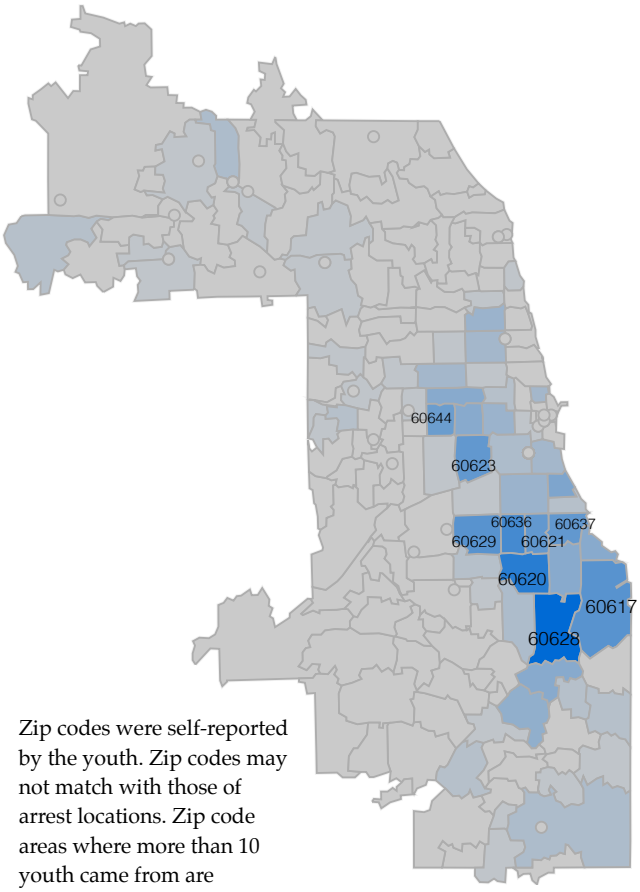
As in previous studies, African-American children are overrepresented among children automatically prosecuted as adults. [45] Over the three years (2010-2012), 83 percent of the automatically excluded children were African- American, and there was only one white child of the total of 257 children. See *Chart 2.*

As in the previous study of transfer [46], automatic adult prosecution of children was primarily used in zip codes in south side and west side of Chicago—it was rarely used in the rest of Cook County (82% Chicago vs. 18% the rest of Cook), and rarely used in the rest of the state.

Chart 2. Children Automatically Prosecuted as Adults by Race, Cook County, 2010-2012



Map 1. Zip Code Map of Children Automatically Prosecuted as Adults in Cook County, 2010-2012

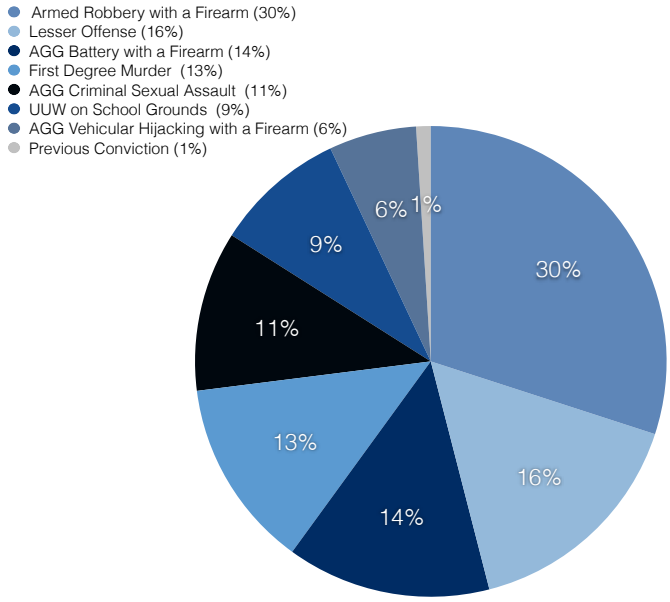


Zip codes were self-reported by the youth. Zip codes may not match with those of arrest locations. Zip code areas where more than 10 youth came from are identified.

CHARGED OFFENSE

As shown in *Appendix A*, children are automatically prosecuted as adults for seven types of offenses, for a technical violation or for having a past adult conviction. Armed robbery with a firearm was the most common charged offense in Cook County from 2010 – 2012. See *Chart 3*.

Chart 3. Charged Offenses

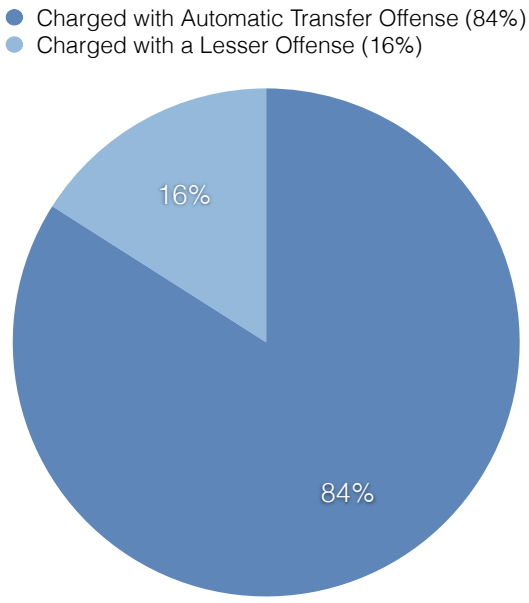


CHARGED WITH LESSER OFFENSE BUT REMAINED IN ADULT COURT

Of the 257 children, more than 40 children (16%) were recharged with a lesser offense that should have triggered removal to juvenile court upon arraignment. The statute provides that children recharged with lesser offenses can only be prosecuted in Juvenile Court. [47] However, in this study, all the children recharged with lesser offenses remained in adult court. See *Chart 4*.

If a child has been convicted as an adult in the past, the current transfer laws require that the child be prosecuted as an adult no matter what the charge is for the subsequent incident ("Once an Adult, Always an Adult"). Juvenile Justice Initiative looked at these children's adult criminal records using the IR number (finger print number), but none of them had a previous adult conviction.

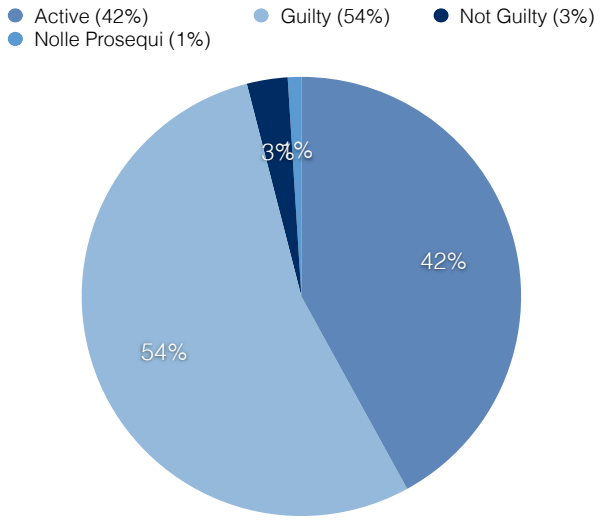
Chart 4. Children Recharged with a Lesser Offense before a Trial



FINDINGS AND DISPOSITIONS

As of early October 2013, 54 percent of the cases had a finding of guilty (*Chart 5*). On the average, it took 377 days for a case to reach a finding of guilty from the date of filing the criminal charge. [48] It took much longer – average of 572 days – for a case to reach a finding of not guilty.

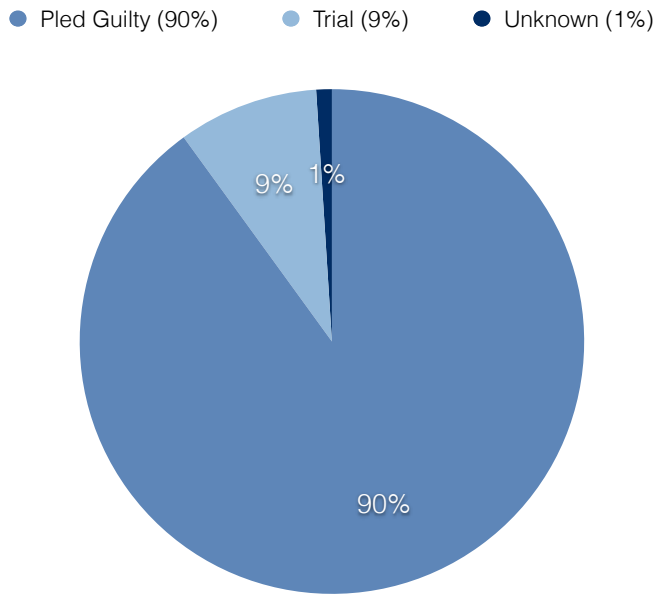
Chart 5. Case Status of the Automatically Transferred Cases



PLEA

The majority of children prosecuted as adults waived their rights to trial and pled guilty. Indeed, of 138 convicted children, 90 percent waived their rights and pled guilty to either the original offense or a lesser offense. Only 12 convictions resulted from trial. See *Chart 6*.

Chart 6. Pleas vs. Trial



Not all the children pled guilty for the initially charged offense. 38 percent of the convicted children who were charged with an automatic exclusion offense pled guilty for a lesser offense. 54 percent of *all the convictions*, including children who were recharged with a lesser offense before trial or plea, were for a lesser offense. See *Chart 7*.

SENTENCING

Of 257 children automatically excluded from juvenile court and prosecuted as an adult from January 1, 2010 to December 31, 2012, 138 children had reached conviction by the time of a Juvenile Justice Initiative's research. More than half of the children [49] were convicted of lesser offenses, but only four of them received a juvenile sentence (in adult court) despite the statutory requirement of juvenile sentencing for a lesser offense after a trial or plea. [50] See *Chart 8.*

Chart 7. Flow Chart of Convicted Cases

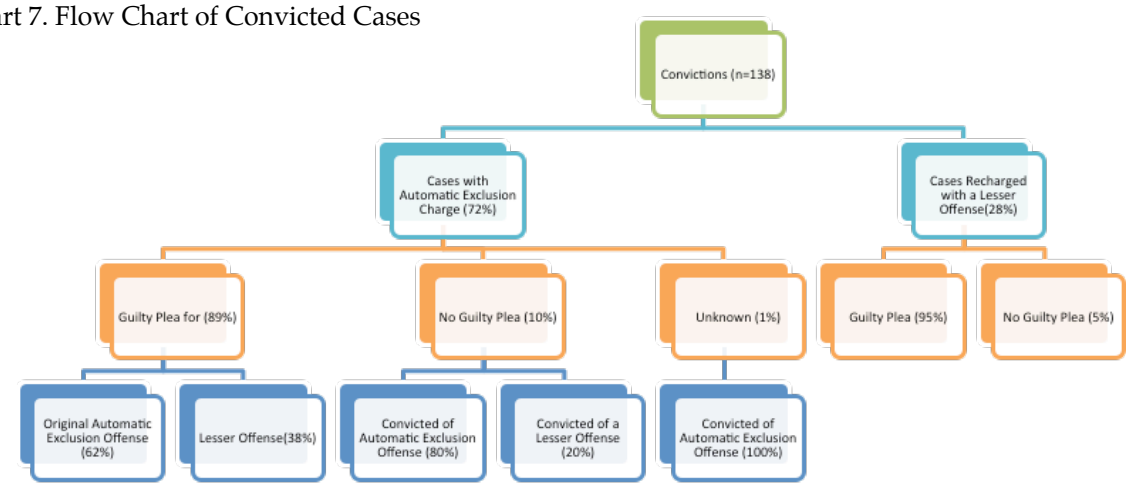


Chart 8. Convictions

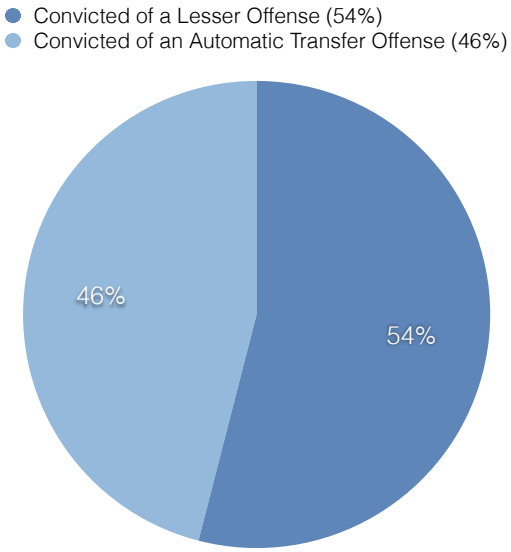


Chart 9. Sentences of Children Convicted as Adults

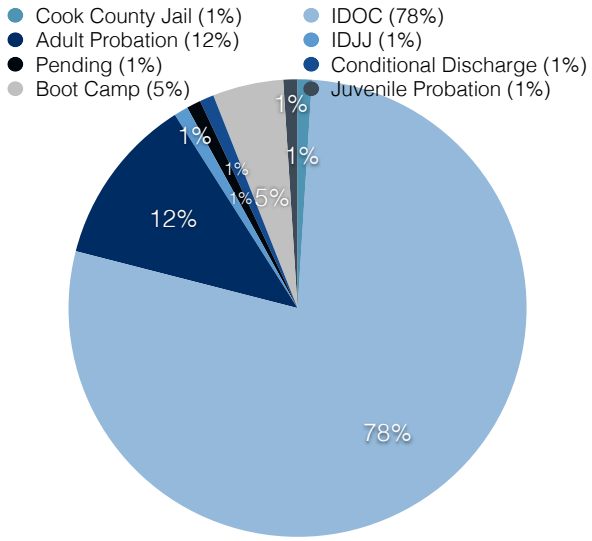
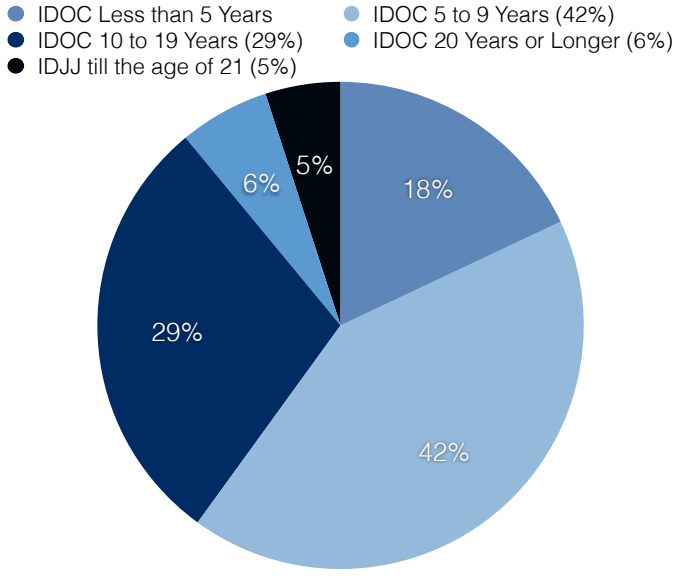


Chart 10. IDOC Sentences



108 received an adult prison sentence [51], and 16 received adult probation. Of the 108 adult prison sentences, five percent were sent to the IDJJ to serve there till the age of 21. 42 percent were between 5–9 years, 29 percent were between 10–19 years, and 6 percent were 20 years or longer. See *Chart 9 and 10*.

CONCLUSION AND RECOMMENDATION

The Illinois system of "automatic transfer," which upon a mere charge sends children into adult court for prosecution and sentencing, is a failed policy. The data reveal the automatic statutory exclusion statute selectively and continually denies one class of children in select zip codes the fundamental right to a mere court hearing on the critical issue of whether to be tried in juvenile or adult court.

These three years of data reveal a startling range of systemic failure throughout the "automatic transfer" process, including:

- Profound racial disparities, with only one white child transferred through the automatic process over a three-year-period;
- Systemic failures, with children trapped in adult court upon the initial arrest and charge despite recharges of lesser offenses prior to a trial, or pleas that should trigger juvenile court sentencing;

and

- Profound geographic disparities, with "automatic transfer" provisions utilized nearly exclusively in a handful of zip codes within the City of Chicago.

Illinois is an outlier – one of only 14 states with such extreme transfer laws, without any possibility of individual review on the critical decision of whether to try a child in juvenile or adult court.

And the United States is an outlier – the only nation to so consistently violate international law requiring children to be tried separately from adults. Indeed, these automatic categories violate U.S. law, as the U.S. has clarified in its reservation to the International Covenant on Civil and Political Rights that the U.S. treats juveniles as adults only in "exceptional" circumstances.

It is particularly startling to realize that these profound disparities have been consistent throughout the life of the automatic transfer laws, for over twenty-nine years. Every research project has consistently documented these disparities, as expressed in the conclusion of the 1993 Illinois Supreme Court Special Commission on the Administration of Justice (the Solovy Commission):

- That increasing numbers of juveniles had been transferred to criminal court over the previous decade without a corresponding deterrent effect, and
- With unintended negative consequences, including an overwhelmingly disproportionate impact upon African Americans and other minorities.

It is time to finally follow the Solovy Commission's recommendations and restore individualized review of children under the age of 18 to determine, on a case by case basis with full due process protections, whether trial in the adult court is the proportionate and last resort.

"[I]t doesn't make sense for us to transfer, indiscriminately, young people to adult court." [53]

Then Senator Barack Obama, January 29, 1998

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ENDNOTE

1. http://www.ilga.gov/senate/transcripts/strans90/ST012998.pdf
2. Age 18 as of January 1, 2014.
3. http://www.ilga.gov/senate/transcripts/strans90/ST012998.pdf
4. *Transfer Laws in Illinois 2002,* https://www.youtube.com/watch?v=fPCunnTa7hI
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6. Id.
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8. 705 ILCS 405/5-4
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11. http://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx
12. Illinois Senate Transcription of Floor Debate on S.B. 1231, May 26, 1982, pages 34-35; http://www.ilga.gov/senate/transcripts/strans82/ST052682.pdf
13. Illinois House Transcription of Floor Debate on S.B. 1231, June 23, 1982, pages 130-139; http://www.ilga.gov/house/transcripts/htrans82/HT062382.pdf; referring to a 1983 study by the Chicago Law Enforcement Study Group.
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20. Id.
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38. Reverse waiver allows a child sent to the adult court to file a motion to have his case heard by a juvenile court judge
39. The states with prosecutorial discretion and/or statutory exclusion and no reverse waiver (i.e., when a child under the age of 18 can petition for a court hearing to return a case to juvenile court) available, are: Alabama, Alaska, Washington D.C., Florida, Idaho, Illinois, Indiana, Louisiana, Washington. Patrick Griffin et al. (2011). *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
40. Children who were arrested and detained as automatic transfer but not transferred to felony court are not included. Only children who had criminal case numbers are included in the sample.
41. Children age 15-16 who are charged with first-degree murder fall under the "automatic" transfer category. The Juvenile Justice Initiative compared the ICJIA's record of children age 15 & 16 who were arrested on first-degree murder over the CY2010-2012 in Cook County with the number of children who were charged with first-degree murder and held pretrial in the JTDC pending adult prosecution. The number of children arrested on first degree murder over the three year period in Cook County (59) was higher than the number of children reported as held in the JTDC (32) pretrial. However, it was impossible to determine how many of children arrested for first degree murder were charged with first degree murder, or how many children arrested for attempted first degree murder were later charged with first degree murder.
42. Based on conversations with Cook County juvenile public defenders, it is impossible to determine which offense is more serious.
43. There was only one non-automatic transfer petition filed from CY2012 to February 2014 in Cook County- it was a discretionary transfer petition, and it was denied.
44. Data labeled 1985 is the yearly average of transferred cases of children age 15 & 16 from 1982 to 1985. Data labeled 1993 is from 11/9/1992 to 3/1/1994 here. From August 2005 to August 2006, 127 children were automatically excluded from juvenile court and from August 2006 to August 2007, 103 children were automatically excluded. Prior to the elimination of drug transfers in 2005, over 300 children were annually automatically excluded from juvenile court.
45. There is a time lag between the time of incident and arrest, the time of arrest and the time of detention admission. JJI only looked at the age at the time of JTDC admissions.
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48. 705 ILCS 405/5-130 (1)(b)(i).
49. There was about a month between the date a child was detained at the Cook County Juvenile Detention center and a date the child's case started at adult felony court.
50. This includes all the children who were convicted – children who were charged with an automatic exclusion offense, and children who were recharged with a lesser offense at the point of an indictment or information.
51. This number includes only sentences to the Illinois Department of Juvenile Justice (IDJJ) and juvenile probation, but excludes the cases where children were sentenced to the Illinois Department of Corrections (IDOC), but sent to the IDJJ until the age of 21. There was one additional child who was sentenced to the IDOC but sent to the IDJJ among those who wereconvicted of a lesser offense.
52. Five of them serve in IDJJ till the age of 21.
53. http://www.ilga.gov/senate/transcripts/strans90/ST012998.pdf

Appendix A. Illinois Transfer Statutes

Statute	Age	Offenses	Type
705 ILCS 405/5-130 (1)(a)	15 - 17	First Degree Murder	Automatic
705 ILCS 405/5-130 (1)(a)	15 - 17	Aggravated criminal sexual assault	Automatic
705 ILCS 405/5-130 (1)(a)	15 - 17	Armed robbery with a firearm	Automatic
705 ILCS 405/5-130 (1)(a)	15 - 17	Aggravated vehicular hijacking	Automatic
705 ILCS 405/5-130 (1)(a)	15 - 17	Aggravated battery with a firearm	Automatic
705 ILCS 405/5-130 (3)(a)	15 - 17	Unlawful use of a weapon on school grounds	Automatic
705 ILCS 405/5-130 (4)(a)	13 & 14	Murder in the course of aggravated criminal sexual assault	Automatic
705 ILCS 405/5-130(5)(a)	Any	Violation of bail bond or escape	Automatic
705 ILCS 405/5-130(6)	Any	Prior adult trial and adult conviction	Automatic
705 ILCS 405/5-805 (1)(a)	15 - 17	Forcible felony with felony conviction and gang activity	Mandatory
705 ILCS 405/5-805 (1)(b)	15 - 17	Felony with prior forcible felony conviction and gang activity	Mandatory
705 ILCS 405/5-805 (1)(c)	15 - 17	Presumptive transfer crime and prior forcible felon	Mandatory
705 ILCS 405/5-805 (1)(d)	15 - 17	Aggravated discharge of a firearm within 1,000 feet of a school	Mandatory
705 ILCS 405/5-805 (2)(a)(i)	15 - 17	Class X felonies other than armed violence	Presumptive
705 ILCS 405/5-805 (2)(a)(ii)	15 - 17	Aggravated discharge of a firearm	Presumptive
705 ILCS 405/5-805 (2)(a)(iii)	15 - 17	Armed violence with a firearm when predicated offense is a Class 1 or 2 felony and gang activity	Presumptive
705 ILCS 405/5-805 (2)(a)(iv)	15 - 17	Armed violence with a firearm when predicated on a drug offense	Presumptive
705 ILCS 405/5-805 (2)(a)(vi)	15 - 17	Armed violence with a machine gun or other weapon in (a)(7) of Section 24-1 of the Criminal Code of 1961	Presumptive
705 ILCS 405/5-805 (2)(a)(vii)	15 - 17	Delivery of a Class X amount of controlled substance on school grounds, on public housing property or any amount within 1,000 feet of a school or public housing when delivery is to a person under age 17	Presumptive
705 ILCS 405/5-805 (3)(a)	13 – 17	Any Offense	Discretionary
705 ILCS 405/5-810	13 – 17	Any Offense	Extended Jurisdiction

Appendix B. Flow Chart of Automatically Transferred Cases, Cook County