



# The Delaware Success Story: Reversing Automatic Transfer of Juviles to the Adult System

## Overview

Delaware law has always allowed for the transfer of juveniles to the adult criminal justice system. For many years, state law allowed juveniles to be tried in Superior Court for a small number of very serious offenses or through a hearing to determine the proper jurisdiction. However, over the last decade, Delaware has joined with almost every other state in enacting legislative changes that have significantly increased the number of juveniles subject to adult criminal sanctions. In 2003, the Delaware General Assembly added to this history by approving a last-minute addition to a comprehensive criminal justice reform bill that increased the number of youth in adult court. The juvenile provisions were tacked on to House Bill 210 as an “afterthought” without collaboration or the support of tested data and went largely unnoticed by advocates, legislators, and juvenile justice professionals alike. However, that didn’t last long. Initial observations suggested the new automatic transfer law was not being utilized as expected and was instead having an unintended and, ultimately harmful, impact. A majority of youth charged under the new provisions youth were ending up back in Family Court instead of Superior Court – often after being detained for long periods of time awaiting disposition. After two years of data collection and analysis, the State published research confirming that a majority of juveniles who were automatically transferred to Superior Court under HB 210 – in particular for the Robbery charge – did not stay there, but were languishing in detention at least twice as long as necessary.<sup>1</sup> With the new data in hand, a Republican legislator in the Delaware Assembly stepped up into a leadership role and brought fellow lawmakers, advocates, judges, prosecutors, public defenders and other juvenile justice professionals together in an effort to correct the injustices resulting from HB 210. In 2005, SB 200 was approved by the Delaware General Assembly, which strictly limits automatic transfer of HB 210 youth to adult court.

Delaware’s success is one example of how state legislatures across the country are reconsidering laws allowing youth to be prosecuted in the adult criminal justice system. This policy brief gives an account of how key stakeholders in the state worked together to reverse a provision in the law that was sending more juveniles to adult court, subjecting them to lengthy and often unnecessary stays in detention. The leadership of an unexpected legislative champion, the collaborative and inclusive approach by stakeholders, and the commitment to a data-based rationale for change offer important lessons for other states seeking to improve their juvenile and criminal justice systems.

June 2009

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## Delaware’s “Tough on Crime” Approach

Following national trends, changes in Delaware law have increased the number of youth in adult court despite a growing body of evidence that shows this policy to be ineffective in reducing juvenile crime. According to the Task Force on Community

Preventive Services at the Centers for Disease Control and Prevention, youth who are transferred to the adult criminal system are 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime.<sup>2</sup> Although transferring youth to the adult system does not reduce recidivism and increase public safety, Delaware – like many other states – has retained a “tough on crime” mentality that has made reform difficult.

### **Automatic Transfer – the HB 210 Story**

Over the last decade, the Delaware legislature has acted to expand the ways in which juveniles can be transferred to the adult system. One of these changes occurred in 2003 when the Delaware legislature passed and the Governor signed into law House Bill 210.<sup>3</sup> HB 210 was a comprehensive criminal justice reform bill that focused largely on reducing mandatory minimum drug sentences in adult court and affording judges greater sentencing latitude at the lower end of the sentencing range. The bill, as introduced, was supported by reform advocates including Stand Up for What is Right and Just (SURJ), a state-wide grassroots organization dedicated to reforming Delaware’s criminal justice system in the areas of sentencing, reentry and treatment. Upon the bill’s passage, the head of SURJ described HB 210 as “a compromise agreement among Delaware’s Attorney General, the Sentencing Accountability Commission (SENTAC) and Stand Up for what’s Right and Just (SURJ) that will reduce prison time for drug and non-violent motor vehicle violators to make sure that expensive and limited prison capacity is saved for the most violent criminals.”<sup>4</sup>

However, unbeknownst to many supporters of the bill and members of the juvenile justice community, a last minute provision was added to the bill which furthered the adultification of juveniles. Unlike the majority of HB 210, these provisions were not fully discussed or supported with an evidence-based rationale by the key stakeholders involved in the system. Rather, the new provisions were a knee-jerk political reaction to incidents involving youth and gun crime in Delaware’s largest city. At the urging of the Mayor of Wilmington and with the support of then-Attorney General Jane Brady, legislators added language to HB 210 at the 11<sup>th</sup> hour that would increase the number of juveniles transferred to the adult system. Specifically, HB 210 transferred original jurisdiction from Family Court to the Superior Court for juveniles who were charged with 1st degree Robbery and/or 1st degree Assault and established a one year mandatory sentence for juveniles who are adjudicated delinquent in Family Court for possession of a firearm during commission of a felony and for 1st degree robbery. According to the legislation, the purpose of the provision was “to combat the alarming rise in the number of armed robberies and violent assaults committed by juveniles.”<sup>5</sup>

While these new provisions received little attention during passage of the bill, once the new law was implemented those working in both the juvenile and criminal justice systems were soon concerned about the unintended consequences of this legislative change. Judges in both the Family and Superior Courts were “shocked and upset” to discover that the new law resulted in children as young as 12 appearing in Superior Court and a large number of youth being ultimately returned to Family Court after lengthy stays in detention awaiting a hearing.<sup>6</sup> The transfer of original jurisdiction for Robbery 1 cases, regardless of the offender’s age, rapidly became the most problematic provision. Instead of trying these cases in Superior Court as the automatic transfer provision in HB 210 dictated, prosecutors were recommending that a majority of these youth be sent to Family Court.

Within months of implementation of HB 210 the population of Delaware's two juvenile detention centers increased dramatically. Youth facing processing in the adult court were detained, in pretrial status, for much longer than those detained for Family Court. On closer examination it became clear that the end result of most of these cases was the same as before the change in the law. The only difference was some very young offenders were being unnecessarily detained for long periods before their cases were resolved.

### **Mobilizing for Change**

Once it became clear what was happening, concerned individuals and groups, including legislators, judges, advocates, and juvenile corrections professionals, began a series of discussions about these new provisions. Annie E. Casey Foundation's Juvenile Detention Alternative Initiative (JDAI), which is committed to reducing the unnecessary confinement of youth, was particularly concerned about the sudden increase in detention stays of HB 210 youth – many of whom were ultimately returned to Family Court for adjudication. Consistent with its mission and strategies for reform, JDAI in Delaware took an early leadership role in bringing stakeholders together to address the problem.

In late 2003, representatives from JDAI, the Juvenile Justice Advisory Group (JJAG) of the Criminal Justice Council, the House Judiciary Committee and others held meetings across the state to discuss the relative value of the new law. Reports of these early conversations suggest that they fell along traditional ideological lines with prosecutors and police defending the new provisions as reasonable and in the interest of public safety and advocates, the court and others claiming that adult court was no place for adolescents and that transferring them to Superior Court would not reduce crime. To move beyond these traditional policy silos, it was clear that the group needed some new information about what was actually happening with these youth.

A coalition of advocacy groups, including leaders from SURJ, the organization that had supported the bulk of HB 210, but not the hastily added juvenile provisions; representatives from JDAI; and others came together in an effort to change the law.<sup>7</sup> An early leader of the effort was Janet Leban, Director of the Delaware Center for Justice, member of the Collaboration for Youth group and SURJ Board Member. According to Leban, Delaware's small size made it easy to round up key members of the juvenile justice community from across the state to work on this issue. While organizing was relatively straightforward, the coalition's goal was formidable; they set out to do something which had not been accomplished in Delaware since the creation of the state's first juvenile court near the start of the 20<sup>th</sup> century - move jurisdiction for some youthful offenders from adult court back to juvenile court.

Because the aim of the group would be unprecedented, members of the newly formed coalition understood that they needed specifics about the impact of HB 210. It would be critical to not only make the larger juvenile justice and public safety policy arguments against the law, but to also demonstrate that expanding automatic transfer law in Delaware was not working as intended. The coalition tasked member Tim Brandau, a former juvenile probation officer and former acting Director Division of

Youth and Rehabilitative Services, to gather some preliminary information about what was happening with youth being held and tried under the new provisions of HB 210; known as “HB 210 Kids”. Brandau presented what he found at a state juvenile justice conference that included Attorney General Brady who had originally supported the inclusion of the youth provisions in the bill.<sup>8</sup>

### **Some Initial Findings**

The Criminal Justice Council gathered some data on juveniles that were impacted by HB 210 in the law’s first 6 months.<sup>9</sup> This study compared juveniles under age 16 charged with 1<sup>st</sup> degree robbery or 1<sup>st</sup> degree assault pre-HB 210 to the same category of juveniles post-HB 210. The Council found that before HB 210, 60% of these youth were found guilty or plead in Superior Court, but that post-HB 210 just 5% of these youth remained in Superior Court. The majority of these youth, approximately 68%, were sent back to Family Court. The report also found that most of these juveniles spent significant time in the New Castle County Detention Center; the average time in detention for HB 210 juveniles originally sent to Superior Court and then transferred back to Family Court was about 199 days, or over 6.5 months.

Staff at the New Castle County Detention Center also tracked “HB 210 Kids” from the time the law was implemented in July of 2003 to August 2004.<sup>10</sup> They included in this tracking juveniles who entered the detention center charged with Robbery 1 or Assault 1, but not juveniles ages 16 or 17 who also had a companion weapons charge since those offenders would have been in Superior Court before the implementation of HB 210. Of the 53 cases tracked, 72% of these youth were transferred back to Family Court. The research also discovered longer-than-average stays in detention for cases that were ultimately resolved in the Family Court including:

- One 14 year old who spent 5 months in detention
- One 13 year old who spent 2 months in detention
- One 12 year old who spent 5 months in detention
- One 12 year old who spent 6 months in detention

After Brandau presented this data, the Criminal Justice Council, the Juvenile Justice Task Force and others requested that the same presentation be given to their members.

### **Juvenile Justice Task Force Steps Up**

The Juvenile Justice Task Force was formed under the leadership of Republican Representative Robert Valihura who also served on the General Assembly’s House Judiciary Committee. Rep. Valihura assembled the Task Force, which included representatives from the advocacy community, the Family and Superior Courts, the prosecutors and public defenders offices, corrections officers, law enforcement, and others to review the concerns raised about the juvenile offender provisions in HB 210. The initial data collected and presented by advocates and the court were enough to compel the Task Force to request an official analysis of the juvenile offender sections of HB 210. Rep. Valihura charged Jack O’Connell, the Director of the Delaware Statistical Analysis Center (SAC), with conducting a comprehensive review. According

to O’Connell, the Task Force was interested in cutting through the various arguments for and against the new provision and seeing what was supported by the data.<sup>11</sup>

As it turns out, members of the coalition were not the only ones who thought the juvenile provisions of HB 210 were misguided. Judge Chandlee Johnson Kuhn, who became the Chief Judge of the Family Court just weeks after HB 210 became law, did not know about the juvenile offender provisions. In the months following enactment of HB 210, Judge Kuhn noted that there appeared to be greater numbers of youth languishing in detention for long periods of time and that a significant number of these youth were ultimately ending up in her court. Deciding to dig deeper, the Judge charged her law clerk to collect information about what was happening with HB 210 kids.<sup>12</sup> Law Clerk Andrea Mills spent several months looking up case files one-by-one to document what was happening to youth detained under the juvenile provisions of HB 210. Delaware does not have an automated system, so this process involved retrieving each file and sometimes multiple files across jurisdictions to get a complete docket. In the end, Mills discovered a pattern similar to what the initial research had shown – longer waits for youth in Superior Court compared to Family Court. She took the information compiled and provided it to Jack O’Connell who verified it and included it in his larger statistical analysis.<sup>13</sup>

This early contribution to data collection from several parties – who were also participants in the Task Force – was critical according to O’Connell. It served to further invest key stakeholders in the process and had several practical implications as well. Because so many outside of the SAC contributed to the data collection, it helped spread out some of the cost involved in this phase of the research and it ensured that the information gathered was complete. It also had a second, equally important, effect – data accuracy. Opposing parties were generally suspicious of information gathered from different sources and there was constant verification of the data received by the SAC. This rigorous process ensured the validity of the results and that the report was trusted by all the stakeholders as complete and accurate. Despite the fact that it was a long and sometimes frustrating process, it produced a quality result that was endorsed by all the key stakeholders.<sup>14</sup>

### **What the Research Said**

After nearly two years, SAC released its report<sup>15</sup> which found the following:

- 60% of the HB 210 cases were ultimately processed By Family Court.
- 26% of the HB 210 cases were never sent to Superior Court, primarily due to the age of the youth. Of the 29 cases involving youth age 14 or younger, only one was processed in Superior Court.
- On average, Family Court processing time for HB 210 cases was about half that of Superior Court. Superior Court disposition took about 6 months versus just three in Family Court.
- HB 210 cases processed strictly in Family Court were detained for less than a month before case disposition.

The research clearly showed that the policy as implemented was unfair – subjecting some youth to unnecessary and often lengthy detention stays. In particular it was also noted that in the select cases where an offender was younger in age and it was a first time offense, they generally spent less than a month in detention unlike youth charged

post-HB-210 who could be detained for as long as a year before any final disposition of their case. The study also helped inform some supporters of the policy that they were not even utilizing the law. For example, according to O'Donnell, prosecutors had no idea they were pleading down so many cases, even when there was a gun involved.<sup>16</sup>

### **Reform Through Collaboration and Leadership**

With the new report in hand and the leadership of a respected legislator, the Task Force was able to engage a collaborative conversation on next steps. The SAC report showed clearly that there was a problem with HB 210 juvenile offender provisions, and now the issue for the group was to come up with a recommendation for the legislature to address the problem. The lengthy detention of youth in Superior Court, coupled with the fact that a large percentage of youth were ultimately transferred to Family Court making this detention unnecessary and potentially harmful were the most compelling findings. Ultimately, the group rallied around SB 200, legislation that would modify the juvenile offender provisions from HB 210 by limiting original jurisdiction to 1<sup>st</sup> degree robbery cases involving juvenile defendants that had a prior felony adjudication and where the robbery involved the display of a deadly weapon or serious injury is inflicted as part of the crime.<sup>17</sup>

SB 200 was approved unanimously by the General Assembly in June of 2005. Rep. Valihura's leadership was viewed by all as key to this success.<sup>18</sup> At the time, Republicans had the majority in the General Assembly and Rep. Valihura was very well-respected by his colleagues in the legislature and across the diverse perspectives represented in the Task Force. With reliable, pertinent research in hand, Rep. Valihura was able to break through the traditional political rhetoric surrounding the issue and keep the discussion focused on the specific problem at hand. As Task Force participant Janet Leban noted, "people who see political issues through tunnel vision saw broadly enough in this case to vote for SB 200."<sup>19</sup>

### **Lessons Learned**

By all accounts the legislative effort to pass SB 200 was unique to Delaware, but there are lessons to be learned for lawmakers and advocates alike. This success clearly came from a willingness of all parties to cooperate and work together to formulate a solution that better served Delaware youth without compromising public safety. Legislative leadership, comprehensive collaboration and the collection of credible data are key elements of this success story that can inform reform efforts in other states.

While leadership can come from many places and in many forms, some of the most effective leadership can come from a strong legislative champion backed by the advocacy community and the juvenile justice system professionals. As chair of the Task Force, Rep. Valihura was instrumental in bringing everyone to the table, initiating the research to help inform the discussion, convening conversations about a solution and leading the effort to get the legislation passed. In this instance, a seasoned lawmaker emerged not only as a legislative champion for SB 200, but as a leader on the larger issue.

For SB 200 to succeed, it also needed to be grounded in specific information about the juveniles in Delaware who were impacted by HB 210 and that data had to be trusted as valid by all the parties involved. As one participant in the process noted, "it's hard

to get stuff through if you are just telling stories.”<sup>20</sup> States seeking reform should factor in the capacity to provide credible, local information about the policy change being sought and look at creative ways to share resources to get to job done.

Finally, this effort succeeded because all the stakeholders were at the table and involved in the process. By working through the data and crafting the legislative solution to the problem together, people reached across individual silos and developed a trust that carried through the process and beyond. As a result of the HB 210/SB 200 process, the way of work has changed in the state. There is now more conversation between stakeholders about policy ideas and proposed changes before they occur; there is a greater respect for everyone’s role; and there is a more collaborative spirit in addressing delinquent youth and reducing juvenile crime.

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<sup>1</sup> Rodriguez-Labarca and John O’Connell. (2005) “*An Analysis of the Implementation of House Bill 210: The Juvenile Offenders Sections*”. A report of the Delaware Statistical Analysis Center, State of Delaware Document Number: 100208-050504.

<sup>2</sup> Centers for Disease Control and Prevention. (2007). *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*. MMWR 2007; 56 (no. RR-9). Washington, DC: U.S. Government Printing Office. Retrieved March 19, 2008 from <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>

<sup>3</sup> 74 Del. Laws c. 106 § 27, 28.

<sup>4</sup> Press Release, “Delaware Passes Drug Sentencing Reform Bill,” Stand Up for what is Right and Just, July 3, 2003. Retrieved from the internet on January 22, 2009 at <http://www.surj.org/hb210pr.htm>.

<sup>5</sup> HB 210, Delaware General Assembly, July 2003.

<sup>6</sup> Interview with Tim Brandau, CHILD, Inc. and Co-chair of the Collaboration of Youth, August 12, 2008.

<sup>7</sup> Interview with Janet Leban, Director, Delaware Center for Justice, August 5, 2008.

<sup>8</sup> *Id* at note 6.

<sup>9</sup> Riblett, Gail. “Changes in Juvenile Sentencing Following H.B. 210: Report to SENTAC” (2004)

<sup>10</sup> McGonigal, Alison. Unpublished data on youth at the New Castle County Detention Center. (2004)

<sup>11</sup> Interview with Jack O’Donnell, Director of the Delaware Statistical Analysis Center (SAC), August 19, 2008.

<sup>12</sup> Interview with Chief Judge Chandlee Johnson Kuhn, Family Court of the State of Delaware, January 5, 2009.

<sup>13</sup> Interview with Andrea Mills, Director of Special Court Services and former Law Clerk to Chief Judge Chandlee Johnson Kuhn, January 15, 2009.

<sup>14</sup> *Id* at note 11.

<sup>15</sup> *Id* at note 2.

<sup>16</sup> *Id* at notes 11 and 15.

<sup>17</sup> SB 200, Delaware General Assembly, June 2005.

<sup>18</sup> *Id* at notes 6, 7, 11 and 12.

<sup>19</sup> *Id* at note 7.

<sup>20</sup> *Id* at note 13.