



# The Illinois Success Story: Reducing Racial Disparity through Transfer Reform

## Overview

Illinois has always been on the forefront of juvenile justice policy and has the proud distinction of establishing the first juvenile court in the world in 1899, which recognized the fundamental differences between youth and adults. However, in the early 1980s and 1990s, the state retreated from this leadership role by being one of the first states to pass laws to automatically try youth in adult court for a range of offenses, including drug offenses. These policies subsequently proved to be racially biased, as research demonstrated the overwhelming disproportionate impact on minority youth making the law “the most racially biased drug transfer law in the Nation.”<sup>1</sup> Fueled by concern over the growing number of minority youth in adult court charged with non-violent drug offenses, the Illinois General Assembly moved to revamp Illinois’ drug transfer policies. House Bill 4129 (now Public Act 92-0665), a bill allowing non-class X drug offenders to petition the adult court judge for a reverse waiver hearing to go back to juvenile court for trial and sentencing, took effect on January 1, 2003. The following year, a legislative task force recommended that original jurisdiction over all drug laws be returned to juvenile court. The Illinois General Assembly agreed and on August 12, 2005, Governor Blagojevich signed PA-94-0574 into law, repealing Illinois’ nearly 20-year policy of automatically transferring youth charged with drug offenses to adult court.<sup>2</sup>

Nearly four years later, automatic transfers in Cook County have gone down by more than two-thirds without any corresponding increase in juvenile caseloads. The first year after PA 94-0574 took effect, the number of youth automatically transferred in Cook County went down by approximately two-thirds, from 361 in 2003 to 127 in 2005-2006. There was no corresponding increase in juvenile court petitions or judicial waivers to adult court. This same rate of reduction held steady in the second year, with the number of youth automatically transferred in Cook County declining from 361 in 2003 to 103 in 2006-2007. Again, there was no corresponding increase in juvenile court petitions or judicial waivers to adult court. The absence of any increase in juvenile court caseloads after the law went into effect shows that the rollback of Illinois’ drug transfer law had no detrimental effect on public safety.

Illinois’ 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 documents changes made to the automatic transfer law in Illinois and the positive impact of the reforms. Illinois was one of the first states to allow automatic transfer of youth, was one of the first to re-think its policies, and is now the first to demonstrate through research the impact of transfer reform. Illinois lawmakers have recognized the failed policies of transferring drug offenders to adult court and have taken steps to ensure a more fair and appropriate way to treat and rehabilitate Illinois youth without a negative impact on public safety.

*June 2009*

By Elizabeth Kooy \*

## **From First to Worst: Illinois' Shift in Juvenile Policy**

In the late 18<sup>th</sup> 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.<sup>3</sup> During the 19<sup>th</sup> century, a movement emerged to reform the system dealing with juvenile offenders. In 1899, the first juvenile court was established in Chicago, Illinois. The purpose of the juvenile court was to provide necessary treatment and guidance—not punishment—to enable juvenile offenders to become fully rehabilitated members of society.<sup>4</sup>

In 1982, the Illinois General Assembly adopted legislation providing for the automatic transfer to adult court of youth aged 15 and 16 charged with violent offenses, including murder, armed robbery with firearm, rape and deviant sexual assault. During the mid-1980s, the automatic transfer legislation was expanded to include 15- and 16-year-olds charged with drug offenses within 1,000 feet of a school and later within 1,000 feet of public housing. This “tough on crime” legislation was promoted in response to statistical data showing an increase in drug crime by teenagers. It was also intended to help solve the problem of older gang members using young teenagers to sell drugs. Virtually everyone believed that automatic transfer for drug offenses would solve the teenage crime problem, even the public housing communities advocated for the drug transfer law. There was only a small contingent of children’s rights advocates who argued that the law was inherently unfair and would end up causing more problems for youth and the criminal justice system. Instead, they argued, these youth should remain in the juvenile court where they could benefit from rehabilitative programs and services.

Over the next several years the Illinois General Assembly further expanded the automatic transfer statute and added presumptive waiver<sup>1</sup> for most Class X offenses, resulting in one of the most extensive transfer statutes in the nation.<sup>5</sup>

### **Chipping Away at the Wall**

In the early 1990’s, advocates became concerned about the growing number of non-violent juveniles prosecuted in the adult court system. A series of studies revealed that an increasing proportion of automatic transfers involved non-violent drug offenses—and impacted only minority youth.<sup>6</sup> For example, in 1993 the Illinois Supreme Court Special Commission on the Administration of Justice (The Solovy Commission) reported 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. Moreover, most of these youth were receiving adult probation as a sanction without any specialized services to meet their needs. Despite statistics showing the clear bias against minority youth, children’s rights advocates were unable to generate interest in the Illinois Legislature or public support

---

<sup>1</sup> Presumptive Waiver -Where the county or district attorney seeks to prosecute a child who meets certain statutory criteria (such as age/offense/prior record). If required statutory criteria are met the court will assume that prosecuting the child as an adult is appropriate and the child’s case will be transferred to criminal court unless the child can make an adequate argument to the juvenile court as to why the transfer should not occur. Automatic Waiver - Where a child who meets certain statutory criteria (such as age/offense/prior record) is automatically transferred to criminal court to be prosecuted as an adult.

for a change in the law. Many communities still believed that the law would help solve the drug problem. Supporters of the legislation maintained that in order to see the positive effect of the law, Illinois had to continue treating juvenile drug offenders as adults. They believed that once youth understood that they would be prosecuted as adults, they would stop engaging in drug crimes.

A legal challenge to the automatic transfer provision involving minors charged with drug offenses within 1000 feet of public housing also failed. In the early 1990's, an Illinois trial court found that the automatic drug transfer law was unconstitutional based on an equal protection claim. Lawyers argued that the law was applied solely to youth of color because public housing was mostly comprised of low-income minorities. A Cook County judge, presented with statistics showing that no white youth was ever charged with an automatic drug transfer offense, agreed and declared the 1000-foot transfer statute unconstitutional. However, in 1994 the Illinois Supreme Court overturned the decision.<sup>7</sup>

The disparate impact of these automatic transfer policies troubled then State Senator Barack Obama. Legislative comments by Obama on the Illinois Senate floor during debates over the passage of a revised juvenile code reveal that he was particularly concerned about the failure of the bill to address the automatic transfer issue. During debate he stated "that too often sending [youth] to adult court and giving them adult sentences may simply be sending them to criminal finishing school..." He went on to say that "It is not the kind of state I want to live in, where we are afraid of our children and we are continually building more prisons, as opposed to building more schools."<sup>8</sup>

Ultimately, a study of youth automatically transferred to adult court in Cook County from 1999-2001 helped focus attention on the need to reform the state's transfer laws. The data revealed that virtually all (99.6%) of the youth subject to automatic transfer 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 youth automatically transferred were in the adult court for non-violent drug offenses. Moreover, close to two-thirds of the youth 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 –over 90% of youth convicted for drug offenses received either a sentence of probation or boot camp. All, however, suffered the consequences of a criminal conviction.<sup>9</sup>

Research also showed that these laws were used primarily in Cook County. Automatic transfers outside of Cook County were far fewer than in Cook County despite higher arrest rates in those other counties. In 2001, only 14 youth were automatically transferred outside of Cook County compared to 438 in Cook County. Only two youth outside of Cook County were charged with a drug offense. These statistics forcefully demonstrated that the automatic transfer statutes were applied unequally and disproportionately in cases involving youth of color in Cook County.

### **Unleashing the Truth: The First Legislative Attempt for Change**

With the data, advocates went to State Representative Barbara Flynn Currie in January, 2001, and persuaded her to sponsor a bill to remove all drug offenses from the automatic transfer statute. House Bill 1028 was the first legislative attempt at

challenging the automatic drug transfer law. Approximately 15 organizations — from the ACLU to the Catholic Conference — supported the legislation. The bill not only sparked debate within the legislature but also increased public awareness of the unfair and biased impact of the automatic transfer statute. The Illinois State Attorneys' Association opposed the bill and was successful in casting the bill as a significant "softening" on crime. Although HB 1028 did not pass, many legislators were outraged at the impact of the automatic transfer provision.

### **Groups Weigh In: Advocates Working for Change**

Simultaneously with the introduction of HB 1028, Illinois groups began to mobilize to bring about change. The Juvenile Justice Initiative (JJI), a statewide coalition of state and local organizations which seeks to transform the juvenile justice system in Illinois by reducing reliance on confinement, enhancing fairness for all youth, and developing an adequate range of community-based resources, was instrumental in bringing the debate to the forefront of criminal justice policy in the state. Many groups put transfer policy on their agendas and began to think creatively about how to challenge the existing law. More importantly, advocates throughout Illinois framed a consistent message about Illinois transfer policies — that they were racially biased, unnecessary, and unfair. A variety of groups — including the League of Women Voters, Illinois State PTA, Illinois State Bar Association, and ACLU of Illinois — all supported a complete removal of all drug offenders from the automatic transfer statute.

The JJI created a videotape of judges, advocates, and youth supporting the challenge to the automatic transfer laws. This video was released with a press conference to support the legislative challenge to the law.

National organizations and coalitions, including Building Blocks for Youth, also weighed in, characterizing the Illinois drug transfer law as the most racially biased youth drug law in the nation. Building Blocks contracted with its partner, the Justice Policy Institute (JPI), to research a report about the automatic transfer laws in Illinois. Working closely with the Juvenile Transfer Advocacy Unit, an advocacy unit developed by the Law Office of the Cook County Public Defender, JPI prepared a report that included Illinois statistics within a national context.<sup>10</sup> Additionally, Building Blocks for Youth, through the Youth Law Center and the Justice Policy Institute, as well as Illinois groups, organized an education campaign about the racial disparity in drug transfers.<sup>11</sup> The report and the press coverage encouraged others to join in the movement to change the transfer laws.

### **Overcoming the State's Attorney's Legislative Response**

Realizing that there was a problem with the current state of the transfer law, the Cook County State's Attorney submitted a bill to repeal part of the drug transfer law but not all of it. In addition, the state's attorney's office asked for an *increase* in automatic transfer offenses to include more gun offenses. House Bill 2087, sponsored by Representative Art Turner, allowed for juveniles charged with possession with intent to deliver to be charged originally in juvenile court and not as automatic transfers. At the same time, it expanded the automatic transfer statute by providing for three gun offenses to become automatic transfers. Advocates opposed the bill, but it passed the Judiciary Committee and the full House. However, youth advocates continued lobbying

against the bill and it eventually died in the Senate. Rep. Art Turner remained a strong champion for reform of automatic transfer laws.

### **The Second Legislative Attempt**

Advocates realized that change in the Legislature was going to be more difficult than initially expected. They decided that getting a judicial review for each juvenile, whether in juvenile or adult court, would begin to correct the biased nature of the law. House Bill 4129, sponsored by Representative Currie, was the vehicle to gain changes in the legislature. HB 4129 originally allowed for reverse waiver for *all* automatic transfer offenses. That would mean that all youth who were automatically charged as adults could move for a hearing in adult court to determine if they could be waived back to the juvenile court for trial and sentencing. The bill was modified throughout the legislative session to allow for non-class X drug offenders to petition the adult court judge for a reverse waiver hearing to go back to juvenile court for trial and sentencing. A class X felony is the highest level of felony (except for murder) and requires mandatory prison time. Current law provides that possession of over 15 grams of a controlled substance such as heroin or crack cocaine is considered a class X felony. However, the “within 1,000 feet” provision enhances all felonies one class. Thus, any amount over *1 gram* and within 1,000 feet is considered a class X felony.

HB 4129 was passed in the House by a vote of 65-46-1 and passed in the Senate by a vote of 43-11-1. One of the hallmarks of the legislation was its strong support by legislative champions like Rep. Currie and Rep. Turner. Another important dynamic was the bill’s bi-partisan support. Governor Ryan approved the Bill in July, 2002, and Public Act 92-0665 took effect on January 1, 2003.

### **Reform Through Collaboration**

Although reform legislation was now in place, it was incomplete. In 2004, the Illinois General Assembly created the Task Force on Trial of Juveniles in Adult Court to study and make recommendations for improvements in laws transferring juveniles from juvenile court to adult court for criminal prosecution.<sup>12</sup> Members of the Task Force included legislators, a prosecutor, a juvenile justice professional, as state bar leader, and a corrections official.<sup>13</sup> Over the next year the Task Force met several times and received testimony from national experts on adolescent development and transfer policies; from stakeholders, including court personnel; and from community members, including victims of violent crime.

Ultimately, the Task Force agreed on legislation that included the following provisions:

- Allowed youth charged with drug offenses to begin cases in juvenile court; if youth were on school grounds and sold drugs to someone under age 17, the cases would be presumptive transfers.
- Standardized lists of factors for judicial discretion for transfer on discretionary transfer, presumptive transfer, and extended jurisdiction juvenile prosecutions.
- 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 (i.e. accomplice liability).<sup>14</sup>

The compromise legislation, SB 283, was passed unanimously in both chambers and signed by Governor Blagojevich on August 12, 2005, becoming PA-94-0574. Illinois was one of the first states to allow automatic transfer of youth; was one of the first to re-think its policies; and now is the first to research the impact of transfer reform.

### **The Substantial Impact**

The first year after PA 94-0574, the number of youth automatically transferred in Cook County went down by approximately two-thirds, from 361 in 2003 to 127 in 2005-2006. There was no corresponding increase in juvenile court petitions or judicial waivers to adult court. This same rate of reduction held steady in the second year, with the number of youth automatically transferred in Cook County declining from 361 in 2003 to 103 in 2006-2007. Again there was no corresponding increase in juvenile court petitions or judicial waivers to adult court. The absence of any increase in juvenile court caseloads after the law went into effect strongly strengthens that the rollback of Illinois' drug transfer law had no detrimental effect on public safety.

### **Cook County Data by Charge**

In 2003, prior to the transfer law change, Cook County automatically transferred 361 youths to the adult court system for trial.<sup>15</sup> In that year, 62.5% were charged with drug offenses and 26% were charged with violent offenses, including sexual assault, armed robbery, carjacking, murder, and aggravated battery with a firearm. Four percent (4%) were charged with gun offenses; 4% were charged with other offenses including "once transferred always transferred"; and 2% had unknown transfer charges. This data is consistent with data from 1999 through 2001 which showed that approximately two-thirds of automatic transfers involved drug offenses and only one-quarter were for violent offenses.<sup>16</sup>

In the first year after adoption of PA-94-0574, the number of automatic transfers in Cook County decreased by almost two-thirds, from 361 to 127.<sup>17</sup> With drug offenses mostly back in juvenile court (4% remaining automatic transfers that year), the composition changed to ninety one percent (91%) charged with violent offenses.

In the second year post- PA 94-0574 there were 103 transfers, -- a two-thirds decrease over 2003 data. Only 2% (2 youth) involved drug offenses, while 92% (95 youth) of automatically transferred youth were charged with violent offenses.

Cook County experienced no increase in discretionary, presumptive, mandatory or extended jurisdictional juvenile prosecutions in either the first or second year. In addition, no youth was petitioned to be transferred to adult court for drug offenses.<sup>18</sup> The caseload in Cook County also showed no increase in petitions despite the change in law. From a 10 year period on delinquency petitions in Cook, the first full year of change in the law (2006) shows a decrease in delinquency petitions filed in Cook County. Many of these youth were likely diverted out of the court system or not prosecuted since past research showed that many of these youth were first time offenders.

## **Transfers By Race in Cook County**

Prior to the transfer law change, virtually all youth being automatically transferred to adult court were youth of color. In 2003, 99% were African American or Latino and 1% (4 youth) were Caucasian. None of the Caucasian youth were charged with a drug crime. The first year post- PA 94-0574, 94% were minority youth and 6% (7 youth) were Caucasian- all were charged with violent offenses or gun charges. The second year post PA 94-0574, 98% were minority youth and 2% (2 youth) were Caucasian. Neither was charged with a drug crime. While minority youth are still impacted by the new laws there are far fewer minority youth in the adult system as a result of this law.

## **Lessons Learned**

Two years of data on the impact of the transfer law change resulted in a decrease in the number of youth who were automatically transferred to adult court nearly all of whom were youth of color residing in Cook County. And, although individual drug cases involving youth could have been judicially waived to criminal court even after the change, that has not seemed necessary. There was no increase in judicial transfers to adult court following the reform, in Cook County or elsewhere in the state.

In collaboration with juvenile justice stakeholders and advocates, Illinois lawmakers were able to recognize the failed policies of transferring drug offenders to adult court and take the necessary steps to ensure a more fair and appropriate way to treat Illinois youth. Without a negative impact on public safety, Illinois lawmakers have succeeded in making rehabilitation of Illinois youth a high priority.

Since this success, Illinois legislators have continued to work in bi-partisan collaboration to further reform the state's juvenile justice system. In 2008, the Illinois Legislature continued to make improvements in the way it treats its youth in conflict with the law. SB 2275 passed both chambers allowing 17-year-olds charged with misdemeanor offenses to be tried in juvenile court instead of adult court. It was signed into law by Governor Patrick Quinn in February of 2009. Since 1906, Illinois has charged all 17-year-olds as adults. This legislation is the first step in raising the age of juvenile court in Illinois and will take effect on January 1, 2010. The legislation also calls for a task force to examine bringing 17-year-olds charged with felonies back into the jurisdiction of juvenile court.

Illinois' story demonstrates that reform based on solid research, meaningful collaboration and vigorous advocacy can result in the more just treatment of youth in trouble with the law, without sacrificing public safety.

On the basis of these results, it is also reasonable to assume that further reforms of Illinois transfer laws and the reform of transfer laws in other states could introduce more flexibility, individualization, and developmentally appropriate handling without compromising public safety. Other state legislatures can learn from Illinois' example to enact reform in their states.

---

<sup>1</sup> Ziedenberg, Jason, "Drugs and Disparity: The Racial Impact of Illinois' Practice of Transferring Young Drug Offenders to Adult Court." Washington, DC: Building Blocks for Youth, May 2002.

<sup>2</sup> Public Act 94-0574 available at

---

<http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=094-0574&GA=094>

<sup>3</sup> Juvenile Offenders and Victims: 2006 National Report, 94, available at:

<http://www.ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/chapter4.pdf>

<sup>4</sup> *Id.*

<sup>5</sup> 705 ILCS 405/5-120, 705 ILCS 405/5-130, 705 ILCS 405/5-805, 705 ILCS 405/5-810.

<sup>6</sup> A series of research projects and newspaper reports showed increasing numbers of minorities in adult court and more drug offenders - *Juvenile Injustice and Automatic Adult Offense Hurts Kids, Not the Gangs*, Deborah Nelson, Chicago Sun Times series, Spring 1992; *Jailing Juveniles*, Steve Bogira, 16 APF Reporter No. 1; *A Case for Reinventing Juvenile Transfer*, Elizabeth Clarke, Juvenile and Family Court Journal, Vol. 47, No. 4, Fall 1996; and *The Numbers: Minorities Hit Hardest*, Sarah Karp, The Chicago Reporter, May, 2000.

<sup>7</sup> The Public Housing Transfer provision was upheld by the Illinois Supreme Court in People v. R.L., 158 Ill.2d 432 (1994)

<sup>8</sup> SB 363, Illinois Senate Floor Debate, January 29, 1998.

<sup>9</sup> Kooy, Elizabeth, *The Status of Automatic Transfers to Adult Court in Cook County, Illinois*, Law Office of the Cook County Public Defender, Chicago, Illinois, August 2001.

<sup>10</sup> Building Blocks released *Drugs and Disparity — The Racial Impact of Illinois' Practice of Transferring Young Drug Offenders to Adult Court*, by Jason Ziedenber, on April 25, 2001

<sup>11</sup> Groups include the Juvenile Justice Initiative, the Cook County Public Defender's Office, Northwestern's Children and Family Justice Center, and the Mandel Legal Aid Clinic

<sup>12</sup> 93<sup>rd</sup> Illinois General Assembly, SJR53, available at

<http://www.ilga.gov/legislation/BillStatus.asp?Docnum=53&GAID=3&DocTypeID=SJR&LegId=12272&SessionID=3&GA=93>

<sup>13</sup> Senator John Cullerton and Representative Annazette Collins were the Co-chairs of the task force. Other members include Senator Dale righter. Representative Patricia Bellock, Cook County State's Attorney Richard Devine, Elizabeth Clarke, president of the juvenile Justice Initiative, Daniel Houlihan of the Illinois State Bar Association, and Roger Walker director of the Department of Corrections.

<sup>14</sup> Under Illinois' theory of accountability, one is criminally responsible for the conduct of another if he or she aids, or attempts to aid, the other in the commission of a crime with intent to facilitate the commission of that crime.

<sup>15</sup> Data was obtained by searching through all Cook County Juvenile Temporary Detention Center intake sheets and reviewing all of the possible automatic transfers in the Circuit Court Clerk System. Approximately 30 more individuals came into the detention center as automatic transfers that year, however upon subsequent review of their cases, they were not new cases (warrants) or they were not in fact automatic transfers. Data dates were January 1, 2003 through December 31, 2003.

<sup>16</sup> Kooy, Elizabeth, *The Status of Automatic Transfers to Adult Court in Cook County, Illinois*, Law Office of the Cook County Public Defender, Chicago, Illinois, August 2001

<sup>17</sup> The first year of statistics includes the following dates – August 12, 2005 through August 11, 2006. The second year of statistics includes the following dates – August 12, 2006 through August 11, 2007.

<sup>18</sup> The Law Office of the Cook County Public Defender and the Clerk of the Circuit Court of Cook County records.