

Policy Brief

Charging youths as adults in California: A county by county analysis of prosecutorial direct file practices¹

By

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Abstract

This report examines county by county prosecutorial direct file practices between 2003 and 2010 to determine whether Proposition 21 (2000) has resulted in more commitments of youths to state institutional facilities than would have occurred otherwise. In light of these historic trends the report also reflects on the potential effect that the Governor's proposed closure of the state's Division of Juvenile Facilities (DJF)² would have on prosecutorial direct file practices in California.

The Center on Juvenile and Criminal Justice (CJCJ) finds that at least two-thirds of direct files do not result in state DJF or adult prison terms. Prosecutorial direct file has not proven an effective means of securing state prison sentences for youthful offenders compared to previously existing mechanisms, such as judicial transfer after juvenile court fitness hearings. While CJCJ was unable to determine the exact numbers of direct file cases that resulted in transfer from DJF to state prison at age 18, the number appears small and has declined sharply over the last three years. In addition, frequent usage of direct file appears to have no effect on crime compared to infrequent usage.

Few areas of the juvenile justice system are more controversial than the practice of transferring youth to adult court for criminal prosecution. The passage of Proposition 21 (2000) provided California's district attorneys with unprecedented new powers to increase the number of youth subject to adult court prosecution. The rationale used to support this policy was based on the belief that the imposition of harsher treatment and lengthy adult prison sentences would deter future criminal behavior. Despite an overwhelming body of new research showing that exposing youth to the adult prison environment actually exacerbates criminal propensities, the use of direct file in California has expanded over the past 10 years. However, as this study reveals, once youth are transferred to adult court, two-thirds are not receiving state prison sentences, but instead are receiving lighter sentences in county jails where they have access to fewer services than youth who remain in the juvenile justice system.

Perhaps one of the most troubling aspects in the use of direct file revealed in this study is the vast disparity between counties in its application. The data reveals that a small number of California counties are responsible for the vast majority of adult court transfers and that the practice is unrelated to population or crime rates. Of particular importance to current discussions about the closure of the state's three remaining youth correctional institutions, there is no relationship between county use of state youth correctional facilities and adult court transfer.

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CJCJ Executive Director

¹ After the release of this publication, the Department of Justice (DOJ) acknowledged a discrepancy in the direct file data submitted by Yolo County's Probation Department during the period 2003-2010. DOJ is currently investigating if this discrepancy extends to other California counties. CJCJ will be revising this publication's tables, discussion, and findings as soon as the corrected data becomes available. March 2, 2012.

² The 2005 reorganization of the Youth and Adult Correctional Agencies into the CDCR created the Division of Juvenile Facilities (DJF). The DJF is commonly referred to as the Division of Juvenile Justice (DJJ). This report uses the Division of Juvenile Facilities.

The overall statewide increase in direct file rates during 2003-2010 is attributable to a select group of counties, whose prosecutors utilize direct file significantly more than the state average. This increase in direct file rates is not correlated to county juvenile court commitments to DJF. In addition, county commitments to DJF varied significantly and declined greatly during the period. The data suggests there are 7 counties that continue to heavily rely on the state system through both high rates of juvenile court DJF commitments and prosecutorial direct filing and may require significant local capacity building if DJF were to be eliminated.

Data and method

The Criminal Justice Statistics Center (2012, 2011) provides direct file data for the 2003-10 period, as well as juvenile felony arrests, for the 35 counties with 100,000 population or more in 2010, which account for 98% of direct files (the 23 less populous counties are aggregated). The Division of Juvenile Facilities (2011) provides new and total commitments of youths to state DJF facilities by county, type of commitment, age, race, offense, movement, and transfer status. A median value was calculated for both the rate at which county prosecutors utilized direct filing (10.1 per 1,000 felony arrests for age 10-17) and the rate at which county juvenile courts committed youth to DJF (9.0).

Background

California has always had a mechanism for prosecuting juveniles who were charged with the most serious violent offenses in adult criminal court. The decision-making authority for this mechanism has historically rested with juvenile court judges, through a process known as a fitness hearing. In 2000, Proposition 21 created the prosecutorial power to directly file charges against juveniles in adult criminal court under a variety of circumstances without first obtaining the permission of the juvenile court. Some juvenile justice and prison reform advocates feared two outcomes as a result of this new prosecutorial power: (a) increased use of adult court to obtain youth commitments to DJF, and (b) increased use of adult court sentencing to transfer more juvenile offenders to state adult prisons after age 18.

Youth who are tried and convicted in adult criminal court face an array of possible sentences. These individuals may be sentenced directly to DJF by the adult criminal court just as juvenile courts do. Alternatively, if the juvenile offender is under 18 years old, the adult court can sentence him or her to the adult institution but house them in DJF. These are called “M” cases. If the adult court makes no determination of where the under-18 youth will be housed, under an agreement between the juvenile and adult divisions, these youth are admitted to DJF until they become 18, when they are transferred to adult prison unless they can complete their sentence before the age of 21. These are known as “E” cases.

In adult court, at least two-thirds of direct files did not result in state DJF or adult prison terms.

(DJF, 2012; CJSC, 2003-2010)

Direct files and DJF commitments by county

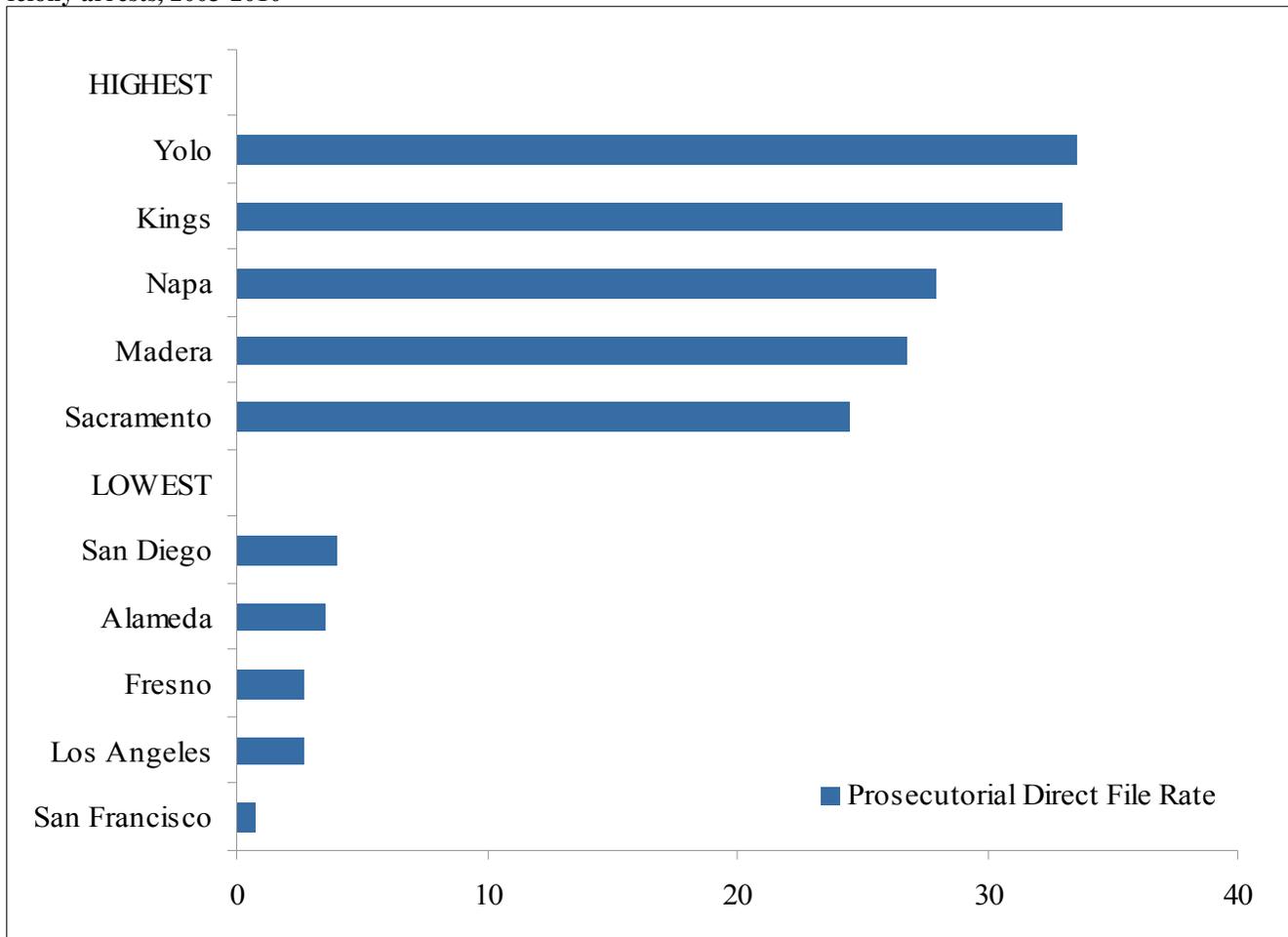
The youth population at DJF has been steadily decreasing, from a peak of approximately 10,000 youth in 1996 to 1,082 youth as of December 31, 2011 (DJF, 2003, 2011). The number of youth committed to DJF by juvenile courts decreased by 55% over the 2003-2010 period. This suggests that either juvenile courts were sentencing their high-risk serious offenders to county-based alternatives, or that juvenile courts and prosecutors were sending those offenders to the adult courts.

During the same period, prosecutorial direct file rates doubled (CJSC, 2003-2010). However, these trends varied greatly across California’s 58 counties. Some counties, like Kern, showed increases in DJF commitments by both adult and juvenile courts; while others, like Alameda, San Francisco, and San Diego, showed decreases in both; and most counties showed an increase in adult court commitments to DJF and a decrease in juvenile court commitments to DJF. However, while it is possible that some prosecutors began to use direct file as a response to the decrease in juvenile court commitments to DJF, the effect has been small; since 2003 adult court commitments to DJF have replaced just one-fifth of the very large decline in juvenile court commitments.

In adult court, approximately 60% of youths received a sentence not requiring a state institutional commitment; including at least two-thirds of direct filed youth (DJF, 2012; CJSC, 2003-2010). During 2003-2010, adult court sentencing to DJF increased by 69%, and then decreased significantly in 2010. Overall, rates of commitment to DJF by juvenile and adult courts combined decreased by half.

During the 2003-10 period, California counties’ prosecutors varied nearly 50-fold in their use of direct file, from 91 direct files per 1,000 juvenile felony arrests in Modoc County (nearly 10 times the state average of 9.3) to 0.7 in San Francisco County. Four smaller counties’ prosecutors did not utilize direct file at all during this period.

Figure 1. Five highest and five lowest direct filing counties with 100,000+ populations, direct files per 1,000 juvenile felony arrests, 2003-2010



Sources: Division of Juvenile Facilities (2011); Criminal Justice Statistics Center (2011, 2012). Notes: Ventura County has not reported direct files; Sierra, Mariposa, Del Norte, and Alpine counties reported no direct files during period.

Although rates of direct file roughly doubled statewide during 2003-2010, county prosecutorial practices again showed great variation, from an 1170% increase in direct file rates in San Joaquin County to a 44% decrease in nearby Merced County. Thus the increase in direct file rates statewide is attributable to a select group of thirteen counties, whose prosecutors utilize direct file significantly more than the state average.

With such sharp divergences among prosecutorial direct file practice, one would expect to see strong impacts on the areas direct file advocates claimed the procedure was supposed to affect: (a) more youths would be committed to DJF or transferred to adult prison after age 18; and (b) reductions in juvenile crime in high direct-filing counties due to incapacitation of offenders and deterrence. **Neither of these transpired.**

Overall, the counties whose prosecutors utilized direct file the most were not the counties showing the highest rates of commitments to DJF by both adult and juvenile court, nor, taken as a whole, did their trends in commitment rates vary from those of counties that direct-filed minimally. For example, the ratio of county juvenile and adult court DJF commitments versus their use of direct file showed that Fresno (10 DJF commitments per 1 direct file), San Francisco (17:1), and Los Angeles (19:1) counties reported very few DJF commitments per direct file, while Yolo (283:1), Marin (275:1) and Orange (235:1) counties reported significantly more DJF commitments than direct files.³

Adult court sentencing showed equally erratic trends. Three major counties that utilized direct file infrequently (Los Angeles, Fresno, and Monterey counties) showed much larger increases in rates of youth sent to DJF by adult courts than the state average. Sonoma, San Mateo, Tulare, and Solano counties had higher than average direct file rates but lower than average increases (and in Sonoma County's case, a decrease) in adult court commitments to DJF.

A correlation of the 40 counties with 10+ DJF commitments, comparing their direct files and DJF commitment rates per 1,000 juvenile felonies from 2003 through 2010 shows a correlation co-efficient of -0.046. This statistically confirms that there is no correlation between prosecutorial use of direct file and overall county commitments to DJF.

In addition, counties whose prosecutors utilized direct file the most did not show any greater decline in juvenile felony arrest rates than counties whose prosecutors utilized the procedure sparingly or not at all. San Bernardino and Orange counties together accounted for nearly one-third of all direct files during 2003-2010 (nearly 1,400), yet both experienced increases in juvenile felony arrest rates over the period. Overall, county trends demonstrate that prosecutorial use of direct file is not related to crime reduction.

A previous CJCJ study of DJF and direct file use found that most counties would be minimally impacted by the closure of DJF (CJCJ, 2011). As discussed above, this is because the majority of counties (35) experience very few juvenile court commitments to DJF. For example, 13 state-dependent counties accounted for 37% of juvenile felony arrests but 61% of all prosecutorial direct filing and 46% of all DJF commitments in 2009, while 12 counties did not use the state system for juvenile offenders at all (CJCJ, 2011). Of the total DJF population in 2010, 40% of county commitments to DJF were from adult courts, compared to 5% in 2003 (DJF, 2011a).

³ Please note this is a simple ratio including DJF commitments by both adult and juvenile courts; not the percentage of direct file cases that were eventually committed to DJF.

Thus, according to available data, prosecutorial direct file does not contribute to long-term public safety through crime reduction. In addition, direct file is applied in extremely different ways across counties and does not appear to result in more youth being confined to the state’s youth correctional facilities than other means of transfer to adult court.

Direct files and transfer from DJF to adult prisons

The second question, to be analyzed is whether direct file is being used in particular to secure transfer to state adult prisons for the small number of juvenile offenders who would otherwise serve sentences in local or state juvenile facilities until age 21; the M and E cases. It is important to note that, as prosecutors cannot direct file all felony cases, but only a specified selection of the most serious offenses, it is likely that direct file eligible offenders would be ordered into a custody placement by either juvenile or adult court. However, according to reports on time served, youths spend as much or more time in a custodial setting for these offenses if sentenced by a juvenile court rather than an adult criminal court. For example, youths convicted of rape and released during 2000-09 served 55.4 months of confinement if sentenced by a juvenile court, compared to 47.3 months if sentenced by an adult court (DJF, 2012a).

According to DJF projections, adult court commitments to DJF are expected to stabilize at lower levels than at present, at an annual total of 264 youth commitments by fiscal year 2014-15 (Division of Juvenile Facilities, 2010, pp. 6-7). Adult court new admissions peaked in 1996 at 205 youth, dropped to 60 youth by 2005, rose again to 158 youth in 2010, and then dropped sharply in 2011. A breakdown of adult court commitments is provided for 2003 to the present. It is important to note that not all such cases result from direct files, since adult court trial and sentencing also can occur through judicial transfer after a juvenile court fitness hearing.

Table 1 shows the currently available information posted by DJF (2012) on numbers of M and E cases held in DJF facilities. Of the 190 DJF adult court cases as of December 31, 2010, two youth were age 15, 25 youth were age 16, 125 youth were age 17, and **38 youth were age 18 or older.**⁴ Nearly all (180) were convicted of violent felonies (robbery, assault, homicide, rape/sex offenses, and

Table 1. Number of direct files, numbers of adult cases in DJF facilities, and sent to CDCR

Year	Direct files*	E/M (adult) cases in DJF**	Sent to CDCR*
2002	-	64	-
2003	248	83	-
2004	283	82	43
2005	337	190	63
2006	653	226	79
2007	716	284	74
2008	825	308	93
2009	734	285	111
2010	689	190	182
2011	-	168	152

*Total in calendar year. **Pop. as of Dec. 31 of year

Source: DJF, 2012.

kidnapping, in that order). Even so, not all of these youth will be transferred at age 18 to adult state prisons; most are paroled or transferred to other custodies such as mental health treatment or county jail (DJF, 2012). If they are able to complete their sentence by the age of 21, they will remain in DJF for the entirety of their sentence. Thus, while initial rise and subsequent drop in M and E cases from 2003 through 2011 roughly corresponds to the rise and fall in prosecutorial direct files, the number of direct-file cases that are sent to DJF and later transfer to adult prisons appears to be small.

⁴ Of the 190 M and E classified youth, 110 youth were Latino, 61 youth were African-American, 12 youth were White, 6 youth were Asian, and 1 youth was Pacific Islander.

Conclusion

At least two-thirds of direct files do not result in state DJF or adult prison terms. Prosecutorial direct file has not proven an effective means of securing state prison sentences for youthful offenders compared to previously existing mechanisms such as judicial transfer after juvenile court fitness hearings. The number of juvenile offenders for whom direct file results in confinement in adult prisons after age 18 is small and declining and involve the most violent cases. In addition, frequent usage of direct file appears to have no effect on crime compared to infrequent usage. Other than to increase the costs and complications of juvenile offender processing—and perhaps lending a public image of “getting tough” on youth crime—CJCJ has been unable to determine the benefit of direct file compared to use of traditional juvenile court judicial transfer.

If full juvenile justice realignment is pursued as proposed by Governor Brown, there are seven counties that are both heavily dependent on juvenile court DJF commitments and prosecutorial direct filing that will be significantly impacted: Kings, Napa, Madera, San Bernardino, Tulare, Riverside, and San Mateo. These counties could utilize their portion of the \$10 million Governor Brown is allocating for preliminary capacity building to acquire adequate technical assistance and resources necessary to develop suitable alternatives at the local level to serve their high-risk youthful offenders. As prosecutorial direct file practice differs so greatly between counties and has no discernable crime reduction benefit, it is difficult to predict the impact of DJF closure on direct filing. However, while this information remains unknown it cannot be an excuse for hindering juvenile justice reform in California.

After the release of this publication, the Department of Justice (DOJ) acknowledged a discrepancy in the direct file data submitted by Yolo County's Probation Department during the period 2003-2010. DOJ is currently investigating if this discrepancy extends to other California counties. CJCJ will be revising this publication's tables, discussion, and findings as soon as the corrected data becomes available.

~ March 2, 2012

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Please note: Each year, every county submits their data to the official statewide databases maintained by appointed governmental bodies. While every effort is made to review data for accuracy, CJCJ cannot be responsible for data reporting errors made at the county level.

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Addendum

Addendum to “*Charging Youth as Adults in California: A county by county analysis of prosecutorial direct file practices*” regarding county data collection discrepancies

By

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Introduction

This addendum refers to the Center on Juvenile and Criminal Justice’s (CJCJ) publication entitled, *Charging Youth as Adults in California: A county by county analysis of prosecutorial direct file practices*, released on February 16, 2012.⁵

The purpose of this addendum is to highlight the limitations with current state methods for collecting data on direct filing, and to urge District Attorneys, as the chief elected county law enforcement officers, to proactively ensure that accurate data is submitted to the Department of Justice as the official statewide data source regarding their direct file practices.

The original report examined county by county prosecutorial direct file practices between 2003 and 2010 to determine whether Proposition 21 (2000) has resulted in more commitments of youths to state correctional facilities than would have occurred otherwise. In light of these historic trends, the report also reflected on the potential effect that the Governor’s proposed closure of the state’s Division of Juvenile Facilities (DJF)⁶ would have on prosecutorial direct file practices in California.

In this age of criminal justice reform, data-driven research is crucially important to analyzing criminal justice policy. This requires all government criminal justice agencies to take responsibility to ensure that information is properly collected and reported. No government agency, including district attorneys, are exempt from the responsibility of accurately reporting data and having that data scrutinized. Information inaccurately reported to the state by county agencies, impacts the ability of policy makers and the public to accurately assess the impact of public policy.

This addendum provides information on how data should be properly reported to the California Attorney General’s Office on the discretionary transfer of youth to adult court by county prosecutors – a practice known as direct file.

The errors in Ventura, Yolo, and possibly other counties’ reports on direct files over many years have misdirected policy research and possibly California juvenile justice policies. CJCJ awaits the corrected statistics for further analysis.

~ Daniel Macallair
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⁵ The full original report can be found at http://www.cjcj.org/files/Charging_Youths_as_Adults_in_California.pdf

⁶ The 2005 reorganization of the Youth and Adult Correctional Agencies into the CDCR created the Division of Juvenile Facilities (DJF), formerly the California Youth Authority (CYA). The DJF is commonly referred to as the Division of Juvenile Justice (DJJ). This report uses the Division of Juvenile Facilities.

The importance of accurate data collection and reporting

California's 58 county probation departments report juvenile justice related data, including data on prosecutorial direct filings, to the Department of Justice's Criminal Justice Statistics Center (CJSC) to **"provide information on the administration of juvenile justice in California"** (CJSC, 2006, p. 19, bold added). This data reporting is mandated under California Penal Code 13020 and Welfare and Institutions Code 285, requiring counties to "install and maintain records needed for the correct reporting of statistical data" to the Attorney General (PC 13020).

Reporting of direct file data is conducted electronically via the Juvenile Court and Probation Statistical System (JCPSS), and is quality assured twice a year by the CJSC through direct contact with county probation departments (Chief of the Bureau of Criminal Information and Analysis Julie Basco, personal communication, February 29, 2012). **As such, county agencies bear full responsibility for the accuracy of the data submitted to the state.**

Prosecutorial direct file data are mandatorily collected and reported to the state expressly for the purpose of providing insight into the county administration of juvenile justice. These data are regularly relied upon by local government, the legislature, state and federal agencies, and other criminal justice stakeholders and have been utilized in many studies and policy discussions in California, including but not limited to:

- Criminal Justice Statistics Center (CJSC). (2002-2010). *Juvenile Justice in California*. Sacramento, CA: Department of Justice.
- Pacific Juvenile Defender Center (PJDC). (2009). *Juveniles Tried in Adult Court in California*. San Francisco, CA: Youth Law Center.
- Berkeley Center for Criminal Justice (BCCJ). (2010). *A Closer Look at Transfer Laws' Impact on Young Men & Boys of Color*. Berkeley, CA: BCCJ.
- National Council on Crime and Delinquency (NCCD). (2010). *A New Era in California Juvenile Justice*. Oakland, CA: NCCD.
- Commonwealth Juvenile Justice Program. (2011). *California Juvenile Justice Policy, Practice & Funding Update*, presented at Beyond the Bench Conference 2011, California Administrative Office of the Courts. Sacramento, CA: Commonwealth.

While every effort is made to review data for accuracy, non-governmental organizations, policy makers, and independent researchers cannot be responsible for errors made at the county level.

County district attorneys have a duty to ensure that data regarding their prosecutorial practices are accurately being submitted to the Attorney General. The California District Attorney's Association has acknowledged the importance of accurate data collection in the assessment of adult criminal justice realignment, and "[t]o ensure accurate measurement of the impact of the laws in the future, CDAA will be developing data-collection recommendations" (CDAA, 2011). Equally, prosecutors must be proactively engaged in ensuring accurate information about prosecutorial direct filing of juveniles is being submitted to the state.

Direct file data discrepancies

Over the course of the past eight months, CJCJ has uncovered several discrepancies in the direct file data being submitted to the CJSC by county agencies since 2003. First, following an August 2011 CJCJ report, Ventura County District Attorney's Office acknowledged that the data Ventura County provided to the state regarding their prosecutorial direct file practices were erroneous and a result of ... "... reporting errors by the Ventura County Probation Department that included:

- Low level juvenile infraction offenses 'directly filed' by law enforcement to the courts assigned to handle infractions,
- Misdemeanor juvenile cases handled in juvenile court, and
- Offenses committed by 18-year-old offenders." (Ventura County District Attorney Greg Totten, personal communication, September 16, 2011).

The Ventura County District Attorney's Office advised that this error would be corrected and accurate data would be submitted to the Attorney General's Office. As of January 4, 2012, Ventura County still had not updated their direct file data and was therefore removed from the revised CJSC direct file data set (CJSC, personal communication, January 4, 2012).

Second, following CJCJ's February 2012 report on prosecutorial direct file practices that utilized the revised CJSC direct file data, the Yolo County District Attorney's Office acknowledged that the data Yolo County provided to the state regarding prosecutorial direct file practices were erroneous as a result of an ambiguity in the definition of "direct file" originating at the county level. This ambiguity resulted in compounding prosecutorial direct files (as defined in WI 707(d)) and statutory direct files (as defined in WI 602(b)) in the data submission.

On February 29, 2012, the CJSC advised that "there may be limitations with the 'direct file' data as depicted" among counties other than Yolo although the extent of this discrepancy is unknown (personal communication). Currently, the Yolo County District Attorney's Office is in the process of reviewing their files to verify the correct data (personal communication, March 1, 2011). CJSC is revising the JCPSS manual and will prepare a corresponding Informational Bulletin to California's statistical reporting agencies (personal communication, Feb. 29, 2012).

Policy implications

The California District Attorney's Association (CDAA) has asserted that restriction of admission to the state's DJF would result in increased transfers of juveniles to adult court (CDAA, 2011a). In light of Governor Brown's current proposal to complete juvenile justice realignment, data-driven assessment of prosecutorial direct file practices has become imperative to this dialogue.

In this instance, the impact of the direct file data discrepancy on the overall validity of CJCJ's analysis is unclear. Statutory WI 602(b) direct filing implicates a subset of offense types (including specifically enumerated homicide offenses and sex offenses) which account for a subset of juvenile felony arrests reported by counties. While CJCJ will certainly revise the report to reflect changes in county data as they become available from the state CJSC, CJCJ will not retract it from the public domain in the absence of data demonstrating that this discrepancy has significantly impacted the trends found in the report. It is still clear that California's counties utilize prosecutorial direct filing at radically different rates. Without this important analysis, policy makers are unable to evaluate prosecutorial practices or the effect of Proposition 21 (2000). County prosecutors cannot escape accountability because they have failed to address reporting errors regarding their practices for the past 8 years.

Conclusion

Accurate data collection and reporting is of the utmost importance as policymakers evaluate outcomes of criminal and juvenile justice practices. CJCJ's recent discovery regarding the quality of the direct file data being submitted by county agencies to the state raises serious concerns about the consistency of county data collection practices. The fact that county District Attorney's Offices have not addressed this issue while these data has been available publically for over 8 years is egregious.

CJCJ appreciates that the Yolo County District Attorney's Office is engaging with its Probation Department to address their error and look forward to receiving the outcome of their review. In addition CJCJ recommends:

- County District Attorneys' Offices work closely with Probation Departments to review and correct their data submissions,
- CJSC reports separately all three code section labels for discretionary, mandatory, and judicial waiver into adult criminal court when revising its manual and bulletin,
- County reporting agencies expedite confirmation of the original data submission or correction of the submitted data regarding direct filing.

CJCJ will reanalyze the county by county prosecutorial direct file trends upon receipt of corrected data.

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