

Policy Brief

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

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Abstract

California Governor Brown's 2012 juvenile justice reforms, included in the FY 2012-13 budget, are designed to encourage divestment from the state's Division of Juvenile Facilities (DJF).² The reforms, which include an increased county fee for using DJF, have fueled a concern that some county prosecutors will respond by direct filing more youth in adult court. This report examines county by county prosecutorial direct file practices from 2003 through 2010 to determine whether Proposition 21 (2000) has resulted in more commitments of youths to state institutional facilities than would have occurred otherwise.

The Center on Juvenile and Criminal Justice (CJCJ) finds that 65% of adult criminal court transfers during this time frame did 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. In addition, frequent usage of direct file appears to have no effect on crime compared to infrequent usage or no usage.

The overall statewide increase in direct file rates during 2003-2010 is attributable to a 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 suggest there are 10 counties that continue to heavily rely on the state system through both high rates of juvenile court DJF commitments and prosecutorial direct filing.³

Data and method

The Criminal Justice Statistics Center (CJSC, 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

¹ This publication follows a February 2012 publication of the same name that uncovered discrepancies in county data reporting to the Department of Justice (DOJ). Following an investigation, the DOJ issued new, corrected data on July 10, 2012. This publication revises CJCJ's original publication to reflect these new data.

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 DJF.

³ They are: Kings, Madera, Tulare, Napa, Ventura, Sacramento, Contra Costa, San Mateo, San Bernardino, and Santa Barbara.

account for 97% of direct files (herein referred to as “major counties”). The DJF (2012, 2011) provides new and total commitments of youths to state DJF facilities by county, type of commitment, age, race, offense, movement, and transfer status.

Direct file data provided by the CJSC combines mandatory direct files (as defined under Welfare and Institutions Code 602(b)) and discretionary direct files (as defined under Welfare and Institutions Code 707(d)). A median value was calculated for both the rate at which county prosecutors utilized direct filing (10.2 per 1,000 felony arrests for age 10-17) and the rate at which county juvenile courts committed youth to DJF (13.0).

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. After extensive campaigning by the California District Attorney’s Association (CDA), Proposition 21 was passed in 2000 by voters, creating 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 and expanding the number of offenses that required direct transfer to adult court. While Proposition 21 requires prosecutors to direct file cases that fall under Welfare and Institutions Code 602(b) (these offenses include murder with special circumstances and seven specified sex offenses with special circumstances, if the minor allegedly personally carried out the acts and was over the age of 14 at the time of the offense),⁴ these offenses comprise only a small number of juvenile felony arrests. Thus, the majority of direct files involve prosecutors’ discretion, not mandatory transfer.

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 an adult institution but house them in DJF. These are called “M” cases. If the adult court makes no determination of where under-18 youth will be housed, then these youth will be admitted to DJF under an agreement between the juvenile and adult divisions until they become 18. These are known as “E” cases. Unless they can complete their sentence in DJF before the age of 21, M- and E-case youth can be transferred to adult prison upon reaching age 18. Currently, counties are not fiscally responsible for housing M and E cases in DJF, unlike youth who are sent to DJF by juvenile courts. Thus, there may be a fiscal incentive for obtaining a DJF commitment through an adult court transfer.

In adult court, 65% of adult court transfers did not result in state DJF or adult prison terms.

(DJF, 2012; CJSC, 2003-2010)

Direct files and DJF commitments by county

Since 1996, a process of juvenile justice realignment has been underway in California and counties have become more adept at serving their youth offenders locally. Despite this trend, direct file granted another avenue for prosecutors to utilize the state system for serious youth offenders, for the purpose of increasing public safety. The trends that followed regarding use of the state system varied widely across counties. Overall, the youth population at DJF has been steadily decreasing, from a peak of approximately 10,000 youth in 1996 to 922 youth as of June 30, 2012 (DJF, 2003, 2012b). The number of youth committed to DJF by juvenile courts decreased by 55% over the 2003-2010 period. During the same period,

⁴ For a comprehensive list of the enumerated offenses that must be directly filed in adult criminal court pursuant to Welfare and Institutions Code 602(b), see: <http://law.onecle.com/california/welfare/602.html>

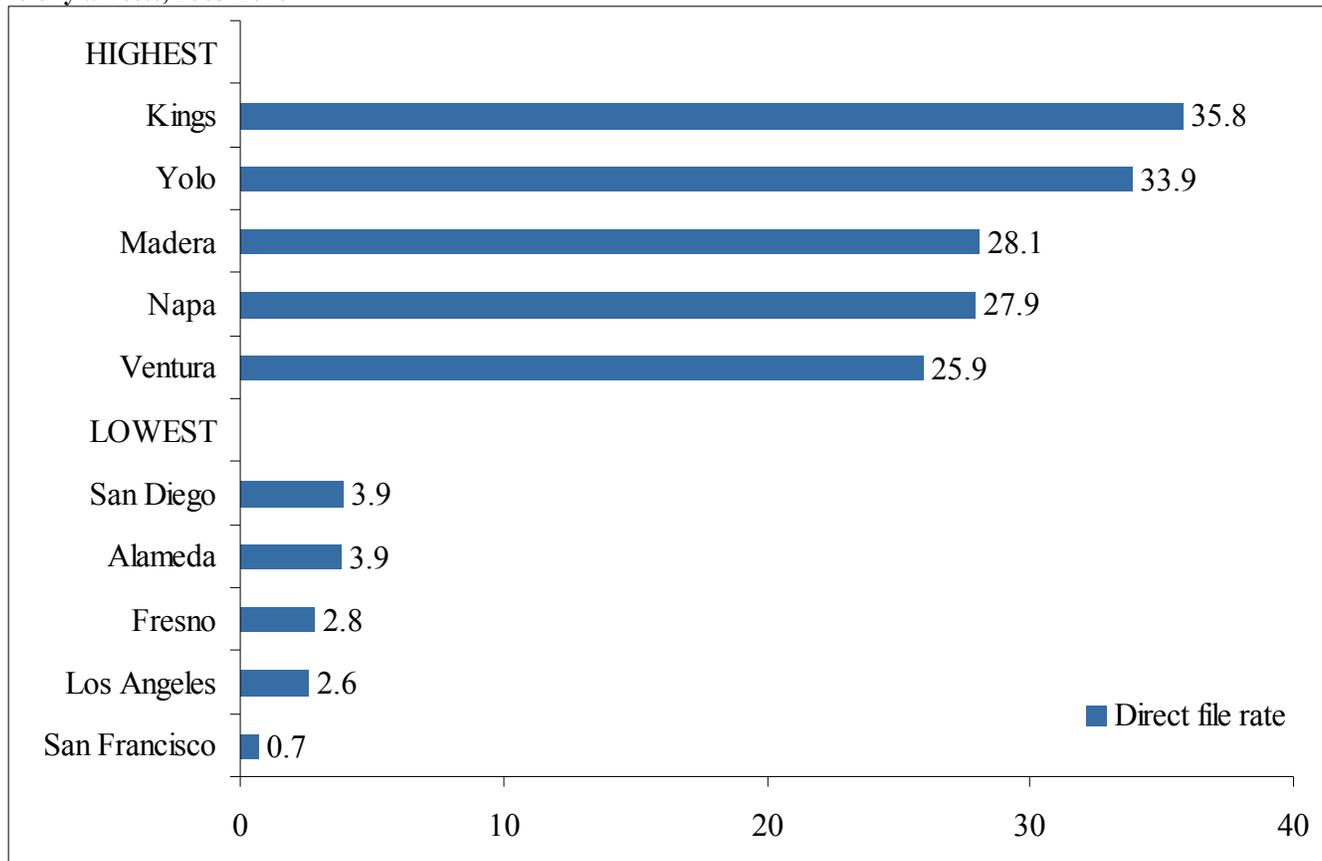
prosecutorial direct file rates doubled (CJSC, 2003-2010). However, these trends do not appear to be causally related. In fact, several counties showed increases across both practices, while other counties showed decreases in both. This suggests that several prosecutors are not increasing their use of direct file as a response to the declining use of DJF.

In addition, adult court commitments to DJF have offset less than one-fifth of the very large decline in juvenile court commitments, suggesting that adult courts are sentencing youth to a state custodial term less often than juvenile courts have previously. In adult court, approximately 65% of youths, including almost two-thirds of direct filed youth, received a sentence not requiring a state institutional commitment (DJF, 2012; CJSC, 2003-2010). During 2003-2009, adult court sentencing to DJF increased by 69%, before decreasing significantly in 2010. Overall, rates of commitment to DJF by juvenile and adult courts combined decreased by half.

Direct file practices by county

During the 2003-10 period, California counties’ prosecutors varied more than 100-fold in their use of direct file, from 91 direct files per 1,000 juvenile felony arrests in Modoc County to 0.7 in San Francisco County. Two small counties’ (Mariposa and Alpine) prosecutors did not utilize direct file at all during this period, and two other small counties (Sierra and Del Norte) did not report their direct files to the Department of Justice.

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: Criminal Justice Statistics Center, 2011, 2012.

1. State-dependent counties

Most of the direct file use during the period is attributable to 10 major counties that also utilized commitments to DJF significantly more than the state average.⁵ Of these 10 counties, five significantly increased their use of direct file during 2003-2010: Napa, Kings, Ventura, Santa Barbara, and San Bernardino. In addition, four of the ten counties continued utilizing DJF at high rates throughout the period: Contra Costa, Kings, Sacramento, and Santa Barbara. These 10 counties show a continuing trend of high dependence on the state system to manage their youth offender population.

The other 7 major counties that utilized direct file at high rates during the period (Solano, El Dorado, Humboldt, Riverside, Sonoma, Orange, and Yolo) utilized DJF at low rates, and showed a lower than average increase in direct files over the period (in fact, Sonoma and Yolo counties both experienced decreases in their use of direct file). This suggests that these counties are divesting from their reliance on the state system.

2. Self-reliant counties

In contrast to the state-dependent counties, there were 10 major counties that utilized direct file minimally and also utilized DJF at a low rate.⁶ An additional 5 counties utilized direct file minimally and had high but rapidly declining rates of DJF use: Alameda, Shasta, Butte, Merced, and Monterey. Combined, these 15 counties show a trend of self-reliance, serving most of their juvenile offenders locally and divesting from state custodial options.

An additional 3 counties (Los Angeles, Kern, and Fresno) utilized direct file minimally, and utilized DJF at a high and slowly declining rate. This again suggests a movement away from utilizing state options to serve serious juvenile offenders, although both Kern and Fresno counties increased their use of direct file over the 2003-2010 period.

Taken as a whole, the counties whose prosecutors utilized direct file the most were not the counties showing the highest rates of commitments to DJF, nor did their trends in commitment rates vary from those of counties that used direct file minimally. Mathematical analysis 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 yielded a correlation co-efficient of -0.047. Overall, some counties were more prone to direct file than commit a youth to DJF, others the reverse. This statistically confirms that there is no correlation between prosecutorial use of direct file and overall county commitments to DJF.

Adult court sentencing

Adult court sentencing showed equally erratic trends. Three major counties that utilized direct file infrequently (Los Angeles, Fresno, and Monterey) 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. Thus, utilizing direct file to transfer more youth to adult court does not result in more commitments to state correctional facilities.

⁵ Those counties are: Kings, Madera, Tulare, Napa, Ventura, Sacramento, Contra Costa, San Mateo, San Bernardino, and Santa Barbara.

⁶ Those counties are: Marin, San Francisco, Santa Cruz, Placer, Imperial, Santa Clara, San Diego, San Joaquin, Stanislaus, San Luis Obispo.

Juvenile crime trends

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. For example, Orange County accounted for more than one-eighth of all direct files during 2003-2010 (571), yet experienced increases in juvenile felony arrest rates over the period. In contrast, San Francisco, which rarely used direct file (just 7 instances during 2003-10), experienced a decline in juvenile felonies over the period. **Overall, county trends demonstrate that prosecutorial use of direct file is not related to crime reduction.**

Given that the most serious youth offenders were transferred to adult court via judicial transfer, prior to Proposition 21, direct file was intended to provide additional public safety benefits to California, such as reduced juvenile crime. However, according to available data prosecutorial direct file is applied unevenly statewide, does not result in significantly more state institutional commitments, and does not contribute to long-term public safety through crime reduction. Based on the data reviewed, there are no discernable public safety benefits to direct file that are not met through traditional judicial transfer, that existed prior to Proposition 21.

Youth transferred to adult prisons

Another concern regarding the use of direct file is that more youth will serve time in an adult state prison for crimes committed as juveniles. It is important to note that prosecutors can only direct file a specified selection of the most serious felony offenses. Thus, it is likely that direct file-eligible offenders would be ordered into a custodial placement by either juvenile or adult court. However, if a youth is sentenced to a custodial placement by adult court they may be housed directly in adult state prison if they are over the age of 18. During 2003-2010, an estimated 463 youth were sentenced directly to CDCR adult facilities (CJSC, 2003-2010; DJF, 2012d). However, approximately 80% of youth sentenced to state institutional confinement by an adult court were confined in DJF (approximately 1,740 youth). It is important to note that not all such cases result from direct files, since adult court trial and sentencing can occur through judicial transfer after a juvenile court fitness hearing.

Adult courts can send youth to DJF through two processes: 1) as a direct DJF commitment, or 2) as an under-18 commitment to adult prison (M and E cases). During 2003-2010, adult courts sentenced approximately 40 youth directly to DJF. In addition, adult courts sentenced an estimated 1,700 under-18 youth to a state prison term (DJF, 2012d). These youth were consequently housed in DJF as M and E cases until they either completed their sentences prior to age 21, or were transferred to adult facilities.

During 2003-2010, of the approximate 1,700 M and E youth housed in DJF, approximately 500 were transferred to an adult facility when they turned 18. The remaining 1,200 youth were housed in DJF for their entire sentence, paroled, or transferred to other custodies such as mental health treatment or county jail (DJF, 2011). Thus the majority of youth that are sentenced to a term in adult state facilities are actually confined in DJF for their full term. Given declining juvenile court commitments to DJF, this suggests that the state youth correctional facilities could be successfully transitioned into adult CDCR facilities designated to serve only the juvenile offender population transferred to adult criminal court.

According to DJF reports on time served, youths spend as much or more time confined in DJF for these offenses if sentenced by a juvenile court rather than by an adult criminal court. For example, youths convicted of rape and released during 2000-09 served an average of 55.4 months in DJF if sentenced by a juvenile court, compared to 47.3 months if sentenced by an adult court (DJF, 2012a).

Adult court new admissions to DJF peaked in 1996 at 205 youth, dropped to 60 youth by 2005, rose again to 158 youth in 2010, and then dropped in 2011. As of June 30, 2012, there were 151 youth confined in DJF by adult court, three youth were age 15, 33 were age 16, 93 were age 17, and **22 were age 18 or older.** Nearly all (145) were convicted of violent felonies (robbery, assault, homicide, rape/sex offenses, and kidnapping, in that order) (DJF, 2012c). Thus, while the initial rise and subsequent drop in M and E cases from 2003 through 2012 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.

Over the course of 8 years (2003-2010), less than 1,000 over-18 juvenile offenders were committed or transferred to adult state prison (equating to an average 125 youth per year). Given that these offenders could have been transferred to adult court via a judicial court hearing, the use of direct file has not been successful in securing transfer to adult state prison for the small number of juvenile offenders who would otherwise serve sentences in local or state facilities until age 21.

Conclusion

Proposition 21 (2000) vastly expanded prosecutorial power to act unilaterally regarding the transfer of youths into the adult system. In some instances, it mandates that prosecutors do so. This publication analyzed the effect of that power on counties' reliance on the state justice system to serve serious youth offenders. During 2003-2010, approximately 65% of adult court transfers did not result in state DJF or adult prison terms. Prosecutorial direct file through Proposition 21, both mandatory and discretionary, 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 involve the most violent cases. In addition, frequent usage of direct file appears to have no effect on crime compared to infrequent usage.

In June 2012, Governor Brown signed several juvenile justice reforms into law through the FY 2012-13 budget. The reforms include an annual per youth fee of \$24,000 for housing youth in DJF, and reducing the juvenile jurisdictional age from 25 years old, to 23. There are 10 counties that are both heavily dependent on juvenile court DJF commitments and prosecutorial direct filing that will be significantly impacted by these reforms: Kings, Madera, Tulare, Napa, Ventura, Sacramento, Contra Costa, San Mateo, San Bernardino, and Santa Barbara. In addition, low direct filing counties, Los Angeles, Kern, and Fresno may be significantly impacted as they historically utilized DJF at a high rate. These counties should explore suitable alternatives at the local level to serve their high-risk youthful offenders to ameliorate their current reliance on the state system. As the Governor's juvenile justice reforms take effect, data analysis of counties' use of DJF and direct filing will be of utmost importance in evaluating county responses and public safety impact.

⁷ Of the 151 M and E classified youth, 91 youth were Latino, 43 were African-American, 8 were White, 7 were Asian, and 2 were Pacific Islander.

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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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