

THE PROSECUTION OF YOUTH AS ADULTS

A COUNTY-LEVEL ANALYSIS OF PROSECUTORIAL DIRECT FILE IN CALIFORNIA
AND ITS DISPARATE IMPACT ON YOUTH OF COLOR

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Introduction

California’s juvenile justice system was designed to address the unique needs of youth by offering support and rehabilitative services for young people who make mistakes. In principle, the system was meant to ensure that youth in California are treated differently from adults through the administration of separate courts and separate facilities, with an emphasis on rehabilitation rather than punishment.

“(T)ransfer of juveniles to adult court should be rare and only after a very thoroughly considered process.”

National Council of Juvenile and Family Court Judges

Over the last several decades, however, changes to state laws have enhanced the ability of courts to prosecute youth in the adult criminal justice system. For example, in 1976, the California State Legislature passed Assembly Bill (AB) 3121, one of the early laws which eroded the distinction between children and adults in criminal courts by permitting 16- and 17-year-olds to be transferred to the adult system for prosecution at the discretion of a juvenile court judge through judicial transfer or “fitness hearings.” More recently, in 2000, California voters passed The Gang Violence and Juvenile Crime Prevention Act, commonly known as Proposition 21, a ballot measure that broadened and hastened prosecutors’ ability to charge youth in adult court. Proposition 21 expanded the list of offenses for which youth could be charged as adults, and empowered district attorneys to directly file charges against youth as young as 14 in adult court¹ (LAO, 2000; WIC 707, 2016; WIC 602, 2016). As a result, Proposition 21 further undermined the mission of California’s juvenile justice system by substantially expanding the age, offenses, and legal presumptions permitting youth prosecution in adult criminal courts. Since 2003, more than 10,000 youth were prosecuted in adult court – nearly 70% of them were direct filed.

Background

Currently, there are three pathways to youth prosecution in California’s adult criminal system – judicial transfer hearing, mandatory direct file, and discretionary direct file (Figure 1).

In a judicial transfer hearing, a judge must review and consider the circumstances of the case, including the youth’s background and his or her ability to benefit from the services available in the juvenile justice system, before making a decision to transfer the case to the adult system. The judicial transfer process is governed by a set of criteria enumerated in statute, and it generally takes about six months to render a decision.

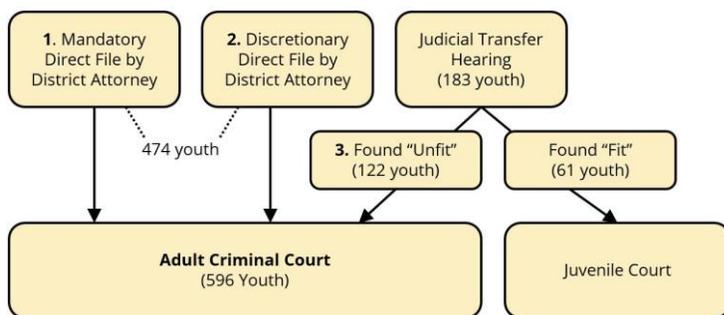
In all direct file decisions, prosecutors typically have 48 hours to decide whether or not to directly file charges against a youth in adult court, and they must make that determination without information about

¹ The process used by prosecutors to directly file criminal charges against youth in adult court is referred to as “direct file” or “prosecutorial direct file.”

the youth’s background, alleged participation in the offense, culpability, and capacity to grow, mature, and be rehabilitated. In mandatory direct file cases, if a prosecutor alleges a youth committed an offense that, if committed by an adult, would require a death penalty or life-without-parole sentence upon conviction, then those charges must be filed in adult court. However, in discretionary direct file cases, if a prosecutor alleges a youth committed a qualifying felony (WIC 707, 2016), the prosecutor has discretion to file charges in either the adult or youth system.

The decision to prosecute a youth in adult court has serious long-term negative consequences for young people and their families. All youth can and should benefit from the juvenile justice system, where education, counseling, and rehabilitative services are legally mandated. However, when a youth is prosecuted in the adult system, he or she is subject to the same sentence, in most cases, as an adult convicted of the same offense. Moreover, the adult criminal justice system is predicated on punishment and offers limited rehabilitative services for prisoners. As a result, youth in the adult system often receive lengthy sentences in dangerous prison environments, where they suffer from high rates of violence, abuse,

Figure 1: Pathways to Adult Prosecution, 2014



and suicide (BJA, 2000). In addition to facing more severe sentences, youth who are subjected to the adult system experience significant life disruptions and psycho-emotional trauma stemming from the high-stakes criminal prosecution, and are more likely to recidivate (Redding, 2010).

While judicial transfer hearings are also problematic because they can result in

the prosecution of youth in criminal court, the practice of direct file poses a particular threat to the values of the juvenile justice system. Allowing prosecutors the discretion to charge youth as adults creates a conflict of interest because prosecutors are adversarial parties in litigation against youth. Often, prosecutors use direct file as leverage against youth who are arrested for a serious offense. The threat of adult court prosecution, and its resulting prison sentence and life-long felony conviction, can compel youth to enter into unfavorable plea agreements (Human Rights Watch, 2014).

Additionally, allowing prosecutors this unfettered discretion, without judicial oversight, makes them wholly responsible for assessing risk and considering the long-term consequences of prosecuting youth in the adult system, with little accountability. Direct file was intended to be used only in exceptional cases, but has increasingly become the norm, with 80 percent of youth prosecuted in California’s adult criminal justice system being placed there by prosecutors (Figure 2).

Significantly, direct file prosecutions primarily impact youth of color, who comprise 90 percent of all direct filed youth (DOJ, 2014c), but 70 percent of California’s youth population ages 14-17 (Puzzanchera, 2015). Research indicates that youth of color who are transferred to the adult system receive more punitive sentences than their White counterparts (Jordan & Freiburger, 2009).

The disparities that exist in direct file prosecutions are present throughout the justice system and impose starkly unequal outcomes and impacts on youth of color. These disparities are unsurprising when considering our nation’s historic treatment of people of color — a history that continues to influence perceptions of youth of color as inherently more violent and therefore deserving of harsher and more punitive treatment. Racialized, “tough on crime” policies, such as direct file laws, perpetuate racial and ethnic disparities across the system.

Data Analysis and Limitations

This report analyzes the use of direct file by district attorneys across California’s 58 counties. It presents county rates of direct file compared to the youth population and rates of youth arrest, and highlights racial and ethnic disparities.

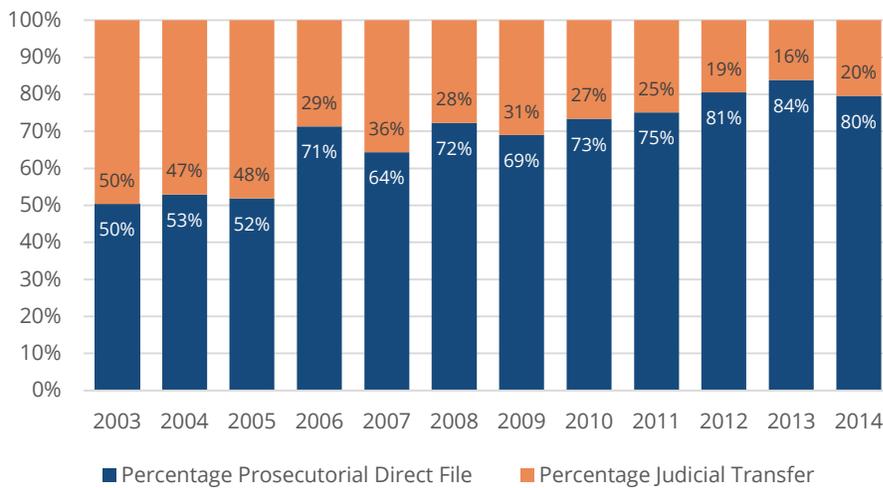
The data used in this report were collected by and obtained from the California Department of Justice (DOJ) for 2003 to 2014. Because Proposition 21 did not include any provision requiring counties to collect and report data to the state on the use and impact of their direct file practices, the state has limited data with which to analyze outcomes. For example, data on youths’ backgrounds and details of case outcomes, such as how long youth languish in jails and juvenile halls while awaiting the disposition of their criminal cases, are unavailable. Additionally, the data do not distinguish between mandatory and discretionary direct file cases. Therefore, this analysis is limited to assessing county practices using the available data.

Statewide Trends in Direct File

California has become increasingly reliant on direct file prosecutions of youth. Despite considerable declines in serious youth crime, as measured by a 55 percent drop in the rate of serious juvenile felony arrests,² district attorneys are direct filing youth at higher rates, reporting 23 percent more filings per capita³ in 2014 than in 2003 (DOJ 2014a; DOJ, 2014c). These opposing trends suggest that there is no relationship between serious crime and the use of direct file.

Trends in judicial transfer hearings also run counter to those of direct file. Though judicial transfer hearings can serve as an alternative to direct file in the case of a youth charged with a serious felony, the number of reported judicial transfer hearings declined 69 percent between 2003 and 2014 (DOJ, 2014c). Among the hundreds of youth prosecuted in the criminal justice system each year, a large and growing share are placed there at the discretion of a district attorney, rather than through a judicial transfer. Figure 2 compares the percentage of youth in the adult system who were transferred by a juvenile court to the percentage who were directly filed by a prosecutor without a formal hearing. While roughly half of all youth in criminal court in 2003 received a judicial transfer hearing prior to their prosecution, only 20 percent had that opportunity in 2014 (DOJ, 2014c).⁴

Figure 2: The Percentage of Youth Transferred to the Criminal System Due to Direct File or a Judicial Transfer Hearing, 2003-2014



Takeaway

A growing share of youth prosecuted in the adult system arrive as a result of direct file rather than a judicial transfer hearing.

Source: DOJ, 2014c

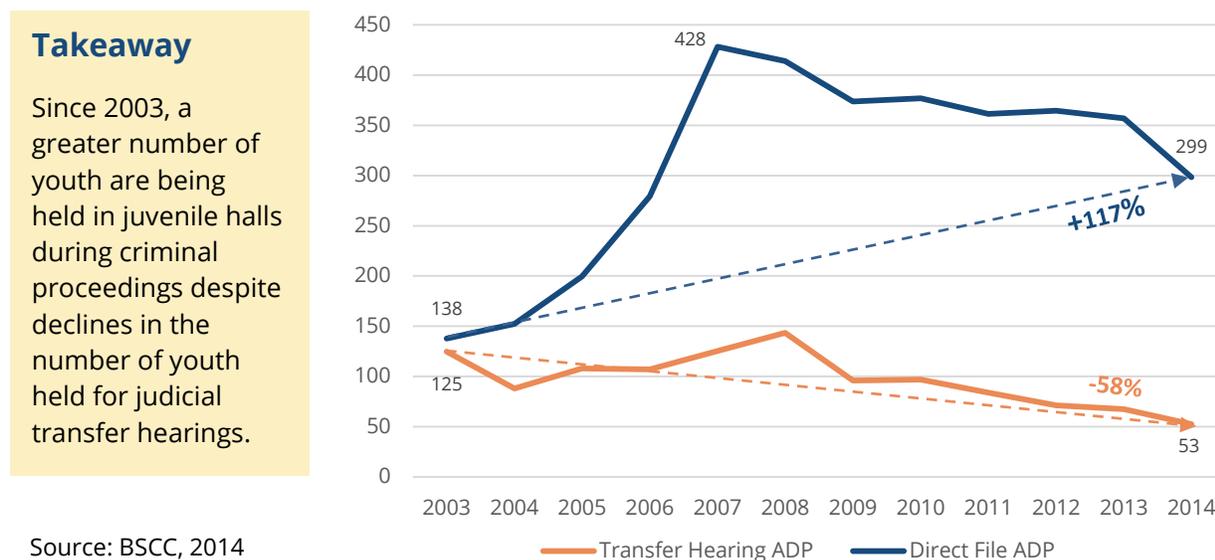
²“Serious juvenile felony arrests” are a proxy for the arrests that could be eligible for direct file. As data are not available on the number of direct file-eligible offenses reported each year, this measure includes arrest statistics collected by the California Department of Justice (DOJ) for the following offenses: homicide, forcible rape, robbery, assault, kidnapping, narcotics, dangerous drugs, lewd or lascivious, unlawful sexual intercourse, other sex law violations, and arson. While only youth ages 14-17 are eligible for direct file, this proxy includes youth ages 10-17 (DOJ, 2014a).

³ The percentage change is derived using the population of youth in California ages 10-17.

⁴ Appendix 1 provides detail on the share of judicial transfer hearings each year that result in a transfer to adult court.

Youth awaiting a judicial transfer hearing or criminal trial are typically detained in county juvenile halls. Although county juvenile hall populations have fallen 44 percent since 2003, youth who are direct filed comprise a growing share of the juvenile hall population. Counties have reported a marked increase in the number of direct file youth who are housed in these secure facilities (BSCC, 2014). While an increasing number of youth in these facilities have been direct filed in adult court, the population of youth awaiting a fitness hearing or related juvenile court proceeding has declined (Figure 3).

Figure 3. One-Day Snapshot⁵ of Youth Tried as Adults and Detained in Juvenile Halls, 2003-2014

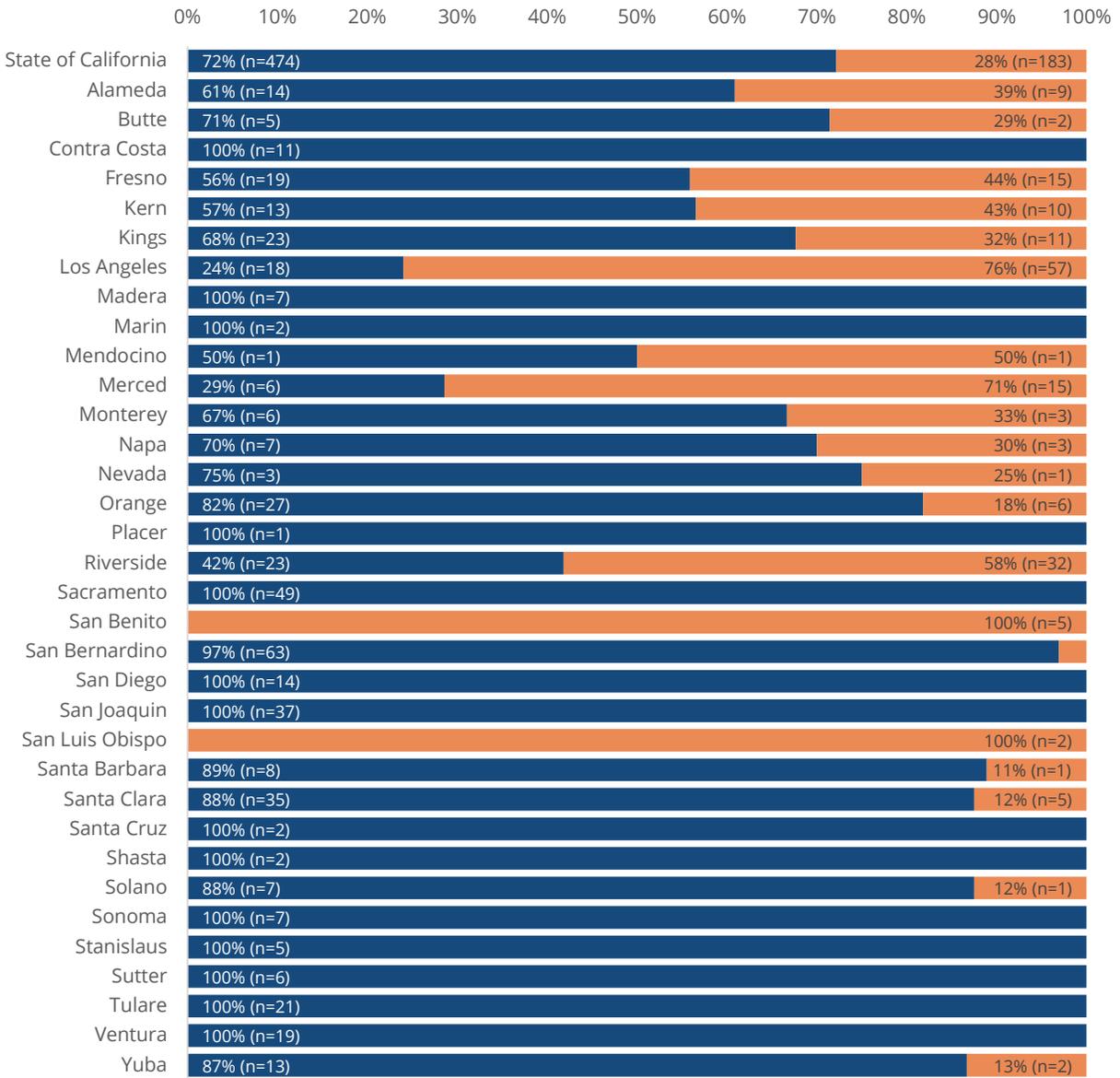


County-Level Variations in the Use of Direct File

Although statewide reliance on direct file is increasing, there is substantial county-level variation in its use by district attorneys. This variation produces a system of justice-by-geography for California youth who are subjected to direct file prosecutions at vastly different rates depending on the county in which they are arrested. Most California prosecutors directly file charges against youth in adult court more often than they petition for a judicial transfer hearing. In 2014, there were 657 cases subject to adult court prosecution — in 74 percent (474) of cases, the prosecutor directly filed charges against youth in adult court, and in 26 percent (183) of cases, the prosecutor petitioned for a judicial transfer hearing (DOJ, 2014c). In 2014, 14 counties relied on direct file at the complete exclusion of judicial transfer hearings (Figure 4).

⁵One-Day Snapshot data includes an annual average of quarterly one-day counts of California juvenile hall populations.

Figure 4. Direct File Cases Compared to Judicial Transfer Hearings by County, 2014



Source: DOJ, 2014b

■ Percentage Direct File ■ Percentage Transfer Hearing

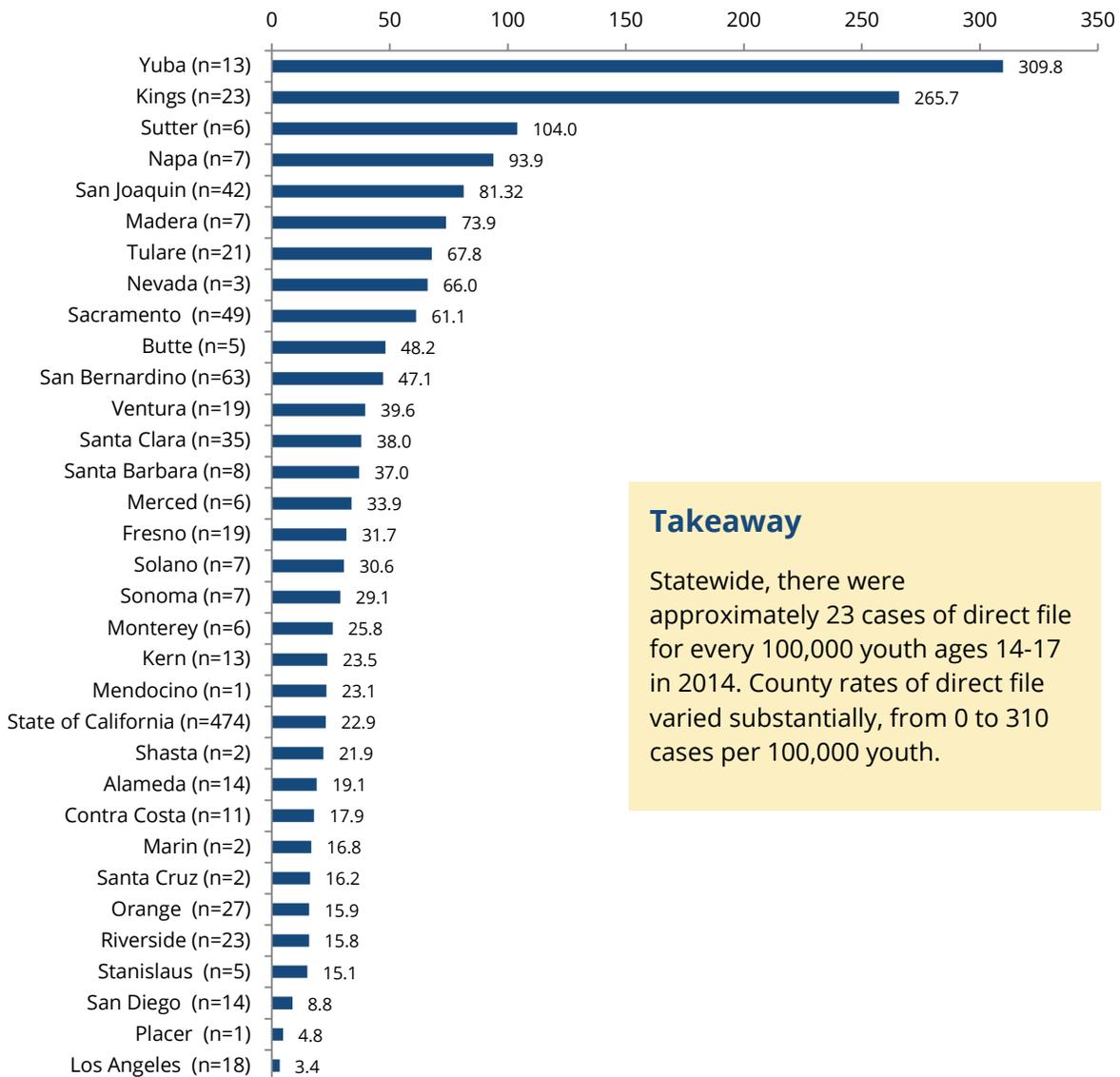
Takeaway

Counties vary in their reliance on direct file, with most reporting a greater number of direct file cases than judicial transfer hearings.

Note: Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Lake, Lassen, Mariposa, Modoc, Mono, Plumas, San Benito, San Francisco, San Mateo, Sierra, Siskiyou, Tehama, Trinity, Tuolumne, and Yolo counties reported no direct file or transfer hearings in 2014.

Counties also vary in their reliance on direct file when compared to the youth population. Comparing direct file cases to the number of 14- to 17-year-old youth in the population allows for direct comparison across counties and highlights the variations in direct file that persist after county size is held constant. Figure 5 ranks California’s counties by their rates of direct file per 100,000 youth. Counties omitted from the figure reported no direct file cases in 2014.

Figure 5. Direct File Rate by County (per 100,000 pop. ages 14-17), 2014



Takeaway

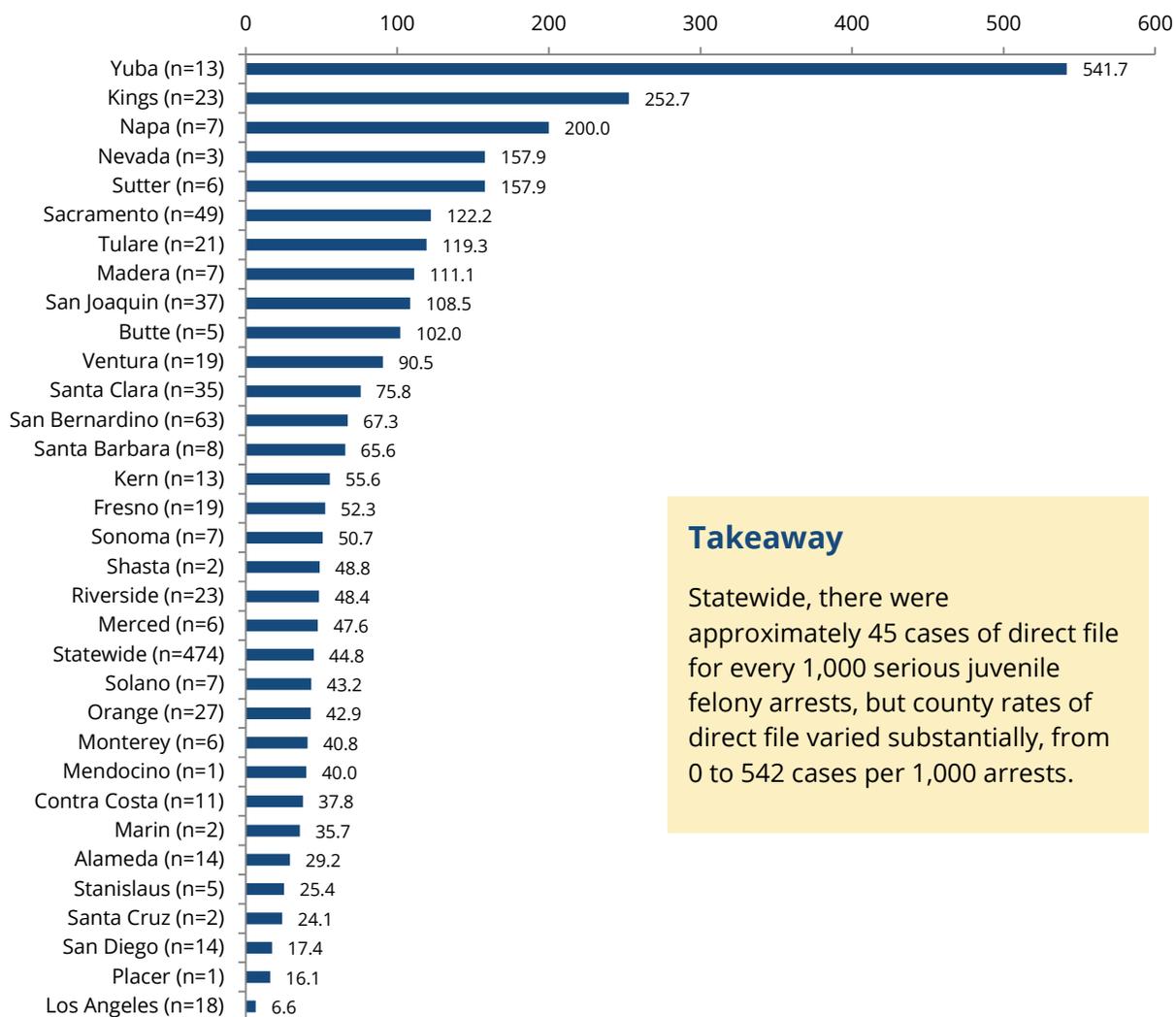
Statewide, there were approximately 23 cases of direct file for every 100,000 youth ages 14-17 in 2014. County rates of direct file varied substantially, from 0 to 310 cases per 100,000 youth.

Source: DOJ, 2014b

Note: Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Lake, Lassen, Mariposa, Modoc, Mono, Plumas, San Benito, San Francisco, San Luis Obispo, San Mateo, Sierra, Siskiyou, Tehama, Trinity, Tuolumne, and Yolo counties reported no direct file cases in 2014.

In addition to differences in population, California counties differ in their rates of felony arrests for youth under 18. One approach to accounting for these differences is to compare counties according to their rates of direct file per 1,000 serious felony arrests of youth ages 10-17. Figure 6 presents these rates for each of California's counties in 2014 (DOJ, 2014b; DOJ 2014a). As shown, 20 counties exceeded the statewide average of 44.8 direct file cases per 1,000 serious juvenile felony arrests, with Yuba, Kings, and Napa Counties reporting particularly high rates of direct file. Notably, most of the counties with high rates of direct file per 100,000 youth 14-17 years of age also report high rates of direct file per 1,000 serious felony arrests.

Figure 6. Direct File Rate by County (per 1,000 serious felony arrests for ages 10-17), 2014



Takeaway

Statewide, there were approximately 45 cases of direct file for every 1,000 serious juvenile felony arrests, but county rates of direct file varied substantially, from 0 to 542 cases per 1,000 arrests.

Source: DOJ, 2014b; DOJ 2014a

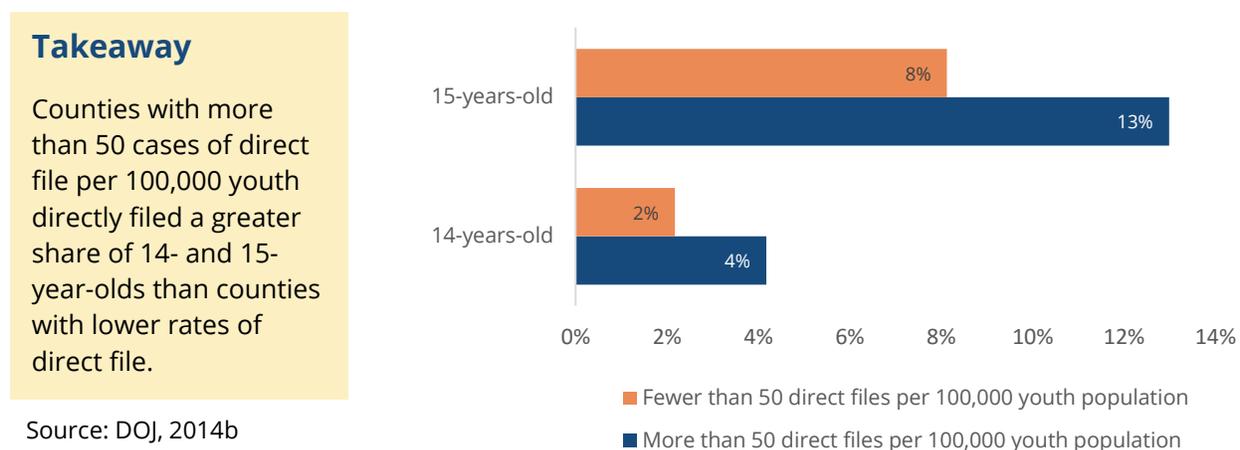
Note: Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Lake, Lassen, Mariposa, Modoc, Mono, Plumas, San Benito, San Francisco, San Luis Obispo, San Mateo, Sierra, Siskiyou, Tehama, Trinity, Tuolumne, Yolo reported no direct file cases in 2014.

Although this approach attempts to control for variations in the number of alleged serious offenses committed by youth, it is an imperfect measure. Due to limitations in the available data, the proxy for qualifying offenses used in this analysis, “serious juvenile felony arrests,” includes the arrests of youth ages 10-13, an age group that is ineligible for direct file. This proxy is also derived from a list of offenses that do not correspond identically with cases that are eligible for direct file. Due to the nature of the code, there are fewer offenses that qualify for direct file than are encompassed by the proxy.

Another key limitation of analyzing rates of direct file per serious juvenile felony arrest is the well-documented presence of racial and ethnic disparity at the point of arrest (Kochel, 2011; Mitchell, 2013). Youth of color are more likely to be arrested than their white peers due to enforcement bias and enhanced police presence in communities of color. As an unreliable measure of actual crime committed by youth, serious juvenile felony arrests cannot serve as the primary method for comparing direct file cases. Due to these challenges, this report will conduct most analyses using the rate of direct file per 100,000 youth in the population, rather than per 1,000 youth felony arrests.

Those counties with the highest rates of direct file also tended to direct file younger teenagers. In counties that direct filed more than 50 youth per 100,000 between 2010 and 2014, a larger percentage of those youth were 14 or 15 years of age (DOJ, 2014b). In counties with more than 50 cases of direct file per 100,000 youth, 17 percent of cases involved a 14- or 15-year-old, compared to just 10 percent in counties with 50 or fewer cases of direct file per 100,000 youth (Figure 7). This finding suggests that counties pursuing direct file prosecutions most aggressively are more likely to prosecute 14- and 15-year-olds in the adult criminal system at the sole discretion of a district attorney.

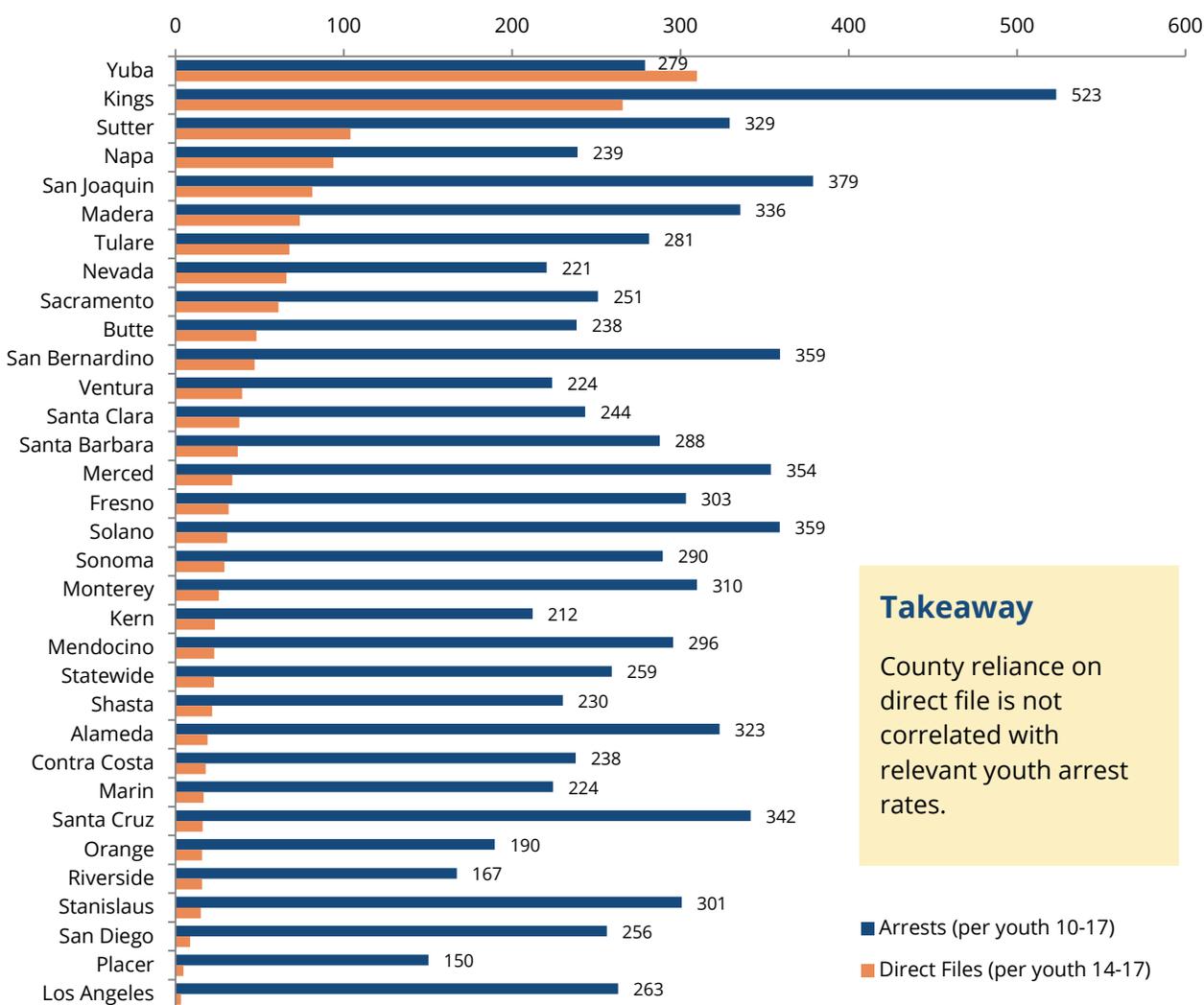
Figure 7. Percentage of Direct File Cases Involving 14- or 15-year-olds, 2010-2014



Direct File and Rates of Youth Arrest

Counties with the highest rates of direct file did not have discernably higher rates of serious youth arrest. Figure 8 compares per capita direct file rates to per capita rates of serious juvenile felony arrests. With the exception of Kings County, most counties that reported particularly high rates of direct file did not report youth arrest rates that far exceeded the statewide average of 259 per 100,000 youth (DOJ, 2014a; DOJ 2014b). In 2014, these arrest rates were not correlated with direct file, suggesting that district attorneys did not use direct file as a proportionate response to alleged youth crime. For example, Yuba and San Diego counties report similar rates of serious youth arrest, yet youth living in Yuba County are 34 times more likely to be direct filed than youth in San Diego County, after accounting for population.

Figure 8. Serious Felony Arrests and Direct File by County (per 100,000 pop. ages 14-17), 2014⁶



Takeaway
County reliance on direct file is not correlated with relevant youth arrest rates.

■ Arrests (per youth 10-17)
■ Direct Files (per youth 14-17)

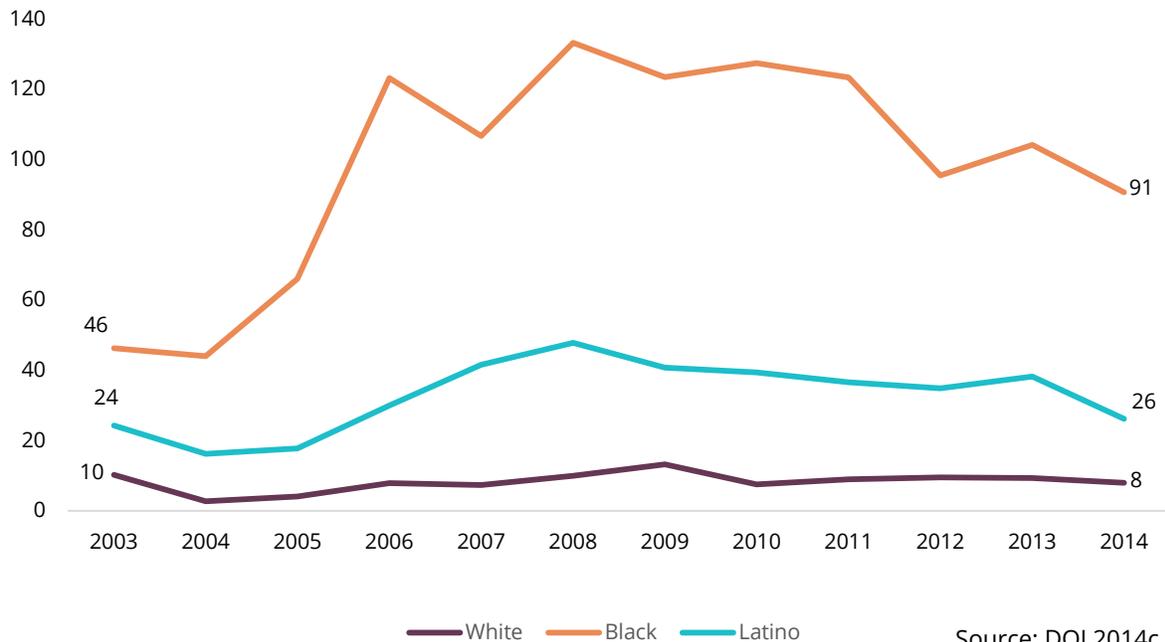
Source: DOJ, 2014a; DOJ, 2014b

⁶An earlier version of this report stated that Yuba County’s serious juvenile felony arrest rate was 256 per 100,000 youth ages 14-17. The correct arrest rate is 279 per 100,000 youth ages 14-17.

Direct File and Racial and Ethnic Disparities

Youth of color are significantly more likely to be subjected to direct file prosecutions than White youth in California. While racial and ethnic disparities persist at every decision-making point in California's juvenile justice system, the imbalance is particularly acute in the decision to directly file charges against youth in adult court.

Figure 9: Rate of Direct File by Race and Ethnicity (per 100,000 pop. ages 14-17), 2003-2014



Takeaway

Racial and ethnic disparities in direct file prosecutions have grown since 2003. While the rate of direct file is decreasing for White youth, it has increased for Black and Latino youth.

While youth of color make up 70 percent of California's population ages 14-17, they comprise 90 percent of youth directly filed in adult court. Over the past decade, the disparity gap, or relative likelihood of youth of color to be directly filed as compared to White youth, has increased. In 2003, Latino youth were 2.4 times more likely than White youth to be directly filed, but in 2014, Latino youth were 3.3 times more likely. For Black youth, the increase is more dramatic. Whereas Black youth were 4.5 times more likely than White youth to be directly filed in 2003, they were 11.3 times more likely to be directly filed in 2014.

Figure 10: Disparity Gap in the Rates of Direct File, 2003-2014

2003		2014	
White 1			White 1
Latino 2.4			Latino 3.3
Black 4.5			Black 11.3

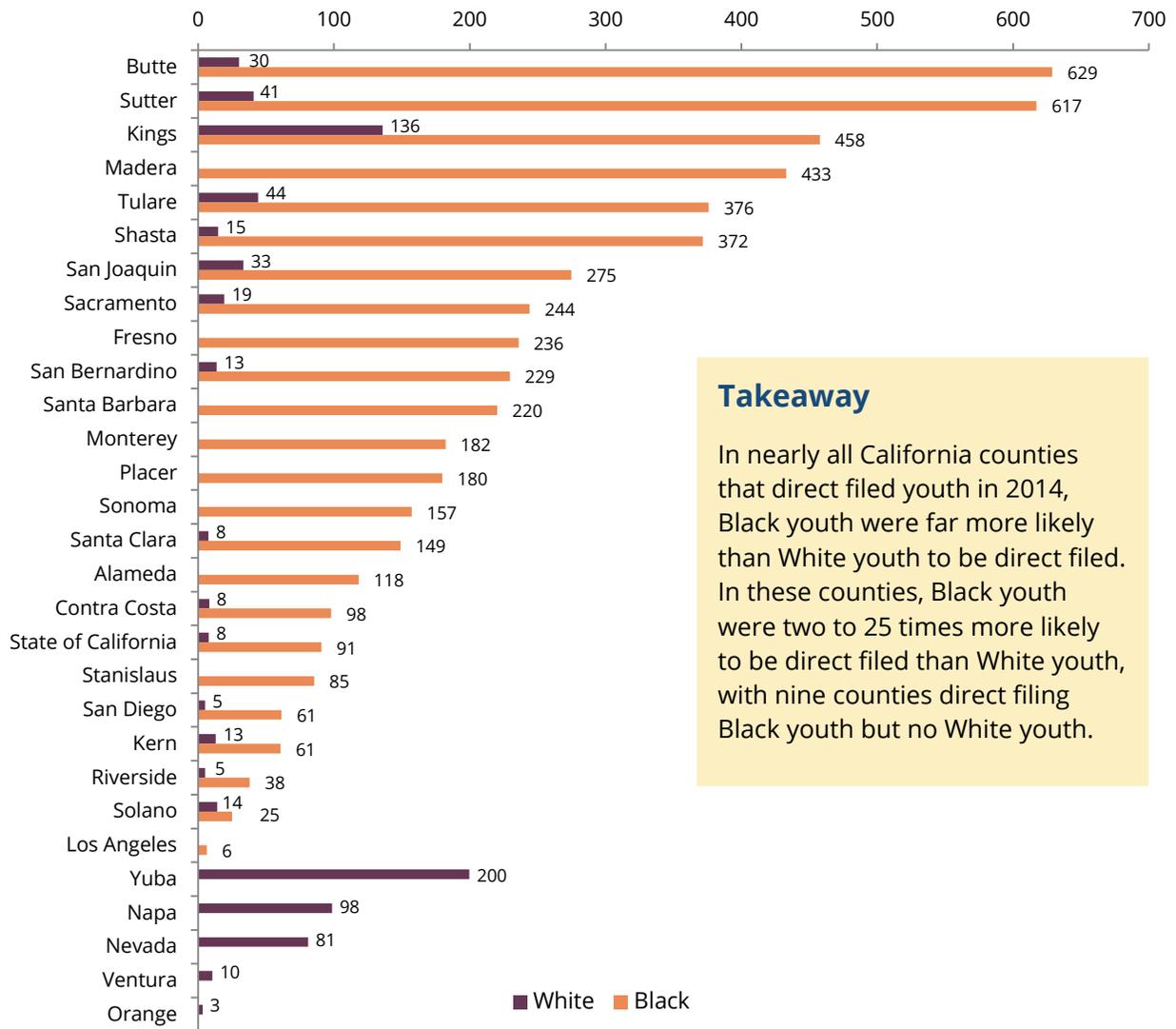
Source: DOJ 2014c

Takeaway

For every White youth directly filed in 2003, there were 2.4 Latino youth and 4.5 Black youth. In 2014, 3.3 Latino youth and 11.3 Black youth were directly filed for every White youth.

Racial and ethnic disparities in the use of direct file are present in counties throughout the state, with several counties reporting particularly high rates for youth of color. Figures 11 and 13 present a comparison of the rates of direct file for youth of color to those of White youth, while Figures 12 and 14 rank counties according to the gap between rates of direct file for youth of color and White youth (DOJ, 2014b).

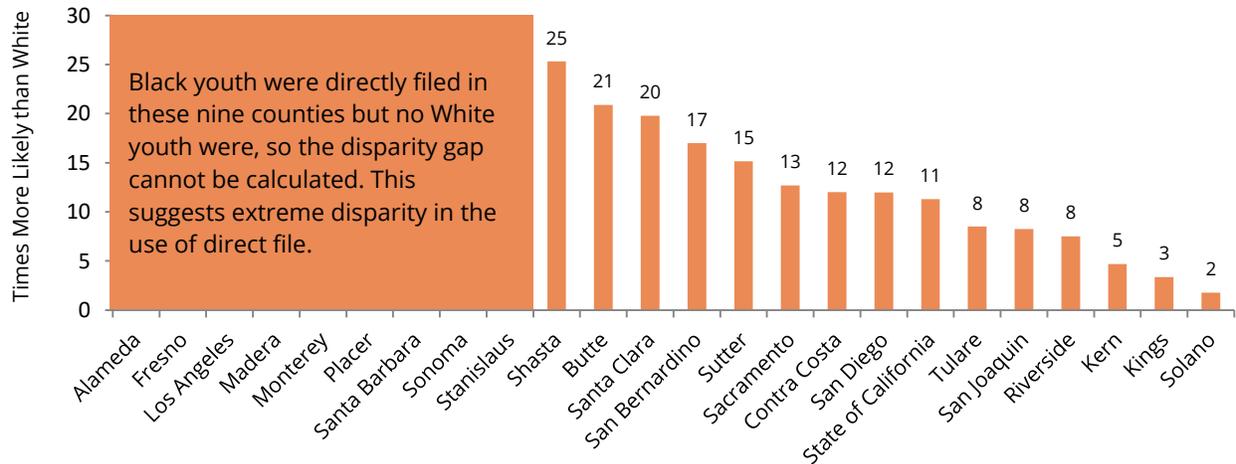
Figure 11. Rates of Direct File for White and Black Youth (per 100,000 pop. ages 14-17), 2014



Takeaway

In nearly all California counties that direct filed youth in 2014, Black youth were far more likely than White youth to be direct filed. In these counties, Black youth were two to 25 times more likely to be direct filed than White youth, with nine counties direct filing Black youth but no White youth.

Figure 12. Disparity Gap for White and Black Youth (per 100,000 pop. ages 14-17), 2014



Source: DOJ, 2014b

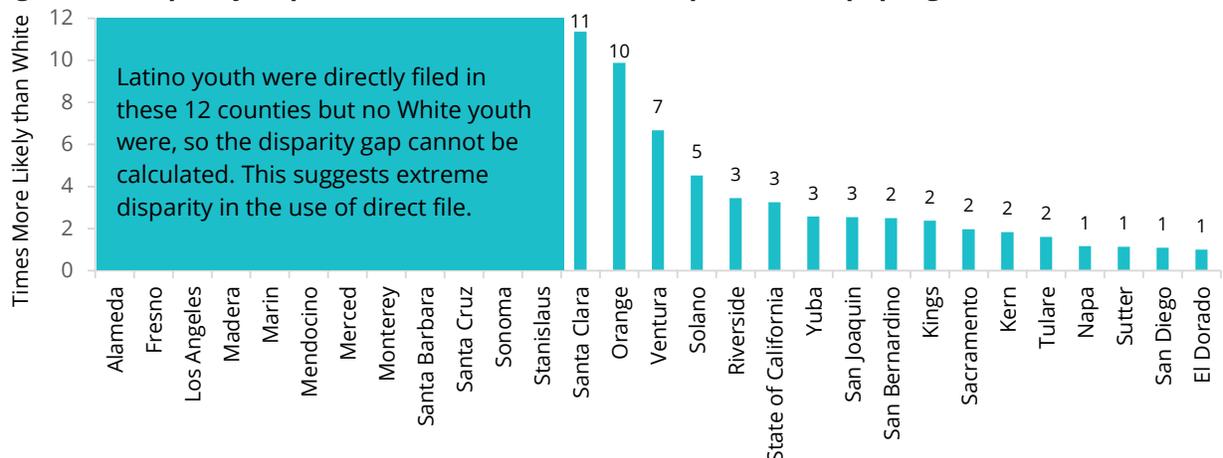
Figure 13. Rates of Direct File for White and Latino Youth (per 100,000 pop. ages 14-17), 2014



Takeaway

In nearly all California counties that direct filed youth in 2014, Latino youth were more likely than White youth to be direct filed. In these counties, Latino youth were up to 11 times more likely to be direct filed than White youth, with 12 counties direct filing Latino youth but no White youth.

Figure 14. Disparity Gap for White and Latino Youth (per 100,000 pop. ages 14-17), 2014



Source: DOJ, 2014b

Conclusion

Direct file remains a system of justice-by-geography. The age, race, and location of a young person — rather than the seriousness of the offense — impacts the likelihood that he or she will be directly filed in criminal court and subjected to the adult justice system. Over the past decade, these disparities have grown more pronounced. Statewide, prosecutors have increased their reliance on direct file as a mechanism for prosecuting youth in criminal courts, and youth of color are increasingly impacted relative to White youth.

The practice of direct file — and its stark racial and ethnic disparities — highlights the need for more appropriate, effective, and humane treatment of youth. Eliminating direct file would prevent prosecutors from exercising ultimate discretion in prosecuting youth in adult criminal court, and would introduce greater transparency and oversight into these decisions.

California is making progress toward restoring judicial discretion over decisions to prosecute youth as adults. In 2015, the California Legislature passed Senate Bill 382, which clarifies the existing criteria used by juvenile court judges when determining whether a youth should be prosecuted in juvenile or adult court. It makes clear that judges should consider more comprehensive information about the alleged crime, as well as the youth's environment, experiences with trauma, and ability to rehabilitate when determining whether he or she should remain in juvenile court.

Additionally, in 2016, California Governor Jerry Brown joined youth justice advocates, law enforcement officials, and faith and community leaders in putting forth the Public Safety and Rehabilitation Act of 2016, a ballot measure that would abolish prosecutors' direct file powers (PRSA, 2016). This initiative would require prosecutors to demonstrate that a particular youth is not amenable to juvenile court treatment and would give juvenile court judges sole authority in transfer decisions.

Abolishing direct file would enhance justice and safety for all Californians. Youth sentenced in the juvenile justice system are entitled to education and rehabilitative services that they would not be entitled to in the adult system. Upon release, youth retained in the juvenile justice system are less likely to recidivate and are able to build greater family connection and economic opportunities (CDC, 2007; Redding, 2010). By returning to a system of judicial discretion, Californians would reduce the high cost of unnecessary and harmful long-term incarceration of youth, while improving public safety and expanding opportunities for adjudicated youth to engage in school, work, family, and community.

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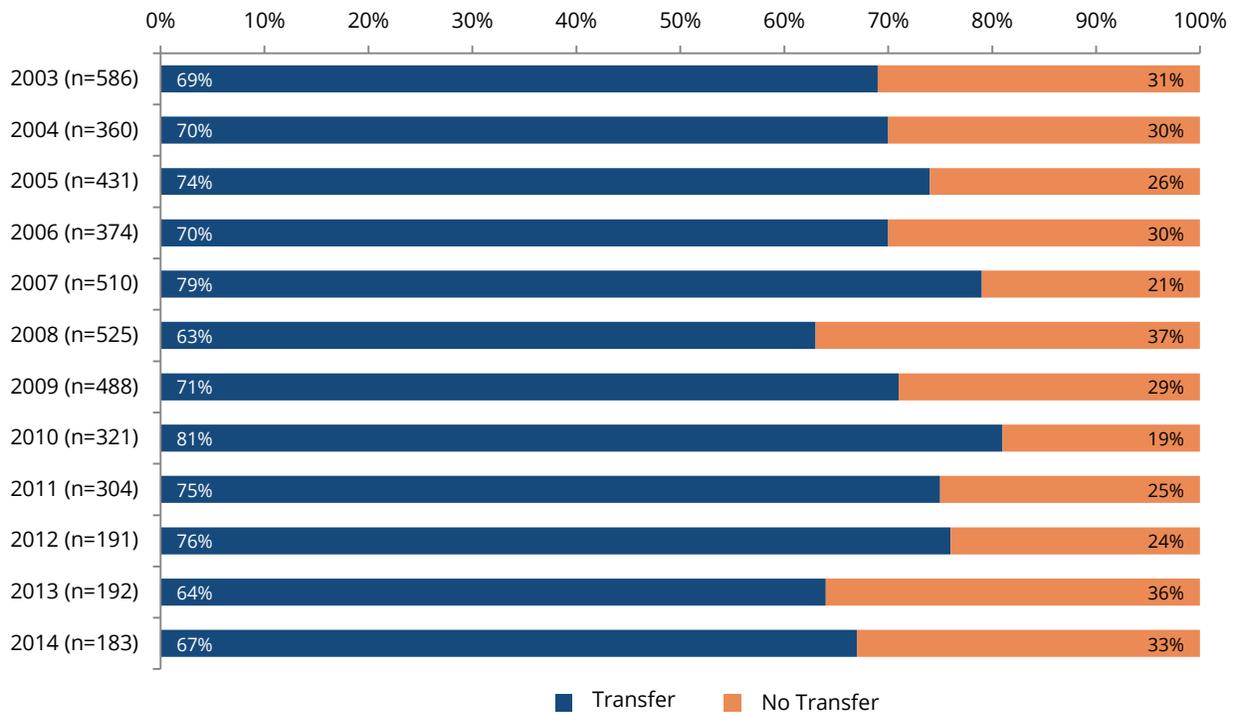
Appendix 1. Trends in Judicial Transfer Hearing Outcomes, 2003- 2014

Number of Judicial Transfer Hearings Resulting in a Transfer to Criminal Court, 2003-2014

Year	Hearings	Transfers	No Transfers	% Transfer	% No Transfer
2003	586	404	182	69%	31%
2004	360	252	108	70%	30%
2005	431	318	113	74%	26%
2006	374	263	111	70%	30%
2007	510	401	109	79%	21%
2008	525	332	193	63%	37%
2009	488	346	142	71%	29%
2010	321	260	61	81%	19%
2011	304	227	77	75%	25%
2012	191	146	45	76%	24%
2013	192	122	70	64%	36%
2014	183	122	61	67%	33%
Average	372	266	106	72%	28%

Source: DOJ, 2014c

Percentage of Judicial Transfer Hearings Resulting in a Transfer to Criminal Court, 2003-2014



Source: DOJ, 2014c

Appendix 2. The Demographics of Direct File Youth, 2010-2014

		Number of Youth	Percentage of Youth
Gender	Male	2998	96%
	Female	125	4%
Race and Ethnicity	Latino	1858	58%
	Black	810	27%
	White	284	10%
	Asian/Pacific Islander	152	4%
	American Indian	2	0%
	Unknown	17	1%
Age	14-Years-Old	86	3%
	15-Years-Old	292	9%
	16-Years-Old	855	27%
	17-Years-Old	1690	54%
	Over 18	200	6%

Source: DOJ, 2014b



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