

The harm of prosecuting a youth in adult court

In Washington state, young people under age 18 who face criminal charges are generally prosecuted in juvenile court. State law, however, requires the juvenile court in certain situations to automatically decline jurisdiction and transfer the youth to adult court for prosecution and potential incarceration in an adult prison, a much harsher system. **The short-hand for this process is “auto-decline.”**

Youth can also be prosecuted in the adult system when the prosecutor asks the juvenile judge to decline jurisdiction and transfer the case to adult court. This process is called “discretionary decline.” Across the state, auto-decline is more common than discretionary decline.

Although both of these systems are harmful to youth, **the juvenile system is less punitive and thus more appropriate for young people.** There are several other important reasons to keep youth out of the adult system:

- Sending youth to prison is deeply harmful. Studies have shown that juveniles in adult prisons are eight times more likely to commit suicide, five times more likely to be sexually assaulted, and almost twice as likely to be attacked with a weapon by inmates and beaten by staff.
- Research shows decline disproportionately affects Black, Asian, and Latinx youth. Dr. Heather Evans, a researcher at the University of Washington, found that Black youth have been sentenced as adults at a rate 4.4 times that of white youth; Asian youth 3.9 times that of white youth; and Latinx youth 3.6 times that of white youth (see box, next page).
- Research shows that children’s brains are still developing. As a result, it is harder for them to understand the consequences of their actions, and they are more vulnerable to peer pressure.
- Research shows that Washington’s automatic decline law results in more youth, once out of prison, reoffending. According to a study by the non-partisan Washington State Institute for Public Policy, recidivism rates are higher for youth who are automatically transferred to the adult system than for otherwise similar youth who stay in the juvenile system.

More often than not, youth who are declined have already been failed and harmed by state systems. Many have already experienced the trauma of system-involvement. Not surprisingly, prosecuting a youth in adult court adds to this trauma, causing long-lasting harms that can affect a young person’s life for decades.

Auto-decline in Washington state

Auto-decline laws arose in the 1990s during the “tough on crime” era, premised on racially biased junk science that viewed certain juveniles as beyond rehabilitation. Washington’s legislature first adopted auto-decline policies in 1994. **We now know the “super-predator” myth is just that—a myth—and that youth are fully capable of reaching their full potential.** Nonetheless, the practice of transferring youth to adult court persists.

In Washington, youth advocates have been fighting to eliminate decline or, short of that, reduce the reach of this harmful law, and in 2018, lawmakers passed E2SSB 6160, legislation that removed several offenses from the auto-decline list and restricted discretionary decline. Though it allowed the harmful practice of decline to continue, the bill’s passage meant many more 16- and 17-year-olds charged with offenses would remain in the juvenile system.

Advocates have also used litigation to try to address the harms of auto-decline. And thanks to a 2017 Washington Supreme Court decision, *State of Washington v. Zion Houston-Sconiers*, judges now have discretion to consider “the mitigating factors of youthfulness” when sentencing a youth in adult court. In its opinion, the Supreme Court said that “sentencing courts must have absolute discretion” to give sentences below mandatory minimums when sentencing juveniles in adult court “regardless of how the juvenile got there.”

A snapshot of how the law works today

Currently, with the changes brought about by the 2018 reforms, the cases that can be automatically declined by the juvenile court and referred to adult court are these:

- Youth who are 16 or 17 at the time of offense and charged with a “serious violent offense.” (A serious violent offense is murder

BIPOC children are disproportionately sentenced in the adult system

According to an analysis by Dr. Heather Evans of the University of Washington, 198 juveniles were sentenced as adults in King County between 2009 and 2019. Her analysis shows “a stark over-representation of children of color” in these sentencing:

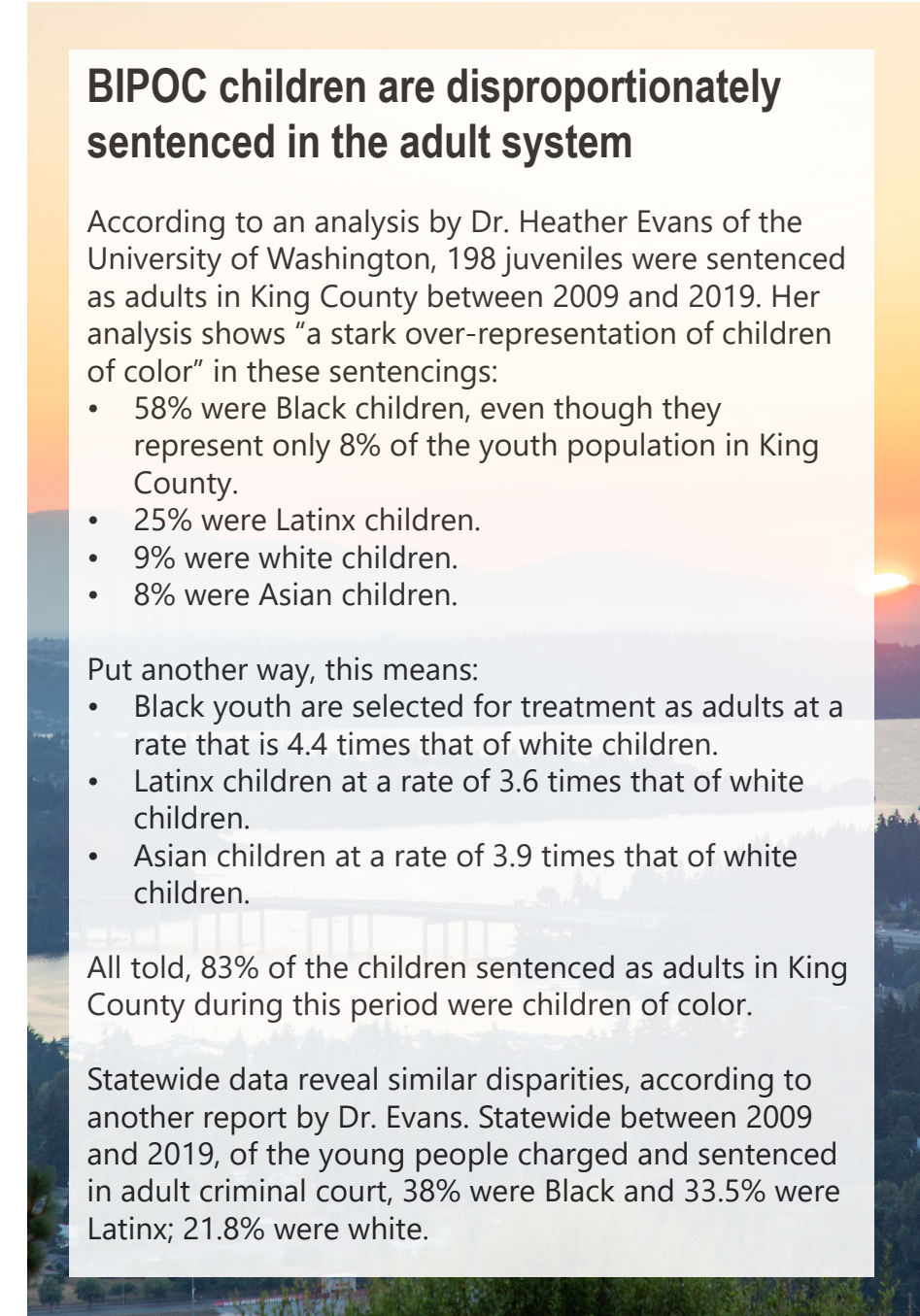
- 58% were Black children, even though they represent only 8% of the youth population in King County.
- 25% were Latinx children.
- 9% were white children.
- 8% were Asian children.

Put another way, this means:

- Black youth are selected for treatment as adults at a rate that is 4.4 times that of white children.
- Latinx children at a rate of 3.6 times that of white children.
- Asian children at a rate of 3.9 times that of white children.

All told, 83% of the children sentenced as adults in King County during this period were children of color.

Statewide data reveal similar disparities, according to another report by Dr. Evans. Statewide between 2009 and 2019, of the young people charged and sentenced in adult criminal court, 38% were Black and 33.5% were Latinx; 21.8% were white.



State Supreme Court recognizes judicial discretion in auto-decline cases

In 2017, the Washington State Supreme Court issued an opinion finding that youths should not be automatically treated like adults in criminal courts because “children are different” and criminal sentences must take their age into account.

The case, *State of Washington v. Zion Houston-Sconiers*, involved two young men, Zion Houston-Sconiers and Treson Roberts, who were serving decades-long prison sentences for robbing Halloween trick-or-treaters of candy and an iPhone when they were 17 and 16, respectively. Because the robberies involved a handgun, both youth were charged with crimes that automatically put them in adult court.

In its opinion, the state Supreme Court upheld the convictions of both young men but ruled that the judge had discretion to give young people lesser sentences than the law mandates for adults. Judges, the Court said, must consider “the mitigating factors of youthfulness” and have “absolute discretion to impose anything less than the standard adult sentence based on youth.”

In 2020, the State Supreme Court issued another opinion, making *Houston-Sconiers* retroactive. The decision stemmed from two companion cases—*In re Personal Restraint of Ali* and *In re Personal Restraint of Domingo-Cornelio*. This meant hundreds of people in state prison were eligible for resentencing and furthered the high court’s recognition that trial courts needed to treat young people differently.

- 1 or 2, homicide by abuse, manslaughter 1, assault 1, kidnap 1, rape 1, assault of a child 1, or an attempt to commit these felonies.)
- Youth who are 16 or 17 at the time of offense and charged with rape of a child 1.
- Youth who are 16 or 17 at the time of offense, are charged with a “violent offense,” like robbery, and have a criminal history that includes two or more prior violent offenses OR three or more of any of the following: class A or class B felony, vehicular assault, manslaughter 2, all committed after age 13 and prosecuted separately.

The 2018 law also extended the jurisdiction for juvenile court:

- A youth whose offense is prior to age 18 and who is convicted in adult court may serve their sentence up to age 25 in a youth prison.
- Youth who are 16 and 17 at the time of offense and adjudicated in juvenile court of robbery 1, drive by shooting, or a violent offense while armed with a firearm and sentenced to an additional 12 months under RCW 14.40.193(3)(b) may be committed to a youth prison up to age 25 for their juvenile offenses.

A case that has been declined and transferred to adult court can be transferred back to juvenile court in certain situations.

- A juvenile case may be transferred back to juvenile court for any auto-decline offense if the prosecutor, youth, and judge agree.
- Jurisdiction transfers back to juvenile court if the juvenile is found not guilty in adult court of the charge for which they were transferred and there are remaining charges to be adjudicated. Under legislation passed in 2019, a prosecutor cannot seek discretionary decline for juvenile offenses returned to juvenile court.

Discretionary decline hearings Another way youth are prosecuted in adult court

Discretionary decline means the prosecutor can, on their own motion, request the juvenile court judge to transfer the youth’s case to adult court for prosecution in the adult system. The court will hold a hearing to make this determination. The defense attorney representing the youth will argue that their case should remain in juvenile court.

Prior to the 2018 legislation, discretionary decline was unlimited. Now, a prosecutor can seek discretionary decline in the following circumstances:

- Youth who are 15 and older charged with a “serious violent offense.” (A serious violent offense is murder 1 or 2, homicide by abuse, manslaughter 1, assault 1, kidnap 1, rape 1, assault of a child 1, or an attempt to commit these felonies.)
- Youth who are 14 or younger charged with murder 1 or 2.
- Youth of any age charged with custodial assault while already serving a minimum juvenile sentence to age 21.

Here’s how discretionary decline hearings work:

- Before the juvenile court can decline jurisdiction, it must find by a preponderance of the evidence that transferring the case to the adult system is in the best interest of either the youth or the public. The prosecutor has the burden of proof.
- The judge must consider the eight factors established in *Kent v. U.S.* (see box, this page) before making their decision. The *Kent* factors are intended to guide the court’s inquiry; not all need to be met.
- If the judge declines juvenile jurisdiction, the case is transferred to adult court.

The *Kent* Factors

- The seriousness of the alleged offense to the community and whether the protection of the community requires decline.
- Whether the alleged offense was committed in an aggressive, violent, pre-meditated, or willful manner.
- Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
- The prosecutorial merit of the complaint.
- The desirability of trial and disposition of the entire offense in one court when the juvenile’s associates in the alleged offense are adult.
- The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
- The record and previous history of the juvenile, including previous contacts with law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation, or prior commitments to juvenile institutions.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services and facilities currently available to the Juvenile Court.

Kent v. United States, 383 U.S. 541, 566–67 (1977)

The power of the prosecutor

A prosecutor’s decision to charge a child as an adult is **totally discretionary** and made with little or no time to understand the young person. Prosecutors have only 72 hours to decide whether to charge a child as an adult. And unlike judges, who must explain their decisions publicly and whose decisions are subject to review from

appellate courts, prosecutors' decisions are made behind closed doors. The fact is, a prosecutor can choose to keep any case in juvenile court, even those charges on the auto-decline list, with the court's approval. In other words, the prosecutor can ask the court to waive adult criminal jurisdiction, giving the prosecutor enormous power over the potential fate of a young person.

The prosecutor also has discretion over how to charge a youth and whether to seek a charge that could put them in the adult system. In fact, prosecutors will sometimes use that power—charging a youth with an auto-decline offense—to pressure a youth to plead guilty to a lesser offense.

Finally, the prosecutor decides if they'll pursue a discretionary decline hearing. While they don't do this often in King County, they did so in 2021, forcing a young person into the adult system. The only **mandatory decline hearings** are for youth charged with escape while serving a minimum sentence until age 21.

When a young person is arrested on an auto-decline offense

The judicial system is complex and bewildering and navigating it can be difficult. Below is a brief overview of the judicial process, starting with a young person's arrest on an "auto-decline" offense.

- The young person will be booked into the Juvenile Jail at 1211 E. Alder Street, Seattle.
- If they're booked before midnight, they'll see a judge in juvenile court the next afternoon (if it's a week day) at what is called a "first appearance." A public defender will be present to represent the youth. The judge will review the police affidavit and decide if there's probable cause.
- The prosecutor, meanwhile, has 72 hours after the young person's first appearance to decide what charges they're going to file, though that charge can be changed in the future. If they charge the youth with an auto-decline offense, the youth (while under age 18) will remain in the youth jail while the case is pending—but the youth's case will now be transferred to adult court.
- If charged as an adult—and if the youth is represented by the Department of Public Defense—the young person will be assigned two attorneys, one attorney who practices in the adult system and a second attorney who practices in the juvenile system. The two will work together in providing legal support to the youth.
- The young person will have an arraignment in the King County Courthouse in Seattle or the Regional Justice Center in Kent about two weeks after the first appearance. At that second appearance, the youth will enter a plea—almost always, a plea of not guilty. In addition, the youth and attorneys may address bail at that hearing, or they may wait, depending on a variety of factors.

- The case now proceeds in adult court unless it is returned to juvenile court. Several hearings will determine next steps in the case. The case generally ends with a trial or a plea agreement. The plea agreement can result in the case staying in adult court or can involve a resolution in juvenile court (if the prosecutor and judge agree).

How you can help a loved one

Family and community members can try to help a young person obtain a less harmful outcome, whether they're prosecuted in the juvenile or the adult system. Here are some ways people can help when a young person they love is charged with a crime:

- Help the youth's defense attorney understand the young person. Show up at court appearances, either in person or remotely. While a remote appearance is not always as impactful, it is still important. When a judge sees a young person has community and family support, that can make a difference in what the judge decides to do.
- Collect any relevant mental health, educational, or medical records.
- Talk with the youth's defense attorney about collecting letters of support.
- When given the opportunity, let the judge know about the young person's strengths and stability, interests and activities.
- Remember that the defense attorney represents the young person, not the family, and can give you information about the case only with the young person's permission.

What is "family"? We use the term broadly. It includes relatives, friends, community members, and anyone else who cares about the young person, knows the young person, and is committed to helping them succeed.

- Provide emotional support to your loved one. Contact the youth jail and find out about visiting hours as soon as possible and visit as frequently as you're able. Encourage others to visit.

What might a letter of support look like?

- Address the letter to "Whom it May Concern" and begin by saying, "This is a letter of support for (the person's name)."
- Then introduce yourself and say how you know the young person.
- After that, discuss the young person's interests, activities, personality traits, strengths, and work history. Be as specific as you can.
- Then note the young person's supports. E.g., family support, community support, church support, school support.
- If appropriate, note some of the stresses or hardships in the young person's life.
- Close by reiterating that this is a young person full of potential and promise and who deserves to be seen as such. If it feels comfortable to you, speak from the heart about your loved one.

Additional resources

- [Transfer to Adult Court: A guide for families in California](#)
- [Raising the Floor: Increasing the minimum age of prosecution of youth as adults](#)
- [No Kids in Prison: End Youth Incarceration](#)
- [End the cruel, racist practice of prosecuting children in adult court, The Seattle Times](#)
- [Race and Juvenile Justice | The National Association of Criminal Defense Lawyers](#)
- [The Child, Not the Charge | Justice Policy Institute](#)

Note: This document will be updated based on feedback and additional information.

"A prosecutor's decision to charge a child as an adult is totally discretionary, virtually unreviewable, and made with little to no time to understand the young person's psychosocial history. Prosecutors are given only 72 hours to decide whether to charge a child as an adult, and once the case is in adult court, children are subject to incredibly long sentences and face immense pressure to plead guilty to avoid spending decades in prison. Unlike judges, who must make and explain their decisions publicly and are subject to review from higher/appellate courts, prosecutor's decisions are made behind closed doors and rarely subject to any review."

Judge (ret.) J. Wesley Saint Clair and
Stephan M. Thomas,

"End the cruel, racist practice of prosecuting children in adult court," *Seattle Times*, Feb. 10, 2021