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Incarcerating children in adult prisons and jails puts them at increased risk of physical harm, Smith writes.

## Prosecuting kids as adults does harm

BY JASON SMITH

When tragedies such as the mass shooting at Oxford High School occur, society rightly seeks to hold the perpetrator accountable — which often includes charging the perpetrators in the adult criminal justice system, even if they are minors.

Research, however, shows that prosecuting youths as adults — which disproportionately impacts Black and Brown youth — does not improve public safety, nor does it prevent similar crimes from recurring.

“Available evidence indicates that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth,” notes one 2007 report from the Centers for Disease Control and Prevention.

Incarcerating children in adult prisons and jails also puts them at increased risk of physical harm at the hands of older inmates or facility staff. They may also be placed in isolation for their own safety, which can lead to its own psychological trauma.

Michigan law offers an alternative to transferring youth to the adult system. Juvenile courts can retain jurisdiction until age 21 for very serious offenses, provided that the offense occurred before the youth turned 18.

In addition, if there are concerns that a youth may be a long-term public safety risk,

Michigan courts can impose a “blended sentence,” which allows the court to immediately confine a young person and provide them with age-appropriate treatment in a juvenile facility.

It also allows for a youth to be released at age 21 if they no longer present a threat to the community, or to serve out an adult sentence possibly in prison, if the court determines the youth is still a risk to public safety.

Under the federal Juvenile Justice Delinquency and Prevention Act (reauthorized in 2018), any youth held in local adult jails must be removed to a juvenile detention center as of Dec. 21, 2021, even those waived into the adult system. In Michigan, as of last October, only those 18 or older can be held in an adult jail.

One exception allowed under the federal act is if a court finds that keeping a minor in an adult facility is “in the interest of justice.”

This means the court must weigh multiple factors including the person’s age, physical and mental maturity, present mental state (including whether they present an imminent risk of self-harm), the nature and circumstances of the charges, the youth’s history of delinquency, and the ability of jail and juvenile facilities to meet the needs of the youth while protecting the public and others in their custody.

A court that decides to detain a youth in an adult jail

must also hold a review hearing once every 30 days, with a 180-day limit unless there is a “good cause” extension.

Youth held in adult facilities under the interest of justice exception are covered by the Prison Rape Elimination Act’s youthful inmates provision, which guarantees sight and sound separation between youth and adult inmates.

However, this is an extremely difficult standard for jails and prisons to meet, and has resulted in young people kept in solitary cells without access to such rehabilitative resources as school and group counseling.

Because the vast majority of youth who are sentenced to adult correctional facilities are eventually released, the lack of appropriate, in-facility treatment along with the trauma of incarceration with adults places them at a higher risk of re-offending than if they had been in a secure juvenile facility.

This means that a knee-jerk, “tough on crime” response which sends children to adult prisons may actually decrease public safety.

When a child gets into trouble with the law, a strong effort to identify and address the young person’s needs with age-appropriate interventions and accountability measures is the most effective way to make us all safer in the long run.

Jason Smith is the executive director of the Michigan Center for Youth Justice. The Ann Arbor based nonprofit advocates for a fair and effective justice system for the state’s youth.