THE CAMPAIGN FOR YOUTH JUSTICE

The Campaign for Youth Justice (CFYJ) is dedicated to ending the practice of trying, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system. The goals of the campaign are:

- to raise awareness about the negative impact of prosecuting youth in the adult criminal justice system and of incarcerating young people in adult jails and prisons;
- to reduce the number of youth who are tried, sentenced, and incarcerated in the adult system;
- to decrease the harmful impact of trying youthful offenders in adult court; and
- to promote research-based, developmentally appropriate rehabilitative programs and services for youth.

THE CONSEQUENCES AREN'T MINOR

The Impact of Trying Youth as Adults and Strategies for Reform

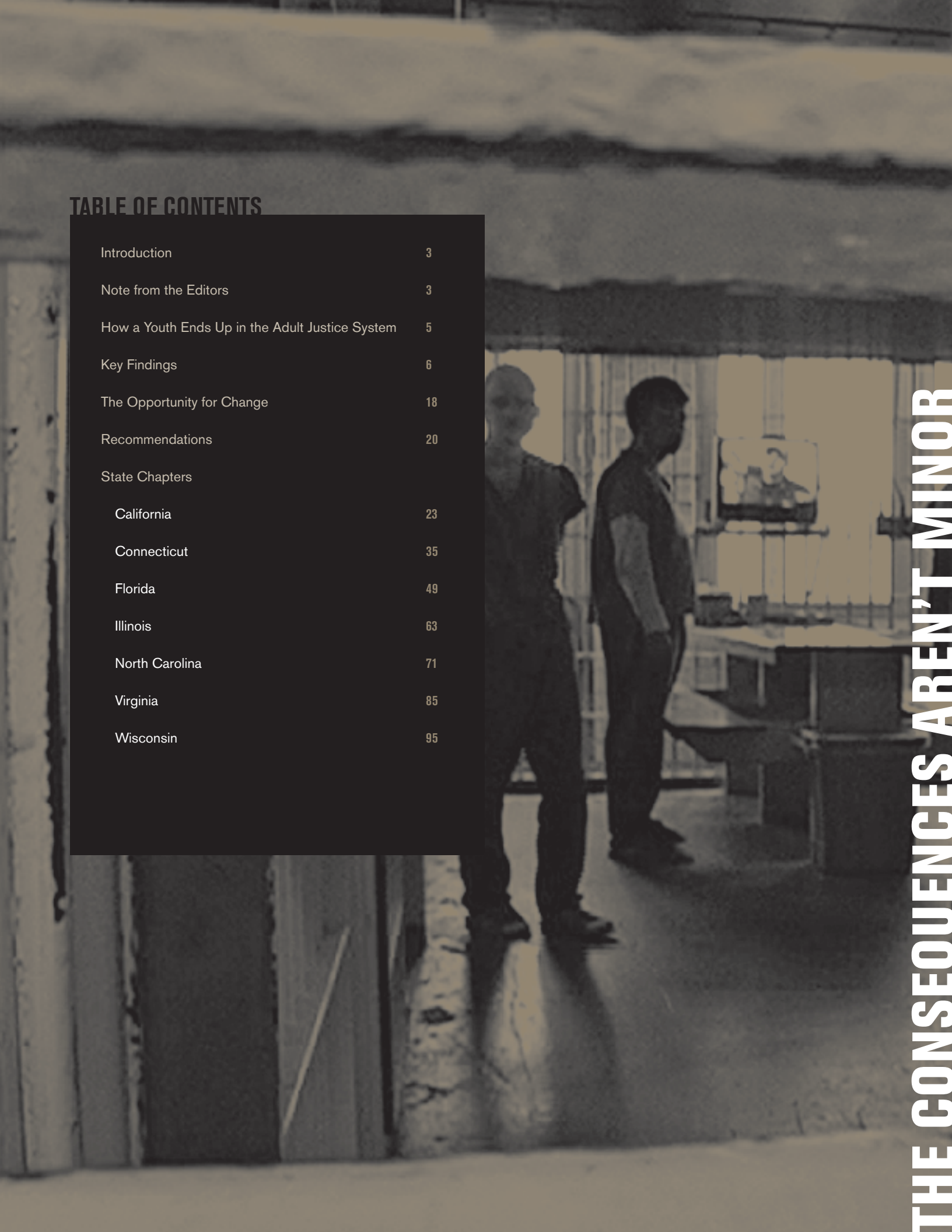
A CAMPAIGN FOR YOUTH JUSTICE REPORT :: MARCH 2007

DEDICATION

This book is dedicated to the thousands of young people and their families across the country who have been affected negatively by state laws in the name of public safety.

CAMPAIGN FOR YOUTH JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR



THE CONSEQUENCES AREN'T MINOR

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NOTE FROM THE EDITORS

"On the horizon, therefore, are tens of thousands of severely morally impoverished juvenile superpredators."

– John Dilulio, The Coming of the Superpredators, The Weekly Standard (1995)

Sometimes all it takes is *one case* to change the course of public opinion and national policy.

The Central Park Jogger case did just that. On April 19, 1989, a 29-year-old investment banker was raped and left unconscious. Five teenagers–who later became known as the "Central Park Five"–confessed to police, were convicted in the rape, and served sentences ranging from 7 to 11 years. The press inflamed public fears, coining new phrases such as the activity "wilding" where "packs of bloodthirsty teens from the tenements, bursting with boredom and rage, roam the streets getting kicks from an evening of ultra-violence."[1]

As a result of the Central Park Jogger case, prominent and influential individuals, such as former Princeton professor and Bush Administration appointee, John Dilulio, made doom and gloom predictions about the emergence of a "generational wolfpack" of "fatherless, Godless and jobless" youth. According to these observers, this situation was not confined to New York City but was endemic of a national wave of "superpredators."[2]

The superpredator phrase stuck and almost every state passed new laws to make it easier to try and sentence youth in the adult criminal justice system. Punitive policies also were introduced on a national level. Former Representative Bill McCollum (R-FL), then chair of the Crime Subcommittee in the House Judiciary Committee, first introduced the "Violent Youth Predator Act of 1996," and later reintroduced this legislation as the "Violent Juvenile and Repeat Offender Act of 1997." At a committee oversight hearing on the legislation he said, "Brace yourself for the coming generation of superpredators."

The roving waves of super-violent youth never materialized. In fact, the juvenile crime rate proceeded to fall for a dozen years to a 30-year low. And the youth in the original Central Park Jogger have since been found innocent. Their convictions were thrown out in 2002, after DNA testing confirmed the guilt of convicted serial rapist and murder, Matias Reyes. This stunning reversal did not garner the same coverage that the original case did, and the myth of excessive youth violence still holds.

Despite the data, surveys report that the public believes the juvenile crime rate is increasing and that youth account for a large proportion of overall crime. In reality, national statistics show that more than 80% of all crimes are committed by adults.

State laws approved in the hysteria over predicted youth crime remain on the books, but with little proven benefit to public safety. The public was told that these laws would promote public safety, but research produced during the 1990's and in this decade refutes that idea. In fact, far from reducing crime, trying youth as adults increases the chances that young people will continue to re-offend.

Combined with earlier statutes, these laws put thousands of youth at risk of isolation, abuse, and emotional and mental health problems. When tried and incarcerated as adults, young people face harmful and irreversible consequences, often for the kinds of minor mistakes many of us made when we were young. Some researchers estimate that as many as 200,000 youth are prosecuted as adults every year.[3]

This report shines light on the high costs youth are paying from these mistaken policies by highlighting the following states: California, Connecticut, Florida, Illinois, North Carolina, Virginia, and Wisconsin. Each chapter contains up-to-date and comprehensive information on the processes and policies that send youth to the adult criminal justice system, data on who is affected, and real-life examples of individual youth who have been personally affected by these laws.

The profiles show what can happen when public policy can be swayed by a single, now-discredited case and the resulting unfounded hysteria. These stories represent more than single cases; they reflect the pain and harm that comes to the thousands of youth in the adult justice system whose stories haven't been told. Unfortunately, they are not the exception; they are the rule.

It is our hope that at least one of the voices of these youth will inspire state and national policymakers to take action on the recommendations in this report.

Sincerely,

Liz Ryan, Campaign for Youth Justice

Jason Ziedenberg, Justice Policy Institute

HOW A YOUTH ENDS UP IN THE ADULT JUSTICE SYSTEM

Age of Juvenile Court Jurisdiction	These laws determine the age of adulthood for criminal justice purposes. They effectively remove certain age groups from the juvenile court control for all infractions, whether violent or non-violent, and place them within the adult court jurisdiction. Thirteen states have defined the age of juvenile court jurisdiction as below the generally accepted age of 18 years old.
Transfer and Waiver Provisions	These laws allow young people to be prosecuted in adult courts if they are accused of committing certain crimes. A variety of mechanisms exist by which a youth can be transferred to adult court. Most states have transfer provisions, but they vary in how much authority they allow judges and prosecutors to exercise.
Judicial Waiver	This is the most traditional and common transfer and waiver provision. Under judicial waiver laws, the case originates in juvenile court. Under certain circumstances, the juvenile court judge has the authority to waive juvenile court jurisdiction and transfer the case to criminal court. Some states call the process "certification," "remand," or "bind over for criminal prosecution." Others "transfer" or "decline jurisdiction" rather than waiver. At the end of the 2004 legislative session, almost all states had judicial waiver provisions. State statutes vary in how much guidance they provide judges on the criteria used in determining if a youth's case should be transferred.
Prosecutorial Waiver	These laws grant prosecutors discretion to file cases against young people in either juvenile or adult court. Such provisions are also known as "concurrent jurisdiction," "prosecutorial discretion," or "direct file." At the end of the 2004 legislative session, 15 states had concurrent jurisdiction provisions.
Reverse Waiver	This is a mechanism to allow youth whose cases are being prosecuted in adult court to be transferred back down to the juvenile court system under certain circumstances. At the end of the 2004 legislative session, 25 states had reverse waiver provisions.
Statutory or Legislative Exclusion	These laws exclude certain youth from juvenile court jurisdiction entirely by requiring particular types of cases to originate in criminal rather than juvenile court. At the end of the 2004 legislative session, 29 states had statutory exclusion laws on the books.
"Once an Adult, Always an Adult"	These laws require youth who have been tried as adults to be prosecuted automatically in adult courts for any subsequent offenses. At the end of the 2004 legislative session, 34 states had such provisions, but most require the youth to have been convicted in the initial criminal prosecution.
Blended Sentencing	These laws allow juvenile or adult courts to choose between juvenile and adult correctional sanctions in sentencing certain youth. Courts often will combine a juvenile sentence with a suspended adult sentence, which allows the youth to remain in the juvenile justice system as long as he or she is well-behaved. At the end of the 2004 legislative session, 26 states had passed laws that provided for blended sentencing in some cases.

Sources: Sickmund, M. (2003). Juveniles in court. Washington, DC: US Department of Justice, Office of Juvenile Justice and Delinquency Programs. http://www.ncjrs.gov/html/ojjdp/195420/contents.html. Griffin, P. (2005). National overviews. State juvenile justice profiles. Pittsburgh, PA: National Center for Juvenile Justice. http://www.ncjj.org/stateprofiles/

KEY FINDINGS

National and state research, and the experience of young people, their parents, and their families give us a concrete picture of how the laws governing the trying, sentencing, and incarceration of youth do not promote public safety. The following are more than a dozen key findings from this research.

#1 The overwhelming majority of youth who enter the adult court are not there for serious, violent crimes.

"I never saw any superpredators in my court. What I saw were 14- and 15-year-olds, scared to death."

–Judge David A. Young, Circuit Court for Baltimore City (1998)

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Estimates range on the number of youth prosecuted in adult court nationally. Some researchers believe that as many as 200,000 youth are prosecuted every year.[4] Despite the fact that many of the state laws were intended to prosecute the most serious offenders, most youth who are tried in adult courts are there *no matter how minor their offense*. In states such as Connecticut, North Carolina, and New York, youth age 16 and 17 can automatically be tried as adults no matter what the offense. In 10 other states (Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin), 17-year-olds are automatically prosecuted as adults.

For example:

- In Connecticut, 96% of the 16- and 17-year-olds arrested are arrested for non-violent offenses,[5] but all of them will be tried in the adult justice system.
- In Illinois, more than 70% of all arrests of young people of any age are for non-violent offenses, and the majority of 17-year-olds in the adult criminal justice system are arrested for non-violent offenses.[6]
- In Wisconsin, all 17-year-olds end up in the adult justice system even though 85% of them were charged with non-violent offenses.[7]

Most of the youth who enter the adult court are charged with non-violent offenses. Of the youth who serve time in adult prison, 7 out of 10 are convicted of violent offenses, but there is more to their story as well. The term "violent offense" does not necessarily imply that these youth are a threat to public safety. For example, Anthony Laster, a youth from Florida profiled in this report, was sent to adult jail for "strong armed robbery," a "violent" crime that consisted of stealing $2 from another young person. And a youth in Illinois was tried as an adult for a robbery that involved taking gym clothes. These "robberies" are considered violent offenses under the FBI index of violent crimes. Additionally, a number of youth entering prison are labeled as accomplices. These youth were present at the scene of the crime but did not actually commit a violent offense.

By increasing the age of juvenile court jurisdiction to 18 in all states, substantial numbers of youth currently charged with minor and non-violent offenses would not be prosecuted in adult courts. Instead these youth would be treated in the juvenile justice system. There they would obtain services, treatment, and programming that is more developmentally appropriate.

#2 Increasing numbers of young people have been placed in adult jails where they are at risk of assault, abuse, and death.

"Barbaric."

–D.C. Superior Court Judge Wendell Gardner in reference to the practice of placing a girl in the D.C. jail (Washington Post, September 14, 2006)

Currently, 40 states permit or require that youth charged as adults be placed pre-trial in an adult jail, and in some states they may be required to serve their entire sentence in an adult jail.[8] Since states have passed laws to make it easier to prosecute youth as adults, the number of youth placed in adult jails has increased dramatically. According to the National Council on Crime and Delinquency, since 1990 the incarceration of youth in adult jails has increased 208%.[9] On any given day, more than 7,000 young people are held in adult jails.[10] This figure is likely much higher as it does not account for the turnover in adult jails.[11]

This policy places thousands of young people at risk as it is extremely difficult to keep youth safe in adult jails. Jail officials are in a Catch 22 when it comes to young people in their custody. On the one hand, if jail officials don't separate youth from adults in adult jails, youth will have regular contact with adults. This situation can result in serious physical and emotional harm to youth. On the other hand, when officials do separate youth from adults, they are often placed in isolation for long periods of time. This can lead to depression, exacerbate already existing mental health issues, and put youth at risk of suicide. Essentially, this is a no-win situation for jail officials. In fact, the American Jail Association recommends that "The American Jail Association be opposed in concept to housing juveniles in any jail unless that facility is specially designed for juvenile detention and staffed with specially trained personnel."[12]

For example, press accounts in 2006 in the *Daily Progress*[13] and *The News Virginian*[14] reported that a 15-year-old youth in Waynesboro, Virginia, was placed in an adult jail in a cell with an adult convicted of child molestation. This youth also witnessed a suicide attempt by an adult inmate. And during his time at the jail, the youth did not receive educational programming or mental health counseling. Even though Virginia law allows youth who are charged as adults to be placed in juvenile detention facilities instead of adult jails, the judge in this case did not exercise this option. Fortunately, the youth's attorneys were able to remove him from this facility.

The researchers for this report learned from youth and their families that many youth in adult jails sleep in excess of 15 hours a day, do not receive adequate nutrition or exercise, and do not have access to educational programming. In addition, they have little to no access to a counselor. Adult jail staff are not equipped or trained to provide adequate services to young people. These youth need programming that is developmentally appropriate and rehabilitative, the kind of programming available in the juvenile justice system.

In visiting correctional facilities for this report, the researchers found many instances of youth awaiting trial in jails or serving sentences in jail of up to two years for minor, non-violent offenses. In the Wisconsin chapter of this report, two cases of youth serving time in adult jails illustrate this situation. In the first case, "Jane" was prosecuted as a 17-year-old in adult court for a bicycle theft. In the other case, "John," who is 17 and homeless, was prosecuted in adult court for breaking and entering a car so he could find a warm place to sleep during a cold spell in December. Both youth were placed in an adult jail for months. As a result, both will have adult convictions for these minor offenses that will follow them for the rest of their lives.

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Recent national research also shows that youth may await trial in adult jails before being sent back to juvenile court by adult court judges for prosecution. In some cases, these youth are not even convicted.[15] In conducting research for this report, the authors became aware of one case of a youth in the District of Columbia who spent more than 14 months in an adult jail awaiting trial and was later found not guilty. As a result of his incarceration, this youth now suffers from a serious mental health disorder that he did not have prior to placement in the jail.

Instead of adult jail, states and counties could place youth, if they pose a risk to public safety, into juvenile detention facilities where they are more likely to receive developmentally appropriate services, educational programming, and support by trained staff. It is true that many of the juvenile justice systems in this country are also in need of reform. Nevertheless, youth sent to the juvenile justice system are more likely to receive age-appropriate and rehabilitative services.

#3 State laws may contradict core federal protections designed to prohibit confinement of juveniles with adults.

"State laws that allow for youth under age 18 to be confined in the adult criminal justice system seem to contradict the intent of the federal Juvenile Justice and Delinquency Prevention Act, which, for more than 30 years, has required sight and sound separation when youth are housed in adult lock-ups, as well as speedy removal of youth whenever they are placed in adult jails."

–Nancy Gannon Hornberger, Executive Director, Coalition for Juvenile Justice (2007)

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Federal protections approved by the Congress in 1974 to protect youth by prohibiting the placement of youth in adult jails (except in rare and limited circumstances) do not apply to youth who are prosecuted as adults. The federal protections, under the Juvenile Justice and Delinquency Prevention Act (JJDPA), specifically cover youth under the jurisdiction of the juvenile court.[16] The protections will still apply to youth who are in juvenile court and have not yet been "transferred" or "waived" to adult court by a juvenile court judge, but do not apply to youth who are automatically prosecuted as adults through other mechanisms. This is especially true for states with statutes that provide for a "lower age of juvenile court jurisdiction," "prosecutorial discretion or direct file," or "automatic transfer or statutory exclusion." These statutes remove youth from the original jurisdiction of the juvenile court and, as a result, youth are likely to be placed in adult jails. Right now, 40 states have statutes that require or allow youth prosecuted as adults to be placed in adult jails without federal protections.[17]

The JJDPA is scheduled for reauthorization in 2007 by Congress and could be amended to prohibit this practice of placing youth in adult jails nationwide.

#4 In contrast to growing numbers of youth incarcerated in adult jails, adult prisons' admissions of youth are declining.

"Youths should not be placed in prison with adults where rape and drugs are the norm."

–Dwayne Betts, formerly incarcerated youth in adult prison (2006)

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On any given day, more than 2,000 youth are in adult prisons.[18] With the exception of Connecticut, which led the nation in the number of youth in adult prison and experienced a nearly 20% increase in the number of youth in adult prison,[19] this number has declined significantly over the past decade.[20] This decrease is explained by a number of factors.

First, there is growing recognition by national, state, and local policymakers that youth don't belong in adult prisons.

Youth in adult prisons are at risk of abuse, sexual assault, suicide, and death, which has led experts to conclude that "clearly, juveniles are a vulnerable population within adult correctional facilities."[21] Over the past decade, the MacArthur Foundation Research Network on Adolescent Development has conducted extensive research that shows that youth in adult corrections face harsher settings and experience more developmental problems than youth in juvenile correctional settings, facts that lead these renowned researchers to conclude that "trying and punishing youths as adults is an option that should be used sparingly."[22]

Additionally, correctional administrators—both juvenile and adult—do not support efforts to place youth in adult prisons.

In a recent policy statement issued by the Council of Juvenile Correctional Administrators (CJCA), they stated that, "The Council of Juvenile and Correctional Administrators strongly opposes the expansion of eligibility criteria for the waiver and transfer of youths into the adult criminal justice system. These policies have resulted in the placement of hundreds of youths into adult penal facilities without adequate treatment services."[23]

As a result, some states ban this practice altogether or severely limit placements of youth in adult prisons. California, which some advocates arguably believe has one of the most punitive and harsh statutes on trying youth as adults, recognizes that adult prison is no place for youth and has a policy in effect to ban that practice. In other states, such as Virginia, adult court judges may sentence youth to juvenile correctional facilities instead of adult prison and these youth may stay in these facilities until age 21. And Florida, which previously led the nation in transfers to adult court, has dramatically reduced transfers and replaced adult prison placements with juvenile incarceration.

Other states, such as Wisconsin and North Carolina, have set up separate facilities in the adult prison system for youth prosecuted as adults. Although this may be one way to address the issue of separating youthful offenders from more hardened adult inmates, there is a lack of national data on the effectiveness of these facilities. One state profiled in this report offers us a glimpse into this approach. In Connecticut, youth charged as adults are placed in the Manson Youth Institute (MYI), a separate facility for youthful offenders. Although MYI only houses youth under age 21, MYI is an adult prison run by the Connecticut Department of Corrections. Programs for youth in the juvenile justice system are not available for this population. The facility has been the subject of numerous lawsuits and in July, 2005, a 17-year-old, David Burgos, incarcerated at MYI for a probation violation, committed suicide at the facility. David's tragic story is shared by his mother in the Connecticut chapter of this report.

To ensure the safety of these youth, the JJDPA could be amended to ban or severely limit the placement of youth in adult prisons; individual states could also ban this practice.

#5 The decision to send youth to adult court is most often not made by the one person best considered to judge the merits of the youth's case–the juvenile court judge.

"Waiver and transfer of juveniles to adult court should be rare and only after a very thoroughly considered process."

–Juvenile Delinquency Guidelines, National Council on Juvenile and Family Court Judges (2005)

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Since the founding of the first juvenile court in Chicago in 1899, the most "traditional" way for a youth to enter the adult court was to be found "unfit" for rehabilitation by a juvenile court judge, who had the discretion to remove a child from the consideration of the juvenile court. Judicial transfer was intended to be used in limited circumstances and after a careful deliberation process that included a hearing.

With the passage of these state laws, this process has been dramatically altered. Now, in most instances, juvenile court judges do not make the decision about whether a youth should be prosecuted in adult court.[24] Despite the fact that a juvenile court judge is a neutral player who is in the best position to investigate the facts and make the decision, state laws have removed some authority and discretion from these judges and, instead, required placement of youth in adult court under a "lower age of juvenile court jurisdiction" (13 states) or through "automatic transfer or statutory exclusion" provisions.[25] These inflexible statutes are based on age and/or category of offense and therefore do not allow for judicial review and do not provide discretion for juvenile court judges to keep youth in juvenile court.

In approximately 15 states, discretion and authority to send youth to adult court has been delegated to prosecutors.[26] This report highlights the fact that in states such as California, Florida, and Virginia, there is a lack of available data on the impact of this situation. In these states, limited to no available public data exist on the number of transfers/waivers to adult court made by prosecutors or the availability or use of objective criteria for prosecutorial decision-making. There is also no analysis available on the exercise of discretion not to send a youth to adult court.

To ensure that a youth's case is fully deliberated and thoroughly examined by a neutral and objective decisionmaker before sending the youth to adult court, states could revise their statutes and policies to allow for only judicial waiver or transfer to adult court.

#6 Access to effective legal counsel is a deciding factor on whether a youth is prosecuted as an adult.

"Almost 40 years after the United States Supreme Court determined that children are entitled to certain due process rights under the Constitution, most notably the right to counsel, many children in Florida still do not have access to the kind of constitutional protections envisioned by the Court."

–Patricia Puritz, Executive Director of the National Juvenile Defender Center and co-author of Florida: An Assessment of Access to Counsel and Quality Representation in Delinquency Proceedings (2006)

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The effectiveness of a youth's lawyer can be the difference between whether a youth is prosecuted as an adult or is considered in the juvenile justice system. Two states featured in this report underscore this point.

In Florida, a recently released report by the National Juvenile Defender Center, *Florida: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, showed that youth routinely waive their right to counsel under the mistaken impression that this makes the case easier to resolve because it means less time, less inconvenience to their parents, and less cost. In addition to many youth waiving their right to legal counsel, the report notes that the legal counsel provided to youth is often inadequate.

In Virginia, court-appointed attorneys assigned to provide legal counsel to youth facing transfer to the adult court are not required to have any criminal defense training or expertise and receive $120 per charge, the lowest rate in the nation.

For youth to receive fair and adequate consideration by the justice system, national, state and local governments could dedicate resources to providing access to effective legal counsel for youth.

7 Youth of color are disproportionately affected by these policies.

"Our job, in working to achieve fairness and equity, is to sound the alarm about the unjust criminal justice system and demand that our leaders and those in power act now to halt this destructive, unfair treatment of our brothers and sisters, especially of our children."

–James Bell, Executive Director of the Haywood Burns Institute (Covenant with Black America 2006)

In every state profiled in this report for which data are available, youth of color are disproportionately affected by these statutes.

- California: African-American youth are 4.70 times as likely to be transferred to the adult system as white youth, and Latino youth are 3.44 times as likely to be transferred to the adult system as white youth.[27]
- Connecticut: Youth of color are less than 30% of the youth population, but make up 80% of the young men in the adult corrections system.[28]
- Florida: African-Americans and Latinos account for fewer than half of the youth population in the state, yet nearly 7 out of 10 young people transferred to the adult system were youth of color in 2005.[29]
- Illinois: In Cook County, youth of color comprise a little more than half of the youth population, but represent 9 out of 10 young people in the county jail.[30]
- North Carolina: Nearly 7 out of 10 young people in the North Carolina Department of Corrections are youth of color.[31]
- Virginia: In 2005, African-American youth constituted fewer than half of all youth arrested in Virginia but represented 73% of youth entering the adult corrections system.[32]
- Wisconsin: Youth of color represent 15% of the state's youth population, but they represent nearly 7 out of 10 youth in adult prisons.[33]

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Together, African-American, Latino, and other non-white youth represent a minority of the youth population in states, but represent up to 7 out of 10 youth tried as adults. Although Latinos were found to be tried as adults at higher rates than whites in some states, in other places, data limitations may be masking the scale as Latino young people are more likely to end up in the adult system.[34]

National research underscores this point. A recent report by the National Council on Crime and Delinquency, *And Justice for Some*, finds that, "[i]n 2002, an estimated 4100 new admissions to adult prisons involved children under the age of 18. Three out of four of these admissions were youth of color."[35] The authors refer to a "cumulative" disadvantage that increases the more deeply youth are involved in the justice system.[36] The authors conclude that "as the blurring of the line between the juvenile and criminal court increases, so does the likelihood that these trends will disproportionately affect youth of color."[37]

When the JJDPA is reauthorized in 2007, Congress could strengthen the federal "Disproportionate Minority Contact" provision by requiring states to invest federal and state resources in effective approaches to reducing racial disparities in the justice system.

8 Female youth are affected too, but little is known about them.

"We're not talking about axe murderers. These are mostly runaways, shoplifters and truants. They needed our help, but didn't get it. Most of them don't belong in prison."

–Mickey Kramer, child advocate on girls in Connecticut's prison system (The Hartford Courant, January 1, 2007)

 # 8 Female youth are affected too, but little is known about them.

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–Mickey Kramer, child advocate on girls in Connecticut's prison system (The Hartford Courant, January 1, 2007)

Very limited data are available on girls in the adult criminal justice system:

- In Connecticut, the number of girls in adult corrections has increased dramatically. *The Hartford Courant* reports that, "At the beginning of December, 30 girls aged 14 to 17 were incarcerated at York Correctional Institution in Niantic, according to the state Department of Correction. By comparison, only 11 girls in that age group were being held at York in December 2005."[38]

- In Wisconsin, several girls are in the Taycheedah women's prison, a prison currently under a federal civil rights investigation by the U.S. Department of Justice.[39]

No recent, comprehensive national research studies have been undertaken that document the impact of the placement of girls in the adult criminal justice system. Clearly, extensive research is needed to adequately address the unique and special needs of girls in the justice system.

Although more information is needed, it is clear that girls, like boys, are at serious risk in the adult system. There are model approaches to serve girls in the juvenile justice system that could be more viable alternatives to placing girls in the adult justice system.

#9 The consequences for prosecuting youth in adult court "aren't minor."

"We must keep almost all teens in the juvenile justice system where they can receive treatment and avoid stigma."

–Dr. Donna Bishop, Northeastern University (February, 2006)

Youth tried as adults face the same punishments as adults. They can be placed in adult jails pre- and post-trial, sentenced to serve time in adult prisons, or be placed on adult probation with few to no rehabilitative services. Youth also are subject to the same sentencing guidelines as adults and may receive mandatory minimum sentences or life without parole. The only consequence that youth cannot receive is the death penalty.

In 2005, Human Rights Watch and Amnesty International released *For the Rest of Their Lives*, which documented the plight of the more than 2,000 youth serving life without parole. In the California chapter of this report, Brian is an example of a young person serving a lengthy sentence, 45-to-life.

When youth leave jail or prison, are on probation, or have completed their adult sentences, they carry the stigma of an adult criminal conviction. They may have difficulty finding a job or getting a college degree to help them turn their lives around. Access to a driver's license may be severely restricted, and in some states, youth may never be able to vote or hold public office. The consequences of an adult conviction aren't minor; they are serious, long-term, life-threatening, and in some cases, deadly.[40]

For example, the Higher Education Act of 1998 (P.L. 105-244) makes youth who are convicted of drug-related offenses ineligible for any grants, loans, or work assistance programs. States do not have the authority to circumvent this federal requirement. No other class of offense, including violent offenses, sex offenses, repeat offenses, or alcohol-related offenses, results in the automatic denial of federal financial aid eligibility. In January 2006, the law "was modified to restrict its applicability to applicants who were in school and receiving federal Title IV aid when they committed their drug offenses." In April 2006, the American Civil Liberties Union filed a suit in federal court challenging the constitutionality of the law.

In one case featured in the North Carolina chapter, a star basketball player's scholarship to college was revoked when the university learned that he had been convicted in adult court for selling $95 worth of marijuana. Fortunately for this youth, another university in another state offered him a second chance and he is thriving in school there. Most youth will not get a second chance for their education.

Youth may also be limited in obtaining employment. Title VII of the Civil Rights Act does protect individuals from the denial of employment by certain employers because of arrests that do not lead to conviction unless there is a "business justification" or because of a criminal conviction unless there is a "business necessity." However, states set most policies and legal standards governing the employment of individuals with criminal records. Where standards do not provide otherwise, employers are permitted to deny jobs "to anyone who has been convicted of a crime or a certain category of crime, without considering the circumstances of the offense, its relevance to the job, the amount of time that has elapsed, the job being sought, evidence of rehabilitation, or the 'business necessity' for barring the applicant, in potential violation of EEOC guidelines."[41]

#9 The consequences for prosecuting youth in adult court "aren't minor."

"We must keep almost all teens in the juvenile justice system where they can receive treatment and avoid stigma."

–Dr. Donna Bishop, Northeastern University (February, 2006)

As of 2004, 37 states permit all employers and occupational licensing agencies to consider arrests in making employment decisions, even if those arrests have not led to a conviction. Only three states prohibit certain employers and agencies from considering such arrests, and only 10 prohibit all state employers and agencies from considering non-conviction. When there is a criminal conviction, 36 states have no standards governing public employers' consideration of applicants' criminal records, 45 states have no standards governing private employers, and 29 states have no standards for occupational license applicants.[42] The laws are construed such that anyone, youth or adult, who has been arrested for even a minor offense, will face significant challenges in the employment market.

10 The research shows that these laws do not promote public safety.

"The Network set out to find scientific evidence of whether juveniles were different enough from adults to merit different treatment by the courts. What we found was that young offenders are significantly unlike adults in ways that matter a great deal for effective treatment, appropriate punishment, and delinquency prevention. Society needs a system that understands kids' capacities and limits, and that punishes them in developmentally appropriate ways."

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Although research on the full impact of these laws is ongoing, the most current results reveal an ever-increasing negative impact on youth adjudicated in the adult criminal justice system. In addition, studies by researchers throughout the country show that sending youth to the adult criminal justice system doesn't work to reduce crime.

In fact, youth are more likely to re-offend after serving an adult sentence. For example, in one study comparing the recidivism of youth waived to criminal court with those retained in juvenile court, the research found that those in the "adultified" group were more likely to be re-arrested and to commit more serious new offenses; they also re-offended more quickly.[43]

Another study compared the recidivism rates of youth in two states (New York and New Jersey) that differed only by the age at which they prosecuted youthful offenders in the adult system. In this study, the same results were found: youth tried in adult court were much more likely to re-offend more quickly and with more serious offenses. The research results provide overwhelming evidence that trying youth as adults does not work.[44]

In addition, the MacArthur Foundation Research Network on Adolescent Development has conducted extensive research for the past decade. At a national gathering in September 2006, they reported some of the following findings:[45]

- The court should take into account the level of competence of young defendants to fully participate in criminal proceedings to better assess their capacity for emotional and psychological maturity, because youth, particularly those under age 15, were more likely to be incompetent to stand trial due to their developmental immaturity.

- Youth placed in adult correctional facilities are less likely to be treated fairly, less likely to receive counseling and therapeutic services, and less likely to receive educational and job training. The lack of services that youth receive can serve as a detriment to a young offender when and if released into society.

- Youth in adult correctional facilities who suffer from mental health problems share many of the same symptoms of soldiers who have returned from war and of survivors of national disasters.

- Youth placed in adult correctional facilities face harsher settings than youth placed in juvenile facilities, exposing them to decreased access to rehabilitation services and resulting in a greater likelihood of these youth experiencing severe mental health problems.

As a result, Network researchers recommend that court judges be given the authority to make transfer decisions that take into consideration factors other than the age and the offense of young offenders. They also found that current policies that encourage the "wholesale transfer of adolescents from juvenile to adult courts" have been shown not to reduce crime.[46]

#11 These laws ignore the latest scientific evidence on the adolescent brain–the same evidence that informed the U.S. Supreme Court's decision to bar the juvenile death penalty.

"We can't continue to see incarceration as a long-term solution...To sentence juveniles to adult prison is ignoring the possibility that we are creating more dangerous criminals by housing juveniles with hardened adults."

–The Honorable Eugene Moore, presiding judge in the case of Nathaniel Abraham, age 11, the youngest individual ever to be convicted of murder (January, 2000)

In 2005, the Supreme Court made the landmark Roper vs. Simmons decision. It held that the Eighth and Fourteenth Amendments forbid the execution of offenders who were under the age of 18 when their crimes were committed. In writing for the majority, Justice Kennedy stated: "When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity."[47] As a result of the Court's decision, 72 juvenile offenders located in 12 different states were spared execution.

The Court's decision relied heavily on new scientific research showing that certain areas of the brain, particularly those that affect judgment and decision-making, do not fully develop until the early 20s. State laws passed prior to these research studies do not take into account these findings. The laws need to be reexamined to reflect this latest evidence on the adolescent brain.

#12 Assessing the impact of youth incarceration is difficult because of a lack of available data.

"If the goal is to decrease crime, we're not doing a very good job."

–Representative Michael Lawlor (D-East Haven), Co-chair of the Connecticut State Judiciary Committee (New London Day, 2006)

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As already mentioned, every year thousands of young people are tried, sentenced, or incarcerated as adults. Some researchers say that this could be as many as 200,000 youth every year.[48] However, no one really knows how many young people this affects. There is no one single, credible, national data source that tracks all the youth prosecuted in adult courts.

Many studies focus on one or two statutes. For example, the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a comprehensive report in 2006 on juvenile crime that showed a significant increase in the transfer/waiver of youth to adult court by judicial waiver between 1985 and 1994, from 7,200 to 13,200 nationwide. The report also showed that transfer/waiver of youth to adult court by judicial waiver significantly decreased between 1994 and 2002. The result is that waivers/transfers to adult court by judicial waiver are 1% below the 1985 level of 7,200.[49]

These data help provide a picture of judicial waivers, but they only show part of the story. They do not look at the number of youth tried in adult court from prosecutorial discretion/direct file, automatic/statutory exclusion, or the reduced age of juvenile court jurisdiction. Earlier reports, collected from the Bureau of Justice Statistics, show that the judicial waiver/transfer mechanism, the traditional way that youth are tried in adult court, now only represents 15% of the cases of youth in adult court.[50] It is obvious that the number of youth considered in adult court, mainly from mechanisms other than judicial waiver, has increased, but we cannot yet know what the change in waivers/transfers to adult court is without an update on this second set of data.

We now know from these state reports that the numbers of youth prosecuted in adult courts through various mechanisms other than judicial waiver are not fully recorded. And, as noted in the Virginia chapter, often the numbers that are available do not exist in one place but rather come from a variety of sources within a state. As a result, these numbers often conflict and cannot be reconciled.

If researchers are not able to assess the magnitude of the impact of these state laws on youth, policymakers lack the information to make informed decisions. There is a need to collect more data so that we can understand just how many youth are affected.

#13 The public should invest its dollars by strengthening the juvenile justice system.

"For too long, juvenile justice services in Connecticut have been failing...our children, particularly troubled children, deserve better."

–Governor Jodi Rell (R-CT, 2005)

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The current juvenile justice system in states is a much more viable alternative than the adult criminal justice system in treating young people in conflict with the law. Rather than continuing to spend public dollars on the adult criminal system, federal, state, and local policymakers should redirect public investments into the juvenile justice system to more effectively treat youth currently in the adult criminal justice system. There are several reasons why making an investment in a quality juvenile justice system makes sense.

First, the long-term benefits to society nationwide of returning youth to the jurisdiction of the juvenile court far outweigh any short-term costs that may be incurred.

- In testimony at a briefing of the Joint Judiciary Committee of the Connecticut legislature, the Urban Institute's senior researcher and economist, John Roman, showed that there would be costs associated with returning 16- and 17-year-olds to the juvenile court, but that there also would be long-term benefits. This action would reduce youth recidivism rates and future crime rates, as the likelihood of recidivating is lower for youth who are maintained in juvenile court rather than transferred to adult court.[51]

- According to John Roman, "[i]f juveniles commit fewer crimes because they have received more and better services, fewer community members will be victimized." He explains further that "less crime will mean fewer victims, fewer missed days of work, lower medical bills and maybe most important, less fear and less suffering." Overall, John Roman estimates that returning 16- and 17-year-olds to juvenile court jurisdiction will result in approximately a $3 savings benefit for the correctional and judicial systems for every $1 spent.[52]

- In its recommendations to the General Assembly in December 2006, the North Carolina Sentencing Commission reported that, "[i]n evaluating the cost/benefit balance of programs, short-term costs must be weighed, especially with this age group, against long-term benefits such as reduced future recidivism, gainful employment, or reduced substance abuse."[53]

Second, new research shows that programs, including ones that treat serious, chronic, and violent offenders in the juvenile justice system, reduce juvenile crime.

- In a recent brief by former state legislator and juvenile court judge Ted Rubin, *Return Them to Juvenile Court*, Judge Rubin provided examples of several effective programs that have worked to treat youth in conflict with the law that treat youth in the juvenile justice system instead of the adult criminal justice system.[54]

Other promising approaches to promoting public safety and assisting youth include:

- the evidence and theory-based practices and programs set outside of a correctional setting featured in *Blueprints for Violence Prevention*, released by the Center for the Study of Violence Prevention in Denver, Colorado,[55] and in *Less Hype, More Help* and *Guiding Lights*[56] by the American Youth Policy Forum;

- the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative (JDAI);[57] and

- the Missouri Youth Services model approach to juvenile corrections.[58]

Finally, the costs of simply keeping the system as is affects society in ways that cannot be calculated in dollars and cents.

No study to our knowledge has been done that could calculate what would amount to an astronomical price tag on the lost opportunities for that young person or to society. What we do have is the testimony of individuals who were given a second chance in the juvenile justice system, rather than an adult conviction, and who have achieved success in our society. These include:[59]

- Olympic Gold Medalist Bob Beamon

- Former U.S. Senator Alan Simpson

- DC Superior Court Judge Reggie Walton

No study to our knowledge has been done that could calculate what would amount to an astronomical price tag on the lost opportunities for that young person or to society.

- Singer Ella Fitzgerald
- Author Claude Brown

The list could go on.

These individuals were not subject to the same harsh laws that were passed in the wake of the superpredator myth. There is simply no feasible way to fully calculate the contributions to society of these and other individuals who have received a second chance.

THE OPPORTUNITY FOR CHANGE

"What's it going to take for us to make the change? Why do we wait for a tragedy? Why does someone like my son have to die before we make a change we know is right?"

– Diana Gonzalez, parent of a 17-year-old boy who committed suicide in an adult prison (March, 2006)

For today's policymakers, there is a new direction that will increase public safety and nurture the successful transition of our youth into adulthood.

#1 All the new research supports a change in policy direction.

"It's time for the law to change course and follow the science."

–Dr. Jeffrey Fagan, Columbia University (September, 2006)

State and local policymakers did not have the benefit of this new compelling research on recidivism, competency, adolescent brain development, and effective juvenile justice programs when they were considering changes to their state's laws on trying youth as adults. Just as this research influenced the U.S. Supreme Court to eliminate the juvenile death penalty, this new research also provides a strong basis for re-examination of and substantial changes to state statutes and policies.

#2 The nation recognizes the need for change, and some states are implementing reforms.

"We have the research that tells us what to do. The tragedy is, we're not capitalizing on it."

–Shay Bilchik, CEO, Child Welfare League of America and former U.S. Department of Justice OJJDP Administrator. (USA Today, September 21, 2006)

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State legislators; juvenile and adult court judges; juvenile and adult detention, jail, and correctional administrators; and probation officials throughout the country are pushing for reforms nationally and in individual states. These public officials are supported by scores of prominent national, state, and local organizations who are calling for major changes in national and state policy. A number of states have already begun to re-examine their state statutes and in some cases have implemented policy changes. Some states, such as Illinois and Delaware, have already repealed punitive statutes. Other states, such as North Carolina, Connecticut, and Vermont, have established high-level commissions to investigate the impact of these statues. Most of the states featured in this report are taking action to reform their statutes and update their laws. In addition, youth, their parents, and their families, who have been most affected by these policies, are speaking out, organizing, and educating national and state policymakers.

#3 When we invest in young people, they can succeed.

"I got off the corner and into the community center and school."

–Bob Beamon, Olympic Gold Medalist (Second Chances 2000)

On the 100th anniversary of the juvenile court, more than 100 prominent national organizations gathered to recommit to the basic principles of the juvenile court:[60]

- youth have different needs from those of adults and need adult protection and guidance;
- youth have constitutional and human rights and need adult involvement to ensure those rights; and
- young people are everyone's responsibility.

State statutes that make it easier to try youth as adults have eroded these founding principles and threaten to dismantle the court's major goal to rehabilitate youth. The costs of the current policy are simply too high.

How do we calculate the loss of life of a youth such as David Burgos who committed suicide in an adult prison?

How do we calculate the contributions to society of an Olympic gold medalist such as Bob Beamon, or a U.S. senator such as Alan Simpson, or an entertainer such as Ella Fitzgerald?

As a society, are we only going to commit to providing our youth with a jail cell or a prison bed? Or will we commit to reinvesting in our nation's youth through policies, programs, and laws that nurture their successful transition into adulthood and the realization of their full potential? The choice is ours.

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RECOMMENDATIONS

In every chapter of this report, experts from each state have developed their own state-specific recommendations on how the laws and policies in those states should be updated. These recommendations are national in scope, and federal, state, and local policymakers should adopt these as soon as possible.

1. State and local policymakers should consider immediately adopting the reforms recommended in their state's section such as:

   - increasing the age of juvenile court jurisdiction to 18;
   - banning the placement of youth in adult jails and prisons;
   - providing waiver/transfer to adult court by judicial waiver only;
   - redirecting resources to expand developmentally appropriate treatment and services for youth in the juvenile justice system as an alternative to the adult criminal justice system; and
   - investing in quality and effective legal counsel for youth.

2. Federal policymakers should consider amending the Juvenile Justice & Delinquency Prevention Act (JJDPA) in 2007 by:

   - imposing a federal ban on placement of young people in adult jails and prisons; and
   - strengthening the federal "Disproportionate Minority Contact" provision by requiring states to invest federal and state resources in effective approaches to reducing racial disparities in the justice system.

3. Starting this year, federal, state, and local policymakers should make significant improvements in the juvenile justice system by investing in programs that are developmentally appropriate and evidence-based, through the JJDPA and other federal programs as well as through state appropriations.

4. This year, federal, state, and local policymakers should invest in and undertake significant data collection efforts on the impact of prosecuting youth as adults.

5. Federal, state, and local policymakers should commit to visit youth regularly in adult jails and prisons and hold public hearings on an ongoing basis to ensure that the youth and families most affected by these policies are involved in policy deliberations.

NOTES

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THE CONSEQUENCES AREN'T MINOR

WHAT IS THE LAW IN CALIFORNIA?

Since the beginning of California's juvenile court in 1913, there has always been a mechanism for transferring youth charged with serious violent offenses to the adult criminal justice system. However, since March 7, 2000, when California voters passed the "Gang Violence and Juvenile Crime Prevention Act of 1998," a ballot initiative commonly referred to as "Proposition 21," youth have been tried as adults for even minor offenses. Coupled with the state's Three Strikes Law, disastrous consequences can result for a young person with two prior violent felonies convicted and tried as an adult; if charged with any kind of third felony (violent or non-violent), that young person can be sentenced to 25-years-to-life in prison. Both Proposition 21 and the Three Strikes Law have permanently altered several aspects of the juvenile and adult criminal justice systems in California because they were ballot initiatives with strict repeal clauses. The only way these laws can be changed is through a new popular vote or by a two-thirds majority of the State Legislature passing a new law. Given the political dynamics related to criminal justice policy in California, it is unlikely that the law will be changed in the near future.

The following are the laws that govern young people in California.

Young people are required to be prosecuted in the adult criminal system for certain offenses (statutory exclusion).
Proposition 21 requires district attorneys to file cases in adult criminal court for minors age 14 and older charged with either murder with special circumstances (i.e., certain aggravating factors) or certain enumerated sex offenses. In California, this type of transfer provision is commonly known as automatic or legislative waiver.

Young people age 16 and older can face judicial waiver to adult court for serious offenses.
From 1976 through 2000, the decision-making authority over the transfer process rested exclusively with the juvenile court judge. Judges use the judicial waiver process, known in California as a "fitness hearing," in which youth 16 or over can be found "unfit" for (i.e., not likely to benefit from) juvenile court. In this type of transfer, prosecutors can request a fitness hearing, and they bear the burden of proof in showing that a 16- or 17-year-old minor is not amenable to treatment in the juvenile court for any alleged offense, felony or misdemeanor.

Since March 7, 2000, when California voters passed the "Gang Violence and Juvenile Crime Prevention Act of 1998," a ballot initiative commonly referred to as "Proposition 21," youth have been tried as adults for even minor offenses.

There are five criteria used by judges to decide whether to transfer a youth:

- degree of criminal sophistication;
- whether the youth can be rehabilitated prior to the expiration of the juvenile court's jurisdiction;
- the youth's previous delinquent activity;
- the results of previous attempts to rehabilitate the youth; and
- the circumstances and the gravity of the offense alleged to have been committed.

Proposition 21 modified the original judicial transfer law by stipulating that any young person 16 or older charged with a felony would be presumed "unfit" if he or she had previously been a ward of the court on the basis of two or more felonies committed after the age of 14. This change effectively stacks the odds against youth and makes young people prove that for each of the above-mentioned factors, they are "fit" to be in juvenile court.

Proposition 21 gave prosecutors power to directly file juvenile cases in the adult court (prosecutorial waiver).
Proposition 21 provided substantial new powers to prosecutors to try youth as adults. There are now several categories of cases in which the prosecutor can choose whether to file the case either as a juvenile delinquency petition or as an adult felony complaint. Prosecutors may "directly" file cases in adult court against a young person 16 or older if the youth is charged with one of several enumerated crimes. Prosecutors may also "directly" file cases in adult court against a young person 14 or older if he or she is charged with an offense punishable by death or life imprisonment;[1] is alleged to have committed any felony or attempted felony with personal use of a firearm; or is charged with one of several crimes, and one of the following criteria applies:

Proposition 21 provided substantial new powers to prosecutors to try youth as adults.

- the youth has previously been a ward of the court on a serious offense;
- the pending offense was committed for the benefit of, at the direction of, or in association with a criminal street gang;
- the current offense is a "hate" crime motivated by the victim's race, color, ancestry, national origin, disability, gender, sexual orientation;
- at the time of the offense, the young person knew the victim to be 65 years of age or older, blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair; or
- the youth 16 or older has previously been adjudged a ward of the court for commission of any felony offense committed when he or she was 14 or older, and where, on the current offense the victim was elderly or suffering from an enumerated disability; it was a "hate" crime; or it was committed for the benefit of, at the direction of, or in association with a criminal street gang.[2]

Criminal court judges have options to return young people to juvenile court jurisdiction under a limited *reverse waiver* statute.
Even though there were no reverse waiver provisions included in Proposition 21, advocates successfully added provisions giving judges some power to return youth to juvenile court jurisdiction. In certain situations, criminal court judges have the authority to send a case for disposition (i.e., sentence) to juvenile court or to directly order a juvenile disposition. Under the first scenario, if a youth has been prosecuted without the benefit

of a fitness hearing (i.e., statutory exclusion or prosecutorial waiver) and is ultimately convicted of an offense for which the youth could have proven amenability to treatment in the juvenile system, the youth can request a post-conviction fitness hearing. If successful, the criminal court must impose a juvenile disposition. Under the second scenario, if a young person is convicted of an offense in criminal court that, in combination with the juvenile's age, would have entitled him or her to a fitness hearing without the presumption of unfitness, the youth is entitled to a juvenile disposition unless the prosecutor requests a fitness hearing. Finally, if the conviction is for an offense that, in combination with the youth's age, is not eligible for transfer, the youth must be given a juvenile disposition.

Young people tried as adults may be held in adult jails.
Under California law, it is unlawful to place young people (under the age of 18 regardless of whether they are prosecuted in adult or juvenile court) in "contact" with adult inmates in jails or prisons.[3] However, in cases in which youth are being prosecuted in the adult criminal system, they may be detained in a jail or a secure setting for the confinement of adults if:

- the juvenile or criminal court judge makes a finding that detention in the juvenile hall would endanger the safety of the public or would be detrimental to the other minors in the juvenile hall;

- contact between youth and adults is limited as mentioned above; and

- the youth is adequately supervised.

After discovering that juvenile probation officers routinely requested judges to order detention in adult jail for minor discipline problems (e.g. typical annoying teenage behaviors), the Youth Law Center, a national nonprofit advocacy organization in San Francisco, sponsored legislation to modify the rules. Now the law requires that before a youth can be placed in a jail, the court is required to find that the youth poses a danger to the staff, other minors in the juvenile facility, or to the public because of the youth's failure to respond to the disciplinary control of the juvenile facility, or because the nature of the danger posed by the youth cannot safely be managed by the disciplinary procedures of the juvenile facility.

Under new California policy, young people tried as adults serve their sentence in juvenile prisons until age 18 and then may be sent to adult prisons.
Under California law, youth convicted in the adult criminal court can be housed in adult prison provided that there is no contact between youth and adult inmates. Since California's juvenile court jurisdiction ends at age 25, California has an extensive array of state-run secure juvenile commitment facilities as part of the California Youth Authority (CYA). However, Proposition 21 prevents many youth convicted in the adult system from being sentenced directly to the California Youth Authority. As a result, many youth have been housed in adult prisons in California despite adequate bed space within juvenile facilities. Until 2004, there were approximately 130 young people housed at the California Correctional Institution in Tehachapi, an adult prison run by the adult Department of Corrections. After a suicide and a subsequent investigation that found inadequate conditions for youth, a policy decision was made and the California Department of Corrections entered into an agreement with the California Youth Authority to house all youth under the age of 18. At the present time, no youth under the age of 18 is being held in a California adult prison.[4]

WHO IS AFFECTED BY THE LAWS IN CALIFORNIA?

When Proposition 21 was passed, there was little data about the numbers and characteristics of youth already being prosecuted in the adult criminal system. At the time of Proposition 21's passing, the only available data showed that arrest rates of youth were

actually lower in the late 1990s than at any time in the previous 25 years.[5] The only other data available was a study for the Building Blocks for Youth Initiative, *The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California*,[6] which found that transfer laws disproportionately affected youth of color.

In 2001, after passage of Proposition 21, Senate Bill 314 was enacted. It required data collection from both juvenile and adult systems to document the impact of the new adultification law. Data available from 2003 and 2005 provide the first comprehensive look at the numbers of youth prosecuted in the adult criminal system in California.

In addition to court system processing data, there are two other sources of data collected at the state level that provide some insight on the number of youth prosecuted in the adult criminal system. Both the California Board of Corrections and the California Department of Corrections collect data about youth housed in jails and juvenile detention facilities. These three data sources do provide insight into the youth tried as adults issue, but since these data are collected by different agencies using different methodologies, their findings are not easily reconciled. Still, all the data reveal that transferring youth to the adult system disproportionately affects youth of color. They also show that the practice varies widely by geography.

All the data reveal that transferring youth to the adult system disproportionately affects youth of color. They also show that the practice varies widely by geography.

TABLE 1: JUVENILES IN THE ADULT CRIMINAL SYSTEM IN CALIFORNIA[7]

STAGE	2003		2005	
Arrests	221,875	100%	222,215	100%
Direct File in Adult Court	410	–	343	–
Total Juvenile Court Dispositions	87,927	100%	98,919	100%
Fitness Hearings Ordered	586	–	431	–
Found fit	182	31%	113	26.2%
Found unfit	404	69%	318	77.8%
Total Adult Dispositions*	608	100%	422	100%
Arrest Offense: Felony	278	45.7%	399	94.5%
Misdemeanor	330	54.2%	23	5.4%
Convicted	414	68.1%	353	83.6%
Dismissed	166	27.3%	60	14.2%
Returned to Juvenile Court	10	1.6%	4	0.9%
Sentenced in Adult Court				
Prison/CYA	110	26.6%	234	66.3%
Probation	79	19.1%	11	3.1%
Probation with jail	139	33.6%	101	28.6%
Jail	9	2.2%	5	1.4%
Fine	57	13.8%	–	–

** These numbers are artificially low because many youth had not completed their trials yet. For example, in 2005, probation departments reported information on 661 transfers to the adult system. The adult disposition information cited here is for the 422 dispositions received in 2005 as not all cases were completed.*

Offenses: The most serious youth?

A very small proportion of youth arrested each year are tried in the adult criminal system (as shown in Table 1 above). Roughly similar numbers of youth get to the adult system via the

direct file and fitness hearing processes. The data show that approximately 70% of youth who go through fitness hearings are declared unfit for the juvenile justice system. This is not surprising given the shift in burden of proof for certain types of fitness hearings as a result of Proposition 21. But what is important to recognize is that judges consider about 30% of youth to be "fit" for the juvenile justice system. Stated slightly differently, juvenile court judges disagree with prosecutors' decisions to try youth in adult court at least 30% of the time. It is likely that many of the youth who are directly filed into adult court would also be deemed fit for juvenile court if they were able to benefit from a fitness hearing.

Judges consider about 30% of youth to be "fit" for the juvenile justice system. Stated slightly differently, juvenile court judges disagree with prosecutors' decisions to try youth in adult court at least 30% of the time.

The data also counter the popular notion that youth are sent to the adult system for the most serious crimes. In 2003, more than half of youth in the adult system in California were prosecuted for misdemeanors (54.2%) and fewer than 30% of youth received a prison sentence. The data for 2004 were incorrectly reported so those data are omitted here. The 2005 data indicate a possible positive trend of fewer young people being prosecuted for misdemeanors (only 23 in 2005, as compared to 330 young people in 2003), yet many of these young people are still being exposed to the dangers of jail time. In 2005, a third of the young people deemed serious enough to be tried in adult court received sentences involving probation or probation and jail. Across the three-year period, about a third of the youth sentenced in adult court spent some time in jail and were exposed to many of the risks that jail poses to young people, even when federal and state law protects against "contact" with adults.

TABLE 2: ADULT COURT DISPOSITIONS BY OFFENSE

	2003		2005	
OFFENSE TYPE	**Arrested**	**Convicted**	**Arrested**	**Convicted**
Homicide	23	16	31	24
Forcible rape	2	2	2	2
Robbery	60	49	133	116
Assault	73	56	126	98
Theft	20	13	8	6
Motor vehicle theft	12	9	6	6
Marijuana	N/A	N/A	1	1
Petty theft	N/A	N/A	5	5
Liquor laws	N/A	N/A	N/A	N/A

In 2005, a third of the young people deemed serious enough to be tried in adult court received sentences involving probation or probation and jail.

The disparate impact by jurisdiction–"justice by geography."
Experience in California also shows the unfair effects of a system that relies so heavily on prosecutorial discretion. In one of the worst demonstrations of "justice by geography," the likelihood of being tried in the adult system varies substantially by the county in which the youth is prosecuted. In most counties across the state, district attorneys use their discretion to directly file a youth in adult court in fewer than 2% of juvenile delinquency cases. However, in several counties more than 10% of youth are directly filed into adult court.[8]

The likelihood of being tried in the adult system varies substantially by the county in which the youth is prosecuted.

The data also show a disparate impact in terms of where young people might experience jail incarceration when they are tried as adults. Data compiled from the California Board of Corrections show that pre-trial youth are housed sporadically and infrequently within jails across the state. Counties in which this has occurred in the past five years include Butte, El Dorado, Los Angeles, Madera, Monterey, San Mateo, and Santa Clara. Some of these locations are rural and lack adequate juvenile detention facilities. Some of these youth have been court-ordered to remain in the adult jail pre-trial (e.g., they have had an escape attempt or are otherwise a discipline problem in the juvenile hall), have been sentenced to

the jail, or are awaiting transport to the CYA. From the data reported, it does not appear that these youth stay in the jail for extended periods of time (i.e., they are typically removed within a month).[9]

Race and ethnicity also play a factor in the likelihood of a youth being tried in the adult system.
The California Department of Justice explored the disproportionality of the juvenile and criminal justice systems in their 2005 report. The results confirm the earlier Building Blocks study:

- African-American youth are 4.70 times as likely to be transferred to the adult system as white youth;
- Latino youth are 3.44 times as likely to be transferred to the adult system as white youth; and
- Asian youth are 1.84 times and Pacific Islander youth are 2.36 times as likely to be transferred to the adult system as white youth.[10]

There is a disparate racial impact on youth sent to adult prison.
Historical data from the California Department of Corrections show that from 1989 to 2003, a total of 6,629 youth entered the custody of the CDC for an offense committed prior to their 18th birthday. In 1989, the number was 172 youth, steadily growing to a high of 794 youth in 1997, and then declining to 504 youth in 2003. Of those youth:

- 164 youth were female, 2.5% of the total;
- 1,922 youth were African-American, 29% of the total;
- 3,397 youth were Latino, 51% of the total;
- 628 youth were white, 9.5% of the total;
- 682 youth were the race "other," 10% of the total;

Between 1989 and 2003, of the 6,629 youth sent to the CDC, 8 out of 10 were African-American or Latino.

Although the public perception of youth housed in adult prison is that they are the "worst of the worst," only 32% of the youth from 1989 to 2003 were sentenced to the CDC for crimes of first- or second-degree murder, manslaughter, or rape. The remainder were convicted of crimes ranging from very serious (e.g., armed robbery) to less serious (e.g., simple drug possession).[11]

California lacks data indicating how many youth under the age of 18 have been held in adult prisons across the state. Data are not available for us to know whether these youth arrived in CDC custody before or after their 18th birthdays.

YOUNG PEOPLE AND FAMILIES AFFECTED BY CALIFORNIA'S LAWS

The Park Family: One strike and you are out.
Brian Park says he grew up in a "typical, middle-class" family in Alta Loma, California, a suburb about 50 miles east of Los Angeles. The one main difference in Brian's life: he is serving a 45-year-to-life sentence for a drive-by shooting he committed at the age of 16 that injured one person and killed the other.

Brian Park was never a violent or difficult child. Like most teenagers, he started rebelling when he entered junior high school and began hanging out with a "skateboarding crowd."

When Brian entered high school, he started spending time with a friend his parents, Stewart and Stella Park, believed was a bad influence; Brian and his friend would stay out late, and once, police caught them out past curfew smoking behind a local drugstore.

Concerned for their son, the Parks sent him to live with an aunt in Salinas where he attended a private high school and met with a counselor. After his freshman year of high school, his behavior and grades improved and he returned home. While Brian was in Salinas, his parents attended a parenting class that preached a "tough love" approach. When Brian returned home, he and his parents started to conflict again. The Parks then attended a second parenting class taught by a Korean-American social worker and psychologist, who warned parents that not all children respond well to harsh discipline and noted that the "tough love" approach could harm their relationship with their children. As a result, the Parks changed their parenting style.

When Brian returned to school in Alta Loma, he became the target of Chinese gang members at his high school. The reason was petty. Brian had broken up with his girlfriend, who had indirect ties to the gang, and so the gang believed that he was disparaging them.

One Saturday, the gang tracked Brian down and assaulted him. On Brian's 16th birthday, the gang members drove by the family's house and shot 12 rounds from a semiautomatic weapon, hitting the water heater in the garage and shattering the windows in the house. Fortunately, the gang had called and warned Brian of the attack, so the Park family was not home. After the shooting, Brian became increasingly agitated and fearful. He told his mother, "I'm not going to live past 18."

The night of June 18, 1995, Brian drove to a restaurant to meet up with friends. While in the parking lot, a group of young white men asked Brian and his friends for a cigarette. When they said they didn't have any, the group began cursing and harassing them. Brian and his friends decided to leave. As they left, one man from the group reached for something from his car trunk. Brian and his friends believed the man was reaching for a weapon, which turned out not to be the case.

Earlier in the day, one of Brian's friends had given him a gun. That same friend told Brian, "Why don't you go cap 'em?" Upset from the incident, Brian shot into the crowd of young men as they drove off. Brian did not realize the bullets had hit anyone until the police picked him up. One 18-year-old was shot in the arm but would recover. The other died of his wounds.

Before his parents even knew he'd been arrested, and without the counsel of an attorney, Brian confessed. His lawyer delayed going to trial for four years, but then had a stroke. The family hired another attorney and started over. In March 2000, after a three-week trial, the judge gave Brian the maximum sentence: 45-to-life.

In the post-three-strikes-world, the Parks understand that it is doubtful that Brian will be released before serving at least 85% of his sentence. Stewart Park trains for triathlons to stay fit so he will be alive and healthy when Brian gets out of prison. He wants to be there to help Brian transition back into society.

In a recent letter to legislators considering Senate Bill 1223, a bill to allow youth a chance to be re-sentenced after serving 10 years or turning 25 years old, Brian wrote:

My name is Brian Park, a 25-year-old inmate of Calipatria State Prison. Three months after my 16th birthday I was shamefully involved in a crime that drastically affected the lives of many people. I am truly remorseful for my actions, and I believe my guilt justifies my '45 to life' sentence. However a small part of me hopes that someone would give me a second chance at life. I feel as if I have grown up so much over the years. Often, I look back at my adolescence and realize how stupid some of my actions were.

Before his parents even knew he'd been arrested, and without the counsel of an attorney, Brian confessed. In March 2000, after a three-week trial the judge gave Brian the maximum sentence: 45-to-life.

Brian Warth: Parole always denied.
The following is an excerpt from *A Fallen Youth Transformed by Spirituality, Education, and a Caring Society by Brian Warth*, a current inmate serving time at Chuckawalla Valley State Prison in California.

I was the youngest of my mom's children, growing up in a gang and drug-infested neighborhood of Southern California. My family struggled early on when my oldest brother was shot dead at age 15 and my second oldest brother was shot multiple times in another gang shooting, but survived.

At age one, I became the focus of a long and bitter custody battle between my parents. Sometimes the judge would order me to live with my mom, sometimes with my dad....By the time I was 12, my siblings were gang members and I started to develop a bad attitude. Soon I also joined the neighborhood gang and my life went on a downward spiral. I got sent to juvenile hall a couple of times and then when I was 14 I was shot in the arm in a gang shooting. My value system was all messed up. I made the most terrible mistake of my life when I was 16: I participated in a gang shooting, which resulted in the death of a rival gang member.

My crime hurt many people (for which I am greatly sorry). I was arrested the following morning and sent to juvenile hall. My short life was over and I hadn't even begun to live yet. Eventually, I was tried as an adult and then transferred to the Los Angeles County Jail. I was 17, slammed down in a cold, one-man cell. The majority of the juveniles I was with were also facing life sentences. Many of them were immediately crushed by the heavy weight of the hopelessness. Finally, when I was 17, I was sentenced to 16-years-to-life in prison.

I could have given up and got worse, like many of my peers did. But a couple powerful things happened that gave me hope. First, my dad told me that I still had a fraction of hope left and that if I would change, one day society would have mercy on me and give me a second chance. My dad firmly believed that America was the land of a second chance.

"At age 20, I was transferred from the California Youth Authority to state prison. This was a big shock because now people who had been in prison for up to 30 years surrounded me."–Brian Warth

Suddenly, I saw a small flickering light at the end of my tunnel. Then at age 18, I renounced my gang and decided to change my morals and values. I started to educate myself. Plus, I started to study and emulate the teachings and ethics of Jesus Christ of Nazareth. As I demonstrated my remorse for my crime and a determination to change, more and more people of society came to my aid. I started to grow mentally and spiritually.

At age 20, I was transferred from the California Youth Authority (CYA) to state prison. This was a big shock because now people who had been in prison for up to 30 years surrounded me. Many of them would tell me that I would spend the rest of my life in prison like them. Other youth I knew didn't have the hope that I had because they had no support or incentive to change. So they got worse. I continued to resist depression, peer-pressure, and the violent prison culture.

By the time I was 26, my life was 95% restored. My relationship with my dad was great and I had been married to my childhood sweetheart for many years. My wife has played a key role in my rehabilitation. Plus, I earned several trade class completions and was working toward my college degree.

In 2002, I went up for parole. At that time the parole board only granted parole to .05% of the 1000s of inmates eligible for parole. The parole boardroom was filled with a heavy cloud of pressure. The panel drilled me with questions about my upbringing,

crime, and prison time. I answered the best I could and at the end of the hearing I pleaded for my life....

That was a miracle morning for me because the panel honored my change and granted me a parole date. I became the youngest life-inmate to be granted parole. I wish I could say that was the end of my struggle. But five months later then-Governor Gray Davis reversed my parole grant. In opposition to me, he stated in part, that I had grown up in gangs, I never had a full-time job and I had spent my entire adult life in prison. It was a devastating blow, but my hope empowered me to keep standing. I went up for parole again a year later and the panel gave me another parole grant. But once again, the then-Governor reversed it. In 2004, I went back up for parole and for the third time I was granted parole. Currently, I am waiting to see if our new governor will reverse it or affirm it. Strangely enough, my crime partner (the actual shooter in my case) has been paroled from CYA four years now. But he was tried as a juvenile with a different set of rules."

In a support letter for Brian Warth, Correctional Lieutenant, D.C. Schall, wrote, "Warth has three times been found suitable for parole by the Board of Prison Terms. However, all three times, twice by ex-Governor Gray Davis and once by Governor Arnold Schwarzenegger those decisions were reversed. Those decisions did not deviate Warth's productive outlook on life, nor stop him from being a model inmate. This continued effort on his part proves to me that my recommendation two years ago is still valid today. I would like to add, that during my 22 years with the Department of Corrections, currently as a Correctional Lieutenant, I do not write cronos very often and I take my responsibilities to insure for the safety and security of society very seriously. I also believe that if punishment and rehabilitation is the goal of society, then Warth has been severely punished and he is most certainly rehabilitated. In fact, he is the epitome of rehabilitation and will better serve society by being released on parole." Governor Schwarzenegger reversed Brian Warth's fourth parole grant in mid-2006.

After a media campaign highlighted the conditions that youth were living in at the Men's Central Jail in Los Angeles County, including two suicide attempts by youth, policymakers were forced to find a better solution.

WHAT ARE THE POLICY OPTIONS IN CALIFORNIA?

Removing youth from adult facilities.
The most successful advocacy efforts for youth tried in the adult system in California have been the efforts to remove youth from adult institutions, both jails and prisons. After a media campaign highlighted the egregious conditions that youth were living in at the Men's Central Jail in Los Angeles County, including two suicide attempts by youth, policymakers were forced to find a better solution. That solution was a negotiated agreement with the nearby Norwalk facility operated by the California Youth Authority to house the pre-trial youth. At the present time, approximately 40 youth are housed in the "Drake Unit" at the Norwalk facility rather than in the adult jail.[12]

In addition, poor conditions in the Tehachapi adult prison contributed to the suicide death of Francis Ray on July 1, 2003, a teenager serving a three-year sentence for robbery. An Inspector General Report investigation of the Youthful Offender Program at Tehachapi found the conditions were not appropriate for youth. As a result, on July 1, 2004, a Memorandum of Understanding (MOU) between the California Department of Corrections (CDC) and the California Youth Authority (CYA) was entered into that stipulated that male youth under 18 years of age sentenced to the CDC would be housed at CYA until their 18th birthday. Approximately 130 youth who had been living in the adult prison were moved to the Youth Authority. Presently, youth are sent directly to the Youth Authority (versus spending any time in a CDC facility) until the youth turns age 18, at which time the youth will be transferred back to the CDC. However, if the youth can fulfill his sentence before his 21st birthday, he

can request to stay at the CYA until release. Females younger than age 18 were already housed at the CYA girls facility in Ventura pursuant to an MOU entered into in February 2001. The population of girls typically does not exceed 10 at any one time.

Legislative opportunities available after Proposition 21.
Proposition 21 restricts many advocacy strategies because the language of the initiative requires that changes to the law occur via a new initiative or by obtaining a supermajority in the legislature; both are very difficult to accomplish. In lieu of changing any existing laws, advocates have attempted new and innovative methods to highlight the injustice of youth tried in the adult system by adding new layers to the code.

The approach used in Senate Bill 1151, sponsored by Senator Sheila Kuehl (D-Santa Monica), was to clarify the criteria that judges would use in fitness proceedings. As mentioned, one of the five factors that judges consider when deciding whether to transfer a youth is "the circumstances and gravity of the offense." Senate Bill 1151 sought to add the sentence, "This includes the actual alleged behavior of the minor, the minor's degree of involvement in the crime, the level of harm actually caused by the minor, and any other matter that may affect the circumstances and gravity of the offense." This bill would have helped limit the numbers of youth transferred to the adult system by actions perpetrated by their peers. Although the bill passed the legislature, in August 2004 Governor Schwarzenegger vetoed the bill.

A second bill was also sponsored by Senator Kuehl, Senate Bill 1223. This bill would have enacted a new mechanism for courts to review the sentence of a person convicted as a minor in adult criminal court and sentenced to prison. After the person had served 10 years of his or her sentence, or after the person had reached 25 years of age, the person could have requested that the court review the sentence. The court would have the authority to suspend or reduce the sentence. Unfortunately, this bill never got out of committee.

Proposition 21 restricts many advocacy strategies because the language of the initiative requires that changes to the law occur via a new initiative or by obtaining a supermajority in the legislature; both are very difficult to accomplish.

CALIFORNIA RECOMMENDATIONS

- **Improve the quality of legal advocacy.**
  The best way to prevent youth from entering the adult criminal system in California is to have effective legal advocates to help make the case for keeping the youth in the juvenile justice system. The Pacific Juvenile Defender Center has been developing resources to support public defenders in their individual case efforts to obtain dispositions in juvenile facilities. However, many legal advocates are not public defenders. They are often private counsel or panel attorneys not affiliated with a public defender office. Other advocates, including the Loyola Juvenile Justice Clinic, have launched an effort to improve the compensation for contract attorneys paid by the case rather than by the hour.

- **Investigate possibilities of sentence reduction/commutation.**
  Some youth will receive sentences forcing them to spend the bulk of their lives behind bars for acts committed when they were very young and immature. Mentioned briefly in Brian Warth's story, California has a unique law that allows the Governor to override the parole board's decision in any murder case. Former Democratic Governor Davis used this law to overturn any release possibilities for persons charged with murder. The early indications of Governor Schwarzenegger suggest that he won't be as categorically opposed to parole, but we do not yet know how willing he will be to let parole decisions stand. To aid in their release, youth prosecuted in California could benefit from post-conviction advocacy support to highlight the progress they have made while in prison.

- **Highlight and address post-conviction employment barriers.** Given the large numbers of youth who are prosecuted in the adult system for misdemeanors, youth may face serious consequences from their conviction in terms of future employment, financial aid, and other opportunities. The state should create mechanisms permitting convicted youth to participate lawfully in certain government programs and careers despite their criminal history.

NOTES

1. The offense may be punishable by death; however, youth were not eligible for the death penalty under a separate California code provision in existence prior to the abolition of the juvenile death penalty by the U.S. Supreme Court.
2. California Welfare and Institutions Code § 707. Available from www.leginfo.ca.gov
3. Contact does not include participation in supervised group therapy, participation in work furlough programs, or participation in hospital recreation activities so long as living arrangements are strictly segregated and all precautions are taken to prevent unauthorized associations. Under federal and state law, it is unlawful to house youth adjudicated in the juvenile system in adult jails, although there are at least two locations (Fresno and Orange County) in California where this happens.
4. The California Department of Corrections is now known as the California Department of Corrections and Rehabilitation. The California Youth Authority is now known as the Department of Juvenile Justice.
5. Males, M. (2006). *Unprecedented drop in California youth crime and incarceration rates.* San Francisco, CA: Center on Juvenile and Criminal Justice. http://www.cjcj.org/pdf/unprecedented_drop.pdf
6. Males, M., & MacAllair, D. (2000). *The color of justice: An analysis of juvenile adult court transfers in California.* Washington, DC: Building Blocks for Youth initiative.
7. California Department of Justice, Criminal Justice Statistics Center. *Juvenile justice in California 2003 and Juvenile justice in California 2005.* Available from http://ag.ca.gov/cjsc
8. Independent calculations by the author using Department of Corrections data from 2002 and 2003 that compared the proportion of direct file bookings to juvenile hall bookings per month.
9. Independent calculations by the author using Department of Corrections *Jail Profile Survey*. Although not a focus of this chapter, there is a problem in California with significant numbers of youth who have been adjudicated delinquent being held in the county jail. When the author submitted a public records act request to Fresno County, it was discovered that an additional 30 youth were being housed in a "jail annex" not recorded in the Department of Corrections database. Fresno County Counsel Wes Merritt has commented, "You would think that the toughest kids would be in the jail, but in fact the lowest-level kids are in the jail. These are kids that can be housed in an open dorm setting, so that is why they are there." According to materials provided through the records request, the California Board of Corrections approved a pilot project for Fresno County on February 3, 2003, to allow youth to be held in the North Jail Annex to relieve overcrowding at the juvenile hall. The Jail Pod houses up to 30 post-disposition male minors who are 14 years of age and older. Those transferred to the Jail Pod are selected from the ranks of the "better-behaved minors." The Santa Ana Sheriff's Department in Orange County runs a similar project and houses approximately 40 youth in its jail annex.
10. California Department of Justice, Criminal Justice Statistics Center. *Juvenile justice in California 2005*. Available from http://ag.ca.gov/cjsc
11. Unpublished data from the Department of Corrections Data, February 2004.
12. For a discussion of the advocacy effort to remove youth from adult jails in Los Angeles, see *No turning back: Promising approaches to reducing racial and ethnic disparities affecting youth of color in the justice system.* (2005). Washington, DC: Building Blocks for Youth initiative. p. 61. Retrieved January 28, 2007, from www.buildingblocksforyouth.org

THE CONSEQUENCES AREN'T MINOR

WHAT IS THE LAW IN CONNECTICUT?

In Connecticut, young people can enter the adult criminal justice system through a number of different legal mechanisms. The following include the key features of Connecticut's adultification laws.

The upper age of juvenile court jurisdiction is 15.
Since 1971, when § 46b-120 of the Connecticut Juvenile Matters Code was amended to make 16 the age of majority, every 16- or 17-year-old in Connecticut arrested for any infraction, violent or nonviolent, is treated as an adult and is automatically under the jurisdiction of the adult criminal court.[1] Only three states in the country have such a young age of adult court jurisdiction: Connecticut, New York, and North Carolina.[2]

Youth 14 and older face *mandatory judicial waiver* to adult court for serious felonies.
In 1996, Connecticut also determined that 14- and 15-year-olds would automatically be transferred to adult court for Class A or B felony offenses, which include crimes such as murder, carjacking, certain sexual offenses, and first-degree burglary. Young people charged with Class B felonies and one particular type of sexual assault, however, are eligible for a reverse waiver in which the case can be returned to juvenile court. The state's attorney is the only one who can initiate this type of *reverse waiver*, and it must be decided by the judge in the adult court to which the case was transferred. The statute does not specify any grounds for such a reverse waiver or any factors to be considered.[3]

Courts have discretion to transfer 14- and 15-year-olds charged with lower-level felonies to adult court.
For any Class C or D felony, such as eavesdropping or loitering on school grounds, a state's attorney may request, by motion, that the juvenile court judge transfer the young person's case to adult court. The court is required to transfer the case if it finds probable cause that the young person committed the alleged offense (without notice, a hearing, or any participation on the part of the youth or their counsel). Once transferred to adult court, the judge, on his or her own initiative, may return any case to the juvenile court within 10 days after transfer.

Every 16- or 17-year-old in Connecticut arrested for any infraction, violent or nonviolent, is treated as an adult and is automatically under the jurisdiction of the adult criminal court. Only three states in the country have such a young age of adult court jurisdiction: Connecticut, New York, and North Carolina.

Connecticut is a blended sentencing state.
In the case of young people 14 and older who are charged with a felony in juvenile court and who have two previous felony adjudications,[4] the prosecutor may request that the court designate the proceeding a "serious juvenile repeat offender prosecution." If this happens and the youth is convicted of the felony, the court must impose both a juvenile and an adult criminal sentence, with the adult sentence stayed or suspended as long as the youth refrains from violating the conditions of the juvenile sentence or committing any subsequent crime. This means that, even when youth are granted a juvenile sentence in lieu of an adult sentence, they can still enter the adult criminal justice system and the suspended sanction can then be imposed if they fail their probation or get re-arrested on a new offense. A similar type of sentence is required for youth whose proceedings, at the prosecutor's request, have been designated as "serious sexual offender prosecutions." Youth convicted in such cases must be given a juvenile sentence–a special probationary period of at least five years to follow this sentence–and an adult sentence that is suspended as detailed above in serious juvenile repeat offender cases.

Youth in the adult criminal justice system can be categorized as "youthful offenders."
The youthful offender statute was designed to provide certain 16- and 17-year-olds, who otherwise would be prosecuted as adults, with some of the protections of the juvenile court, such as maintaining the confidentiality of records, a maximum sentencing limit of four years, and the chance to expunge their records.[5] Unfortunately, many of these teenagers are unable to benefit from the statute. A young person is not eligible for the youthful offender statute if he or she has previously been convicted of any felony in adult criminal court, previously been convicted of a "serious juvenile offense," or is currently being charged with a Class A felony such as murder or kidnapping. Also exempted from youthful offender status are those who have been charged or convicted of crimes such as sexual assaults and risk of injury–an offense that include selling or trading a child for goods, child endangerment, and any other activity that would physically harm or impair the morals of a child. Pursuant to a new law passed in 2006, all 16- and 17-year-olds are presumed eligible for youthful offender status, however many do not benefit from the program because prosecutors can deny this status to any youth charged with a felony. Prosecutors maintain discretion over youth with youthful offender status and can ask the court to transfer any youth charged with a felony from youthful offender status to regular adult status. Furthermore, if the youth violates probation, either with a new arrest or a technical violation such as non-compliance with court-ordered requirements, the youthful offender status, and thus its protections, can be revoked.

Although the youthful offender statute is a step forward . . . these youth are actually in a Catch 22 . . . They are unable to access the services available in criminal court, as programs are designated for adults over the age of 18, and . . . they are also unable to participate in juvenile services.

Although the youthful offender statute is a step forward toward a less punitive and more rehabilitative way of dealing with older youth, these youth are actually in a Catch 22. Due to federal legislation, they are unable to access the services available in criminal court, as programs are designated for adults over the age of 18, and conversely, as they have been deemed an adult due to age of majority, they are also unable to participate in juvenile services. The limited services they ultimately receive are provided by the adult Department of Correction, which has neither the resources nor the properly trained staff to provide appropriate services to youth.

Young people detained while awaiting trial in the adult court end up in the adult corrections system.
Connecticut is one of a few states in the country in which the jail system (pre-trial) and prison system (post-conviction) are combined into one Department of Correction (DOC). Male youth who enter the adult court, and who are not granted pre-trial release, are held at the Manson Youth Institution (MYI). MYI is a high-security correctional institution under the jurisdiction of the adult DOC that houses prisoners ranging in age from 14- to 21-years-old. Female youth are held at Connecticut's only women's prison, York Correctional

Institution (YCI). Young people who have been designated as youthful offenders are required to be segregated "to the extent of their facilities" from individuals over the age of 18 who are charged with a crime.[6]

Young people can be sentenced to the Department of Correction.
If convicted of a crime, youth can be ordered to complete a period of probation with conditions of behavior and rehabilitative programming requirements, or they could be sentenced to the DOC to complete a court-ordered period of incarceration.

For those individuals under the age of 18 who are sentenced—also described as being committed to the custody of the Connecticut DOC—males are housed at MYI and females are placed at YCI. All girls and women are also held at YCI pre-trial. In the words of the DOC, MYI "houses chronic disciplinary inmates, close custody program, mental health, high security, and general population inmates who are involved in a wide variety of programs including educational, vocational, and addiction services."[7] According to *The Hartford Courant*, the state's largest newspaper, MYI, "despite its name ...is an adult prison ringed with razor wire. Youths are incarcerated alongside adult criminals. They do not get treatment equal to the type dispensed by the juvenile courts."[8] Youth 14 and older also can be transferred from delinquency facilities to MYI and YCI at the request of the Commissioner of Children and Families, for dangerousness, if permitted by the juvenile court judge after a hearing on the matter.[9]

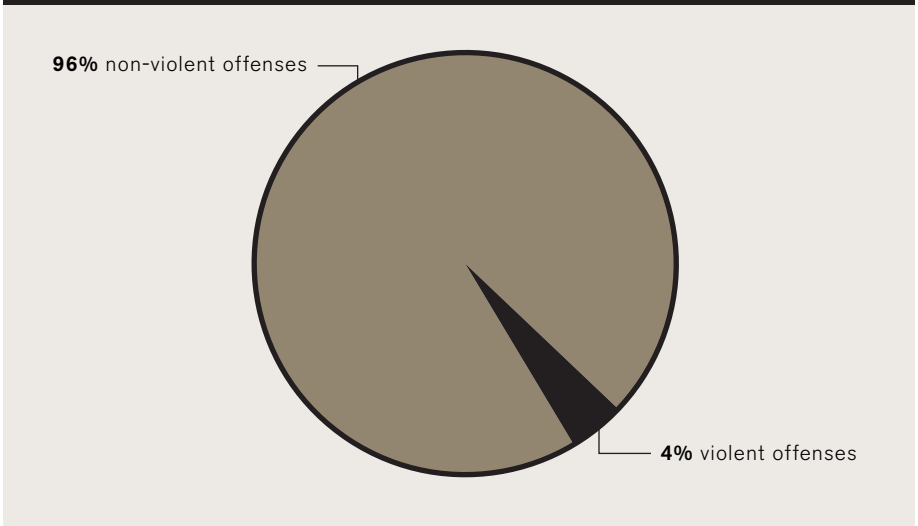
As of July 25, 2006, there were 3,478 youth under the age of 18 on adult supervision.[10] There are no age-appropriate services available for youth under adult supervision. Further, there is no adolescent development training provided to prosecutors, court staff, judicial marshals, and adult court judges, let alone adult probation officers. As a result, those under age 18 are provided only adult probation services.

WHO IS AFFECTED BY THE LAWS IN CONNECTICUT?

Nearly 8,000 youth in Connecticut enter the adult court system each year.
According to Connecticut's Uniform Crime Reporting Program, approximately 12,000-13,000 Connecticut youth age 16 and 17 are arrested and fall under adult court jurisdiction—the vast majority for non-violent offenses.[11] In 2003, of 12,153 16- and

According to Connecticut's Uniform Crime Reporting Program, approximately 12,000-13,000 Connecticut youth age 16 and 17 are automatically arrested and fall under adult court jurisdiction—the vast majority for non-violent offenses.

Majority of arrests for 16-year and 17-year-old are non-violent offenses



Source: State of Connecticut Department of Public Safety, Division of State Police, Crimes Analysis Unit. (2003). Crime in Connecticut: Annual report of the Uniform Crime Reporting Program.

17-year-olds who were arrested, only about 4% (535) were arrested for FBI-designated violent index offenses (murder, rape, robbery, or aggravated assault).[12]

In Connecticut, youth of color comprise fewer than 30% of the youth population, but they make up 80% of the young men in the adult corrections system.[13] Approximately 14% of Connecticut youth age 14 to 17 are African-American and 14% are Latino.[14] As of July 20, 2006, MYI housed 407 boys between the ages of 14 and 17.[15] An additional 23 female inmates under age 17 were housed at YCI. There were two 15-year-old girls housed at YCI in 2006, one white and one African-American. Of the girls at the YCI, for every one white female, there were two African-American or Latino females incarcerated.[16] There were 124 16-year-olds and 282 17-year-olds at MYI in 2006; 18% were white and almost 82% were African-American or Latino. Whereas there were 18 African-American and eight Latino 15-year-old boys, there were no 15-year-old white prisoners at MYI. Of the three 14-year-olds at MYI, all three were African-American.

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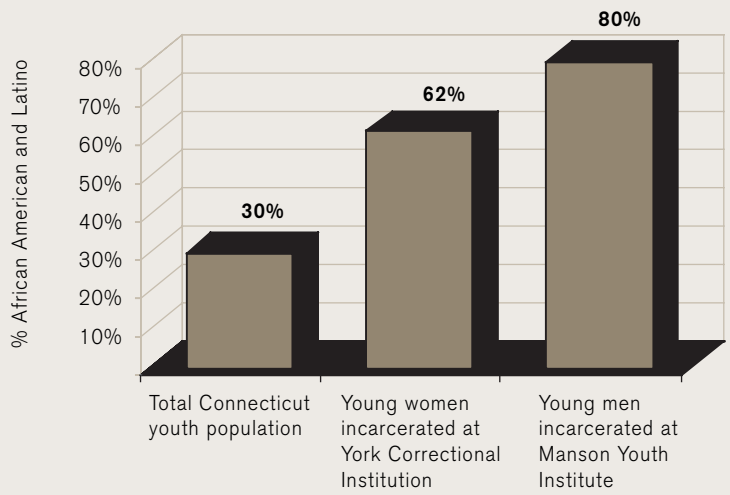
In terms of their convictions, only six offenders were serving time for murder and an additional 67 were convicted of robbery. The other 364 inmates were incarcerated under the youthful offender statute for lower-level, largely non-violent offenses.

Youth of color are overrepresented in juvenile transfer cases and half are non-violent offenders.
In an assessment of juvenile transfers in Connecticut between 1997 and 2002, researchers found that, on average, 90 cases each year were transferred automatically and an additional 35 were transferred to adult court by prosecutorial discretion.[17] Forty percent of all transfer cases during that time period were of African-American youth.[18] Yet in 2002, African-Americans made up only 13% of the 14- to 17-year-olds in Connecticut.[19] Twenty-seven percent of juveniles transferred had no prior referral to juvenile court and 84% of those who had juvenile records had not fully exhausted the resources of the juvenile justice system prior to their transfer to adult court.[20] Even though only about half of the youth transferred to adult court were transferred for a violent offense, 72% were sentenced to more than one year of incarceration.[21] Even youth convicted of non-violent crimes received sentences that exceeded the length of time they would have received in the juvenile system, where they would have had more rehabilitative services.

Connecticut Department of Correction, July 2006.

African-American and Latino youth overrepresented in adult institutions



Young people with mental health needs end up in the courts.
The vast majority of individuals who come into contact with the juvenile and criminal justice systems have diagnosable mental health disorders. Sixty-two percent of the youth detainees in Connecticut suffer from mental health issues and require appropriate treatment.[22] The National Alliance for the Mentally Ill says that for many youth with mental health issues in the juvenile justice system, the behavioral manifestation of their mental health disorder has led to the infraction for which they are arrested.[23] Although the proportion of youth under the adult corrections system who have mental health issues is unknown, the case histories of young people who have spent time in adult institutions reflect how the lack of age-appropriate mental health services contributes to delinquency, and possibly contributes to their being tried as adults.

YOUNG PEOPLE AND FAMILIES AFFECTED BY CONNECTICUT'S LAWS[24]

Chris: Mental illness and lack of services leads to prison.
A young, white mother of three, Johnna P. has tried everything to get services for her oldest son, Chris W., who was diagnosed early with Attention Deficit Disorder. Chris's father was uninvolved in his life and Ms. P.'s family moved to Alaska just after Chris was born, leaving Ms. P. with no family support in Stamford, CT. During his childhood, Chris was hyperactive and a tutor was engaged to help him build his remedial skills, particularly in reading. Chris's disruptive behavior became a serious problem by the fifth grade, landing him in an instructional behavioral modification class even though Chris did not have a diagnosed learning disorder (Attention Deficit Disorder can, but does not necessarily, constitute a learning disorder).

Throughout middle school, Chris felt extremely embarrassed to be assigned to a special education class. The class was held in the basement of the school building and included severely emotionally disturbed students. Further, his teacher "wrestled" with the students on a regular basis, which made Chris uncomfortable.

Chris attended a different high school for ninth grade but was still not able to be mainstreamed into a regular academic schedule. Although just 13 years old, Chris often had trouble sleeping and would regularly sneak out of the house in the middle of the night to ride his bike around his Stamford neighborhood. Ms. P. asked the police officers escorting Chris home for assistance accessing services, but their advice was simply to have him arrested the next time this happened. Trusting the police, Ms. P. called them during the next family altercation and had Chris arrested for assault. This initiated his lengthy contact with the juvenile and criminal justice system for minor infractions. Initially, Chris was deemed a "child from a family with service needs" and received special services, but only for a short time period. With the limited services available to him, Chris's mental health conditions worsened. When he was hospitalized at Riverview Hospital for six months, Chris was misdiagnosed and overmedicated, leading to seizures. Once stabilized, Chris was reevaluated and diagnosed with bipolar disorder.

Subsequent to the initial domestic incident, Chris has been held in eight different facilities, some multiple times. Since turning 16 years old, he has been detained or incarcerated in various adult facilities, including MYI, in which he has contemplated suicide multiple times and received little or no counseling or interventions from staff. While held at Bridgeport Correctional Center, an adult detention facility, a fellow inmate committed suicide and Chris witnessed staff dragging the deceased's body through the common area of his unit. Chris has continually been haunted by this image and regularly reflects that "minutes go by like hours" while in custody. Chris's bipolar disorder is in large part responsible for

Chris has been held in eight different facilities, some multiple times. Since turning 16 years old, he has been detained or incarcerated in various adult facilities, including MYI, in which he has contemplated suicide multiple times and received little or no counseling or interventions from staff.

his violating the law; however, his punishments have done nothing to ensure his mental stability. Instead, they have made his psychological state worse.

Even when released on pretrial bond or probation, Chris has received little mental health assistance. According to his mother, he was evaluated regularly but improperly medicated. These medications interacted negatively with Chris's bipolar disorder and initiated manic cycles. It was during these manic cycles that Chris's behaviors led to repeated arrests for low-level offenses, such as trespassing, assault, and technical probation violations. Yet once Chris turned 16, he found himself without access to the treatment and services typical of juvenile court. During one period of detention in an adult facility, it took Ms. P. three weeks to get the medication Chris had been prescribed approved by the correctional facility staff. His mother has stated that Chris "...was simply too young for an environment like [Manson Youth Institute]" and he "needs treatment, he needs services, he needs programs that can help him catch up educationally, get his disorder under control and develop the skills he needs to get a job."[25] Most recently, Chris was arrested for assault stemming from allegations he participated in a neighborhood fistfight and was subsequently incarcerated at MYI. When he was released in June 2004, Ms. P. picked up a then-17-year-old Chris from MYI and was shocked at his appearance; she thought her son "looked like someone from a POW camp."[26]

His mother has stated that Chris "...was simply too young for an environment like [Manson Youth Institute]" and he "needs treatment, he needs services, he needs programs that can help him catch up educationally, get his disorder under control and develop skills he needs to get a job."

While incarcerated at MYI, Chris was locked in his cell for up to 22 hours for the first two weeks. Since academic programs apparently have lengthy waitlists, it was weeks before he received any education. According to interviews with both incarcerated youth at MYI and their family members, the food is said to be the worst of any Connecticut facility. To supplement their diets, the youth use exposed cable wires to heat water to cook noodles purchased through the commissary—an unsafe practice and an institutional infraction, but a necessary survival tactic.

Although Chris has had the benefit of being deemed a youthful offender, the continued deficiency in appropriate mental health services has led to his repeated involvement in the criminal justice system. This has invalidated any protective factors the statute provides. The Connecticut Department of Children and Families (DCF), which oversees both the family court and part of the juvenile justice system, is obligated by statute to make available mental health services for any youth under the age of 18 in need, but the agency has restricted space in facilities throughout the state for these adolescent patients. Even the youth who are committed to the DOC are entitled to mental health services provided by DCF, yet services are largely unavailable to them.

This mandate to provide mental health services still holds for those under 18 who have been committed to the DOC, as well as those who are committed to the juvenile justice system, yet its reach has not spread effectively into correctional facilities where the youth with mental health issues are forced to reside. According to Gary Kleeblatt of DCF, in July 2005 there were 18 youth incarcerated at MYI who were already committed to DCF as wards of the state due to abuse and neglect.[27] Moreover, he said, the families of 112 young males incarcerated at MYI had open abuse and neglect cases. However, as Connecticut lawyer and advocate Martha Stone has said, "Adult prisons are not an appropriate place for abused and neglected children to wait while DCF develops a treatment plan for them."[28]

Girls in Connecticut's criminal justice system.
York Correctional Institute (YCI) is a high-security adult women's prison run by the Connecticut DOC. YCI houses all women committed to the DOC regardless of their security level or age.[29] Although they are a small portion of the youth under the jurisdiction of the adult criminal justice system, girls face a series of specific challenges to their health, safety, and opportunity for rehabilitation. Young women who have been placed in DOC custody are not kept separate from older female inmates.

Katharine.
Katharine is one of the girls who has been incarcerated at YCI. As a child, she was described as charming and bright, but her personality changed drastically as she grew up. She isolated herself and was extremely withdrawn. Around age 12, she became secretive. Her parents believed this was normal early adolescent behavior. Katharine began to experiment with drugs, skipped school with her boyfriend, and was frequently suspended. On different occasions, the police or her mother returned her to school.

Katharine did manage to complete the 10th grade, but her life was troubled. Not only did this boyfriend introduce her to drugs, but he also physically, mentally, and sexually abused her. Unfortunately, this relationship lasted for almost five years. During her 11th grade year, Katharine requested to attend night school and her mother eventually agreed. She barely passed 11th grade. During the following summer, she was taken to Saint Mary's Hospital in Waterbury for a heroin overdose. Two months later, she stole her sister's car in order to have transportation to a drug deal in New York where her stepbrother, a fellow heroin user, lived. She was detained by the police in Bronx, NY, and was charged with disturbing the peace.

After this incident, her family helped get Katharine into a substance abuse treatment program, but she did not stay and returned to the family home. Two days later, a neighbor called the police, suspecting Katharine of burglarizing their home. The police searched her parent's home and found the neighbor's possessions. Katharine was charged with larceny for $13,000 worth of jewelry and electronic equipment.

Katharine met with a prosecutor and explained how depressed she had felt over the recent years and how her drug use alleviated some of those feelings, but the prosecutor did not feel that her explanation was sufficient. She was ordered to complete outpatient drug rehabilitation, but she continued to test positive after two and a half weeks of attending the program. She was placed in several inpatient treatment programs over the next few months, but did not successfully complete any of them. It was believed that Katharine was bipolar, but she had never been sober enough long enough to give an accurate diagnosis.

Before she entered the fourth program, Katharine stole her mother's car again—for the 10th time. Since Katharine had been involved in several accidents in her mother's car, her mother decided to finally call the police and report the car stolen. She agreed to press charges, but she did not understand that Katharine would be dealt with in the adult criminal justice system.

Almost two weeks later, Katharine was taken into custody and held at YCI. Her cellmate was incarcerated for stabbing someone. Katharine soon became hysterical and spent 10 days in the same clothing. She was not evaluated for mental health services or medication for two weeks. Everyone, guards and inmates included, treated her inhumanely. Katharine was horrified when she was strip searched and touched inappropriately by a male officer because she was accused of having contraband. The contraband was soap provided to her by another inmate because she did not have any. Older women also constantly threatened to beat, rape, and kill her.

Katharine was taken into custody and held at YCI. Her cellmate was incarcerated for stabbing someone.

Vanessa.
When single, white, nursing college professor, Pam Dudac, adopted nine-year-old Grace Dudac in 1980, she did not know what she would be getting herself into years later. Ms. Dudac adopted a physically and psychologically abused Grace from the Philippines. It was unknown whether Grace had been sexually abused, but a social worker at the adoption agency informed Ms. Dudac that the standard protocol was to assume that all the girls had been sexually abused. Grace had cigarette burns on her skin when Ms. Dudac received her.

When Grace was only 15 years old, she began dating an 18-year-old Cambodian named Sean. Grace had felt ostracized from the white, middle-class community she grew up in. Grace's therapist actually recommended the relationship, because she felt that Grace would better understand her ethnicity. Ms. Dudac opposed the relationship due to the age difference. On October 17, 1988, when Grace was 16, she gave birth to Sean's daughter, Vanessa.

Although Sean had a good job as a quality control inspector, he also had a gambling problem. Unable to handle raising a child with him and upon facing eviction, Grace relinquished custody of Vanessa to Ms. Dudac. Grace remained with Sean and they moved in with a drug dealer friend of theirs. Shortly thereafter, the three were arrested. Grace served nine months at YCI after Ms. Dudac spent $15,000 on attorney's fees. Sean was sentenced to two years and the drug dealer was sentenced to 30 years. He was charged with a drug-school zone offense and Grace and Ms. Dudac testified against him.

Upon her release, Grace decided she would have nothing more to do with Sean. However, the two reconciled when he was released from prison. He abandoned Grace and Vanessa shortly after that and moved to Texas. Vanessa was molested by their neighbor's six-year-old son. When Ms. Dudac found out, she reported the incidents to the police and social services, but nothing was done about the case. Subsequently, a number of their neighbors turned against the Dudacs and Vanessa lost her childhood best friend. Although these traumatic events had occurred in her early childhood, Vanessa was never an angry child and always reached out to help others.

But things changed once Vanessa entered Madison Middle School. She began to sneak sips of cough syrup and experimented with cutting herself. One day, she called her mother, and Grace told her that she did not know who was calling and not to call again. Distraught from the extreme abandonment, Vanessa began cutting herself regularly. She attended a young women's self-esteem group but the therapy provided was minimal.

Vanessa had a best friend, Jessica, and boyfriend, Joseph, she depended on for support. During ninth grade, Vanessa and Jessica regularly went to the library after school to complete homework, but one day Vanessa did not call Ms. Dudac to pick her up at the normal time. Worried, Ms. Dudac contacted Jessica and found out that they had not been together at the library that afternoon. While searching for her, Vanessa called but did not say where she had been. Upon returning home she was grounded.

Ms. Dudac, worried about Vanessa, contacted her piano teacher to find out any information about how Vanessa was doing and the piano teacher suggested that Ms. Dudac take Vanessa to obtain a method of birth control. Shocked, Ms. Dudac confronted Vanessa and Vanessa revealed that she had been date-raped by a 19-year-old student at her high school. Ms. Dudac reported this to the police and the young man was arrested and was sentenced to nine months in protective custody. Outraged by this slap on the wrist, Ms. Dudac was even more troubled by the school's support of the young man and its lack of support for Vanessa. Vanessa continued to cut herself and began experimenting with drugs.

At the end of the school year, Vanessa began to spend a lot of time with her paternal cousins. Most of this time was unsupervised and she met an older boy named Angelo. Vanessa and Joseph broke up the summer after ninth grade when she found out that Jessica and Joseph had been sneaking around behind her back. Once she found out, Vanessa ran away for three days. She spent those three days with Angelo on a cocaine binge. When she returned home, she was admitted for psychological testing to Hall Brooke Psychiatric Hospital in Westport, CT. Vanessa received a referral for outpatient counseling but no services were put into place. She continued to use drugs, skip school, cut herself, and run away. She also developed bulimia and created an altar in her bedroom made up of drawings of women engaged in sexual acts together.

A few weeks after Vanessa turned 16, Ms. Dudac came home to find her naked with a fully clothed Angelo in her bedroom and two other friends in the house. Ms. Dudac threw Angelo out of the home along with the other friends and she and Vanessa got into an argument. Vanessa slapped her grandmother and Ms. Dudac called the police. At the time of the incident, Ms. Dudac was over the age of 60 and Vanessa was charged with a violent felony against an elderly person. Vanessa was taken into custody and held at YCI for a week where older female inmates constantly groped her inappropriately. She was released pending trial and was court-ordered to complete an anger management program.

Vanessa met with a private psychologist around the same time who recommended an age-appropriate secure setting, but the recommendation was not adhered to. A few weeks later, another family fight erupted when Grace was visiting and Ms. Dudac called the emergency intervention services provided by the anger management program. Vanessa became paranoid that they would remove her from the home and ran away before they arrived.

Vanessa eventually returned home and in order to deal with the court case expediently, Vanessa pled guilty and obtained youthful offender status with a one-year suspended sentence and three years of adult probation. Vanessa met with a probation officer weekly. Although the probation officer refused to meet with Ms. Dudac, the officer incorporated Angelo into Vanessa's treatment planning. Although several assessments were scheduled for Vanessa, none of the service providers followed through with treatment and Vanessa did not do well on probation. She was sent to a crisis home for a brief period of time before she was returned home with an electronic ankle monitor. She was permitted free time on weekends and one weekend she ran away with Angelo.

A few months later, Vanessa found out that she was pregnant. In the meantime, Ms. Dudac had obtained services from a private mental health care provider. The provider agreed that Vanessa needed to be placed on medication for multiple diagnoses, including bipolar disorder, oppositional defiant disorder, and depression and anxiety related to abandonment issues. However, since Vanessa was pregnant, she was unable to take the necessary medications. Vanessa was sent to a home for pregnant teens, called Mi Casa, where she managed to participate in the programming and attend school.

Unfortunately, she eventually ran away to Angelo but learned he had been cheating on her. She returned to Mi Casa and was accepted back into the program. Vanessa began cutting herself more frequently and using marijuana. The drug counselor inspected Vanessa's sheets one day and found them caked with dried blood. Mi Casa attempted to send Vanessa to the emergency room for a psychological admission, but by the time Ms. Dudac arrived at the hospital, Angelo was talking with the nursing staff on Vanessa's behalf. Ms. Dudac could not believe that the hospital staff listened to Angelo, whom she feels contributed to the delinquency of a minor, and not to her. Vanessa's grandmother is a licensed nursing professor.

Vanessa was taken into custody and held at YCI for a week where older female inmates constantly groped her inappropriately.

Vanessa was not admitted to the hospital and was returned to her grandmother's home. She was five months pregnant and decided to have an abortion. After the abortion, Vanessa began to attend counseling through probation, but it was only every other week and did not sufficiently treat her or help her to stop harming herself. After acting out during a group therapy appointment, Vanessa was placed in Transitions, an adolescent group home. She managed to stay at the placement for two months until she ran away and violated probation. While on the run, Vanessa snorted so much cocaine that she was admitted to the hospital due to erosion of her nasal septum. Her grandmother returned her to Transitions before a warrant was issued, but Vanessa ran away again and is currently in ascendance and a warrant has been issued for her arrest. She faces a one-year sentence at YCI for a heated family argument with her grandmother that took place almost one year ago. Had developmentally appropriate services been put in place

for Vanessa a year ago, ones that addressed the many psychological traumas she had experienced in her young life, she may have been able to avoid having the suspended prison sentence imposed.

David: The ultimate sacrifice.
As noted in the introduction, youth incarcerated in adult correctional facilities are eight times more likely to commit suicide than their peers in juvenile facilities.[30] On July 24, 2005, 17-year-old David Burgos, a Latino, committed suicide at MYI while being held on a probation violation. David's mother, Diana Gonzalez, had been worried about her son because his letters sounded desperate; the letters detailed the lack of mental services, and how David was seeking counseling support from his fellow inmates.

On July 24, 2005, 17-year-old David Burgos, a Latino, committed suicide at MYI while being held on a probation violation.

David grew up with both parents and three other siblings in Bristol, CT. David's father was an alcoholic who regularly abused Mrs. Gonzalez, both verbally and physically, in front of their children. When David was nine, his parents divorced and the family court became involved in a custody dispute. David went from his mother's home to his father's. While in his father's care, David began to act out. He was evaluated and diagnosed with Attention Deficit Hyperactivity Disorder, prescribed medication for the condition, and returned to his mother's care. Although happy to be back in his mother's care, David always desired the ideal father/son relationship and was continuously disappointed by his father's lack of interest and motivation to be a part of his children's lives. As a result of emerging mental health conditions and his familial stressors, David was hospitalized repeatedly and, as a result of a neglect case, was placed under DCF guardianship at age 10.

David's resentment towards his father compounded his limited cognitive ability and he grew easily frustrated with tasks. He was in need of extra assistance regularly, particularly in school. He underwent several inpatient evaluation and treatment interventions and, at age 14, was placed in a residential treatment facility by DCF because of his active neglect case. Accurately diagnosed with bipolar disorder and severe depression, he received the therapeutic structure and schooling he needed while in residential care. David became a leader among his peers, experiencing both physical and psychological benefits. His mother visited as often as possible and participated actively in his treatment regimen. To his detriment, however, DCF discontinued payment for this placement, deeming it too expensive. David hoped he would be placed in a therapeutic foster home, but his age made him difficult to place.

Instead, David was sent to a group home in New Haven, CT. According to Mrs. Gonzalez, the group home had very little structure and David was taunted by staff and encouraged to run away. Eventually, he did just that. David was subsequently placed in another group home but was threatened by a resident with a gun and ran away again. He went to his mother's home and she took him to the hospital to receive an updated evaluation. DCF rejected his request to return to a prior placement, opting to take him back to the same group home where his life had been threatened. While being transported, David jumped out of the moving vehicle.

While in ascendance, David left the group home, and was arrested for stealing and was released and placed on probation to comply with his family court order. Complying with DCF was one of the restrictions placed on him under probation. However, David exercised his civil right as a 16-year-old to remove himself from DCF services, prompting probation violation proceedings in his criminal case. While awaiting his revocation hearing, David was held at MYI. After four months of confinement compounded by the onset of severe depression and with no mental health intervention, he took his life by hanging himself with a bed sheet in his cell.

WHAT ARE THE POLICY OPTIONS IN CONNECTICUT?

Spurred by reports of poor conditions at MYI, including suicides and assaults on youth, a growing number of voices in the state are calling on legislators to raise the age of juvenile court jurisdiction in Connecticut to 18. In light of the emerging scientific understanding of brain development as it relates to chronological age, criminal justice practitioners, including probation officers, judges, defense attorneys, and a small number of prosecutors in Connecticut have called for greater discretion in juvenile transfer and for more in-depth assessments of juvenile competency.[31] The recent research findings on the frontal lobe, the part of the brain that influences emotional decision-making, suggests it does not reach its peak development stage until a person's early 20s, is starting to have a positive effect on juvenile justice policy and practice.[32]

Representative Toni Walker (D–New Haven) believes that a judge needs to have discretion to transfer a youth for a serious offense, as opposed to having all youth of a certain age possibly subject to the same outcome. She has said that youth who commit "silly mistakes" should not suffer the same punitive consequences as a teenager who commits a violent offense.[33] Although legislation introduced by Walker to raise the age of juvenile court jurisdiction did not pass in the 2006 legislative session, Section 16 of House Bill 5846 established a commission to evaluate the efficacy and implications of these transfer provisions and to assess the cost of returning 16- and 17-year-olds to juvenile court jurisdiction. The commission published its recommendations in February 2007.

Spurred by reports of poor conditions at MYI, including suicides and assaults on youth, a growing number of voices in the state are calling on legislators to raise the age of juvenile court jurisdiction in Connecticut to 18.

At Walker's request, Dr. Donna Bishop, a criminal justice professor at Northeastern University, testified before the Judiciary Committee in February 2006 on the negative implications of automatic waiver and transfer of youth to the adult court. During her testimony, she said that "young offenders are generally not rational, calculating offenders... a lot of their crime is impulsive."[34] Bishop further elaborated: "when we put them into the adult system, we make it far more likely that the public will be harmed in the long run."[35]

Representative Michael P. Lawlor (D–East Haven), co-chair of the legislature's Judiciary Committee, "would like to increase the age of so-called status offenses to 18, to allow parents more control over delinquent behavior."[36] Although he supports raising the age of juvenile court jurisdiction to18, Lawlor says that the youthful offender bill from 2005 is a compromise because, although it did not exempt 16- and 17-year-olds from adult jurisdiction, it opened up the door for a review of the implications for both the juvenile and criminal justice systems in Connecticut and their corresponding government agencies. Additionally, an analysis of the resources that will need to shift from the Department of Correction to the Department of Child and Family Services will be undertaken. According to Dr. Steven Berkowitz and former MYI warden Leonard Barbieri, youth ages 16 to 18 are "neither children nor adults," and raising the age of jurisdiction in Connecticut to reflect the practices of most other states "would release the Department of Correction from its difficult role of ensuring the safety of incarcerated 16- to 18-year-olds."[37]

Among the most controversial parts of the debate over whether to bring 16- and 17-year-olds back under the jurisdiction of the juvenile court concerns the costs of the change. According to John Roman, a researcher with the Washington, DC-based Justice Policy Center at the Urban Institute who testified before the legislature on raising the age, these reforms could prove more cost-effective. Although there will be costs associated with returning 16- and 17-year-olds to the juvenile court jurisdiction, there also will be the long-term benefit of saving future dollars through lower youth recidivism rates; the future likelihood of recidivating is lower for youth who are maintained in juvenile court compared with those transferred to adult court. "If juveniles commit fewer crimes because they have received more and better services," Roman says, "fewer community members will be victimized...."[38] He explains that "less crime will mean fewer victims, fewer missed days

of work, lower medical bills and, maybe most important, less fear and less suffering." In general, Roman estimates that returning 16- and 17-year-olds to juvenile court jurisdiction will result in approximately a $3 savings benefit for the correctional and judicial systems for every one dollar spent.[39]

Opponents to raising the age of juvenile court jurisdiction, such as Chief State's Attorney Christopher Morano, believe that the 2005 amendments to the Youthful Offender Statute provide enough safeguards for adolescent offenders.[40] Police Chief James Strillacci, addressing the Judiciary Committee on behalf of the Connecticut Police Chiefs Association, believes that increasing the age of juvenile court jurisdiction will actually impede the ability of a police officer to interview a juvenile if a parent must be present, yet there is little evidence to support this theory.[41]

"For too long," Governor M. Jodi Rell has said, "juvenile justice services in Connecticut have been failing...our children, particularly troubled children, deserve better."[42] Concerned by the suicide of David Burgos in July 2005, Governor Rell identified $550,000 for juvenile services in the proposed budget for Fiscal Year 2007 to create a more functional juvenile justice system. If 16- and 17-year-olds are returned to the juvenile court's jurisdiction, they will benefit greatly from the added services this money creates.

In recent years, Connecticut has taken important strides to improve its juvenile justice system. . . These reforms make a compelling case for keeping 16- and 17-year-olds eligible for this system.

CONNECTICUT RECOMMENDATIONS

- **Raise the age of juvenile court jurisdiction.**
  As noted in this report's introduction, studies have shown that public safety is best preserved when youth remain in juvenile court and are provided with age-appropriate services. In recent years, Connecticut has taken important strides to improve its juvenile justice system. New services, pilot programs, and a conscious and concerted effort to focus on rehabilitation and not simply punishment are working to make the juvenile justice system more effective, equitable, and safe. These reforms make a compelling case for keeping 16- and 17-year-olds eligible for this system.

- **Invest in prevention and diversion.**
  Returning 16- and 17-year-olds to juvenile court is only one part of an effective juvenile crime prevention strategy. Moreover, community alternatives such as afterschool programs, substance abuse counseling, and mental health treatment save policing, court, and correctional costs along with the costs, both financial and emotional, incurred by victims. Programs to keep young people from becoming involved in the courts also will help reduce disproportionate minority confinement.

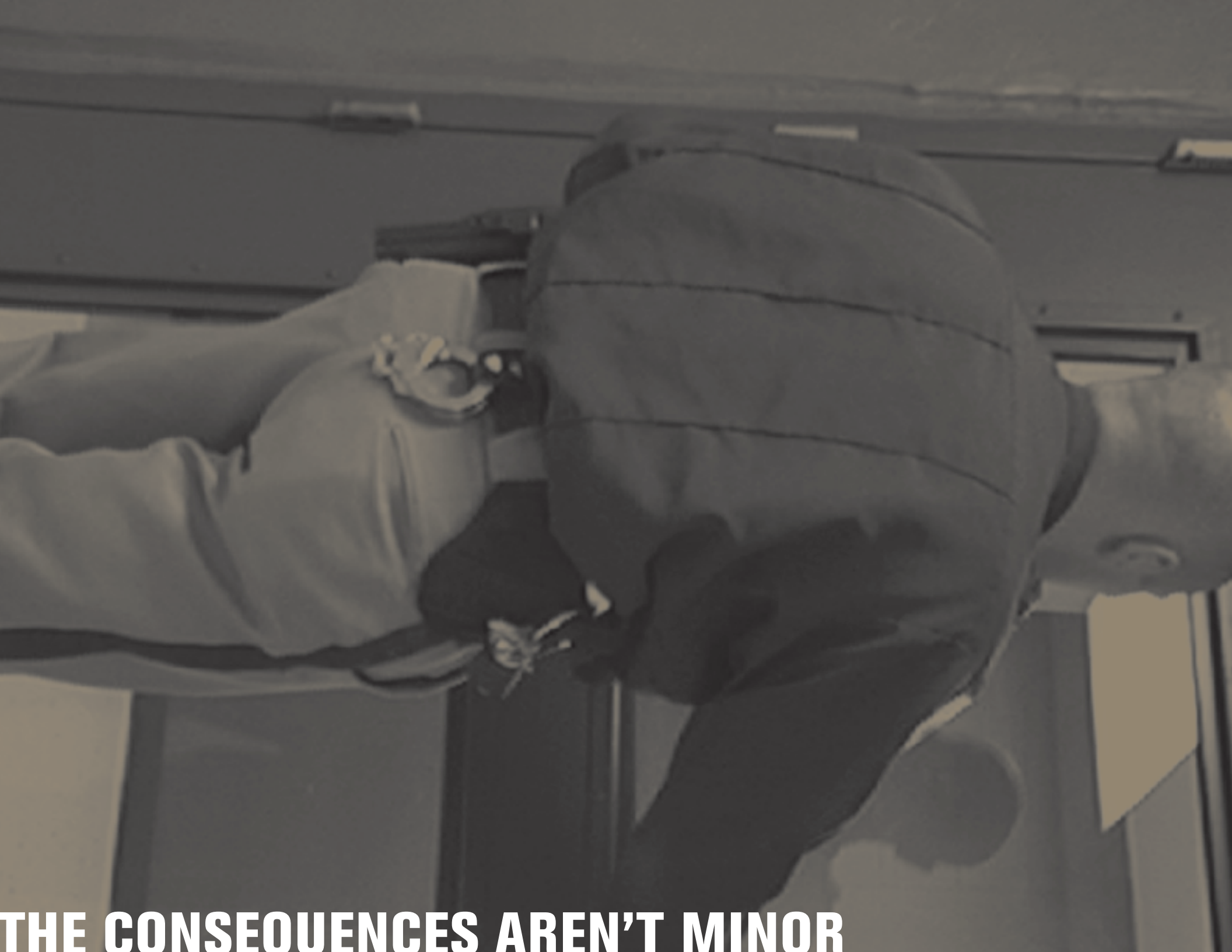
- **Decriminalize young people with mental health disorders.**
  As evidenced by the overrepresentation of individuals with mental health issues in the criminal justice system, there is not enough suitable treatment available. Thus, when youth act out due to their psychological complications, they find themselves in a system that has little to no means of extracting them from the slippery slope of the criminal justice system.

- **Commit to providing rehabilitative services to 16- and 17-year-olds within the juvenile justice system and inter-agency collaboration.**
  According to longtime child legal advocate Ann-Marie DeGraffenreidt, "the perspective of the two courts is different, in that adult court is focused on punishment for crime as opposed to rehabilitation. The philosophy behind juvenile court is that kids aren't set in stone."[43] The juvenile court, working in concert with similarly interested youth agencies, can provide a specialized level of service that will ensure successful futures for Connecticut's youth.

- **Eliminate disproportionate minority representation.**
  Although all of these recommendations should help reduce the level of disproportionate minority representation by reducing the overall number of young people in the justice system, specific attention must be paid and funding allocated to determine the causes of this disparity and make the changes necessary to eliminate it.

NOTES

[1] State of Connecticut General Assembly. www.cga.ct.gov
[2] National Center for Juvenile Justice. (2005). *State juvenile justice profiles: Connecticut transfer provisions as amended through the 2004 legislative session.* http://www.ncjj.org/stateprofiles/
[3] This statute is known as Conn. Gen. Stat. § 46b-127 (formerly § 51-308). *Transfer of child charged with a felony to the regular criminal docket.*
[4] Adjudication is the term used in juvenile court that is equivalent to an adult conviction.
[5] Conn. Gen. Stat. Ann. § 54-76b (2006 Supp.).
[6] Conn. Gen. Stat. § 54-76h (2006 Supp.).
[7] Connecticut Department of Correction: Manson Youth Institution. http://www.ct.gov/doc/cwp/view.asp?a=1499&q=265428
[8] Don't give up on youth [Opinion]. (2006, February 26). *The Hartford Courant.*
[9] Conn. Gen. Stat. § 17a-12 (a) (2004).
[10] Data request filled by External Affairs Division of the Connecticut Judicial Branch, July 25, 2006.
[11] Connecticut Uniform Crime Reports. Available from www.dir.ct.gov/dps/ucr/ucr.aspx
[12] State of Connecticut Department of Public Safety, Division of State Police, Crimes Analysis Unit. (December, 2003). *Crime in Connecticut 2003: Annual report of the Uniform Crime Reporting Program.* Middletown, CT: Author.
[13] Data request filled by the Connecticut Department of Correction, July 2006.
[14] Puzzanchera, C., Finnegan, T., & Kang, W. (2006). *Easy access to juvenile populations.* Available from http://www.ojjdp.ncjrs.org/ojstatbb/ezapop/
[15] Data request filled by the Connecticut Department of Correction, July 2006.
[16] Ibid.
[17] Spectrum Associates. (2006, April). *A study of juvenile transfers in Connecticut 1997 to 2002 final report.* Milford, CT: Author.
[18] Ibid.
[19] See Puzzanchera, C., Finnegan, T., & Kang, W., 14.
[20] See Spectrum Associates, 17.
[21] Ibid.
[22] CT Mental Health Policy Council: Children's Issues Subcommittee. (2002, February). *Annual report.* New Haven, CT: Author.
[23] CT Voices for Children. (2006, March). *Why CT should return its juvenile court jurisdiction to age 18.* http://www.ctkidslink.org/publications/juv06juvcourtjur1617.pdf
[24] Permission was obtained to use real names.
[25] Coleman, T. A. (2006, February 22). Changes urged on treatment of criminal youth. *Southern Connecticut Newspapers.* http://www.greenwhichtime.com/news/local/scn-sa-nor.juveniles2feb22,0,7327718.story
[26] Poitras, C. (2006, February 21). CT: Teen crimes, adult prisons. *The Hartford Courant.* http://www.hartfordinfo.org/issues/documents/FamiliesAndChildren/htfd_courant_022106_a.asp
[27] Ibid.
[28] Poitras, C. (2006, February 22). DCF fails to pay bail. *The Hartford Courant.* http://www.courant.com/hc-dcfbail0222.artfeb22,0,6894836,story
[29] Connecticut Department of Correction: York Correctional Institution. http://www.ct.gov/doc/cwp/view.asp?a=1499&Q=265454&docNav=
[30] Flaherty, M. G. (1980). *An assessment of the incidences of juvenile suicides in adult jails, lockups and juvenile detention centers.* Urbana, IL: The University of Illinois, Urbana-Champaign.
[31] See Spectrum Associates, 17.
[32] Henderson, W., & Brien, N. (2006). *Rethinking the juvenile in juvenile justice.* Madison, Wisconsin: Wisconsin Council on Children and Families.
[33] Levine, D. (2006, February 21). A statement in orange. *Connecticut News.* http://www.campaign4youthjustice.org/MAR06/news/CT/CTNewsjunkie.pdf
[34] Mann, T. (2006, February 22). Groups seeking change in teen-crime penalties. *The Day.* http://www.campaign4youthjustice.org/MAR06/news/CT/NewLondonDay.pdf
[35] Ibid.
[36] Dixon, K. (2006, February 21). Drive on to expand youthful offender status. *Connecticut Post,* http://www.campaign4youthjustice.org/MAR06/news/CT/CTPost.pdf
[37] Berkowitz, S., & Barbieri, L. (2005, August 30). Treat young offenders differently. *The Hartford Courant.* http://www.nccev.org/us/press_releases/30aug2005.htm
[38] Roman, J. (2006, February 21). *The economic impact of raising the age of juvenile jurisdiction in Connecticut.* Remarks before the Judiciary and Appropriations Committee, Connecticut General Assembly.
[39] Assuming services are consistently maintained for youth and no new facilities are constructed.
[40] Joint Committee on Judiciary. (2006). Testimony of Chief State's Attorney Christopher L. Morano in opposition to (H.B. No. 5782). Rock Hill, CT: U.S. Chief State Attorney's Office.
[41] Salzman, A. (2006, April 2). Redefining juvenile criminals. *The New York Times.* http://www.campaign4youthjustice.org/files/news/NYTRedefiningJuvenileCriminals.pdf
[42] Haller, S. (2005, March). *Report on the reform initiative at the Connecticut juvenile training school.* South Bend, IN; The Justice Education Center.
[43] See Salzman, A., 41.



THE CONSEQUENCES AREN'T MINOR

WHAT IS THE LAW IN FLORIDA?[1]

After the national news media broke the story of several 13- and 14-year-olds being sent to adult prisons in the late 1990s, Florida's adultification statutes gained national and international notoriety. Florida prosecutors have a great deal of power over transfer decisions, and during the 1990s, Florida prosecutors sent nearly as many youth to adult court (7,000) through the judicial waiver process as judges in the entire U.S. did.[2] In Florida, youth enter the adult system in five ways: prosecutorial waiver (commonly known in Florida as direct file), judicial waiver, mandatory waiver, indictment, or because the youth had a prior adult sentence. The following are the key features of Florida's adultification laws.

Prosecutorial waiver (direct file). Prosecutors have significant power and discretion to transfer young people to adult courts.
Prior to 1994, prosecutors had discretion to transfer cases for juveniles age 16 and older and had limited discretion to transfer cases for 14- and 15-year-old juveniles. In 1994, the Florida State Legislature passed legislation that expanded prosecutorial discretion. Only 15 states or jurisdictions including Florida employ direct file (prosecutorial discretion waiver).[3] This legislation grants prosecutors discretion to transfer to adult court youth who are 14 or 15 and charged with the commission, attempt, or conspiracy to commit certain serious crimes (19 crimes apply). Prosecutors also have discretion to transfer cases in which the prosecutor views that the public interest requires that adult sanctions be considered or imposed. For any offenses other than misdemeanors, prosecutors may use direct file to transfer cases involving youth who are 16 and 17 years old. Prosecutors also may use direct file for misdemeanors for youth who are 16 and 17 and have at least two previous adjudications (or adjudications withheld) for delinquent acts, one of which involved a felony. Nearly 95% of Florida juvenile cases transferred in 2000 were via direct file.[4]

Mandatory waiver (statutory exclusion). Young people must be sent to the adult court for certain acts.
A prosecutor must direct file a case for young people who are 16 and 17 years old if they were:

- previously adjudicated delinquent for acts classified as a felony and facing repeated charges for violent crimes, or

- charged for offenses classified as a forcible felony and previously adjudicated delinquent–or had adjudication withheld–for three felonies that were committed within 45 days of each other.

Youth also are subject to mandatory waivers if:

- they are charged with the commission of a fourth felony offense for which they have previously been adjudicated delinquent;
- a previous felony adjudication has been withheld; or
- one of three previous felony adjudications for committing, attempting to commit, or conspiring to commit a felony involved the use or possession of a firearm, or involved violence against a person.

A prosecutor must direct file cases in which youth of any age are accused of causing serious bodily injury or death while stealing a motor vehicle or while in possession of a stolen vehicle. For crimes in which the mandatory minimum "10-20-life rule" applies, mandatory direct file must be used for youth who are 16 and 17 years old if their crime involved discharging a firearm or destructive device and resulted in bodily harm or death. Last, prosecutors must transfer the case to adult court via "indictment" in cases in which youth, regardless of age, are charged with capital charges meriting death or life without parole. In these cases, the juvenile court retains jurisdiction until the prosecutor seeks an indictment. Once transferred, these youth are tried and sentenced as adults in every aspect. Additionally, any cases still pending in the juvenile court for these youth are also transferred from juvenile court to adult court. This practice is commonly referred to as "coat tailing." In the event that a youth is found guilty of a lesser felony charge than alleged in the indictment, the young person is eligible for juvenile sentencing.

***Judicial waiver*. In Florida, regardless of the offense, the State Attorney's Office may file a petition for a discretionary waiver before a judge.** The waiver proceeding is a two-part hearing before a juvenile court judge who reviews the evidence presented by the prosecutor and defense counsel and then decides whether to transfer the youth to adult court. In order to transfer the case, the judge must find:

Young people who have served previous adult sentences are automatically tried as adults.

- sufficient probable cause to allege that the youth was involved in the delinquency act, and
- background information supporting the transfer to adult court.[5]

Waiver hearings can be voluntary or involuntary. A young person or his or her parents or guardians can request that the case be transferred to adult court for trial, or a prosecutor may direct file a case, either because they choose to or because the crime dictates that the youth be transferred.

Once an adult, always an adult.
As shown, young people who have served previous adult sentences are automatically tried as adults.

Young people who await trial may be detained in juvenile facilities or adult jails. Within 24 hours of arrest, young people must appear before a juvenile judge, who determines whether the youth pose a public safety risk. Youth who are considered risks to public safety must remain in physically secure detention centers while awaiting trial. Generally, there is a 21-day limit to secure detention; however, young people who have been charged with serious offenses may be detained for up to 30 days. When youth are

transferred to adult court, they must appear before an adult court judge within 48 hours of their transfer from juvenile court. Most young people whose cases have been transferred to adult court are detained in adult jails or freed on bond.

Although young people who are awaiting prosecution are generally kept separate from the adult population, they can be held in adult jails. Young people who turn 18 while awaiting prosecution in secure facilities are automatically transferred to adult facilities. If they are exceptionally young, youth who face adult charges are sometimes detained in juvenile facilities.[6] Regardless of the situation, youth who are detained in adult facilities must be separated from adult inmates by both sight and sound.

Trial judges have discretion about where and how youth convicted as adults should serve their sentences.
In 1994, Florida's State Legislature passed legislation that made it easier to transfer youth to adult criminal court as well as provided broader discretion to the criminal court by allowing the court to levy juvenile dispositions or adult sentences on youth who have been tried as adults. Judges have two options:

1. *Juvenile sentencing options.* Some youth who have been convicted as adults may serve their sentences in juvenile correctional facilities or residential rehabilitative programs. In cases when adult courts are considering imposing juvenile dispositions, the Florida Departments of Corrections and Juvenile Justice submit reports to criminal court judges. These reports provide guidance to judges as they determine whether to impose juvenile or adult sanctions on the offender.[7] If their cases were transferred to adult court due to a mandatory direct file, youth who are 16 and 17 may not be eligible for juvenile sanctions.[8]

2. *Adult sentencing options.* Judges may sentence youth tried as adults to adult probation, where they are closely monitored, or to adult facilities. Youth sentenced to less than one year are incarcerated in county jails. Youth sentenced to longer than one year are incarcerated in adult prisons. In addition, Florida's Youthful Offender Act provides sentencing options for youth between 18 and 21 years of age and convicted of first-time offenses that are not punishable by the death penalty. These youthful offenders may be detained in designated youthful offender facilities rather than in the adult system.

Data from the Florida Department of Juvenile Justice profiles database show that of the 2,794 juvenile cases transferred to adult court, 58% were transferred for non-violent (non-index) offenses and 42% were transferred for violent offenses.

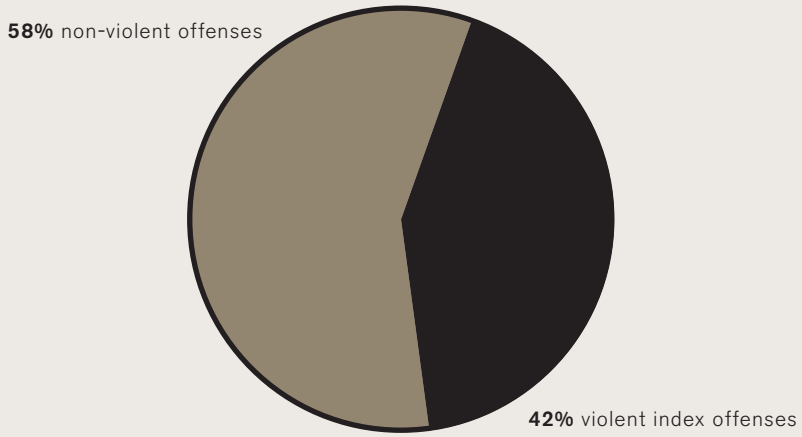
WHO IS AFFECTED BY THE LAWS IN FLORIDA?

Most juvenile crime is not violent.
According to Uniform Crime Reporting (UCR) data found on Florida's Department of Law Enforcement website, in 2005, 35% of crimes committed by youth were "index" crimes (which include violent crimes, and burglary, larceny, theft of a motor vehicle, and arson) and the other 65% of youth crime were non-index crimes.[9]

Additionally, 2005-2006 data from the Florida Department of Juvenile Justice profiles database show that of the 2,794 juvenile cases transferred to adult court, 58% were transferred for non-violent (non-index) offenses and 42% were transferred for violent offenses.[10] This includes 127 cases that were transferred for misdemeanor offenses. According to these data, more cases were transferred to adult court for drug offenses[11] (475) than for armed robbery (404).

Source: the Florida Department of Juvenile Justice's Office of Research and Planning. (2007). 2005-2006 Delinquency Profiles. http://www.djj.state.fl.us/Research/Delinquency_Profile/0506_Profile.html

Fifty-eight percent of youth transferred to adult court were for non-violent offenses



Furthermore, a 1991 analysis of young people transferred to adult court in two representative Florida counties showed that only 29% of the juveniles waived by prosecutors to adult court were transferred for violent crimes. More than half (55%) of the youth whom prosecutors sent to adult court were charged with property offenses that involved no violence, and 5% were tried as adults for misdemeanors.

Thousands of young people come into contact with Florida's adult criminal justice system, but the number of youth transferred has declined.
During Fiscal Year (FY) 2004-2005, the Florida Department of Juvenile Justice handled 150,687 delinquency referrals and 95,263 individual youth.[12] Of those, 3,279 referrals were transferred to adult court and 2,504 individual youth were transferred to the adult criminal justice system.[13] Between FY 2000-2001 and FY 2004-2005, transfers to adult court decreased by 23%.[14]

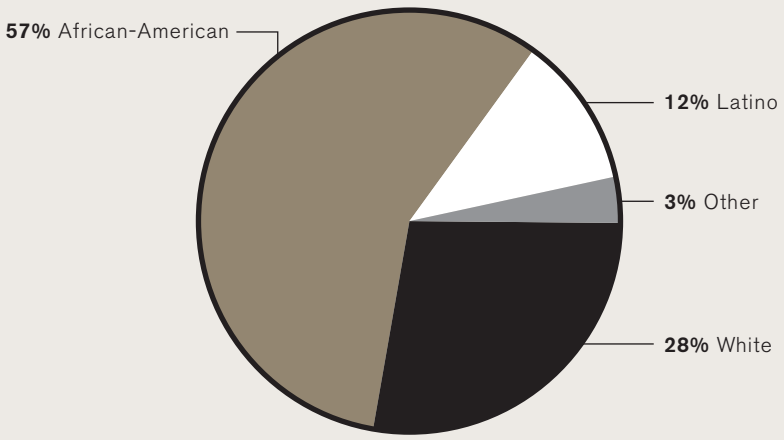
In 2005-06, while African-Americans represented 24% of the general youth population, African-Americans represented 57% of all the youth transferred to adult court. All told, non-white young people accounted for about 7 out of 10 young people transferred to the adult system in Florida.

Hundreds of young people are under the supervision of the adult corrections department.
In FY 2003-2004—the latest year available—1,301 youth in Florida were sentenced to adult prisons.[15] On the average day in 2001, 465 juvenile males and 23 juvenile females were held for pre-trial in local jails. In cases when particularly young youth were transferred to adult court, rare exceptions were made to detain them in juvenile facilities.[16]

In Florida, African-American youth are disproportionately overrepresented in transfers to adult courts.
Statistics compiled by the Florida Department of Juvenile Justice in 1996 found that, in Florida, African-American young people were 2.3 times more likely than white young people to be transferred to adult court.[17] Although not calculated as a rate, the latest figures from Florida's DJJ still show a racially disparate impact.

In 2005-2006, while African-Americans represented 24% of the general youth population, African-Americans represented 57% of all the youth transferred to adult court. Although the Latino figures may underestimate young people who are Latino but were categorized as white, in 2005-06, Latinos accounted for 12% of the youth population and 12% of the youth transferred. All told, non-white young people accounted for about 7 out of 10 young people transferred to the adult system in Florida.[18]

Youth of color make up about 7 out of 10 youth transferred to adult court

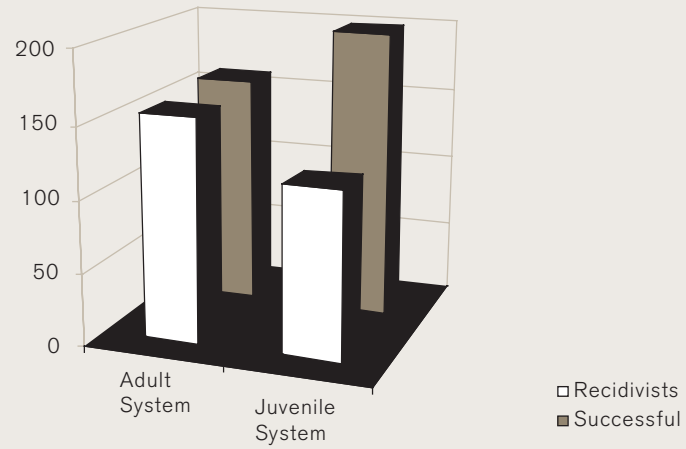


Research has shown that young people who have been treated as juveniles are less likely to re-offend than young people treated as adults. Research funded and published by the U.S. Department of Justice and the Miami-Dade County Public Defender's Office has found that young people tried as adults are more likely to re-offend than youth sent to the juvenile justice system, even when compared to young people with similar offense backgrounds.

1. *Academic and U.S. Justice Department studies of recidivism.* A 2002 report funded and published by the U.S. Department of Juvenile Justice found that youth in the juvenile system have lower recidivism rates than youth in the adult system. One study, *Juvenile Transfer to Criminal Court Study: Final Report*, compared the recidivism rates of 315 "best matched" young offenders–that is, young people with similar offense backgrounds. As summarized in a report by Florida's Department of Juvenile Justice, "The researchers found that youth who receive sanctions and rehabilitation in Florida's juvenile justice system have a lower rate of recidivism than their counterparts who are transferred to adult criminal court." The 2002 report also argued that "when the youth recidivate, those transferred to the adult system committed more felony offenses."[19]

Research funded and published by the U.S. Department of Justice and the Miami-Dade County Public Defender's Office has found that young people tried as adults are more likely to re-offend than youth sent to the juvenile justice system, even when compared to young people with similar offense backgrounds.

Felony recidivism, 315 "best-matched" pairs

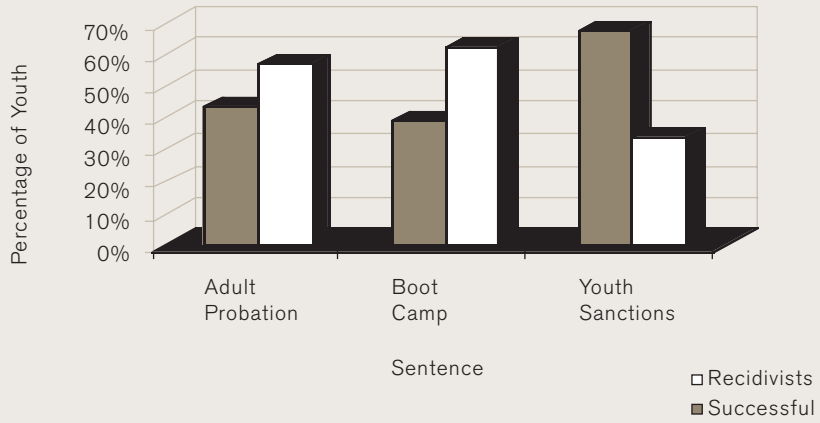


Source: Bishop, Lanza-Kaduce, & Winner, as cited in Florida Department of Juvenile Justice. (2002, January 8). A DJJ success story: Trends in transfer of juveniles to adult criminal court. p. 5. Retrieved October 5, 2006, from http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=564[20]

2. *Findings of the Miami-Dade County Public Defender's Office Juvenile Sentencing Advocacy Project.* In 1998, the Miami-Dade County Public Defender's Office initiated a program called the Juvenile Sentencing Advocacy Project. This project encourages judges in the adult system to "sentence back" youth tried as adults by implementing juvenile sanctions. In a 2001 study done on the program, the researchers compared re-arrest rates between Florida youth sentenced to adult probation and boot camp versus those given juvenile sanction (the "sentence-back" option). If technical violations–generally, violations of a condition of supervision, not a new crime–are included, youth receiving adult probation re-offended 89.2% of the time, while youth sentenced to boot camp re-offended 92.3% of the time. Youth receiving juvenile sanctions re-offended 39.4% of the time. This means that youth placed on adult probation or in boot camps were twice as likely to re-offend as youth receiving juvenile sanctions. When the researchers excluded technical violations, adult probationers re-offended more than 50% of the time and those sentenced to boot camp re-offended almost 60% of the time. Those receiving juvenile sanctions re-offended slightly more than 30% of the time. Even when controlled for race, initial charges, and age, youth with adult sanctions re-offended (excluding technical violations) 2.26 times more than youth receiving youth sanctions. When technical violations were included, youth receiving adult probation or boot camp re-offended 4.90 times more than youth receiving juvenile sanctions.[21]

Juvenile Sentencing Advocacy Project:
Young people sentenced to the juvenile justice system re-offended less.

Violation rates by sentence - Excluding technical violations



Source: Mason, C. A., & Chang, S. (2001, October 15). Re-arrest rates among youth sentenced in adult courts: Evaluation report for juvenile sentencing advocacy project. Retrieved October 12, 2006, from http://www.pdmiami.com/JSAP_2001_Impact_Evaluation.pdf

YOUNG PEOPLE AND FAMILIES AFFECTED BY FLORIDA'S LAWS

In recent years, a few high-profile cases have spurred debate on juvenile justice policy and reform in Florida. Some of these stories gained notoriety because they involved 13- and 14-year-olds engaged in serious crimes that resulted in long, adult prison sentences. Other cases involved young people engaged in routine delinquency who were tried and jailed as adults. These news stories have dominated the headlines and provided the public with insight into the impact of Florida's adultification statutes on young people, their families, and communities.[22]

Anthony Laster.
When Anthony Laster was 15, his robbery case gained national attention. Laster, who was mentally disabled and hearing impaired, came to the attention of law enforcement for reaching into a classmate's pocket and stealing two dollars in lunch money.[23] Thanks to the West Palm Beach Junior High School's zero-tolerance policy, officials reported the incident to the police even though Laster had no previous criminal record and was not armed. Soon afterward, Florida prosecutor Barry Krischer filed three felony charges against Laster in adult court: strong-arm robbery, extortion, and petty theft. The young man faced the possibility of a 30-years-to-life sentence.

Laster spent three weeks in a detention center. On Christmas Eve, the judge in the adult court set bond at $500, the minimum level for felony charges. Because Laster's family could not raise bail money, Laster spent the next four weeks, Christmas included, in county jail.

The county prosecutor explained his actions in *The Palm Beach Post*, describing Laster as "this schoolyard bully, this mugger." The prosecutor said that to treat "this forcible felony, this strong-arm robbery, in terms as though it were no more than a two-dollar shoplifting fosters and promotes violence in our schools."[24] Laster's case made national headlines, and the prosecutor dropped the case after a "60 Minutes" crew arrived in town to investigate.

Lionel Tate.
For certain crimes, such as first-degree murder, Florida state law requires that youth of any age be tried in adult court. If found guilty, the law requires these youth to be sentenced to life without parole. In 2001, in a controversial case that garnered national headlines, the impact of the Florida statutes came into sharp relief. The incident occurred in 1999. Lionel Tate, who was 12 years old at the time, was "wrestling" with six-year-old playmate, Tiffany Eunick. Tate's actions resulted in Eunick's tragic death. In 2001, Tate was convicted in an adult court of first-degree murder and sentenced to life without parole.

The sentence caused many, including Florida Governor Jeb Bush, to publicly question the state's law. Bush stated, "As I have previously expressed, I am also concerned about the law which can require a life sentence—without any possibility of parole—for a crime committed by a 12-year-old child. I am not sure it is right to consign such a young child to a life without any hope... This is a concern that I know is shared by many Floridians."[25]

Tate's attorneys appealed. In late 2003, the State Appeals Court overturned the decision arguing that Tate, at 14, was not mentally competent enough to make informed decisions about his defense. Lionel Tate was granted a new trial, where he pleaded guilty to second-degree manslaughter and was sentenced to three years in jail. After he was released on January 29, 2004, he faced up to a year of house arrest and up to 10 years of probation. However, Tate did not successfully complete his sentence. In 2004 he was caught carrying a knife, and in 2006 he was arrested and convicted for an armed robbery of a Domino's pizza delivery man. He was eventually sentenced to 30 years in prison.

The question remains: did Lionel Tate receive sufficient rehabilitative services to successfully reintegrate into society? Michael Brannon, the psychologist who evaluated Tate for the court said, "We had a real chance. The right thing would have been to get this young man some help."[26] After rendering the guilty verdict, some jurors expressed mixed views on the options available to them under the law. "While they had sympathy for Lionel, they could not give a more sympathetic sentence because the law required them to give him life in prison without parole. Kathleen Pow-Sang, who was one of Tate's jurors said, `Nobody wanted to put down a guilty verdict, because it was a child.'"[27]

Laster came to the attention of law enforcement for reaching into a classmate's pocket and stealing two dollars in lunch money. . . On Christmas Eve, the judge in the adult court set bond at $500, the minimum level for felony charges. Because Laster's family could not raise bail money, Laster spent the next four weeks, Christmas included, in county jail.

Anthony.
Anthony, an 18-year-old African-American male from Miami, Florida, is a middle child. He has three sisters and one brother. At age 12, he was charged with stealing a car. Anthony successfully completed his probation for that offense. In elementary school, Anthony was diagnosed with a mental health issue. He began having trouble in school and, because his exceptionality could not be addressed in one school, he moved from school to school. Anthony has been to a total of eight schools. In January 2006, at age 17, he was arrested for grand theft auto and fleeing the scene of an accident with injuries. He was processed through the Juvenile Assessment Center where he was direct filed and charged as an adult. Anthony was custody released to his mother and was able to go home while awaiting the disposition of his case.

Upon conviction, Anthony was sentenced as a juvenile pursuant to Florida Statute 985.233 and committed to the Department of Juvenile Justice to await placement in a moderate risk residential facility. He is expected to be at the residential program for a period of six to nine months. Upon completion of the program, he will be placed on conditional release for an anticipated period of two to four months and he will be monitored by his juvenile probation officer and/or conditional release officer. If he does not successfully complete the conditions of his program and conditional release, he can be sentenced for up to 15 years in prison. While Anthony is awaiting placement in the residential program, he is required to maintain weekly contact with his juvenile probation officer. Anthony is not currently employed. His juvenile probation officer recommended that he wait until he is released from the program to get a job. However, because Anthony is on the waitlist for placement, he is unable to get on with his life until he gets placed into a program. In December 2005, Anthony was placed at RAM-C, a program that serves offenders with developmental disabilities.

Every time Dominique had a court hearing, she had to go to the county jail where she would be held in a two-by-four cell. She was held there four or five times for up to 12 hours each time.

Dominique.
Dominique, an 18-year-old Cuban girl from Princeton, Florida, is the oldest of four siblings. When Dominique was young, her mother died, and during much of her youth her father was in prison. She and her siblings lived with her grandparents, but her grandmother died and her grandfather did not have enough money to support Dominique and her brothers and sisters. Dominique moved in with her aunt and they moved frequently. In 2004, when Dominique was 16, she was charged with armed robbery and transferred to the adult criminal justice system via direct file. This charge was her first and only charge. Dominique was sentenced to two months in jail and one year of probation.

Dominique was held at the Women's Annex in downtown Miami for two months (December 17 to February 28). Dominique described the facility as nasty and said that "the guards don't care about you. They do things on their own time." She also said that they were racist and gave extra privileges (food, extra phone minutes) to girls they favored. The guards cursed and even flirted and acted inappropriately with some of the inmates.

Dominique also described the conditions of the Miami Dade Jail. Every time she had a court hearing, she had to go to the county jail where she would be held in a two-by-four cell. She was held there four or five times for up to 12 hours each time. Not only was the cell small, but the conditions of the jail were also poor. Dominique explained that when she asked to go to the bathroom, the guards would not listen or respond to her request, so she often had to go to the bathroom on the floor of the cell.

Dominique was held with three other girls. On a typical day, the four girls would wake up at 4:00 a.m. to shower, and then go back to bed. School started at 8:00 a.m. and ended at 2:00 p.m. From 2:00 p.m. to 4:00 p.m., they were locked down. At 4:00 p.m., they were allowed to use the phone. Afterwards, they were supposed to have recreation; however,

whether they did depended on the officer. Dominique estimated that they had recreation about four times a week. The rest of their night consisted of dinner, watching TV, and being locked in their cell.

Federal law states that youth in adult facilities are to be separated by sound and sight from adults. Therefore, the four youth in the Women's Annex lived in the same unit, ate together, and took classes together. However, this federal regulation often limited their activities. For example, when the girls had recreation, the rest of the facility had to be locked down. Oftentimes they did not get their recreation because the guards did not want to lock down the rest of the facility.

Towards the end of Dominique's sentence, a girl with chicken pox entered the facility and contaminated it. As a result, everyone was locked down for 21 days and no one could go to their court appearances. Dominique's release date had to be pushed back because she could not leave the facility to attend her court date.

Dominique has now finished her sentence and probation term. She attends Miami Dade Community College and plans to go to a university to study Forensic Psychology. She is currently a hostess at a restaurant. Dominique got this job on her own, with no help from her probation officer or the system.

In 2004, when Dominique was 16, she was charged with armed robbery and transferred to the adult criminal justice system via direct file. This charge was her first and only charge. Dominique was sentenced to two months in jail and one year of probation.

Dominique believes that the system could be improved markedly by improving staff. As she mentioned, many officers did not care about the girls and some even interacted inappropriately with the inmates. She notes that even when an inmate was asking for help, an officer might turn his or her head to look at the inmate, but then not do anything about the situation. Dominique gave the example of witnessing a girl in the facility forcing another girl to have sex with her. When it was reported, nothing was done. Also, Dominique noted that recreation and the day's activities "depended on the officer." Some officers allowed the girls recreation, but some did not. Dominique also said that some of the "officers do not deserve to be in there. They did not help you." Dominique's story emphasizes that especially when dealing with incarcerated youth, whether in the adult system or in the juvenile system, the officers need to be responsive to the needs of the girls and care about them. Dominique says that this really makes a difference. The one person she believes cared was her teacher. She "gave the girls hope and treated us like she was our mom." The teacher left a strong impact on Dominique because she performed her job with a caring attitude.

Dominique's story highlights the problem that sight and sound laws create when sending youth to adult facilities. As Dominique noted, when youth are incarcerated in adult facilities and have to be separated by sight and sound, it complicates the procedure. Having to lock down the rest of the facility when the girls have recreation makes it more likely that the girls will not get recreation. Dominique noted that while it was good to be held with other youth, being in an adult facility, they were treated as adults.

Dominique also recommends that the incarcerated should have better access to medical care. She experienced two instances of delayed medical help and witnessed many others. She hurt her knee and asked a guard to see a nurse, but the guard told her the nurse was busy and that she would get to her when she could. Then the shift changed and a new officer came on duty. It took two days for a nurse to get to her. However, she witnessed much worse. A friend at the Women's Annex had a lump growing on her neck. She repeatedly asked for medical attention, but did not get it until she went to court. The lump turned out to be a tumor. Another inmate had gingivitis and was bleeding through her gums. The girl cried for days. Five days later, she was admitted to the hospital. Dominique's sister, who was also incarcerated at the Women's Annex, was diagnosed with bipolar disorder when she was admitted. They gave her

medication to treat the disorder, but when she was released, she went to another doctor who told her she did not have bipolar disorder. Now her sister has developed a dependence on the medication and still takes it.

WHAT ARE THE POLICY OPTIONS IN FLORIDA?

[In 2004,] Florida had a violent juvenile crime rate of 468 per 100,000, making it the state with the fourth highest juvenile violent crime rate.

Policymakers expanded the ways in which young people could be tried as adults, in part because of the belief that it would lead to lower crime. Based on 2004 arrest rates, Florida had a violent juvenile crime rate of 468 per 100,000, making it the state with the fourth highest juvenile violent crime rate.[28] This is a distinction that has not changed much since the 1990s, when the Justice Department reported that the state had a juvenile violent crime rate 48% higher than the national average.[29]

Even though the juvenile justice system was created based on the notion that youth should be given special consideration, some Florida judges assert that youth have no right to special treatment. Commenting on Lionel Tate's case, Judge Barry J. Stone stated, "Florida courts have long recognized that there is no absolute right requiring children to be treated in a special system for juvenile offenders."[30] Judge Martha C. Warner said "there's no discretion exercised at all in this—no societal judgment...Age is not a consideration."[31] In a March 31, 2004, press release, Senator Geller reminds us that "These are kids. They're not old enough to vote, they're not old enough to drive, and they're not old enough to drink or do all these other things. Why do we assume that they're able to make adult decisions?"[32] Geller noted that "children are not simply short adults. They are different from adults and should be treated accordingly. We must impose punishments that fit the crime, but at the same time, we must also provide opportunities for rehabilitation."[33]

The Miami-Dade County Public Defender's Office believes that 97% of transferred youth are not sentenced to appropriate juvenile intervention.

Juvenile sentencing advocacy: How has the system accommodated Florida's ability to try thousands of young people as adults?
Many note that youth receive insufficient treatment in adult courts and prisons. The Miami-Dade County Public Defender's office believes that 97% of transferred youth are not sentenced to appropriate juvenile intervention.[34] As Florida added even more laws to make it easier to transfer youth to the adult system, public defenders and local providers have been working at providing the courts with appropriate ways of serving young people's needs without adult sanctions. The Miami-Dade County Public Defender's Office Juvenile Sentencing Advocacy Project (JSAP) provides young people with aggressive sentencing advocacy, encouraging courts to provide juvenile dispositions to young people who are being tried in the adult system. As shown, young people receiving juvenile sanctions under the program have lower recidivism rates than young people receiving adult sanctions.[35] Despite the evidence of the program's effectiveness, the program is under-utilized. Many transferred youth are ineligible to be sentenced back and a number of judges are unaware of sentencing options. In addition, few defenders' offices have disposition specialists (social workers) to help attorneys develop sentencing options.[36]

Florida's rigid punishments for adults means that young people tried as adults can face life in prison.
The success of sentencing advocacy is tempered by the fact that these options are unavailable to many prison-bound young people. In many cases, the rigid punishment structure found in adult courts does not allow judges to consider a number of factors when sentencing, including prior record, special circumstances (i.e., family situation), willingness to change, age, and maturity. In some cases, once a young person is sentenced as an adult, sentencing requirements leave criminal court judges with few options. For example, the enactment of the "Tough Love" legislation trumped by then-

Governor Jeb Bush allows the automatic transfer to the adult system of young people ages 16 and 17 who have at least three prior felony adjudications and have committed an additional violent felony; or charged with mandatory minimum sentences.[37] As the 10-20-life law requires the automatic transfer of youth who commit gun crimes, they face long prison sentences. Some policymakers argue that sentencing requirements are meant to punish rather than rehabilitate youth who are tried as adults. Senator Walter "Skip" Campbell states that, "The purpose of the penal system is to punish, but I believe it's also to rehabilitate. If we don't allow the rehabilitation side to be pursued, then we're really not a true, honest society."[38]

Legislators press for reforms to Florida's adultification statutes.
In 2003, in hopes that the media attention given to Lionel Tate's case would draw support, Florida State Senator Steven Geller introduced Bill 530. Far from being wide sweeping, the bill would have continued to allow 16- and 17-year-old youth to be tried and sentenced as adults and incarcerated in adult prisons. It also still allowed for youth to serve life without parole. However, the bill provided parole eligibility for first-time offenders who were younger than 15 years old and convicted of offenses that carried a death or life sentence or a sentence of greater than 10 years. Following the bill's defeat in 2004, Senator Geller commented about issues that sentence guidelines create: "No member of the Florida Legislature has ever been defeated for re-election or election to a higher post because they're seen as too tough on crime. You only lose because you're seen as too soft on crime."[39] And Senator Geller says, "While it is important that criminals receive the punishment most suitable to their crime, we cannot continue to allow a 'one size fits all' policy to govern the way we prosecute children who commit bad acts."[40]

Concerns over adequacy of legal representation for youth in Florida have been raised.
Because these laws have raised the stakes for young people before the courts, questions have arisen about the quality of legal counsel young people receive. According to a report released in the fall of 2006 by the National Juvenile Defender Center, *Florida: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, young people "were observed routinely waiving their Constitutional right to counsel. This often occurs with a wink or a nod—or even encouragement—from judges."[41] The report found that young people are under the impression that waiving right to counsel makes the case easier to resolve because it means less time, less inconvenience to their parents, and less cost. In addition, the report notes that the legal counsel provided to youth is often inadequate. "Untimely appointment of counsel" and "inadequate resources, and excessive caseloads" all impede the effective representation of Florida's youth.[42] Furthermore, the report states that because juvenile defenders carry "staggering caseloads," many cases result in guilty pleas rather than adjudicatory hearings. As Florida laws grant prosecutors the discretion to file certain cases in adult court, this gives prosecutors additional leverage to extract guilty pleas from youth who fear being transferred to adult court for trial and sentencing.[43] In October 2005, Senator Stephen Wise proposed legislation (S. 526) that sought to ensure legal representation for youth and to protect youth from waiving their right to counsel before consulting with counsel. After passing the Florida Senate on April 26, 2006, the bill stalled in the House Committee on the Judiciary.[44]

"While it is important that criminals receive the punishment most suitable to their crime, we cannot continue to allow a 'one size fits all' policy to govern the way we prosecute children who commit bad acts." Florida State Senator Steven Geller

FLORIDA RECOMMENDATIONS

Just as Florida has led the nation in the use of prosecutorial mechanisms to try youth as adults, it has led the nation in documenting the impact of trying youth as adults through groundbreaking research on juvenile re-offending. The high-profile cases of Tate and

Laster also have served as reminders of the effects these harsh laws can have on Florida's youth. As a result, a number of juvenile justice leaders, legislators, and policymakers in Florida have made the following recommendations on how the state could change the way it treats young people before the courts.

- **Prohibit prosecutorial transfers of youth to adult court.**
  Judges should have sole discretion in the determination of whether to transfer a youth to adult court. Prosecutorial transfers represent the bulk of Florida's transfers to adult court. Shifting decision-making power to judges would reduce the amount of cases transferred to adult court and would ensure that more youth have access to age-appropriate services. This access reduces recidivism and increases public safety.

- **Require judges to consider imposing juvenile dispositions for youth tried and convicted in adult court.**
  Judges need discretion and flexibility when sentencing youth, particularly those in the adult court. Judges also should have the discretion to sentence transferred youth to juvenile treatment programs or adult court supervision. In addition, judges should be given the ability to waive minimum mandatory sentences for juveniles transferred to adult court.

- **Implement protections for youth who indicate a willingness to waive their right to counsel.**
  It is imperative that youth understand the long-lasting consequences of juvenile adjudication or adult conviction. Well-trained, adequately resourced juvenile attorneys have the expertise to guide youth throughout the complicated court process.

- **Young people who are found to be incompetent should not be transferred to adult court.**
  Under the adult system, the services available to individuals found incompetent are not youth-specific.

Judges need discretion and flexibility when sentencing youth, particularly those in the adult court. Judges also should have the discretion to sentence transferred youth to juvenile treatment programs or adult court supervision.

- **Create a centralized database to track prosecutorial transfer decision-making by circuit.**
  It is important to be able to understand the extent to which prosecutors exercise their discretion to transfer juveniles to adult court, so that young people are not receiving vastly different outcomes from place to place.

- **Promote the public and social benefits of the "sentence back" option to judges and defenders.**
  The JSAP program evaluation has shown that, despite the Florida adultification statutes, when young people are sentenced to juvenile dispositions, they are less likely to re-offend than young people sentenced to adult dispositions.

- **Expand eligibility and provide resources to allow more youth who have been transferred to be "sentenced back."**
  In sharp contrast to high recidivism rates associated with trying youth as adults in Florida, the state has a number of promising programs that provide quality supervision, services, and rehabilitative options for young people in the juvenile justice system. The state should invest in expanding interventions such as those run by the Associated Marine Institute, Apalachicola Forest Youth Camp,[45] and the Culinary Education and Training Program for At-Risk Youth.[46] These programs have been shown to reduce re-offending among young people.

- **Eliminate statutory transfer to adult court.**
  If this were eliminated, youth who pose a threat to public safety could still be placed in the adult system if the judge felt it necessary.

NOTES

[1] Information on Florida transfer laws was compiled by Carlos Martinez at the Miami-Dade County Public Defender's Office.

[2] Butts, J. A., & Harrell, A.V. (1998). *Delinquents or criminals: Policy options for young offenders.* Washington, DC: The Urban Institute.

[3] The other 14 states and jurisdictions are Arkansas, Colorado, Georgia, Louisiana, Michigan, Nebraska, New Hampshire, Vermont, Arizona, Massachusetts, Montana, Oklahoma, Virginia, and the District of Columbia. See Snyder, H. N., & Sickmund, M. (2006). *Juvenile offenders and victims: 2006 national report.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. p. 113.

[4] Florida Department of Juvenile Justice. (2002, January 8). *A DJJ success story: Trends in transfer of juveniles to adult criminal court.* p. 5. Retrieved October 5, 2006, from http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=564

[5] Fla. Stat. § 985.556.

[6] Data request filled by Ted Tollett, Florida Department of Juvenile Justice, Office of Data and Research.

[7] See Florida Department of Juvenile Justice, 4.

[8] Fla. Stat. § 985.557(2)(a).

[9] Florida Department of Law Enforcement. (2005). Arrest totals by age and sex: Florida January-December 2005. *Florida's uniform crime reports.* Retrieved October 26, 2006, from http://www.fdle.state.fl.us/FSAC/UCR/2005/CIFAge_annual05.pdf. Index crimes are defined as one of the eight crimes listed in Part 1 of the *Uniform crime reports* such as rape, robbery, murder, and aggravated assault.

[10] The FBI designates violent index offenses as murder/non-negligent manslaughter, forcible rape, robbery, and aggravated assault. The non-violent offense category combines both misdemeanor and felony non-violent crimes.

[11] Includes 33 misdemeanor drug transfers (28 marijuana, three possession of drug paraphernalia, and two for "other misdemeanor" drug cases) and 442 felony drug transfer cases (389 for felony non-marijuana drugs, 53 for marijuana felonies). Florida Department of Juvenile Justice's Office of Research and Planning. (2007). *2005-2006 delinquency profiles.* http://www.djj.state.fl.us/Research/Delinquency_Profile/0506_Profile.html

[12] Florida Department of Juvenile Justice. (2006, February 5). Fast facts. *Key juvenile crime trends and conditions.* Retrieved October 3, 2006, from http://www.djj.state.fl.us/Research/Trends.html

[13] Delinquency referrals count any charges on the same date as one case. The individual youth category counts any charges brought against a youth throughout the year as one referral. Therefore, a youth referred twice or more during a year is counted once for the most serious offense for the individual youth statistic, but is counted twice in the delinquency referrals statistic. See *2004-05 profile of delinquency cases and youths referred,* Office of Research and Planning, Florida Department of Juvenile Justice.

[14] Data request filled by Ted Tollett Florida Department of Juvenile Justice, Office of Data and Research.

[15] Ibid.

[16] Ibid.

[17] Department of Juvenile Justice. (1996, March 24). *Management report* (No 42). Tallahassee, FL: Author.

[18] Florida Department of Juvenile Justice's Office of Research and Planning. (2007). *2005-2006 delinquency profiles.* http://www.djj.state.fl.us/Research/Delinquency_Profile/0506_Profile.html

[19] Ibid, p. 1.

[20] See Florida Department of Juvenile Justice, 4.

[21] Mason, C. A., & Chang, S. (2001, October 15). *Re-arrest rates among youth sentenced in adult courts: Evaluation report for juvenile sentencing advocacy project.* Retrieved October 12, 2006, from http://www.pdmiami.com/JSAP_2001_Impact_Evaluation.pdf

[22] See Florida Department of Law Enforcement, 9.

[23] Twohey, M. (1999, June). The wrong answer to Littleton. *The Washington Monthly.* http://www.washingtonmonthly.com/features/1999/9906.twohey.littleton.html

[24] Ibid.

[25] Amnesty International. (2003, February 18). *United States of America (Florida): Legal concern, Lionel Tate.* From Amnesty International online library archive http://news.amnesty.org/library/Index/ENGAMR510272003?open&of=ENG-USA

[26] Ibid.

[27] Charles, N., Morrissey, S., & Trischitta, L. (2001, February 12). Judging Lionel. *People Weekly*, pp. 87-88.

[28] Office of Juvenile Justice and Delinquency Prevention. (2006, September 8). *OJJDP statistical briefing book.* http://ojjdp.ncjrs.gov/ojstatbb/crime/ qa05103.asp?qaDate=2004

[29] Snyder, H. N., & Sickmund, M. (1998). *Juvenile offenders and victims: Update on violence.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[30] Critics challenge Florida law allowing child life sentences: Court throws out teen's murder conviction, life sentence. (2003, December 11). *Associated Press.* Retrieved October 5, 2006, from http://www.nbc6.net/print/2698674/detail.html

[31] Ibid.

[32] Ibid.

[33] Office of Florida State Senator Geller. (2004, March 31). Senator Geller remains dedicated to reforming juvenile justice system despite legislative setback (Press Release). Retrieved October 5, 2006, from http://www.flsenate.gov/cgi-bin/View_Page.pl? Tab=legislators&Submenu=1&File=033104.html&Directory=Legislators/senate/ 031/press

[34] Miami-Dade County Public Defender's Office. *Juvenile sentencing advocacy program.* Retrieved October 13, 2006, from http://www.pdmiami.com/ juvenile_sentencing_advocacy_program.htm

[35] Mason, C. A., & Chang, S. (2001). *Impacting re-arrest rates among youth sentenced in adult court: An epidemiological examination.* Available from http://www.pdmiami.com/juvenile_sentencing_advocacy_program.htm

[36] Information provided by Carlos Martinez at the Miami-Dade County Public Defender's Office.

[37] Executive Office of Governor Jeb Bush. (2000, January 14). *Governor Bush proposes tough love approach to juvenile crime* (Press Release). Retrieved October 20, 2006, from http://www.flgov.com/release/644

[38] Schwartz, N. (2004, February 8). Child advocates call for flexible juvenile justice system. *Sun-Sentinel.* Retrieved October 5, 2006, from http://www.sun-sentinel.com/sfl-0208gough,0,6471392.story

[39] Ibid.

[40] Office of Florida State Senator Geller. (2004, January 7). Senator Geller: Justice and humanity eluded by 'one size fits all' sentencing law (Press Release). Retrieved October 5, 2006, from http://www.flsenate.gov/cgi-bin/View_Page.pl?Tab=legislators& Submenu=1&File=010704.html&Directory=Legislators/senate/031/press/&p=2

[41] Crawford, C., & Puritz, P. (2006, Fall). *Florida: An assessment of access to counsel and quality of representation in delinquency proceedings.* Washington, DC: National Juvenile Defender Center, p. 2.

[42] Ibid.

[43] Ibid.

[44] Florida Senate. Senate 0526: *Relating to juvenile defendants/public defender.* Retrieved October 6, 2006, from http://www.flsenate.gov/Session/index.cfm? Mode=Bills&SubMenu=1&Tab=session&BI_Mode=ViewBillInfo&BillNum=0526&Chamber=Senate&Year=2006&Title=%2D%3EBill%2520Info%3AS%25200526%2D%3ESession%25202006

[45] Apalachicola Forest Youth Camp. Retrieved September 18, 2006, from http://www.afycamp.com/

[46] U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. (2001, April). *Culinary education and training program for at-risk youth.* Retrieved November 3, 2006, from http://www.ncjrs.gov/pdffiles1/ojjdp/fs200107.pdf

THE CONSEQUENCES AREN'T MINOR

WHAT IS THE LAW IN ILLINOIS?

In Illinois, most youth enter the criminal justice system without the benefit of an individualized hearing by a judge. Instead, they are automatically transferred to the adult criminal system based on age and charging offense. Some do enter the system after a judge has decided to transfer the youth to the adult criminal courts, but the number of youth charged as adults this way is much smaller. The following include the key features of Illinois' adultification laws.

The upper age of juvenile court jurisdiction in Illinois is 16.
Seventeen-year-olds are automatically under the jurisdiction of the adult criminal court.[1] In other words, every 17-year-old arrested for any infraction, be it violent or nonviolent, is treated as an adult in the eyes of the law. Nine other states have the same "age of juvenile court jurisdiction," including Georgia, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin.[2]

Youth 13 and older face automatic transfer to adult court for certain felonies.
In 1982, the Illinois Legislature passed legislation requiring certain youth to be automatically tried in the adult court based solely on age and the charging offense. These youth do not get the benefit of an individualized hearing. The initial cases that triggered automatic transfer were murders, armed robberies with guns, and aggravated sexual assaults for youth 15 years of age or older. Since 1982, other offenses have been added including drug crimes, possession of guns on school grounds, aggravated battery with a firearm, and aggravated vehicular hijacking. Most automatic transfers are for youth 15 and older, however Illinois also automatically charges youth 13 or older in the adult criminal court for murder and sexual assault charges. Youth who have been transferred and convicted in the criminal court once are automatically transferred to the criminal court no matter their subsequent offense.[3] As will be detailed later in the chapter, since 2003, the Illinois Legislature and the executive branch are allowing for more individualized discretion in the adult transfer decision.

Every 17-year-old arrested for any infraction, be it violent or nonviolent, is treated as an adult in the eyes of the law.

Judges have discretion to transfer any youth age 13 or older to the adult court for any crime.
For any crime, a state's attorney may ask that the case be transferred to adult court in a discretionary transfer hearing. In making the transfer decision, the juvenile court judge must consider certain factors including the youth's age or participation in the offense and his amenability for treatment. But any youth age 13 or older committing any infraction can end up in the adult court system after an individualized hearing by a juvenile court judge.

Youth also may end up in the adult criminal court from a mandatory transfer or a presumptive transfer. Under the mandatory transfer provision, prosecutors can ask to have certain cases transferred. Upon a finding of probable cause, the juvenile court judge must transfer the case to adult court. Youth age 15 or older can be presumptively waived to the adult court for certain offenses (e.g., aggravated discharge of a firearm). The prosecutor can ask to have the youth transferred to the adult court, and the youth is presumed to be transferred unless he proves that he should remain in juvenile court.

Illinois is a blended sentencing state.
In the case of young people 13 and older who are charged with any felony in juvenile court, the prosecutor may file a petition for an "extended jurisdiction juvenile" (EJJ) hearing. If a prosecutor files the EJJ petition, the youth will have a hearing to determine if, in the event of conviction, he or she will be given both a juvenile sentence and an adult criminal sentence. If the youth loses the EJJ hearing, and is subsequently convicted, the court will impose both a juvenile and an adult criminal sentence. The adult sentence will be stayed or suspended as long as the juvenile refrains from violating the conditions of the juvenile sentence or committing any subsequent crimes. If the youth does not successfully complete the juvenile sentence, the youth must then serve the adult sentence. The EJJ statute allows for youth to serve adult time without being transferred to the adult court.

Young people convicted in Illinois' adult court end up in the adult pre-trial detention and corrections system.
All 17-year-olds charged in adult court await trial in the adult jail system unless they pay their bonds or get one of the limited alternatives to incarceration. These limited alternatives are only available in certain counties. Any youth automatically charged as an adult but who is not yet 17 will remain in the juvenile detention system until he or she turns 17. Then the youth will be transferred to the county jail. In counties under 3,000,000, there is an option for youth of any age tried as adults to be detained pre-trial in the county jails, provided they are separated by sight and sound from adults until they turn 17. Once a 17-year-old is sentenced to prison, the youth will enter the adult corrections system, the Illinois Department of Corrections. If a youth under age 17 is tried and convicted in adult court, the youth will be sentenced to the Department of Juvenile Justice until the youth turns 17. At that time, the Department of Juvenile Justice has the option to ask the adult court judge to transfer the youth to the Illinois Department of Corrections. At age 18, the Illinois Department of Juvenile Justice has the discretion to transfer the youth, and at age 21 the transfer is mandatory. If a 15-year-old is charged with an offense, but convicted and sentenced after turning 17, the youth is automatically in the adult corrections system.

All 17-year-olds charged in adult court await trial in the adult jail system unless they pay their bonds or get one of the limited alternatives to incarceration.

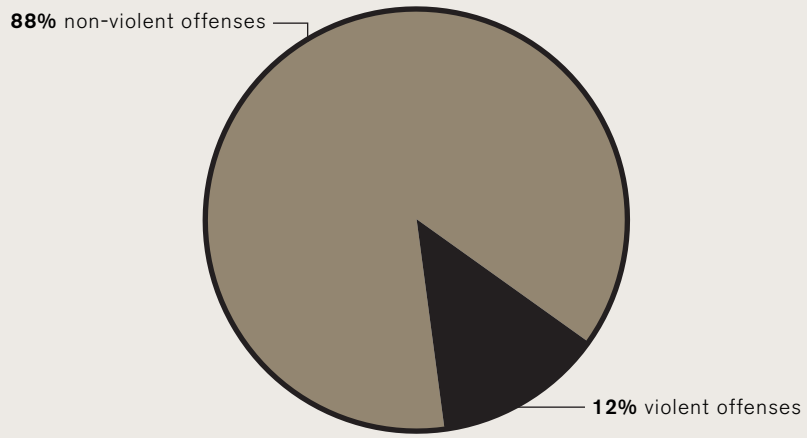
There is no sight and sound separation between adults and 17-year-old youth in Illinois prisons, because the age of juvenile court jurisdiction in Illinois is 17.
For those individuals under the age of 18 who are committed to the custody of the Illinois Department of Corrections, all males go to the reception and classification center at Joliet and then can be transferred to any one of the 20 facilities in the state. Youth age 17 can be assigned to the maximum-security facilities as well as to the Supermax facility. There is one facility designated for women.

WHO IS AFFECTED BY THE LAWS IN ILLINOIS?

An estimated 16,000 17-year-olds enter the adult system in Illinois annually. The total petitions filed for all ages of youth in Cook County in 2003 was 9,168, and in the entire state it was 21,151. Although accurate data are not available on the actual number of 17-year-olds arrested each year, the authors estimate that approximately 16,000 youth age 17 are arrested and could be charged as adults in Illinois each year.[4] Seventy-one percent of all arrests of young people of all ages are for non-violent crimes, and in Cook County, fewer than 12% of 17-year-olds charged are charged with felonies, including non-violent

felonies such as drug crimes.[5] The authors estimate that the majority of 17-year-olds in the adult system are arrested and charged with non-violent crimes.

Eighty-eight percent of the 17-year-olds charged in Cook County and who are under adult justice supervision are charged with non-violent offenses



Source: Analysis of Juvenile Justice Initiative of Illinois review of Judicial Advisory Council memorandum, April 2006. Exhibits A, B, and C of the Circuit Clerk of Cook County charges, March 29, 2005 to March 28, 2006.

Hundreds of young people are transferred to adult court in Illinois, but due to reforms, the number of youth transferred is declining. Data on transfers to adult court are more accurate and more readily available than information on 17-year-olds who automatically end up in court. Starting in 1999, data on the automatic transfers to adult court became available through the Law Office of the Cook County Public Defender. The data showed that 66% of all automatic transfers were for non-violent drug crimes; all but one youth was a youth of color, and all but one was from the city of Chicago. The research showed that more than 60% of the youth had had no prior services in juvenile court, such as supervision or probation, before being automatically transferred to adult court. Whether they were youth charged with non-violent drug crimes or serious violent crimes, almost two-thirds had no prior services before the automatic transfer. Research over the next several years by the Juvenile Justice Initiative confirmed these findings. Virtually all youth automatically tried were youth of color. Sixty-six percent were tried for non-violent drug crimes, and two-thirds or more of the youth had had no prior services in juvenile court before being automatically transferred to the adult court.

In 1999, the data showed that 66% of all automatic transfers were for non-violent drug crimes; all but one youth were youth of color, and all but one were from the city of Chicago.

Based on this research, several rounds of changes were made to the automatic transfer laws. This has substantially reduced the number of youth entering the adult system via automatic transfer. Approximately 150 youth under age 17 are automatically transferred to adult court each year, down from well over 400 per year as late as 2004. Currently, the majority of these youth are tried in adult court for violent offenses, but there are some cases of non-violent offenses being automatically charged in adult court. Throughout the state, fewer than 100 youth are transferred each year via a juvenile court judge and a discretionary hearing.[6] Outside of Cook County, very few automatic transfers occur. In fact, in 2001, fewer than 25 transfers were reported to the Administrative Office of the Illinois Courts from all other counties other than Cook. When each case was analyzed further, only 14 of these cases were actual automatic transfers.

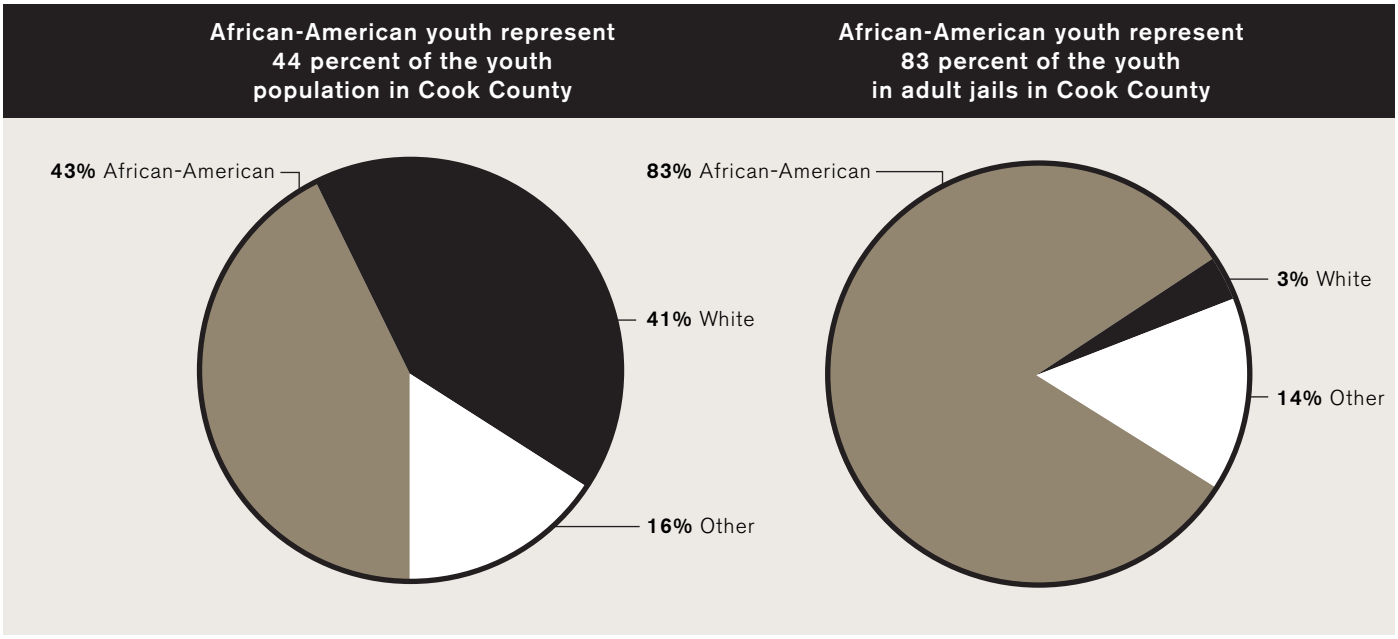
Judicial waivers in the form of discretionary, presumptive, or mandatory transfers also occur in Illinois, but they account for a much smaller number of youth in the adult court system. Cook County reported 52 discretionary transfers in 1998, while the other counties in Illinois reported 41. In 2003, all counties outside of Cook reported 10

discretionary transfers and 25 automatic transfers.[7] However, it is unclear if these data are accurate. Since the laws on transfer are so complicated and easily misunderstood, it is unclear if officials reporting the transfers know how to classify each transfer.

In Illinois, youth of color are about a third of the youth population, but have represented nine out of 10 young people in the adult system.
Although prior to the reforms to the state's transfer laws data were not available to show the disproportionate impact statewide, there are data on Cook County. Over a three-year period (2000-2002), 99% of the youth automatically transferred to adult court in Cook County were African-American or Latino.

According to the Justice Department's analysis of Census data, in 2004 approximately 19% of Illinois youth aged 17 were African-American and 16% were Latino.[8] Although racial and ethnic information on 17-year-olds in the adult court system statewide is not available, a picture of 17-year-olds in the Cook County Jail reveals disproportionate representation of youth of color. White youth (defined as "Caucasian") represent 48% of the youth population[9] in Cook County, but 3% of the youth jailed in Cook County on a given day are white. African-Americans represent 44% of the youth population in Cook County, but they constitute 83% of the youth jailed.[10] Youth defined as Latino represent 14% of the young people jailed in Cook County. This means that 97% of the youth in the jail are non-white.

Source: Juvenile Justice Initiative analysis of data from the U.S. Census and the Cook County Jail conducted for July 3, 2006.



YOUNG PEOPLE AND FAMILIES AFFECTED BY ILLINOIS' LAWS

"Armed robbery" of gym clothes lands Keith Pearl in jail and puts an adult conviction on his record.
Keith Pearl was 17 years old when he was arrested for two counts of armed robbery and one count of attempted armed robbery. The incident involved three young people who were charged with taking two pairs of gym shoes, two white tee-shirts, two silver-colored chains, and six pairs of socks.

Pearl was charged under a theory of accountability; he never had possession or use of a weapon, nor was he an active participant in the robbery. According to Pearl, he was in the

wrong place at the wrong time. Pearl was the only "offender" apprehended, and he had no weapon and none of the stolen objects in his possession when he was arrested minutes after the robbery. He pled to one count of robbery, was placed on probation, and now has a felony conviction permanently on his record. Had Pearl gone to trial and been convicted for the original charge, he would have faced a mandatory minimum of six years in the penitentiary. Pearl had no previous arrests in either the juvenile or the adult criminal justice system. As a result of the charge, he was detained at the Cook County Jail for several weeks.

Pearl is the oldest of two children who were raised by their maternal grandmother. He has strong support from his immediate and extended family who attended all scheduled court dates. He has now graduated from high school and has every intention of attending college. Pearl was a junior deacon in his church and an active member of the youth group and youth choir. He is an avid basketball player who spends much of his spare time playing in organized sports in the community and at the youth center near his home.

As part of the legal representation, Pearl's lawyers solicited input from school and church officials who interacted with him on a regular basis. His pastor said that he had always known Pearl to be "an honest and good young man." His teachers all saw him as motivated, with great potential. In order to make up the several weeks he missed while he was in jail on this charge, he went to night school in addition to his day classes. He made up the credits and graduated on time.

The judge in this case was very impressed by the motivation and potential of this young man, but the sentencing options of the charges and the position of the state's attorney's office prevented him from modifying the sentence. The impact of the felony conviction on the rest of his life continues to unfold. As a result of this conviction, Pearl's ability to get student loans will be extremely compromised, as will his job opportunities upon graduation.

WHAT ARE THE POLICY OPTIONS IN ILLINOIS?

Over the past few years, the tide has shifted dramatically in Illinois' juvenile justice policy. Legislation has been enacted to reform the transfer laws and to create a new Department of Juvenile Justice. The Legislature also has passed a bill to raise the age of majority to 18.

Reforming the automatic transfer laws.
Beginning in 2001, the Illinois Legislature began reviewing the automatic transfer laws. With evidence that the policies had a much greater impact on youth of color from inner-city Chicago and that these policies resulted in mostly non-violent drug offenders being automatically transferred to the adult court without a hearing in front of a judge, the Legislature began considering a number of bills to change the automatic transfer statutes.

Over the past few years, the tide has shifted dramatically in Illinois' juvenile justice policy. Legislation has been enacted to reform the transfer laws and to create a new Department of Juvenile Justice. The Legislature also has passed a bill to raise the age of juvenile court jurisdiction to 18.

At first, there was some resistance to change within the prosecution community. But by 2003, the Illinois Legislature began a series of steps to create a positive change in the transfer laws. The first change allowed a reverse waiver for drug offenders automatically tried in the adult court. Youth charged with certain drug crimes were allowed to petition the adult court judges to transfer them back to juvenile court. The bill was sponsored by Senator Ed Petka, a Republican, pro-prosecution legislator, who was referred to as "Electric Ed"[11] for his pro-death penalty stance.

But legislators and advocates claimed the 2003 reverse waiver reforms did not significantly affect the number of youth ending up in the adult system. To find consensus for deeper reforms, the Legislature created a Task Force on Transfer in 2004. This task force was co-chaired by Senator John Cullerton and Representative Annazette Collins. Public hearings were held over the summer and fall of 2004 and discussions about

possible changes were held in the spring of 2005. During these hearings, legislators learned about new research on the brain and adolescent development.

The outcome of the bi-partisan Task Force was more change to the transfer statute, including a return of drug offenders to juvenile court. It also clarified and corrected some inconsistencies in discretionary and presumptive transfer statutes and extended jurisdiction juvenile statutes. Although the reforms allowed more youth to have individualized hearings in front of a juvenile court judge, it did not allow youth eligible for transfer an individualized review. The Task Force also did not address raising the age of juvenile court jurisdiction to 18. In August 2005, Public Act 94-0574, allowing the changes to the transfer statute, was signed into law. By all accounts, this has lessened the number of youth automatically transferred by almost two-thirds.

Raising the age of juvenile court jurisdiction to 18.
While the changes to the transfer statutes were happening, there was also legislation proposed to raise the age of juvenile court jurisdiction to 18. In 2004, a bill passed the House of Representatives with a sizable margin of victory and bi-partisan support. Interestingly, Representative Bill Black, a conservative out of downstate Illinois, was quoted on the House floor as saying, "I don't understand why anyone would oppose this bill. I think it is a common-sense measure."[12] This particular bill was not called in the Senate that year.

In 2005, a "raise the age" bill was introduced in the Senate, S. 458. It passed the Senate with bi-partisan support. The main opposition came from the Department of Corrections and Cook County. They claimed that the fiscal impact of this reform would be too great, particularly in Cook County. Indeed, symbolic of the new policy consensus around having developmentally appropriate, individually tailored juvenile justice policies, the only major concern has been that there will not be enough resources to service all youth. Legislators and local government were mainly concerned about costs. Despite these concerns, the Senate still passed the bill, with Senator Cullerton noting, "because it is the right thing to do."[13]

Will "raising the age" have a large fiscal impact on Illinois counties?
Throughout 2006, researchers, legislators, and advocates have been working to get a clear sense of the true fiscal impact of raising the age, so that appropriate resources can be allocated to local and state government to help with the changes. Some legislators have said, "The problem now is inconsistency with the law. We should change it now and deal with the dollars later. We won't give new allocations before we actually change the law."[15] Local legislators have raised the biggest concerns. The Cook County Board of Commissioners' Legislative Committee held a hearing in April 2005 regarding S. 458 where it was clear that the commissioners wanted to see the change but had concerns about the fiscal impact. Because of these concerns, by November 2006 the County Board had changed its position on the bill to neutral.

"Using 17-years-old as the cutoff in Illinois was an arbitrary number. With all of the research that we now have regarding juveniles, the juvenile court should be given jurisdiction for 17-year-olds." Judge Curtis Heaston, presiding judge of the Juvenile Justice Division, Cook County.[14]

The concern over the potential costs of raising the age of majority in Illinois does not fully account for the savings that would come from the lower recidivism rates, lower crime rates, and the increased economic productivity of young people who successfully leave a life of crime behind them. Although there is research from other states demonstrating that young people tried as adult recidivate at higher rates, Illinois does not collect the kind of data needed to make projections of the fiscal impact of these rates. Still, stakeholders know that raising the age will help reduce crime, and hence reduce the costs associated with higher crime rates. Judge George Timberlake, Chief Judge of the 2nd Judicial Circuit in Illinois, has said that, "If you want to reduce crime in our society, then it makes much more sense to include 17-year-olds in the classification of juvenile court."[16]

S. 458 failed to pass in the House in 2006. Like the reform to the transfer statutes, Illinois policy debate around the age of jurisdiction may take more time to come to conclusion. Legislators who have spoken out against the bill say they are only concerned about costs.

Most stakeholders claim that they would like to see 17-year-olds in the juvenile court, but they do not want a bill to pass without appropriate funding. But legislators prefer to pass the bill first and then, once there is an actual fiscal impact, provide funding at that time. There are plans to reintroduce another bill to raise the age of juvenile court jurisdiction in the spring of 2007.

ILLINOIS RECOMMENDATIONS

Although Illinois is a leader in reforming adultification of youth statues, it can do more. With further reform, Illinois can reform the juvenile court so more youth will benefit from juvenile court services and avoid the consequences of adult convictions.

- **Raise the age for 17-year-olds.**
  If passed, 17-year-olds will benefit from juvenile court services and communities will be safer, because youth with more treatment have lower recidivism rates.

- **Allow all youth individualized discretion in terms of transfer.**
  All youth who are transferred to adult court should have a neutral party or judge make the decision on transfer. This would ideally be done by a judge familiar with adolescent development.

- **Review sentences in adult court for youth.**
  Although the adult court is about punishment and adult consequences, the system needs to review the length of sentences for youth in adult court to make sure that they are age-appropriate.

- **Provide appropriate rehabilitative services in juvenile court.**
  As the juvenile court changes with a new Department of Juvenile Justice and as the changes to the automatic transfer laws return more youth to the juvenile court, it is imperative that the juvenile court provide rehabilitative services to these youth so that they have opportunities to improve their lives.

NOTES

1. Since 1906, boys age 17 have been tried automatically as adults, and in 1973, after a legal challenge based on 'equal protection' issues, girls 17 years of age were treated automatically as adults.
2. National Center for Juvenile Justice. (2006). *State juvenile justice profiles.* Pittsburgh, PA: Author. Retrieved January 28, 2007, from http://www.ncjj.org/stateprofiles/
3. 705 ILCS 405/5-130.
4. The number of 17-year-olds charged in adult court statewide is not available. Data do show that 10,183 youth age 16 were arrested in Cook County in 2003, and 5,135 youth age 16 were arrested in the other 101 counties in the state. According to the National Center for Juvenile Justice, 17-year-olds are arrested at approximately 112% of the number of 16-year-olds, and 102% over the number of cases for 16-year-olds. Although there would be some variation in arrest patterns between ages, the volume of juvenile arrests would increase much more for some offenses than for others, and the differences would cancel each other out. For example, because 17-year-olds have more access to cars and alcohol than younger juveniles, the largest percentage increase would be in juvenile arrests for driving under the influence–226%. See Snyder, H., Sickmund, M., Puzzanchera, C., & Griffin, P. (2005, April 27). *Background briefing paper: The impact of raising the upper age of juvenile court jurisdiction from 16 to 17.* Pittsburgh, PA: National Center for Juvenile Justice.
5. Analysis of Juvenile Justice Initiative of Illinois review of Judicial Advisory Council memorandum, April 2006. Exhibits A, B, and C of the Circuit Clerk of Cook County charges, March 29, 2005 to March 28, 2006.
6. Lan, Y. A, Hughes, E, & Stevenson, P. (March 2006). *Juvenile justice system and risk factor data for Illinois: 2003 annual report.* Chicago, IL: Illinois Juvenile Justice Commission, Illinois Criminal Justice Information Authority.
7. Ibid.
8. Puzzanchera, C., Finnegan, T., & Kang, W. (2006). *Easy access to juvenile populations.* Retrieved January 28, 2007, from http://www.ojjdp.ncjrs.org/ojstatbb/ezapop/
9. Ages 10 to 19 in Cook County in 2003.
10. Juvenile Justice Initiative analysis of data from the U.S. Census and the Cook County Jail conducted for July 3, 2006.
11. Collar County endorsements [Editorial]. (2006, November 2). *The Chicago Tribune.*
12. House Bill 4610, House Floor Debate, Final Action, March 25, 2004.
13. Senate Bill 458, Senate Floor Debate, Final Action, April 14, 2005.
14. Juvenile Justice Initiative of Illinois. (2006, October 19). *Dialogue highlights imperative to recognize developmental differences with kids. Senate Bill 458 reflects current science, brings Illinois in line with majority of states* (Press Release). Chicago, IL: Author.
15. Discussion on raising the age of juvenile court jurisdiction, Northwestern University School of Law, October 13, 2006.
16. See Juvenile Justice Initiative of Illinois, 14.

THE CONSEQUENCES AREN'T MINOR

WHAT IS THE LAW IN NORTH CAROLINA?

In North Carolina, there are a number of ways young people under age 18 who commit crimes can be tried and sentenced as adults. Since 1919, state law has given jurisdiction of youth ages 16 and 17 to the adult criminal justice system. Since then, laws have been enacted that allow cases for youth ages 13 to 15 to be transferred–automatically in the case of alleged first-degree murder–to the adult criminal justice system. Once transferred, the law provides limited access to appeal the transfer decision.

The upper age of juvenile court jurisdiction in North Carolina is 15.
In North Carolina, the age of majority is 18, but the age of juvenile court jurisdiction allows 16- and 17-year-olds to be tried as adults.[1] This means that all 16- and 17-year-olds arrested for any offense, regardless of whether the offense is violent or non-violent, are automatically treated and tried as adults. North Carolina, Connecticut, and New York are the only three states in the country that end juvenile court jurisdiction at age 16.[2] Of the three, North Carolina is the only state that does not allow youth to appeal for a reverse waiver so that they can be transferred back to the juvenile justice system.

[In North Carolina,] all 16- and 17-year-olds arrested for any offense, regardless of whether the offense is violent or non-violent, are automatically treated and tried as adults.

Youth as young as 13 may face mandatory waiver to adult court for Class A felonies (statutory exclusion).
In 1993[3] a Special Crime Session of the North Carolina General Assembly passed the Structured Sentencing Act. The law included a provision that reduced the minimum age that a youth's case could be transferred to Superior Court (adult court) to 13. As a result, young people ages 13 and over can be sentenced to life without parole. This law took effect in 1994 and stated that following a probable cause hearing, youth ages 13 and over who face Class A felony charges must be transferred to adult court for trial and sentencing.[4]

Young people age 13 to 15 may be transferred to adult court for lower-level felonies (judicial waiver).
North Carolina's *discretionary judicial waiver* statute allows juvenile court judges to transfer into adult court young people as young as 13 accused of felonies. The process of transfer is as follows. Within 10 days after a petition alleging delinquency has been

filed charging a youth with a felony, a hearing is held in juvenile court to consider a young person's continued custody, inform the young person of the charges, appoint counsel, set a date for the next hearing, and contact the guardian. Then a second hearing is held, where a juvenile district court judge determines whether probable cause exists that the youth may have committed any felony other than first-degree murder. Except for first-degree murder, the severity of the felony charges that these young people face plays no role in the decision to transfer. If probable cause is established, the district court judge determines whether the youth should remain in juvenile court or be transferred to superior court for trial as an adult. Motions to transfer may be made by the district court itself, prosecutors, or the young person's counsel. A judge may consider up to eight factors when considering whether to transfer certain felonies to superior court:

- the youth's age;
- the youth's maturity;
- the youth's intellectual functioning;
- the youth's prior record;
- prior attempts to rehabilitate the youth;
- facilities or programs available to the court during the time it would have jurisdiction over the youth and the likelihood that the youth would benefit from treatment or rehabilitative efforts;
- whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and
- the seriousness of the offense and whether the protection of the public requires that the youth be prosecuted as an adult.[5]

When youth who are 14 and 15 years old are arrested, and if their case merits that they remain in secure custody, they can be detained in a county jail.

North Carolina, unlike Connecticut and New York, lacks a reverse waiver provision.
In North Carolina, youth whose cases are being prosecuted in adult court cannot be transferred back down to the juvenile court system. A youth may appeal if he or she believes there is abuse of discretion in the transfer decision to superior court. The superior court judge can only review the transfer decision for an abuse of discretion; the judge cannot review the probable cause findings.[6]

North Carolina is a "once an adult, always an adult" state.
After a youth is transferred to and convicted in superior court, he or she must be prosecuted as an adult for any charge thereafter, no matter how minor the subsequent offense.[7]

Young people who are being detained until trial may be housed in adult facilities.
When youth who are 14 and 15 years old are arrested, and if their case merits that they remain in secure custody, they can be detained in a county jail. Youth detained in county jails are closely supervised and separated from the adult population by both sight and sound.[8] Youth alleged to have committed certain felonies[9] may be placed in "holdover facilities" in jails for up to 72 hours, but only if the court, based on information provided by the court counselor, determines that no acceptable alternative placement is available and that the protection of the public requires that the youth be housed in a holdover facility. The Department of Health and Human Services must inspect holdover facilities in jails to ensure that they provide close supervision of youth in custody and that sight and sound

separation from the adult population is maintained.[10] Once a youth is indicted, superior court judges make the decision about whether to detain young people who have been transferred to adult court in juvenile or adult facilities.[11] Again, youth detained in adult facilities must be closely supervised and separated from the adult population by sight and sound.[12] Efforts are also made to keep violent and non-violent offenders separated; they also try to keep older youth separated from younger youth.

Once young people are tried and convicted in adult court, they must serve their sentences in adult correctional facilities.[13]

North Carolina does not allow judges to sentence transferred youth, regardless of their age, to serve any part of their sentences in juvenile facilities.[14] Upon conviction, they must immediately be transferred to the Department of Correction (DOC). The DOC has six primary facilities in which "youthful offenders," young people age 13 to 20, are housed. Although the facilities vary in terms of age ranges and custody levels, all male youth under age 18 are generally sent to the Western Youth Institution; female youth are sent to the North Carolina Correctional Institution for Women where many serve their entire sentence but some are transferred at age 20.[15] With few exceptions, inmates younger than 16 are prohibited from being incarcerated in Central Prison.[16] These youth are generally incarcerated in one of five DOC facilities: Foothills Correctional Institution, Morrison Correctional Institution, North Carolina Correctional Institution for Women, Polk Correctional Institution, and Western Youth Institution.[17] Although there are no legal statutes governing the incarceration of youth under age 25, the North Carolina DOC has a number of policies that it applies to this group. Male youthful offenders with felony convictions are kept separate from inmates who are older than 25. Felons and misdemeanants who are younger than 19 are processed and incarcerated at Western Youth Institution. Males age 19 to 25 serving sentences for misdemeanors are housed with their older inmates in minimum custody facilities.[18] Since females represent a much smaller portion of North Carolina's youthful offender populations, there are no separate youth prisons for female youthful offenders. Therefore, female youthful offenders are incarcerated in women's prisons with the general population.[19]

North Carolina does not allow judges to sentence transferred youth, regardless of their age, to serve any part of their sentences in juvenile facilities.

North Carolina no longer has a "youthful offenders" code.

Prior to the early 1990s, youth who were younger than 21 years old and serving sentences in adult facilities were given "youthful offender" status. This status was intended "to improve the chances of correction, rehabilitation, and successful return to the community of youthful offenders sentenced to imprisonment by preventing, as far as practicable, their association during their terms of imprisonment with older and more experienced criminals, and by closer coordination of the activities of sentencing, training in custody, parole, and final discharge."[20] In 1993, in an effort to address concerns about rising crime rates, and to make sentencing more meaningful and equitable, the North Carolina General Assembly passed the Structured Sentencing Act. Implemented in 1994, the Structured Sentencing Act repealed provisions that established "youthful offender" status. This change in the statute abolished parole for everyone but first-time misdemeanants, and required all offenders (including youthful offenders) to serve their entire sentence.[21] The term "youthful offender" continues to be used in North Carolina, however it now "refers only to offenders who commit offenses between their 16th and 21st birthdays, and youth transferred from the juvenile courts for trial as adults."[22] "The DOC defines "youthful inmates" as being between the ages of 13 and 25. The lower part of the age range contains youth between 13 and 15 charged with felonies and transferred to the criminal court system for trial as adults. Due to a decline in the number of prison admissions for youthful offenders over the last several years, the DOC has increased the upper age range for youthful inmates from 21 to 25."[23]

An April 2006 analysis of data from the North Carolina Sentencing and Policy Advocacy Commission and the DOC showed that in fiscal year 2001/02 there were 13,038 youthful offenders under some form of supervision.[24]

The youth prisons used to incarcerate youthful offenders focus primarily on retribution rather than rehabilitation.
The "youth prisons," which are operated by the North Carolina Department of Correction (DOC), differ from Youth Development Centers (YDC), which are operated by the North Carolina Department of Juvenile Justice and Delinquency Prevention (NCDJJDP). YDCs are treatment-focused and embrace the philosophy of rehabilitation. As a way to promote successful re-entry, youth who are committed to these facilities are able to maintain their connections to the communities they will re-enter.[25] And after they serve their sentences at a YDC, their criminal records are expunged. In contrast, North Carolina law does not require facilities operated by the Department of Correction to provide specific programs or services to youth under its care. Youthful inmates in the DOC do have priority for participation in educational, vocational, or technical training, but youth who have served their sentences in Youth Prison Facilities leave with criminal records that cannot be expunged.

Nearly 70% of the young people in the North Carolina Department of Correction were African-American, Latino, or Native American.

WHO IS AFFECTED BY THE LAWS IN NORTH CAROLINA?

Race and ethnicity:
The disproportionate impact of adultification on youth of color.
In 2005, there were 407 young people[26] under the age of 18 in adult prison facilities in North Carolina. Seventy-eight percent[27] of these young people were 17, 20% were 16, and 2% were 15. Non-white youth were overrepresented among the young people under custody by the adult DOC. Nearly 70% of the young people in the North Carolina DOC were African-American, Latino, or Native American.[28]

Offense type: Half the young people in adult custody are there for non-violent crimes.
Among the number of young people in the North Carolina prisons in 2005, the majority (55%) of young people under the jurisdiction of the adult DOC were there for offenses the FBI would classify as non-violent[29] crimes. Among those under custody for violent crimes, 5% of the young people were under the custody of the DOC for homicide, 6% for rape, 15% for assault, and 19% for robbery. However, among the 55% of youth who were under DOC custody for non-violent crimes, 19% were there for breaking and entering, 9% were there for drug offenses, and 14% were there for larceny. Twenty young people were under the custody of the adult DOC for "other public order offenses," and 10 were in custody for traffic offenses.[30]

Among the number of young people in the North Carolina prisons in 2005, the majority of young people under the jurisdiction of the adult DOC were there for offenses the FBI would classify as non-violent crimes.

Adult corrections: Admissions, releases, and community supervision (probation).
During the 2005 calendar year, 3,863 youth (3,109 males, 754 females) under the age of 18 were on probation/parole/post-release.[31] In 2001/02, 2,832 youthful offenders entered prison and 10,206 were placed on probation.[32] Although it is not clear how many of the 10,000 young people under community supervision spent time in an adult jail or an adult facility, these youth may face some of the collateral consequences of an adult conviction.

Recidivism and re-offending.
The DOC notes that youth under their supervision, whether in prison or not, represent a significant correctional issue: "The challenge for the courts, corrections, and society at large is to impose sanctions to deter recidivism with this age group while providing programs to rehabilitate and reintegrate them, truncating an otherwise lengthy and possibly escalating criminal career."[33] The DOC found that young people in prison had a higher re-arrest rate than young people on probation. Of the three groups they looked at (youthful prisoners, youthful probationers, and adult prisoners), youthful prisoners were the most likely to be rearrested.[34] Of the three groups studied, youthful prisoners were the

most likely to experience a recidivist incarceration.[35] Although these data did not control for offense background and other characteristics, they do suggest that sending young people to adult prison is not achieving public safety goals.

YOUNG PEOPLE AND FAMILIES AFFECTED BY NORTH CAROLINA'S LAWS

Although no one story can capture the impact of North Carolina's adultification statutes, a drug case that caused dozens of young people to receive drug felony convictions reveals the issues at play.

In the fall of 2004, headlines in North Carolina were dominated by news of a six-school undercover sting operation in the Alamance-Burlington high school system that resulted in the arrests of 60 students under age 18. In accordance with the State's 1919-enacted "Juvenile Court Act," of the 60 arrested in the sting operation, those 16 and over faced felony charges and were automatically under the jurisdiction of the state's adult criminal justice system. Forty-five of the 60 youth pled guilty and were sentenced to three years' probation. Although most did not serve prison time, some, including Jeff Webster, served active sentences. Regardless, the convictions continue to seriously affect the lives of these young people.

JamesOn Curry: A mistake narrowly redeemed.
JamesOn Curry was 17 years old when arrested for selling marijuana to an undercover police officer posing as a fellow student as part of the sting operation. After the officer purchased marijuana on previous occasions, the officer videotaped JamesOn selling the officer marijuana in the school parking lot. The district attorney said Curry's profit on these two drug deals was $95.[36]

In April 2004, Curry pleaded guilty to six felony drug counts, including two counts each of possession with intent to sell and deliver marijuana; sale and delivery of marijuana; and possession and selling and delivering a controlled substance on school grounds.[37] Judge Kenneth C. Titus suspended his sentence, placed him on probation for 36 months, and ordered him to perform 200 hours of community service. Because he was not allowed to return to his high school, Curry attended an alternative school in the area and graduated in May.[38]

Curry was a promising high school basketball player and he hoped to parlay that talent into a college education. In fact, when Curry was just a sophomore, University of North Carolina coach, Matt Doherty, committed an athletic scholarship to him. The year Curry was arrested, he was ranked among the best high school players in the country, scoring 40.3 points per game in 2003, including 65 points in one game. Over his high school career, he scored 3,307 points, exceeding the number of points James Worthy or Michael Jordan scored in their high school careers.

Curry's adult felony conviction put much of his future at risk. Because North Carolina law places youth age 16 and over under the jurisdiction of adult criminal courts, Curry has an adult criminal record that is not sealed and cannot be expunged. Subsequently, Curry's arrest and conviction was brought to the attention of the University of North Carolina's new head coach, Roy Williams. Williams decided to rescind the scholarship. Curry had been recruited by Roy Williams's predecessor and Williams had committed to honoring Doherty's offers to all incoming recruits unless they'd robbed "a bank or something." Williams stated later, "Well, he did rob a bank, or something."

Curry's adult felony conviction put much of his future at risk. Because North Carolina law places youth age 16 and over under the jurisdiction of adult criminal courts, Curry has an adult criminal record that is not sealed and cannot be expunged.

Curry understood Williams's decision: "I had the scholarship as long as I didn't screw up. I screwed up." Fortunately, three months after his arrest, Curry signed a new letter of intent to attend Oklahoma State, which had reached the Final Four in 2004. Before signing, Coach Eddie Sutton told Curry what Oklahoma State expected of him and that his "margin for error was zero."

Before offering the scholarship, Oklahoma State's basketball coaches did a lot of investigating into both Curry's basketball abilities and his character. "Nobody had a bad word to say about him," said Assistant Coach James Dickey. "I've been around a lot of kids, and some have expressed remorse and not meant it. I believed JamesOn meant it." "He sat in my office and tears came to his eyes," Oklahoma State Athletic Director Harry Birdwell said. "And he told me: 'I embarrassed my family and all the people who trusted in me. I want to make amends. If you give me a second chance, I will not let you down.' I thought the kid was telling me the truth."

In summer 2005, Curry was one of 20 individuals selected to try out for Team USA. Although an injury forced his withdrawal from the try-outs, the opportunity to play for Team USA drew criticism from those concerned about Curry's criminal record. However, Sean Ford, the director for the men's USA basketball program stated: "It seems like he's made tremendous progress from the bad decision he made... As a committee, we didn't feel–based on the progress he made, the season he had, the second chance he's taking advantage of–that we were putting ourselves at tremendous risk by including him in these trials."[39]

Curry's story of redemption is an unfinished one. As Curry reflected after his first exhibition game wearing a University of Oklahoma Cowboys' uniform, "I had never been in trouble before, but for the people out there that think I need to prove myself to them, I've got to set a perfect example that I am not that type of person... History tends to repeat itself, so I try not to look back as much and try to walk as straight as I can."[40]

Jeff Webster: Second chances do not come easily.
Jeff Webster was 17 years old when he was arrested for selling marijuana to a female undercover officer. Webster bought marijuana for her on three occasions in 2003: October 30, November 4, and November 12. The officer gave him money, which he used to purchase the drugs from known dealers at school. He did not profit from the sales. Webster admitted to friends that he had a crush on the officer and testified that she flirted with him, hinted to his friends that they planned to attend the prom together, and that she even hugged him on occasion. Webster said they "often walked in school hallways holding hands." According to newspaper accounts of his testimony, Webster agreed to sell her drugs within 10 minutes of their initial encounter. He testified, "I was trying to get her good prices and impress her in a way... I had never purchased any drugs or received any drugs for anyone before." "I was attracted to her and was thinking about things that 17-year-old boys think about when being pursued by a very attractive girl who usually wears very provocative clothes," he said. "She zeroed in on me. Now I realize that she used me to get in with the popular crowd."[41]

Webster was arrested and charged with three felony counts: possession with the intent to sell and deliver marijuana, selling marijuana, and delivering marijuana.[42] Webster, whom character witnesses described as a model citizen who attended church three days per week, volunteered in the community, did well in school (3.7 grade point average and 12th in his class),[43] and worked two jobs, asserted that he was entrapped because the undercover officer flirted with him and led him to believe that she would go out with him.[44]

After his arrest, Webster was shocked by the realization that he was to be treated and tried as an adult. In addition, he was surprised to learn that the charges he faced were

felonies. “I thought what I had done was a misdemeanor. Had I known that it was a felony, it would have changed my decision to obtain marijuana for her.”[45] Webster had planned to join the military as a means to pay for his college education. Concerned that a felony conviction would prevent him from joining the military, Webster offered to serve an active sentence if the district attorney would reduce the charges to misdemeanors.[46] The district attorney rejected the offer, and Webster elected to claim entrapment as his defense in his trial.

When asked about his experience as a defendant, Webster identified several aspects of the trial that appeared unfair and prevented him from proving entrapment. First, the undercover officer had recorded all her conversations with Webster. However, a key conversation—the conversation in which Webster informed the undercover officer that he didn’t feel right about buying her drugs and that he would no longer buy them for her—was “accidentally recorded over” before the jury had an opportunity to hear it. Webster said, “I felt like I had been set up.”[47]

Second, before the defense had an opportunity to prepare Webster for questioning, the judge stipulated that Webster be the first of the defense witnesses; he went before the court without preparation.[48] According to newspaper accounts, the prosecuting attorney asked Webster, “So she didn’t persuade you in any way or trick you in any way on that first occasion, did she?”[49] Webster responded, “Not in any verbal way. No sir, she did not.”[50]

Third, the prosecution attempted to make the undercover officer appear less attractive to the jury. In response to the defense’s request that the prosecution admit into evidence examples of clothing that the undercover officer wore at school, the prosecution produced baggy jeans and sweatshirts rather than the tight-fitting, low-cut halter tops that Webster had been accustomed to seeing her wear. “What [the prosecution] produced was nothing I’d ever seen her wear before,” says Webster. And last, Webster claims that the judge allowed the prosecution to introduce evidence in the trial without first notifying defense counsel.[51]

After an hour of deliberation, the jury found Webster guilty on all nine counts.[52] During sentencing, in reference to Webster’s answer about whether the undercover officer had tricked him, Judge J.B. Allen said, “You got on the witness stand and convicted yourself.”[53]

“I was shocked by the conviction. I didn’t think I’d be convicted. My head fell to the table. It was like a slap in the face,” Webster says.[54]

Judge Allen did not see any benefit to imposing the maximum sentence of six years for all nine charges. Instead, Webster was sentenced to serve five to six months in prison followed by three years of probation.[55] Webster served a five-month sentence in Western Youth Institution, where he was incarcerated in a minimum-security section with other youthful offenders, most of whom were serving sentences for non-violent offenses, such as breaking and entering and drug-related crimes.

“I willed myself to get through the experience... You never feel totally safe in prison... There were fights everyday, and you always had to be careful about keeping others from stealing your stuff... There was a lot of gang activity... It was a very difficult time not to be able to see my family. You don’t realize how important your family is until you have them taken from you...”[56]

Although his prison experience was very difficult, Webster developed positive relationships with a corrections officer and a counselor. He learned to respect them because of their willingness to help him and because they treated him with dignity. While in prison, Webster was also able to complete the courses he needed to graduate from

“You never feel totally safe in prison...There were fights everyday.... You don’t realize how important your family is until you have them taken from you...” –Jeff Webster

Cummings High School, and he worked three different jobs, including Keeper of the Yard, the highest-paying job ($1 per day) you could obtain in the prison.[57]

Webster was released in September 2004. Now his felony conviction creates a number of barriers to employment and education. Luckily for Webster, after his trial one of the jurors approached his parents and offered to help Webster find an Information Technology (IT) job after he was released. Webster followed up with the juror immediately after his release, but it took five months before the juror was able to help him get hired. After two years, he continues to enjoy his job, but he notes that quitting is not an option because finding another well-paying job would be extremely difficult.[58]

Webster's felony conviction has also made it difficult for him to attend college. Before the conviction, Webster had a partial academic scholarship to North Carolina State and had planned on enlisting in the U.S. Air Force to help pay for the remaining college expenses. As was the case with JamesOn Curry's athletic scholarship, Webster's scholarship was rescinded upon his conviction. He is also no longer eligible to join the military. Unlike Curry, no recruiters have approached Webster with offers of a second chance. However, Webster wants to own his own IT business someday and knows that higher education will help him to achieve his goal. So he is making his own second chance by taking courses at the local community college. Unfortunately, he cannot quit his job to take classes full time. Webster explains that often the courses he needs to take at the community college are not offered at times when he can attend.

Webster was released from prison for good behavior, has paid all his restitution (approximately $2,100), and continues to work to prove that he is a good person who made a youthful mistake. As Webster notes, "Just because you made a mistake doesn't mean that you are a terrible person."[59]

Webster was released in September 2004. His felony conviction has made it difficult for him to attend college.

WHAT ARE THE POLICY OPTIONS IN NORTH CAROLINA?

Sentencing Commission studies judicial processing of young people, age 16 to 21 years.
The Almance-Burlington High School System drug sting discussed in this chapter's profiles occurred in the district of Representative Alice Bordsen, a member of the North Carolina General Assembly. In 2005, Bordsen introduced legislation[60] (H.B. 1298) folded into an "omnibus" study bill (H.B. 1723) that was enacted on August 18, 2006. The Act authorizes the North Carolina Sentencing and Policy Advisory Commission to "study issues related to the conviction and sentencing of youthful offenders aged 16 to 21 years, to determine whether the State should amend the laws concerning these offenders, including, but not limited to, revisions of the Juvenile Code and/or the Criminal Procedure Act that would provide appropriate sanctions, services, and treatment for such offenders." In anticipation of the passage of the study bill and at Bordsen's request, the North Carolina Sentencing and Policy Advisory Commission established the Youthful Offender Subcommittee in 2005. Chaired by Judge Fred Morrison and William Dudley (Vice Chair), the Subcommittee met six times in 2005 and 2006. On December 1, 2006, the Subcommittee approved its final report, including five policy recommendations (most summarized in this chapter's Recommendations section). The Act also requires the Commission to consult with the state's Departments of Health and Human Services, Juvenile Justice and Delinquency Prevention, and Public Instruction and submit a report to the General Assembly by March 1, 2007.[61]

North Carolina debates "raising the age."
As previously noted, North Carolina is only one of three states where, regardless of the

severity of the offense, youth age 16 and 17 are automatically tried and sentenced as adults. In September 1997, Governor James Hunt created the Governor's Commission on Juvenile Crime and Justice to conduct a thorough and comprehensive review of North Carolina's juvenile justice system. It examined the implications associated with increasing the age of adult jurisdiction to 18. At that time, the committee determined that the costs associated with increasing the age to 18 would be prohibitive and would overburden the State's limited juvenile justice resources, and so it recommended keeping the age of jurisdiction at 16.[62]

A decade later, policymakers are reconsidering the age of jurisdiction. During their meetings in 2006, the North Carolina Sentencing Commission's Youthful Offender Subcommittee discussed how they should carefully consider changing the age of jurisdiction. The Subcommittee's final report recommended that the state "[i]ncrease the age of juvenile jurisdiction to persons who, at the time they commit a crime or infraction, are under the age of 18. Traffic offenses committed by persons 16 and older will remain within the jurisdiction of the adult criminal courts." They also recommended that the state "delay the implementation of the change in juvenile jurisdiction by [two years] after passage of the bill and create a task force to analyze legal, systemic, and organizational changes required; to determine necessary resources; and to produce a detailed road map for implementation of the new law."[63]

When asked whether youthful offenders (16 and 17) would have a better chance in the juvenile system, George Sweat, Secretary of the North Carolina Department of Juvenile Justice and Delinquency Prevention answered, "I don't think there's any question; yes, I think they would."[64] Sweat, however, has raised concerns about the state's ability to effectively absorb an influx of youth age 17 and 18 into the juvenile justice system. He believes it would be a challenge to bring these young people into this system at a time when the agency is in the middle of a reform process that includes attempting to move young people, 16 and under, into smaller, more therapeutic facilities that are accessible to families. "Research shows that raising the minimum juvenile age is the right thing to do," Sweat says. "However, the options for raising the juvenile age must be carefully weighed in terms of cost, impact, and timing."[65]

"I don't think there's any question; yes, I think they would." –George Sweat, Secretary of the North Carolina Department of Juvenile Justice and Delinquency Prevention, responding to whether youthful offenders (16 and 17) would have a better chance in the juvenile system.

Does North Carolina need more community programs for young people and does the state need to improve their efficacy? During their meetings in 2006, several members of the North Carolina Sentencing Commission's Youthful Offender Subcommittee were concerned about the lack of resources for youthful offenders, including community diversion and reentry programs. Community programs, both adult- and youth-specific, are important components in the state's efforts to support offenders who are likely to respond to therapeutic approaches that help these individuals successfully reenter their communities. As stated, prior to the enactment of the Structured Sentencing Act in 1994, young people 21 years old and serving sentences in adult facilities were governed by statutes that intended "to improve the chances of correction, rehabilitation, and successful return to the community of youthful offenders sentenced to imprisonment by preventing, as far as practicable, their association during their terms of imprisonment with older and more experienced criminals, and by closer coordination of the activities of sentencing, training in custody, parole, and final discharge."[66] Changes to the age of jurisdiction and sentencing statutes would need to be made as part of a larger approach to delivering community-based services, supervision, and alternatives to incarcerations.

Should North Carolina implement blended sentencing? North Carolina is the only one of the states that transfers youth to adult court that lacks blended sentencing, a sentencing tool that allows courts to impose juvenile dispositions in addition to adult sentences for serious juvenile offenders who are 14 years of age or older. Whether

North Carolina could use blended sentencing is questionable. Some in the state believe that the state's constitution, which guarantees the right to trial by jury, would prohibit implementation of blended sentences. Juvenile dispositions in North Carolina are decided by bench trials rather than jury trials. This raises a question of whether the constitutional rights of youth who go on to serve the adult sanctions of their blended sentences would be violated; they are considered convicted as adults, yet were not allowed trials by jury.[67] Others disagree, believing that criminal models of blended sentencing could be imposed in North Carolina, but the conviction in adult court would still leave the offender with an adult criminal record.[68]

Collateral consequences and expunging the records of juveniles convicted as adults.

Once convicted as adults, youth who are tried and sentenced as adults face life-long barriers, including barriers to education and employment.

Since North Carolina's age of adult jurisdiction is 16, students who have criminal records may experience some barriers to postsecondary education. The University of North Carolina system includes six standard questions about applicants' criminal histories. Students may be denied admission to North Carolina state universities if they have been convicted of any crime other than a traffic-related misdemeanor or an infraction; however, admitting to a criminal history does not result in an automatic denial of admission.[69] Although the decision to admit students with criminal histories is left to each of the 16 constituent campuses, UNC officials assert that students are more likely to be denied admission to the University of North Carolina for omitting pertinent information about their criminal backgrounds on their applications than for merely admitting their criminal backgrounds.[70] Students may not be denied admission to the state's community colleges based on criminal background. However, community colleges often discourage students with criminal backgrounds from pursuing certain careers, such as nursing, that prohibit licenses and credentials to people who have criminal backgrounds.[71] People who have felony convictions also are not allowed to join the military, an option young people often take to help pay for college.

Once convicted as adults, youth who are tried and sentenced as adults face life-long barriers, including barriers to education and employment.

In addition to the impediments youth face when attempting to go to college, background checks make finding employment difficult. Furthermore, insurance companies are reluctant to provide insurance for employers who hire convicted offenders.

Rep. Alice Bordsen, concerned about the stigma that inevitably supplements a criminal conviction, has stated that early exposure to the criminal justice system builds a "complete box" around youth. In response to the Almance-Burlington High School System drug sting, the State House of Representatives passed a bill (H.B. 1084) in 2005 that would allow first-offender youth who have been convicted of non-violent crimes before they turned 18 to petition the court to expunge their records. Petitions could be submitted two years after the youths' convictions or after the completion of sentences (including post-release supervision), and after serving 100 hours of community service. The State Senate did not consider the bill. According to Judge Ronald Payne, a member of the North Carolina Sentencing Commission's Youthful Offender Subcommittee, expunction is useful. Those who favor expunction want to ensure that limits exist, including a waiting period for the record to be expunged. If the case takes a long time to expunge, social, education, and employment opportunities for youth who have been convicted as adults will continue to be negatively impacted.[72]

NORTH CAROLINA RECOMMENDATIONS

As part of their 2006 report to the Legislature,[73] the Sentencing Commission recommended that legislators consider a number of changes to adult and juvenile statutes that would reform how young people are treated.

- **Increase the age of juvenile court jurisdiction to persons who, at the time they commit a crime or infraction, are under the age of 18.[74]**
  To deal with concerns over the impact of the change on the juvenile justice system, the Sentencing Commission recommends a two-year phase-in for the implementation of the change in juvenile jurisdiction by creating a task force after passage of the bill to analyze the legal, systemic, and organizational changes required to determine necessary resources, and to produce a detailed road map for implementation of the new law. Although the Sentencing Commission did not recommend it, the two-year implementation phase-in could take steps to ensure that youth (16 to 18) who are convicted of crimes during the long implementation period may be eligible for retroactive juvenile dispositions, including sealing or expunging records.

- **Develop a "transfer back" mechanism.**
  Adopt a post-conviction procedure for youth transferred to and convicted in Superior Court by which the Court, in lieu of imposing a criminal sentence, may return the offender to the exclusive jurisdiction of the District Court for entry of a juvenile disposition.

- **Adopt a youthful offender status for sentencing in adult court.**
  The state should make it possible for a sentencing judge, upon plea or verdict of guilt, to defer judgment for offenders under 21 for a period of special, supervised probation that, if successful, would result in discharge of the defendant, dismissal of the charge, and eligibility for expunction of the records of arrest and prosecution.

The Sentencing Commission recommendations to the legislature would represent a significant step towards making North Carolina's adultification statutes consistent with other states' statutes. It would take into account new research on adolescent development, as well as the research on the impact of sending youth into the adult system. The state could also consider other policy options to improve rehabilitation opportunities for young people and promote public safety.

- **Increase dispositional options for judges for young people.**
  Along with extending the age of juvenile court jurisdiction to 18, the age of extended juvenile jurisdiction for dispositional purposes for delinquent youth could be extended from 18 to 21 to ensure that fair and meaningful dispositions can be implemented for young people.

- **Support the ability of young people to expunge their records.**
  The state could enact legislation to allow individuals who have been convicted of non-violent crimes in adult court committed before they turned 21 to petition to expunge their criminal records. These records could be sealed for the duration of the waiting period to ensure access to employment and educational opportunities for youth who are reentering the community.

- **Develop community-based alternatives to incarceration for young people.**
  The state should adequately invest in treatment and diversion strategies that provide judges with suitable sentencing options that are proven to rehabilitate youth while protecting public safety. They should do so by ensuring access to, and sufficient resources for, youth (13 to 21) who are currently serving adult sentences.

- **Abolish "once an adult, always an adult."**
  This would ensure suitable access to services provided by the juvenile justice system for youth 18 and under who have been previously convicted as adults.

- **Increase the age that youth can be tried as adults from 13 to 15.**
  Very few jurisdictions see 13-year-olds entering the adult system. North Carolina has already taken steps in this direction by raising the age in most cases to 14.

NOTES

[1] Mason, J. (2004, October). *Confidentiality in juvenile proceedings.* UNC School of Government, http://www.iog.unc.edu/pubs/electronicversions/pdfs/ss19.pdf

[2] The National Center for Juvenile Justice. (2005, August). *State juvenile justice profile.* http://www.ncjj.org/stateprofiles/overviews/upperage.asp

[3] Minutes from North Carolina Sentencing and Policy Advisory Commission Youthful Offenders Subcommittee Meeting on January 13, 2006, in the Correction Enterprises' Conference Room at the Department of Correction facility with Dr. James Howell regarding American thinking on juvenile jurisprudence, p.5.

[4] N.C. Gen. Stat. § 7B-2200 (2006).

[5] Mason, J. (1999, January 1). *Juvenile justice reform act.* Chapel Hill, NC: Institute of Government, The University of North Carolina at Chapel Hill. http://www.juvjus.state.nc.us/about/reform.html

[6] N.C. Gen. Stat. § 7B-1064 (b) (2006).

[7] N.C. Gen. Stat. § 7B-1064 (b)

[8] See Mason, J., 5.

[9] Class A, B1, B2, C, D, or E felonies.

[10] See Mason, J., 5.

[11] N.C. Gen. Stat. § 7B-2204 (2006).

[12] N.C. Gen. Stat. § 7B-1501 (11) (2006).

[13] N.C. Gen. Stat. § 7B-2204) (2006).

[14] Note, however, that the Governor may order the transfer of any young person under 18 from any jail to one of the juvenile residential facilities after consultation with the Department of Juvenile Justice and Delinquency Prevention. N.C. Gen. Stat. § 7B-2517 (2006).

[15] North Carolina Sentencing and Policy Advisory Commission Youthful Offender Subcommittee [Meeting Minutes]. (2006, March 31). Raleigh, NC: The North Carolina Department of Correction. pp. 31-32.

[16] North Carolina Sentencing and Policy Advisory Commission Youthful Offender Subcommittee. (2006, December 1). *Final report.* Raleigh, NC: The North Carolina Department of Correction.

[17] Ibid.

[18] Ibid.

[19] Flinchum, T., Jones, K., Hevener, G., Moore-Gurrera, M., & Katzenelson, S. (2006). *Correctional program evaluation: Offenders placed on probation or released from prison in fiscal year 2001/02.* Raleigh: North Carolina Department of Corrections, Sentencing and Policy Advisory Commission. p. 79.

[20] The Committed Youthful Offender Code, N.C.G.S 148-49, et seq. (repealed 1993).

[21] State Strategies to manage budget shortfalls. (2003, January). *National Conference of State Legislatures.* http://www.ncsl.org/programs/fiscal/fpssmbsnc.htm

[22] See North Carolina Sentencing and Policy Advisory Commission, 16.

[23] Ibid.

[24] See Flinchum, T., et al., 19.

[25] National Center for Juvenile Justice data. http://www.ncjj.org/stateprofiles/profiles/ NC06.asp?topic=Profile&state=%2Fstateprofiles%2Fprofiles%2FNC06.asp

[26] Collected from the Office of Research and Planning, Department of Correction, North Carolina, on July 20, 2006 and July 24 2006. All data and statistics concern youth under the age of 18 during the calendar year of 2005. Fourteen [10 males, 4 females], however, were "safekeepers"–defined as "individuals who have been charged with a crime but have yet to be adjudicated and who are court ordered into the custody of DOC. The 14 "safekeepers" are configured into the data results that follow.

[27] Of the 17-year-olds, 303 were males and 16 were females; of the 16-year-olds, 74 were males and 10 were females; and of the 15-year-olds, three were males and one was female.

[28] Of these 407 young people, 64% were African-American (243 males, 18 females), 5% were known to be Latino (18 males, 1 female), two were Native American, and seven were defined as "other" (6 males, 1 female). One hundred and nineteen were European/Caucasian (113 males, 6 females).

[29] The FBI categorizes homicide, rape, robbery, and aggravated assault as violent crimes.

[30] See Office of Research and Planning, 26.

[31] Ibid.

[32] See Flinchum, T., et al., 19.

[33] Ibid.

[34] Ibid.

[35] Ibid.

[36] Berkow, I. (2004, May 31). Basketball: A star. An arrest. A second chance. *The New York Times.* http://select.nytimes.com/gst/abstract.html?res= F40A12FE3D550C728FDDAC0894DC404482&n=Top%2fReference%2fTimes%20Topics%2fOrganizations%2fO%2fOklahoma%20State%20University

[37] Huguenin, M. (2005, February 28). JamesOn Curry tries to leave past behind. *Knight Ridder/Tribune News Service.* http://www.accessmylibrary.com/coms2/summary_0286-8442747_ITM

[38] See Berkow, 36. Unless otherwise noted, the remaining profile of JamesOn Curry is from Berkow's article.

[39] DeCourcy, M. (2005, July 8). Not the right choice for Team USA: North Carolinians will be surprised to learn JamesOn Curry still might represent them. *The Sporting News* http://findarticles.com/p/articles/mi_m1208/is_27_229/ai_n14713612

[40] Landis, T. (2004, November 10). Curry shines in debut while thoughts stray. *Cowboy Book.* http://www.ocolly.okstate.edu/new_ocollycom/archives/show_story.php?a_id=24075

[41] Interview with Jeff Webster. Jan 5, 2007.

[42] Hayhust, B. "Judge sentences to 5-6 months in prison." *Times-News.*

[43] See 41.

[44] See Hayhurst. 42.

[45] See 41.

[46] Smith, T. Teenager was entrapped into crime. *Times-News.*

[47] See 41.

[48] Ibid.

[49] Hayhurst. 42.

[50] See 41.

[51] See 41.

[52] Hayhurst. 42.

[53] Hayhurst. 42.

[54] See 41.

[55] Hayhurst. 42.

[56] See 41.

[57] See 41.

[58] See 41.

[59] See 41.

[60] Bordsen's bill was also sponsored by State Representatives R. Phillip Haire, Earline W. Parmon, and Larry Womble.

[61] House Bill 1723 / S.L. 2006-248, http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2005&BillID=H1723

[62] North Carolina Sentencing and Policy Advisory Commission, Youthful Offenders Subcommittee Meeting Minutes. June 23, 2006.

[63] See North Carolina Sentencing and Policy Advisory Commission, 16.

[64] Minutes from North Carolina Sentencing and Policy Advisory Commission Youthful Offenders Subcommittee Meeting on June 23, 2006, in the Correction Enterprises' Conference Room at the Department of Correction, p. 3. George Sweat, Secretary of the North Carolina Department of Juvenile Justice Delinquency and Prevention.

[65] Right thing to do! Wrong time to do it: Secretary Sweat discusses raising the juvenile age with North Carolina Youthful Offender Subcommittee. (2006, June). *DJJDP News Express,* http://www.ncdjjdp.org/newsletter/archives/2006/printable_june06.html

[66] The Committed Youthful Offender Code, N.C.G.S 148-49, et seq. (repealed 1993).

[67] North Carolina Sentencing and Policy Advisory Commission, Youthful Offenders Subcommittee Meeting Minutes. June 23, 2006.

[68] Ibid

[69] Interview with Robert Kanoy, University of North Carolina System. December 15, 2006.

[70] Ibid.

[71] Interview with David Sullivan, North Carolina Community College System. December 14, 2006.

[72] North Carolina Sentencing and Policy Advisory Commission, Youthful Offenders Subcommittee Meeting Minutes. June 23, 2006.

[73] See North Carolina Sentencing and Policy Advisory Commission, 16.

[74] The Sentencing Commission exempted traffic offenses from their recommended changes.

THE CONSEQUENCES AREN'T MINOR

WHAT IS THE LAW IN VIRGINIA?

Virginia allows for young people to be sent to the adult criminal justice system, including incarceration in jails and prisons, through a variety of legal mechanisms. Although Virginia's statutory scheme does not specifically reference *discretionary waiver, mandatory waiver,* and direct file, it does allow for these practices through processes it terms "juvenile transfer" and "certification."[1] The following include the key features of the way young people end up in the adult criminal justice system in Virginia.

Juvenile justice jurisdiction runs until youth turn 18.
Juveniles are defined as persons under age 18. There is no minimum age in Virginia for juvenile court jurisdiction, but youth must be at least 11 years old before they may be committed to the custody of the Department of Juvenile Justice.[2]

Transfer hearings.
Generally, youth who become the subject of juvenile delinquency petitions before their 18th birthday are subject to the jurisdiction of Virginia's Juvenile and Domestic Relations Court (J&DR Court).[3] Before a youth may be transferred or certified to the adult Circuit Court, the J&DR Court must hold a preliminary hearing. Depending on the status of the case, the preliminary hearing can either be a full review of which court the young person can be tried in, or it can be a perfunctory hearing in which competence is presumed and the prosecutor only needs to establish probable cause to send the case to the Circuit Court.[4]

There are a series of factors the court can consider when determining if a young person should remain in the juvenile court. (These factors only apply to *judicial waiver* decisions and do not apply when the case is *statutorily excluded*.)

- The seriousness and number of alleged offenses;
- The record and previous history of the youth in this or other jurisdictions;
- The youth's age;
- Whether the youth has previously absconded from the legal custody of a juvenile correctional entity in any jurisdiction;

Virginia allows for young people to be sent to the adult criminal justice system, including incarceration in jails and prisons, through a variety of legal mechanisms.

- The extent, if any, of the youth's degree of mental retardation or mental illness;
- The youth's school record;
- The youth's mental and emotional maturity;
- The youth's physical condition and physical maturity;
- Whether the youth can be retained in the juvenile justice system long enough for effective treatment and rehabilitation; and
- The appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the youth's problems.[5]

Judicial discretionary waiver.[6]
As stated, in some cases the juvenile court retains discretion over the transfer decision. To do so, the court must first conduct a transfer hearing.[7] If a youth is alleged to have committed a crime that would be considered a felony if committed by an adult,[8] the prosecutor may move to have the young person tried as an adult. There is a rebuttable presumption[9] (i.e., it is taken to be true unless someone comes forward to contest it and proves otherwise) that the juvenile is competent to stand trial as an adult. The burden of proof rests on the young person to show that the state has not met the thresholds (that a young person is competent, 14 or older, written notice was given, and that there was probable cause that the youth committed the crime) for him or her to be tried as an adult. If a judge finds probable cause, the court must decide whether the youth is "not a proper person" to remain within the jurisdiction of the juvenile court. The court can then consider the above factors when making the decision.[10]

The burden of proof rests on the young person to show that the state has not met the thresholds for him or her to be tried as an adult.

Prosecutorial waiver or certification.[11]
In Virginia, the "certification procedure," which is similar to the direct file procedure in other states, places the choice of prosecution in an adult or juvenile forum solely in the hands of the prosecutor, who in Virginia is referred to as the "Commonwealth Attorney."[12] The prosecutor may elect to try a youth as an adult if the youth is charged with certain crimes.[13] The prosecutor must provide "written notice of his intent" to try the youth as an adult,[14] and a hearing must be held. Once again, it is up to the young person being charged to prove that he or she is not competent[15] to stand trial as an adult. If the J&DR Court finds that the young person is at least 14 years old, that the prosecutor has provided written notice of wanting to try the young person as an adult, and that there is probable cause that the youth committed the crime, the charge is certified to Virginia's Circuit Court. If these thresholds are met, the court has no discretion to retain juvenile court jurisdiction.[16] The transfer factors used in discretionary waiver proceedings have no bearing on this certification decision.

Statutory or legislative exclusion or mandatory waiver.[17]
If a youth is charged with certain forms of murder or aggravated malicious wounding, and the same legal thresholds are met in a hearing (that a young person is competent, 14 or older, written notice was given, and that there was probable cause that the youth committed the crime), the young person will be tried as an adult. Assuming that these thresholds are met, the juvenile court has no discretion to retain juvenile court jurisdiction. Again, the transfer factors described under the state's discretionary waiver have no bearing on this decision.

Reverse waiver.
If the young person is waived to the adult court under discretionary waiver, the youth may appeal the decision and try to get transferred back to the juvenile court. A young person has

10 days to appeal the transfer decision. The adult Circuit Court has jurisdiction over this appeal and may decide to keep the case or return it to the juvenile court for adjudication and disposition.[18] With the exception of the probable cause determination, which is not subject to review on appeal, the Circuit Court may review the J&DR Court's transfer decision to determine if it was in compliance with Virginia's transfer statute.[19] Also, when a prosecutor's motion to transfer a youth to the adult court is denied, he or she may appeal this decision to the adult Circuit Court, if it is in the public interest to do so.[20]

Virginia is a blended sentencing state.
In Virginia, youth tried as adults are entitled to jury trials, but are sentenced by Circuit Court judges. In most cases, young people who are tried as adults may be sentenced, at least partly, as youth, but the availability of some juvenile sentencing options turns upon whether the offense is categorized as a violent juvenile felony.[21] If this threshold is met, a youth may serve a portion of the sentence in the juvenile justice system and serve the rest of the sentence in the adult system. Youth also may receive a suspended adult sentence if they successfully complete their juvenile term. If the offense is not categorized as a violent juvenile felony, the Circuit Court can then sentence the juvenile as either an adult or as a juvenile. This can include a commitment as a "serious juvenile offender," which allows the court to sentence a youth to a longer term in a juvenile correctional facility than is otherwise permissible under Virginia law. Typically, the maximum juvenile sentence is three years,[22] but a "serious juvenile offender" may be sentenced for up to seven years, or until the juvenile's 21st birthday, whichever occurs first.[23] In these cases, the Court reviews the progress of the youth on an annual basis beginning on the second anniversary of the sentence, and has the authority, even when the youth has been sentenced as an adult to a blended sentence, to suspend the remaining juvenile and/or adult time if the young person has demonstrated necessary progress.[24]

Other distinctive features of Virginia's adultification statutes.
In Virginia, prosecutors may move to certify a felony or misdemeanor offense not otherwise eligible for certification to adult court, to the adult court for trial if the offense is "ancillary" or related to another offense that is subject to certification.[25] "Ancillary charge" means that any delinquent act committed by a juvenile as a part of the same act or transaction, or which constitutes a part of a common scheme or plan with, a delinquent act which would be a felony if committed by an adult."[26] If the juvenile court determines at the preliminary hearing that a charge is ancillary to a certified charge, the charge will be sent to the adult court for prosecution and disposition with the certified charge.[27] Also, in Virginia, when certain offenses are tried in the adult court, they are subject to mandatory minimum adult prison sentences. For example, the crime of use of a firearm in the commission of a felony carries three years of mandatory adult prison time for a first offense, and trumps the ability of the Circuit Court Judge to order a juvenile sentence.[28]

In Virginia, when certain offenses are tried in the adult court, they are subject to mandatory minimum adult prison sentences.

Once an adult, always an adult.
Virginia's *Once an Adult, Always an Adult* provision had created an alternative and unfortunate avenue to adult court jurisdiction for juveniles who were certified or transferred to the jurisdiction of the adult court in a prior proceeding. According to the Virginia Supreme Court's interpretation of this statute, the transfer of a youth to adult court would have kept all future charges in adult court, even if the charges first brought in Circuit Court were ultimately dismissed.[29] Additionally, this statute did not distinguish between subsequent felony and misdemeanor offenses.[30] Therefore, a misdemeanor offense, which could not normally be brought against a youth in circuit court, would have required prosecution in the adult court if the youth was tried or treated as an adult in a prior proceeding. As this report goes to press, a bill passed both houses of the Virginia General Assembly to change Virginia's law to provide that only youth 'convicted' of crimes in circuit court had to be tried again for subsequent offenses in circuit court. This amendment to the statute passed both houses unanimously and is an example of how advocates and legislators can work together to make common-sense improvements to the administration of juvenile justice.

Young people convicted in the adult court can end up in adult jails and prison. Virginia permits, but does not require, that youth awaiting trial as adults can be housed with the general population in adult jails without the sight and sound separation benefits allotted to youth being tried as juveniles detained in adult jails.[31] After a youth was brutally beaten in the Virginia Beach Jail, the law, which previously mandated that youth be placed in adult jails, was changed in 1997 to make this placement discretionary. According to a recent report by Amnesty International USA, of the 2,225 youth in the United States serving life without the possibility of parole, the adult Virginia Department of Corrections (DOC) houses 48 of them.[32]

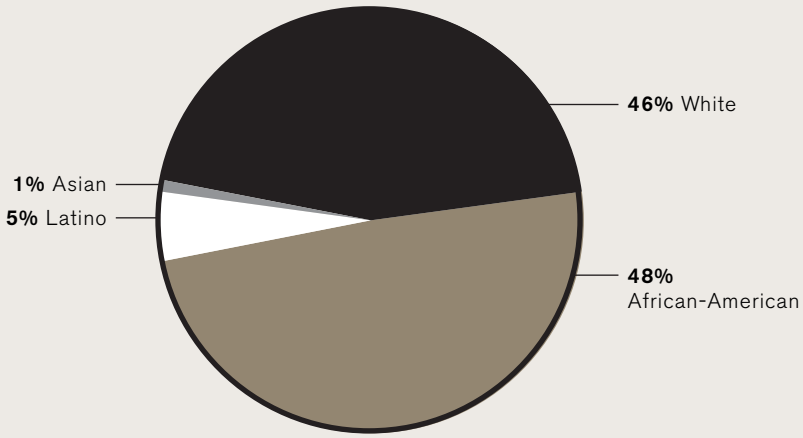
After a youth was brutally beaten in the Virginia Beach Jail, the law, which previously mandated that youth be placed in adult jails, was changed to make this placement discretionary.

WHO IS AFFECTED BY THE LAWS IN VIRGINIA?

The Virginia Supreme Court, State Police, Department of Juvenile Justice, and Department of Corrections each keep data relating to juvenile transfer and certification. However, because youth who are tried as adults begin in the juvenile system, move into the adult system, and may then be sentenced as either adults or juveniles, the available data are not kept in one centralized or uniform depository. As a result, it is difficult to determine the number of youth who are affected each year by Virginia's transfer and certification laws. The following statistics provide the best available estimates of the number and characteristics of the young people who are affected by Virginia's laws.

Arrest and convictions data.
In 2005, there were 32,980 arrests of youth under the age of 18 in Virginia.[33] Of those arrests, just over 1,000 were for violent index offenses, classified by the Federal Bureau of Investigation as murder, rape, robbery, and aggravated assault.[34] African-American youth comprised fewer than half of all juvenile arrests in 2005.[35]

2005 youth arrests (All Offenses)



Source: Virginia Incident-Based Reporting System, Virginia State Police. (2005).

According to the Virginia Sentencing Commission, 325 youth were convicted of a felony in adult circuit court in 2003, 306 youth were convicted in 2004, and 291 in 2005.[36] According to the Virginia Department of Juvenile Justice, in each year at least one-third or more of these youth were initially sentenced to the Department of Juvenile Justice to serve all or at least a portion of their sentence.[37] This percentage represents a much

larger percentage of sentenced juveniles than those are who are placed directly into the Department of Corrections.

Specifically, according to the Virginia Department of Corrections,[38] in 2003, 75 youth were admitted to the adult corrections system. Seventy-two were sentenced in 2004 and 59 were sentenced in 2005. Since most young people who are sentenced are likely sentenced to the adult system for more than a year, there is probably little double counting in the sentencing figures.

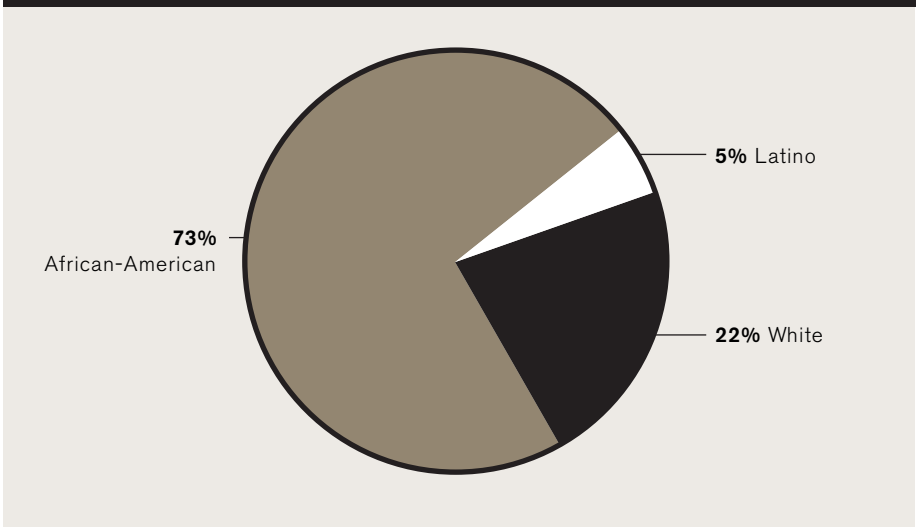
Even though many youth appear to be sentenced as juveniles, it is important to remember that all youth convicted as adults, regardless of where they are placed, face the same collateral consequences and barriers imposed by adult felony convictions.

The racial, ethnic, and offense profile of young people sent to the adult system. In 2005, of the 59 new court commitments (youth transferred and convicted in adult court and sentenced to the DOC on an annual basis), 73% were African-American and 24% were for non-violent offenses. In 2004, 67% of new commitments were African-American and in 2003, 69% were African-American.

From 2003 to 2005, between 8% and 15% of youth incarcerated in adult prisons (the standing population of juveniles in adult prison on any given day) were serving time for non-violent offenses. Further, of those youth sentenced to serve time in the DOC from 2003 to 2005, approximately 4% were girls. Sixty-nine percent of new court commitments during this period were African-American.

In 2005, of the 59 new court commitments to the Virginia Department of Corrections, 73% were African-American and 24% were for non-violent offenses.

African-American youth constituted fewer than half of all youth arrested in Virginia, but represented 73% of youth entering the adult corrections system



Source: 2005 New Court Commitments, All Offenses Data provided by Laura Cross, Virginia Department of Corrections (2006)

YOUNG PEOPLE AND FAMILIES AFFECTED BY VIRGINIA'S LAWS

The Reverend Jones,[39] the father of six adult children, became a big brother to Jim[40] when he was 11 years old. For several years, he took Jim with him to church group meetings, movies, and community activities. He was committed to providing Jim with a positive adult male role model. Shortly after Jim turned 14, he was arrested and, though these were his

first alleged offenses, tried as an adult. Reverend Jones had this to say about Virginia's practice of trying youth as adults:

> ... I feel Jim is a young black male now caught up in a legal system not really looking out for his best interest nor has taken the time to investigate the history of this young man.
>
> My greatest fear about what has happened is that this criminal system is doing the opposite of what it is designed to do and Jim will end up being another angry young black male with no dream and no future. Because in his mind society has demonstrated that he is of little value. It's hard to believe we have a justice system that is designed to strip a young man of his self-worth at such a young age and call it rehabilitation. When and where does common sense come into play?

WHAT ARE THE POLICY OPTIONS IN VIRGINIA?

Raising attorney's fees: Findings of the American Bar Association assessment. For several years, attorneys have advocated for an increase in payment for court-appointed attorneys and "issue-specific training" for attorneys who handle serious cases.[41] In 2004, *A Comprehensive Review of Indigent Defense in Virginia* found that "Virginia's indigent defense system is deeply flawed."[42] Specific findings from the ABA report include:

- "The unwaivable statutory fee caps for court-appointed counsel in Virginia are the lowest in the country."
- "The unreasonably low statutory fee caps act as a disincentive to many assigned counsel from doing the work necessary to provide meaningful and effective representation of their indigent clients. The judges, Commonwealth's Attorneys and juvenile court personnel...agree that low fees are a disincentive to zealous advocacy."
- "There is great disparity in resources afforded to public defenders and Commonwealth's attorneys."[43]

"The fee caps for court-appointed counsel in Virginia are the lowest in the country." –A Comprehensive Review of Indigent Defense in Virginia, American Bar Association (2004)

Despite the advocacy work done to improve pay for defenders, the pay gains for court-appointed and public defenders have been minimal. The maximum total fee per juvenile charge is just $120, while each Circuit Court felony charge is capped at $445.[44] There is an exception for felonies punishable by more than 20 years in prison; the fee for representation in these cases is capped at $1,235.[45] The fee caps are particularly onerous in juvenile transfer cases where lawyers should perform diligent investigation and preparation in advance of the transfer hearing, as well as the trial, but the fee–$120–will remain the same.

A December 2005 newspaper editorial by Esther Windmueller, a Richmond, Virginia, attorney, noted that "[e]ven though many court-appointed lawyers and public defenders work tirelessly for their underprivileged clients, too often Virginians have received exactly what we've paid for: a system where, as the [American Bar Report] put it, 'substandard practice has become the accepted norm.'" The governor of Virginia, Tim Kaine, recently proposed increased funding totaling nine million dollars to address this problem, but this proposal awaits an uncertain fate in Virginia's General Assembly. In addition, the Virginia Indigent Defense Commission has recently approved rigorous standards for lawyers representing accused youth. The combination of more rigorous standards and improved compensation will address the persistent problems with Virginia's indigent defense system.

Introducing legislation to remove youth from juvenile detention and send them to jail if they are awaiting trial as adults.
HB1332, legislation introduced in 2006, would have required that youth awaiting trial be transferred to the adult criminal justice system and placed in adult jails, as opposed to juvenile detention facilities. The bill failed to become law.

Conducting legislative studies on disproportionate minority contact and access to legal representation.
Representative Brian Moran (D-Alexandria) introduced legislation that has led to House Joint Resolution No. 136 which asked the Virginia State Crime Commission to examine the juvenile justice system, paying particular attention to the following issues: disproportionate minority contact, and quality access to legal representation in accordance with American Bar Association recommendations.[46] This study, due to the legislature in November of 2007, will report on the Crime Commission's findings.

VIRGINIA RECOMMENDATIONS

- **Organize the collection of data on youth tried and sentenced as adults.**
  As mentioned, data relevant to studying the practice of trying and sentencing youth as adults are hard to access in Virginia. Different agencies have different pieces of information. It is very difficult to determine the exact number of youth tried in Circuit Court and the exact resolution of their cases. The initial data collected for this report suggest that Circuit Court Judges are, at least initially, treating more of the young people who come before them as youth rather than as adults. More information might confirm this trend and raise important questions for policymakers. In addition, it would be helpful for researchers to understand the relationship between geography and juvenile transfer. Given the latitude accorded prosecutors to decide which court will try juvenile offenders, it would be useful to learn more about how this discretion is exercised.

- **Ensure judicial discretion prior to certification to adult court.**
  Virginia's legislature recognizes that there are varying degrees of criminal culpability and concludes that not all juveniles have equal rehabilitative potential. Seriousness of the offense is but one of 10 factors that a J&DR Court "shall" consider before determining if transfer to adult court jurisdiction is appropriate.[47] However, in certification cases, which tend to constitute the more serious offenses, judges have no discretion in determining if the adult forum is most appropriate for prosecution. In these cases, the juvenile court must certify juveniles to adult court merely upon finding probable cause. In contrast, transfer hearings provide a forum for these mitigating circumstances to be presented and assessed when determining the appropriate forum for prosecution. Providing discretion to J&DR Court judges, who typically occupy the bench for many years and review thousands of cases, would leave the transfer decision in the more appropriate hands of experienced evaluators of amenability to treatment and future dangerousness. Deputy prosecutors, who often serve very short tours of duty in juvenile court, do not have this type of experience.

- **Provide judges with discretion to sentence youth as youth, even if the charge carries mandatory minimum adult time for adults.**
  In Virginia, mandatory minimum adult sentencing provisions trump those portions of the Virginia law that permit juveniles who are convicted by adult courts to be sentenced as juveniles or given suspended adult time. Offenses that carry mandatory minimum adult sentences, such as Virginia's use of a firearm statute, are intended to deter "violent criminal conduct" rather than reform "the most dangerous class of criminals."[48] Given the impulsive nature of most youth, the deterrent purpose may be of minimal value when

applied to juvenile offenders and likely would be far outweighed by the availability of appropriate rehabilitative services.

- **Keep youth out of adult jails.**
  Jails are, by their very nature, short-term housing facilities. Because they do not tend to serve many youth at any one time, they often lack the education and mental health services so critical to a young person's rehabilitation. They do not have adequate staff, facilities, or experience to serve a juvenile population. By contrast, juvenile detention centers are well-versed in their obligations to provide educational services, mental health services, and other relevant services to juveniles.

- **Increase the quality of the defense afforded indigent youth facing transfer and certification.**
  Specifically, Virginia should improve the pay provided to defense counsel who represent indigent juvenile defendants and waive the caps for those representing youth facing transfer to Circuit Court.

- **Require J&DR Courts to consider each of the statutory transfer factors before a transfer decision is made.**
  The current statutory language states that although the J&DR Court "shall consider, but not be limited to" the statutory transfer factors, "no transfer decision shall be precluded or reversed on the grounds that the court failed to consider any of the[se] factors."[49] This qualifying language needlessly chips away at statutory transfer factors, including the age of the defendant, the number of prior court contacts, and the appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the youth's problems. These are factors that the legislature has concluded are relevant in determining whether transfer is appropriate.

- **Change the minimum age for prosecution of a youth as an adult.**
  The minimum age for prosecution as an adult is currently 14. The minimum age should be raised to fit with what we now know about juvenile culpability. New research shows that differences exist in young people's brain functioning that contribute to their cognitive abilities. Although 16-year-olds may have the same intelligence or ability to reason as adults, in high-pressure crime situations, short-sighted decision-making, poor impulse control, and vulnerability to peer pressure may undermine a youth's decision-making capacity.[50] These developmental differences between youth and adults are key factors in justifying the special considerations made for youth and the existence of the juvenile justice system.[51]

NOTES

1. Va. Code § 16.1-269.1.
2. Va. Code §§ 16.1-228, 16.1-278.8(A)(14).
3. Va. Code§ 16.1-241. This is true even if the delinquency petition is initiated after the juvenile's 18th birthday. However, juveniles who reach the age of 21 before they are charged with a felony that occurred before their 18th birthday are adjudicated as adults.
4. Va. Code § 16.1-269.1(A)(4).
5. Va. Code § 16.1-269.1(A)(4).
6. Va. Code § 16.1-269.1(A).
7. Va. Code § 16.1-269.1(A).
8. This provision relates to felony offenses that are not eligible for certification pursuant to Va. Code § 16.1-269.1(B) or (C)) (typically less-serious felony offenses) or felony offenses that are eligible for certification pursuant to Va. Code § 16.1-269.1(C), but that the Commonwealth did not choose to certify to the Circuit Court. As a practical matter, Commonwealth Attorneys tend to use the Va. Code § 16.1-269.1(C) procedure, where possible, as it is an easier standard to meet and puts the Commonwealth in a better bargaining position for possible plea negotiations.
9. Va. Code § 16.1-269.1(A) (3), (D).
10. Va. Code § 16.1-269.1(A).
11. Va. Code §16.1-269.1(C).
12. Va. Code § 16.1-269.1(A).
13. Robbery, malicious wounding, abduction, carjacking, rape, or other specific charges set forth in Va. Code § 16.1-269.1(C).
14. Va. Code § 16.1-269.1(C).
15. Va. Code § 16.1-269.1(A) (3), (D).
16. Va. Code § 16.1-269.1(A) (1), (C), (D).
17. Va. Code § 16.1-269.1(B).
18. Va. Code § 16.1-269.4.
19. Schwartz v. Commonwealth of Virginia, 41 Va. App. 61, 70 (2003); Va. Code § 16.1-269.1(A).

[20] Va. Code § 16.1-269.3.

[21] A "violent juvenile felony" is defined as any offense that is subject to certification to the adult court pursuant to Va. Code § 16.1-269.1(B) or (C). The statute reads that, under this provision, a juvenile may "serve a portion of the sentence as a serious juvenile offender ... and the remainder of such sentence in the same manner as provided for adults"; (ii) "... serve the entire sentence in the same manner as provided for adults"; or (iii) a suspended adult term "conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case...." [see Va. Code § 16.1-272(A)(1)].

[22] Va. Code § 16.1-285.

[23] Va. Code § 16.1-285.1

[24] Va. Code §§ 16.1-285.1, 16.1-285.2.

[25] Va. Code §§ 16.1-269.1(D), 16.1-272.

[26] Va. Code § 16.1-228.

[27] Va. Code §§ 16.1-269.1(D). "If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes the court may order that" the juvenile be sentenced as an adult for a violent juvenile felony. Va. Code § 16.1-272(A)(1). If a juvenile is convicted by the Circuit Court of a felony offense, other than a violent juvenile felony, he may be sentenced as a juvenile or an adult. Va. Code § 16.1-272(A)(2). "If the juvenile is not convicted of a felony but is convicted of a misdemeanor," he will be sentenced as a juvenile. Va. Code § 16.1-272 (A)(3).

[28] Va. Code § 18.2-53.1.

[29] See, for example, Cook v. Commonwealth, 268 Va 111 (2004).

[30] Va. Code § 16.1-271.

[31] Va. Code § 16.1-249(D).

[32] Amnesty International and Human Rights Watch. (2005). *The rest of their lives: Life without parole for child offenders in the United States.* New York: Author.

[33] FBI Uniform Crime Reports, Crime in the United States, 2005.

[34] Ibid.

[35] Electronic data files from the Virginia Incident-Based Reporting System, compiled by the Virginia State Police.

[36] *Felony sentencing patterns for juveniles convicted in Circuit Court (FY2001-2005)*, presentation to the Virginia State Crime Commission by Richard Kern, Director of the Virginia Criminal Sentencing Commission.

[37] Virginia Department of Juvenile Justice report to the Virginia State Crime Commission. PowerPoint Presentation on Juvenile Justice Trends. (2006, October 18).

[38] Unless otherwise noted, all data from this section were provided by Laura Cross at the Virginia Department of Corrections, July 2006.

[39] Permission was obtained to use real names, except where otherwise noted.

[40] Jim is a pseudonym.

[41] The American Bar Association Juvenile Justice Center and the Mid-Atlantic Juvenile Defender Center. (2002, September). *Virginia: An assessment of access to counsel and quality of representation in delinquency proceedings.* Washington, DC: Author.

[42] Spangenberg, R. L. (2004, January). *A comprehensive review of indigent defense in Virginia* (Executive Summary). Washington, DC: American Bar Association Standing Committee on Legal Aid and Indigent Defendants. Retrieved January 29, 2007, from http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/va-report2004.pdf

[43] Ibid.

[44] Va. Code § 19.2-163.

[45] Ibid.

[46] House Joint Resolution No. 136 (2006).

[47] Va. Code § 16.1-269.1(A)(4).

[48] Bullock v. Commonwealth, 48 Va.App. 359, 377 (2006).

[49] Va. Code § 16.1-269.1(A)(4).

[50] MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. (2006, September). *Less guilty by reason of adolescence.* Philadelphia, PA: Author.

[51] Ibid.

THE CONSEQUENCES AREN'T MINOR

WHAT IS THE LAW IN WISCONSIN?

In Wisconsin, juvenile court jurisdiction runs until the age of 17.
Since 1996, 17-year-olds have been excluded from juvenile court jurisdiction by law.[1] After youth crime spiked in the early 1990s, then-Governor Tommy Thompson initiated a change in the juvenile laws for the state of Wisconsin. With the change, Wisconsin became one of only 13 states to statutorily exclude 17-year-olds from juvenile court jurisdiction.

Since 1996, 17-year-olds have been excluded from juvenile court jurisdiction by law.

Young people 10 and up can be tried in adult court. Under Wisconsin's statutory exclusion provision, youth as young as 10 years old must have their cases filed in criminal court for the following violent offenses: first- or second-degree intentional homicide, attempted first-degree intentional homicide, or first-degree reckless homicide. A young person who is accused of committing assault or battery while detained in a secure correctional facility also must be tried in criminal court.[2] Under the state's prosecutorial waiver provision, prosecutors can request that cases be waived to criminal court when youth as young as 14 are accused of felony murder, second-degree reckless homicide, first- or second-degree sexual assault, taking hostages, kidnapping, burglary, robbery with a dangerous weapon, manufacturing or distributing controlled substances, or the commission of a felony at the request of a gang.[3] Under the same provision, youth 15 and older can be waived into adult court for any crime. Once a young person is in adult court, there is an opportunity to attempt a "reverse waiver." This waiver allows the youth to return to the jurisdiction of the juvenile court. The burden of proof for these cases rests on the youth; these cases are rarely successful.

In practice, youth as young as 13 have been tried as adults in Wisconsin. Some of the youngest people tried in the adult system are there because of a provision that mandates that youth who commit an assault in a juvenile correctional facility be automatically treated in adult court.[4]

In practice, youth as young as 13 have been tried as adults in Wisconsin.

Once an adult, always an adult.
After having been tried as an adult, an individual under age 17 cannot return to juvenile court for subsequent offenses.[5] This provision affects youth disproportionately in counties that use the prosecutorial waiver provision more often. There is a wide disparity between counties in how the waiver is used. Some counties have not waived a youth in several

years, while others waive upwards of 50 per year. In 2005, of the 377 juveniles waived into adult court, 10 out of the 72 counties accounted for 276 of the waivers.[6]

Young people convicted in the adult court end up in the adult jails and prisons. In Wisconsin, youth age 15 or older under adult court jurisdiction can be detained pre-trial in the general adult population in local jails without the sight and sound separation allotted under federal law to youth held as juveniles.[7] After sentencing, the Department of Corrections (DOC) has the final authority in matters concerning placement of waived youth. Any youth who has not reached the age of 15 can be placed in a juvenile correctional facility even if that youth has been sentenced to the DOC.[8] However, the DOC can sentence youth as young as age 10 to adult prisons.

Youth held in adult facilities do not have access to the same programs as their counterparts in juvenile facilities. In juvenile facilities, youth must attend school. However, in adult jails and prisons, education, if available, is voluntary.

In Wisconsin, as is generally the case elsewhere, juvenile and adult correctional facilities operate with different presumptions and purposes. This affects the conditions and types of services a young person might encounter. Youth held in adult facilities do not have access to the same programs as their counterparts in juvenile facilities. For instance, in juvenile facilities, youth must attend school. However, in adult jails and prisons, education, if available, is voluntary. Additionally, group and individual therapy sessions are not provided in the vast majority of adult facilities but are mandatory in the bulk of juvenile programs. Rehabilitative programming such as conflict resolution classes or substance abuse treatment is more accessible in juvenile facilities than in jails or prisons.

In 2005, the Civil Rights Division of the U.S. Department of Justice (DOJ) undertook an investigation of conditions and practices at the Wisconsin DOC's Taycheedah Correctional Institution in Font du Lac, Wisconsin. That facility currently houses more than 700 maximum and medium security female inmates, including girls age 14 and older. The DOJ commended the state's efforts to detect, minimize, and prevent sexual misconduct, but it also concluded that "certain conditions at Taycheedah violate inmates' constitutional rights by failing to provide for inmates' serious mental health needs."[9] Among the specific failures cited by the DOJ are:

- *"Failure to provide a minimal array of mental health programming, crisis services, and specialized treatment for inmates with acute mental illness."* Because the one inpatient psychiatric facility in the area is overcrowded and ill-equipped to handle inmates who pose a danger to themselves or others, "Taycheedah staff resort to the use of segregation and observation status to control inmates' dangerous behavior, which not only fails to solve the problem, but often exacerbates it." In June 2005, shortly after being discharged from the inpatient facility because "her behavior was too difficult to manage," an 18-year-old inmate fatally asphyxiated herself while in administrative segregation. When investigators from the DOJ visited Taycheedah in July 2005, they found 44 out of the 59 individuals in segregation had serious mental illnesses and appeared to be in significant distress. They also met a 15-year-old inmate who was placed in long-term segregation as a result of "problematic behavior." She had been diagnosed with attention deficit disorder and intermittent explosive disorder, but was not receiving medication, mental health treatment, or educational services. They concluded that the Monarch Special Treatment Unit at Taycheedah is supposed to "provide specialized treatment to those inmates...with the most acute mental illnesses," but the unit provides "almost no programming," leaving "the vast majority of inmates... unoccupied for most of the day."

- *"'Grossly inadequate' staffing of mental health providers."* Taycheedah employs only two part-time psychiatrists and each carries a caseload of more than 400 patients at a time. As a result, "inmates with serious mental health needs are left untreated, sometimes for as long as several months." The ACLU's National Prison Project recently filed a class action lawsuit on behalf of four prisoners at Taycheedah who suffered invasive surgeries

and permanent disablement as a result of the prison's neglect of their medical needs.[10] The suit is pending. The ACLU also noted a discrepancy in treatment options for seriously mentally ill women in the WI DOC.

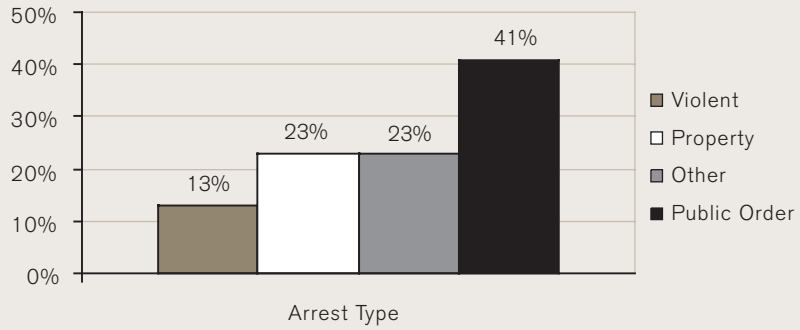
- *"[Wisconsin Department of Corrections]'s February 2006 Status Report on adult correctional health care, produced at the request of the Joint Committee on Finance, concedes that although a much greater percentage of the female prison population has mental health needs, women prisoners do not have access to inpatient mental health care that is "comparable" or even "similar" in quality to the care available to incarcerated men at the Wisconsin Resource Center (WRC)."*[11] And although juvenile boys with serious mental health problems have the Mendota Juvenile Treatment Center, operated by the Department of Health and Family Services, available to them for specialized treatment and inpatient care, the ACLU found that females under the age of 18 with serious mental health issues only have access to mental health treatment at Southern Oaks Girls' School. This facility is operated by the juvenile corrections division, not the Department of Health and Family Services. Although women and girls constitute the minority of incarcerated people, many of these inmates have special needs that require more attention than male inmates. Incarcerated women are more likely than men to come from poverty-stricken neighborhoods and to be single parents of minor children.[12] Furthermore, female prisoners are at least three times as likely as their male counterparts to have experienced physical or sexual abuse, and are more likely to use drugs or have substance abuse problems.[13] Denying services to this vulnerable population could negatively affect the children of incarcerated women, the community, and the prisoner herself.

WHO IS AFFECTED BY THE LAWS IN WISCONSIN?

In 2002, there were almost 14,000 admissions of 17-year-olds to adult jails; the vast majority was arrested for non-violent offenses.[14] Only 15% of these youth were arrested for violent crimes such as murder, rape, aggravated assault, and robbery.[15] Seventy percent of these youth were held in adult jails prior to trial and 28% (more than 3,000 youth) were sentenced to serve time in jail. Almost half of all 17-year-olds in adult jails were housed in jails in a different county than where the crime was committed.[16] This means that when in jail, youth are away from their homes, families, and community.

In 2002, there were almost 14,000 admissions of 17-year-olds to adult jails; the vast majority was arrested for non-violent offenses. Only 15% of these youth were arrested for violent crimes such as murder, rape, aggravated assault, and robbery.

In 2003, 87% of all 17-year-old admissions to adult jails in Wisconsin were non-violent crimes

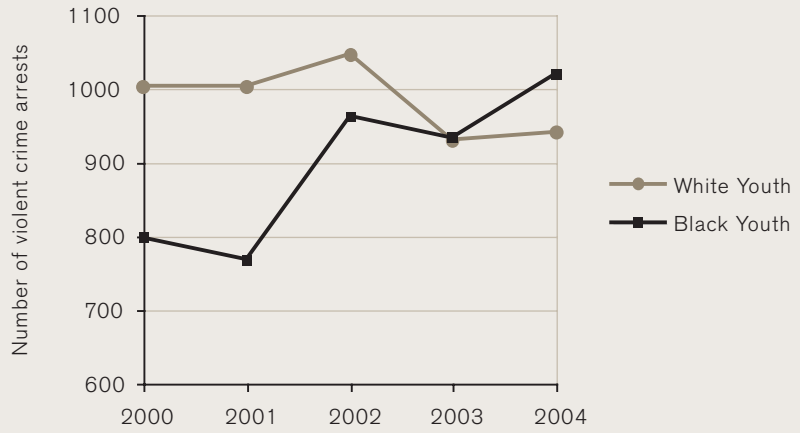


Source: Office of Justice Assistance. 2003 Adult Jail Populations Report.

Compared to 2004, youth arrests for both violent and non-violent crimes were down in 2005. In 2004, there were more than 28,000 arrests of 17-year-olds in Wisconsin, but only 1.5% of these arrests were for violent index crimes.[17] Violent crime arrests for all youth under age 18 were down almost 12% and property crimes were down 18%; overall there was a 8.9% decrease in all juvenile arrests in 2005, mirroring a 10-year trend of decreasing juvenile arrests.[18] In Milwaukee, "where prison terms are handed down on a daily basis to young men and women convicted of selling a gram or less of cocaine," officials have cracked down on drug crimes in the last decade, prosecuting more people for non-violent drug offenses than the other 71 Wisconsin counties combined.[19] In 2005, Milwaukee waived 20 youth to adult court.[20] As of July 2006, there were 46 youth age 17 and younger in adult prisons in Wisconsin.[21] Forty-three of these youth were male, and one out of every five youth in adult prisons was 16 years old or younger. Further, 15% of the youth held in adult prisons were arrested for non-violent offenses such as property and drug offenses.

Despite the decrease in juvenile arrests, arrests of African-American youth are increasing. Between 2000 and 2004, violent crime arrests of white youth fell by 6.4% and overall white youth arrests decreased by 17%. However, during this time, African-American juvenile arrests for violent offences increased almost 28% and overall arrests increased 13%.[22] These increases are cause for concern and constitute possible evidence of racial disparities in policing practices. National research from the Justice Department has shown no significant difference between youth of differing races and their propensities toward criminal behavior.[23]

Arrests of African-American youth increased 27.9%



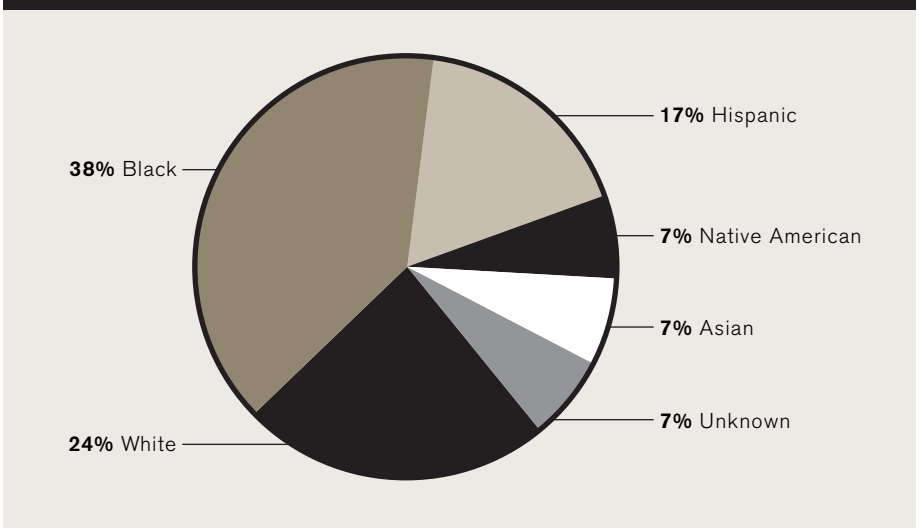
Source: Wisconsin Office of Justice Assistance. Crime and Arrests Reports. 2000-2004.

In 2004, there were more than 28,000 arrests of 17-year-olds in Wisconsin, but only 1.5% of these arrests were for violent index crimes.

In 2002, the Governor's Juvenile Justice Commission started the Disproportionate Minority Confinement Reduction Initiative to address Wisconsin's juvenile justice system's growing racial disparities. At that time, youth of color made up only 17.3% of the youth population, but they accounted for 37% of youth waived to adult courts and 52.5% of youth in adult lock-ups.[24] Youth of color continued to be overrepresented in the number of youth waived to adult court in 2004; in some counties, youth of color were more than twice as likely to be waived as white youth.[25] In Milwaukee County, Wisconsin's most populous county, of the 13 youth waived in 2004, only one was white.[26] Despite Wisconsin's DMC Reduction Initiative, youth of color are still overrepresented in adult facilities.

African-American youth make up just 10% of Wisconsin's youth population,[27] but they represent 38% of all youth in Wisconsin adult prisons and 43% of non-violent juvenile offenders in adult prisons in 2006.[28] When combining Asians, Latinos, Native Americans, and African-Americans, non-white youth constitute 15% of the state's youth population, but they represent nearly 70% of youth in adult prisons.[29]

Majority of arrests for 16- and 17-year-olds are non-violent offenses



Source: Robert Nikolay, Budget Director, Wisconsin Department of Corrections.

African-American youth make up just 10% of Wisconsin's youth population, but they represented 38% of all youth in Wisconsin adult prisons and 43% of non-violent juvenile offenders in adult prisons in 2006.

YOUNG PEOPLE AND FAMILIES AFFECTED BY WISCONSIN'S LAWS[30]

Jane: Running Late.
Jane, the first-born in her family, was raised by her mother in a small town in Wisconsin. Her working-class, Caucasian parents divorced when she was a toddler and throughout her life Jane's only regular contact with her father was over the phone. Her father is an alcoholic and cocaine addict who has been jailed for a number of misdemeanors. He is currently facing jail time for failing to pay back child support.

Jane attended Catholic school and earned good grades, but she was picked on alot. She was on the honor roll until eighth grade. Then she befriended a new crowd, began skipping school regularly, and her grades began to suffer. When she was 14, Jane started drinking alcohol and smoking marijuana. She got into trouble with the law, receiving tickets for truancy, disorderly conduct, trespassing, underage drinking, and cigarette possession.

Despite this early delinquency and her reported negative self-image, Jane managed to pass eighth grade. Upon entering ninth grade, in hopes of starting high school off right, she joined the cheerleading squad, but she was kicked off for smoking a cigarette in uniform. Jane continued skipping school and her academic performance suffered. She also got into fights with her brother because she was stealing money from him and other family members.

To help Jane treat her depression and marijuana use, Jane's mother got her admitted to a two-month outpatient drug program. While in the program, Jane met a young man, Steve, and they began dating. In the middle of the program, Jane stopped attending meetings, became depressed, and began drinking excessively. She never wanted to be at home. Her mother placed her in a 13-day inpatient program, but Jane didn't respond to the treatment.

At the same time, Steve moved to a different town and they stopped dating. Jane continued to date other young men, drink alcohol, and she frequently ran away from home.

To get a fresh start, Jane moved in with her aunt to another small town in Wisconsin. While there, she attended school, but again she befriended another "negative crowd." After three months of improvements, she began to date a young man in secret and skip school. Jane's aunt made her leave the home, and Jane moved back in with her mother. It was then that she reconnected with her ex-boyfriend, Steve, and the two resumed their relationship.

Jane described Steve as very "controlling." Steve was a drug user and the two of them began to use ecstasy pills at least one to two times per week. She also experimented with cocaine, smoked crack a few times, snorted Attention Deficit Disorder medications, smoked opium, and occasionally smoked marijuana.

During this time, she took her mother's car without permission. Her mother reported the theft to the police and Jane was arrested, charged as an adult, and spent the night in jail. She was later found guilty of the misdemeanor offense and was sentenced to probation and an ankle monitor. She later ended her relationship with Steve, who himself ended up in jail.

After this run-in with the law, Jane returned to school, got a job at Burger King, and by the time she turned 17, she had repaired her relationships with her mother and brother. She also began dating a young man whom she described as responsible. He held a steady job and encouraged her sobriety. Although she met her probation obligations, Jane said she did not take them seriously. Jane did try to get into a women's issues group to help with her self-esteem and depression problems, but since she was 17, it took 10 months to get into this program. She was also supposed to go to anger management therapy and drug treatment. Jane, by her own account, was overcoming many of the issues she'd been facing.

One day when she was late for school, Jane took her neighbor's bike from their yard and used it to get to class. The police charged Jane with a probation violation and she was jailed in adult jail. This incident led to Jane being incarcerated for 75 days in two different jails.

Then, one day when she was late for school, Jane took her neighbor's bike from their yard and used it to get to class. Later that day, she left the bike at school and got a ride home from a friend. Her neighbors, who had seen her using the bicycle, called the police and when confronted, Jane was told to apologize to her neighbor. It seemed as if the incident would be settled informally, but then Jane's probation officer found out about the "theft." The police charged Jane with a probation violation and she was jailed in adult jail.

This incident led to Jane being incarcerated for 75 days in two different jails. Jane was housed with adult women offenders where she had to try and avoid their negative influences. Every day, she watched television, claiming there were no "good" books to read in the jail. Although she attended Alcoholics Anonymous meetings and church services every week, Jane was not able to resume school. Her request for mental health services also went unanswered. She was often cold at night, having only two sheets, two thin blankets, and a thin mattress for sleeping. Every day for lunch the inmates were served a bologna sandwich: Jane said the dinners were disgusting and that the jail was unsanitary. After spending 75 days between the jails, Jane was sentenced to time served. The probation violation and her misdemeanor conviction will remain on her record.

John: Nowhere to go.

At age 11, John moved to Wisconsin with his family. He first came into contact with the juvenile justice system at 12, when he was arrested for driving without a license. As a result, he spent time in a juvenile detention facility and was placed on probation. At that point, his parents had split up and neither was able to care for him, so he lived in various group homes for five years.

John stopped attending high school at 16, and at 17 he was no longer eligible for services in the juvenile justice system. As a result, when he needed a place to stay, he could not access any group home placements. Because he stopped attending school, he did not have a school identification card, and he never was able to get a driver's license. Because he did not possess an identification card, the food pantry would not distribute food to him.

One late, cold winter night, John didn't have a place to spend the night. Seeking a warm place to sleep, John climbed into a car in a downtown parking lot. A few hours later, he was woken up by a police officer who charged him with breaking and entering. John was placed in the local county jail and released the next day. Once released from the county jail, he went to stay at a relative's house. While there, he didn't receive the court documents notifying him of his upcoming court date. As a result, he missed his court date and the local law enforcement agency put out a warrant for his arrest. After he was arrested, John was sent to the county jail again, this time for six months.

After John was released from the county jail, he went to stay at a relative's house. While there, he didn't receive the court documents notifying him of his upcoming court date. As a result, he missed his court date and the local law enforcement agency put out a warrant for his arrest. After he was arrested, John was sent to the county jail again, this time for six months.

All of his "cellies" were older than him. John says he tried to keep to himself so he wouldn't get into any trouble. John spent most of his daily time sleeping. Although he was interested in getting his high school equivalency degree, he didn't attend educational courses at the facility. He had difficulty reaching his lawyer. In addition, he often went hungry because he was not getting enough to eat in the jail and he didn't have anyone on the outside that could put money on his "commissary" so he could purchase additional food.

John doesn't believe that 17-year-olds should be automatically tried as adults and believes that youth like himself need additional support from the community. John would like to see more subsidized housing and food assistance programs in the community, especially for young men who are not eligible for services in the juvenile justice system or for programs that serve adults.

Jeffrey: Searching for a safe place.
Jeffrey, a 17-year-old white male, was born in a Wisconsin town of fewer than 2,000 people. As an elementary school child, Jeffrey attended classes for youth with emotional disabilities. He was regularly in trouble for not being able to sit still in class. He has been diagnosed with chronic depression and Attention Deficit Hyperactivity Disorder (ADHD) and has battled drug and alcohol dependence since his early teens.

Prior to his 15th birthday, Jeffrey had several juvenile arrests for minor infractions. In an attempt to get him services through the juvenile court, his parents had him arrested for using marijuana. He was placed in an alcohol treatment center for a year. During that year, his mother died.

When Jeffrey was released, he moved to his aunt's house in a larger city. That arrangement did not work out and so he moved from foster homes to group homes. Because he wanted to dull the pain of being rejected by his aunt and of his mother's passing, his use of alcohol and marijuana escalated. While in a group home, at 15 years old, Jeffrey was caught with marijuana. He was charged with possession and the district attorney moved to have his case waived into adult court. Jeffrey felt that it wasn't his choice to be waived – he remembers a short hearing on the issue, but recalls only the district attorney and his attorney testifying on the issue. He was given probation, but he didn't understand that his subsequent arrests would result in his being charged as an adult.

At age 17, after being arrest-free for two years, Jeffrey was arrested for misdemeanor disorderly conduct. Because of his previous arrest, he was sentenced to six months of jail time. Upon entering the jail at 17, he was placed with a 25-year-old awaiting trial for sexual

assault. The cellmate talked about his sexual assault constantly. Jeffrey was intimidated by the size and demeanor of his cellmate and feared being assaulted by him. Rather than wait for this to happen, Jeffrey struck his cellmate. Jeffrey now awaits new charges for felony assault.

Jeffrey did succeed in getting a single cell, but he still does not receive alcohol or drug treatment nor does he attend any school classes. Jeffrey spends his entire day in his cell, sleeping for much of it. Although he is eligible for work release, he is unable to get a job. He is on a waitlist for a job within the jail and in the meantime has nothing to fill up his days.

Jeffrey wanted to join the military, but knows that his arrest history will prevent that. He hopes to receive the drug treatment that was ordered by the court, as well as grief counseling to deal with the death of his mother. Although he wants a second chance, he sees a very bleak future for himself at 17 with a felony record.

WHAT ARE THE POLICY OPTIONS IN WISCONSIN?

Between 1993 and 1994, youth violent crime arrests increased by 16%.[31] Yet, during his tenure, then-Governor Thompson did not support funding for juvenile code reforms.[32] The concern over rising crime caused Governor Thompson to appoint a commission to change the waiver statutes. This commission was assisted and supported by a number of juvenile court judges and prosecutors as well as officers of the court. Dennis Barry, Racine County Circuit Court Judge and the chairman of the 1995 commission enacted by former Governor Tommy Thompson and the Legislature, continues to affirm that the adult court should have jurisdiction over 17-year-olds.[33]

Jeffrey was intimidated by the size and demeanor of his cellmate and feared being assaulted by him. Rather than wait for this to happen, Jeffrey struck his cellmate. Jeffrey now awaits new charges for felony assault.

Today, the impact of these decade-old changes has caused some court officials to rethink this approach. Initially, Assistant District Attorney Don Garber, from Dane County, supported the legislation in 1995.[34] However, he now believes it was a mistake. He sees this legislation as harmful to youth because it reduces their access to education and because adult court proceedings strip them of their confidentiality rights. He believes judges should retain the power to decide whether a youth should be prosecuted in juvenile or adult court. Mr. Garber is not alone in Dane County. Jim Moeser, the juvenile court administrator for Dane County, comments on the legislation, saying: "I think it was bad policy for the wrong reasons at the time it was made, and there is more and more evidence to assume it wasn't good policy."[35]

Juvenile crime in Wisconsin peaked in 1994, prompting the more punitive legislative agenda in 1996.[36] But since 1995, juvenile crime has been on the decline in both Wisconsin and across the nation. In 2005, Assembly Bill 82 was introduced to the Wisconsin State Legislature to change the upper age of the juvenile court jurisdiction from 16 to 17 years old, removing 17-year-olds from adult court jurisdiction. Because AB 82 failed to pass before the end of the legislative session in May 2006, it will have to be reintroduced in future sessions to remain on the legislative agenda.

Prior to the introduction of AB 82, the Wisconsin Office of Justice Assistance published a report by the University of Wisconsin, *What Works, Wisconsin*, which analyzed the effectiveness of youth programs in preventing crime.[37] This report reviewed evidence-based prevention and juvenile offender programs to determine the most valuable and cost-effective programs for reducing crime, saving money, and providing youth with the opportunity for a positive future. The report concluded, "The strongest empirical evidence of cost-effectiveness is for diversion programs and therapeutic interventions that

provide a range of intensive services over relatively long periods of time." The researchers put forth numerous recommendations, including changing how funding decisions are made, providing a greater balance between prevention and intervention programs, and investing in more research, evaluation, and development for these programs. The media commended the report, saying that "We need more of this hard-headed approach," rather than one of despair.[38]

Although most human services' officials and workers agree that 17-year-olds should be treated as juveniles, budgetary issues are a concern. In 1996 when the Legislature declared the age of juvenile cout jurisdiction as 17, they removed a large portion of their juvenile justice population. Today, despite its Youth Aids funds, the juvenile justice system does not have enough money to adequately fund programs for its youth population. Unfortunately, the state budget does not have extra money to allot to these funds. Those against changing the statutes argue that these programs will have even less money to spend per youth if 17-year-olds re-enter the juvenile justice system. If this budgetary impediment remains unsolved, it will dominate the debate surrounding raising the age of juvenile court jurisdiction to 18, distracting those involved from focusing on the best measures to take to stymie youth crime and ensure public safety. Perhaps the best solution would be to find a better funding mechanism that would ensure developmentally appropriate services for youth involved in the juvenile justice system. Once those services are available, 17-year-olds could be folded back into the juvenile system.

WISCONSIN RECOMMENDATIONS

- **Return 17-year-olds to juvenile court jurisdiction.**
  Research on adolescent brain development has shown that adolescents do not demonstrate the maturity of an adult when making decisions. Youth need developmentally appropriate services to ensure rehabilitation. Adult prisons and jails do not provide adequate rehabilitation programs for this age group.

- **Revise the Juvenile Justice Code so that only a juvenile court judge can waive jurisdiction and determine appropriate placement of youth.**
  It is important that youth be given the chance to be evaluated for the appropriate sanctions on their behavior on a case-by-case basis by a judge. Juvenile court judges, who have been trained to evaluate culpability, are best able to determine where a youth in conflict with the law should be placed, not prosecutors. When youth lose the opportunity to be placed in juvenile court, they are denied access to adequate rehabilitative services as well as the safety provided within the juvenile court.

- **Expand services available to youth and ensure they are developmentally appropriate.**
  Rehabilitative opportunities that have been evaluated and deemed successful have the greatest positive impact on recidivism rates. Furthermore, a large number of incarcerated youth suffer from mental health problems. While they are in custody, these issues could be addressed by trained and qualified youth support staff. Education and other rehabilitative programs can greatly reduce the likelihood that a youth will return to court. This ensures a better life for the child upon release and also enhances public safety.

NOTES

[1] Wis. Stat. § 938.02 (2006). http://www.legis.state.wi.us/statutes/stat0938.pdf
[2] Wis. Stat. § 938.183 (2006).
[3] Wis. Stat. § 938.18 (2006).
[4] Wis. Stat. § 938.183 (1)(a).
[5] Wis. Stat. § 938.183 (2006).
[6] Wisconsin State Circuit Court Statistical Reports. Juvenile caseload summary 2005. http://wicourts.gov/about/pubs/circuit/circuitstats.htm
[7] Wis. Stat. § 938.209 (2006).
[8] Wis. Stat. § 970.13(3m) (2006).
[9] Letter from the U.S. Department of Justice to Wisconsin Governor Jim Doyle Re: Investigation of the Taycheedah Correctional Institution. (2006, May 1). http://www.usdoj.gov/crt/split/documents/taycheedah_findlet_5-1-06.pdf
[10] American Civil Liberties Union (ACLU). (2006, May 2). *Women at Wisconsin's Taycheedah Prison suffer medical neglect and receive worse mental health care than men.* http://www.aclu.org/prison/women/25405prs20060502.html
[11] Ibid.
[12] Frost, N., Greene, J., & Pranis, K. (2006). *Hard hit: The growth of the imprisonment of women: 1977-2004.* New York, NY: Women's Prison Association. Available from www.wpaonline.org
[13] Snell, T., & Morton, D. (1994). *Women in prison.* Washington, DC: Bureau of Justice Statistics. Retrieved December 20, 2006, from www.ojp.usdoj.gov/bjs/pub/pdf/wopris.pdf
[14] Wisconsin Office of Justice Assistance. [2004]. *2003 adult jail populations report.* Madison, WI: Author.
[15] Ibid.
[16] Ibid.
[17] Wisconsin Office of Justice Assistance. (2006). Madison, WI: Author.
[18] Wisconsin Office of Justice Assistance. (2006). *Preliminary crime and arrests in Wisconsin 2005.* Madison, WI: Author.
[19] Greene, J., & and Pranis, K. (2006). *Treatment instead of prisons: A roadmap for sentencing and correctional policy reform in Wisconsin.* Washington, DC: Justice Strategies.
[20] Wisconsin State Circuit Court Statistical Reports. *Juvenile caseload summary* 2005. Available from http://wicourts.gov/about/pubs/circuit/circuitstats.htm. However, this number does not include 17-year-olds who automatically fall under adult court jurisdiction or youth under 17 subjected to mandatory waiver for certain offenses. These groups constitute a large portion of youth who are tried as adults.
[21] Robert Nikolay, Budget Director, Wisconsin Department of Corrections.
[22] Wisconsin Office of Justice Assistance. (2000-2004). *Crime and arrests reports.* Madison, WI: Author.
[23] Snyder, H. N., & Sickmund, M. (2006). *Juvenile offenders and victims: 2006 national report.* Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. http://ojjdp.ncjrs.org/ ojstatbb/nr2006/downloads/NR2006.pdf
[24] Wisconsin Office of Justice Assistance. 2002. *Wisconsin's 3-year juvenile justice plan 2003-2005.* Madison, WI: Author.
[25] Wisconsin Office of Justice Assistance. 2005. *Wisconsin 2006-2008 Three-year plan.* Madison, WI: Author.
[26] Ibid.
[27] U.S. Census Bureau. *2005 American community survey.* Available from www.factfinder.census.gov
[28] Wisconsin Department of Corrections.
[29] Robert Nikolay, Budget Director, Wisconsin Department of Corrections.
[30] Names have been changed to protect the individuals profiled.
[31] Wisconsin Office of Justice Assistance. Statistical Analysis Center. *Crime and arrests reports 1994.* Available from http://oja.state.wi.us/
[32] Lisheron, M. (1995, March 1). Thompson budget fails on juvenile issues, Doyle says. *The Milwaukee Journal.* http://www.findarticles.com/p/articles/ mi_qn4207/is_19950301/ai_n10187128
[33] Schuetz, L. (2006, March 9). Report: Juvenile system is broken. Wisconsin State Journal. http://www.madison.com/archives/read.php?ref=/wsj/2006/03/09/0603090044.php
[34] Ibid.
[35] Ibid.
[36] Wisconsin Office of Justice Assistance.
[37] Small, S. A., et al. (2005, June). *What works, Wisconsin: What science tells us about cost-effective programs for juvenile delinquency prevention.* Madison, WI: University of Wisconsin–Madison.
[38] Stanford, G. (2005, October 16). Good programs exist, contrary to myth. *Milwaukee Journal Sentinel.* http://www.findarticles.com/p/articles/mi_qn4196/is_20051016/ai_n15710395