

To: Rodger Heaton, Chairman and Commissioners  
Illinois Criminal Justice and Sentencing Reform Commission

From: Elizabeth Clarke, President  
Juvenile Justice Initiative

Date: November 20, 2015

Re: Written testimony Urging Consideration of Issue of Adult Prosecution of Juveniles

The Juvenile Justice Initiative (JJI) submits this written testimony to remind the Commissioners that within the adult criminal justice framework is the issue of adult prosecution of juveniles. Illinois has a lengthy history with adult prosecution of children, and the research in Illinois and on the national level has consistently revealed poor outcomes from this extreme policy.

Illinois began an experiment with “automatic transfer” in 1982. Based solely on age and charged offense, children were tried as adults – so, within hours/days of arrest, a child would bypass juvenile court entirely and be prosecuted in adult court. **Under automatic transfer, there is never any hearing** in juvenile court – so there is never an opportunity for individual consideration of background, of physical and mental health, of education, of family and any prior child welfare services, of prior juvenile court services, or of any rehabilitative potential. The only factors are age and charge.

Not surprisingly, research on automatic transfer consistently revealed an overly broad application. Children who were merely nearby were charged as adults under accountability provisions. Children who would have been amenable to juvenile court services were given lengthy adult sentences instead. The lack of individual review produced profoundly negative consequences.

**Drug transfer provisions eliminated.** Eventually drug crimes were eliminated from the automatic transfer provisions in 2005. A follow-up study of the first two years of data by the Juvenile Justice Initiative noted the positive impact of this change:

- **2/3 drop in transfers** - The repeal of automatic transfer for drug offenses in Illinois reduced the number of transfers by more than two-thirds.
- There was no increase in judicial waivers following the reform, either in Cook or elsewhere in the state, indicating the drug transfer cases were not serious enough to support a decision by a juvenile court judge to send the case to adult court.
- Nearly all of those affected by the change were youth of color residing in Cook County

Next, Illinois raised the age to bring seventeen year olds back to the juvenile court – with two reforms, one in 2010 impacted 17 year olds charged with misdemeanors, and the other in 2014 impacted 17 year olds charged with felonies. A report by the Juvenile Justice Commission documented the positive impact of the 2010 reform, and the 2014 reform appears to be equally successful in allowing more individualized review of seventeen year olds in conflict with the law with more individual and tailored use of limited resources.

The most recent transfer reforms in Illinois are due to take effect on January 1, 2016. The reforms in Public Act 99-258, provide for individual juvenile court review of the transfer issue for all youth age

fifteen (and younger), and for individual juvenile court review of those charged with armed robbery with a firearm (in light of research documenting over-breadth of automatic transfer due to accountability provisions). The reforms in P.A. 99-258 reflect the statewide consensus that most, if not all, transfer decisions should be made by a juvenile court judge, with a full review of all relevant background information including mental health, family, education, and previous service provision.

Finally, any discussion of this issue would be incomplete without also referencing the profound racial disparities present throughout our justice system, and especially poignant in the context of automatic adult prosecution of children. The JJI reports consistently that children of color are the primary target of automatic transfer policies:

**Three years of automatic transfer data from Cook County (2010-2012) revealed 83% were African-American - only one child was white. Between 2013-2014, 85% were African-American and 3 were white.**

**Research:** solidly establishes that children tried in the adult court are more likely to repeat offend, than children similarly situated who are tried in juvenile court. A 2007 survey of existing studies by the U.S. Centers for Disease Control and Prevention concluded that **children who are tried as adults are 34 percent more likely to commit crimes** than children who were kept in the juvenile court system.

Further, trial of children in the adult court is an extreme U.S. policy that is banned under international law in the Convention on the Rights of the Child. Trial in juvenile court with some limited possibility of extended sentences is the consensus approach by similar developed nations.

We urge you to consider current scientific evidence on adolescent development as well as Illinois' experience (more than 30 years of research in Illinois on the failed policy of automatically trying children in adult court), and recommend ending the practice of trying children in adult court.

**Instead – Utilize existing provisions for Trial in Juvenile Court with Limited Possibility of Suspended Adult Sentence** - New Mexico has provisions that allow for some limited adult sentencing of children after a trial in juvenile court – trying all children in juvenile court with some limited (and generally suspended) adult sentence options is a more effective policy, both for public safety and to maximize costs. Illinois already has a similar option called Extended Jurisdiction Juvenile (EJJ) – one recommendation could be to revise the current EJJ provisions to, in certain cases, allow a judge to impose a suspended adult sentence that may be less than but not exceed the sentence required for an adult convicted of the same offense, and include factors (background, maturity, mental health, education, previous abuse/neglect, etc) for the judge to consider in sentencing minor to ensure proportionality of the suspended sentence.

Trying children – all children – in juvenile court, with some limited possibility of a suspended adult sentence, will maximize our juvenile resources to rehabilitate wherever possible. Such a reform will keep our children out of adult court, and out of adult jails and prisons thereby furthering your mission of reducing the prison population in Illinois – and will also allow our state's young people the opportunities they need to become productive members of society and make our communities safer.

Thank you for the opportunity to provide these comments for your consideration. If you would like additional information, please contact me at (847) 864-1567.