

# JUVENILE JUSTICE INITIATIVE

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518 DAVIS, SUITE 211  
EVANSTON, IL 60201  
847.864.1567

WWW.JJUSTICE.ORG

## Juveniles in the Adult Criminal Justice System

### Testimony of the Juvenile Justice Initiative before the Joint Criminal Justice Reform Committee

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Chicago, IL.

Thank you to the members of the Joint Criminal Justice Reform Committee for including the topic of juveniles in the adult criminal justice system in your comprehensive consideration of sentencing reforms for Illinois.

My name is Elizabeth Clarke, and I am the President of the Juvenile Justice Initiative of Illinois. The Juvenile Justice Initiative is a nonprofit, statewide advocacy organization focused on reducing reliance on incarceration while shifting limited resources to community-based alternatives, and on reducing the harm by keeping youth in the juvenile system. We are privately funded – we take no government funding. Among the reforms we have advanced are Redeploy Illinois, Raising the Age of Juvenile Court to include seventeen-year-olds, eliminating “automatic” adult trial of juveniles charged with drug offenses, and ensuring incarceration is the least restrictive alternative.

Illinois is the home of the world’s first – the world’s first – juvenile court, and thus is a leader in juvenile justice reforms. Many of these reforms on the juvenile side have been highly successful and have implications for adult sentencing reforms.

Juveniles – youth under the age of 18 – are not all tried in the juvenile court in Illinois. A few youth annually are “automatically” considered adults based on the charge and their age at the time of arrest.

These children who are prosecuted in the adult court are frequently overlooked. They do not figure prominently in government reports on the justice system – juveniles by age, but adults by charge, they generally fall between the cracks and rarely get more than a short mention in any justice system analysis or report. However, the Juvenile Justice Initiative has consistently tracked the children prosecuted in the adult court, and recently released a review of three years of children under the age of 18 who were detained while being “automatically” prosecuted in the adult court in Cook County.

Only one white boy was among the 257 Cook County children charged with crimes requiring an automatic transfer to adult court in a recent three-year study period, and most of those children live in predominantly minority communities in the south and west sides of Chicago.

Racial disparities are not the only problem. More than half the children end up convicted of lesser offenses – offenses that would not have triggered adult trial if charged appropriately at the outset. These poor outcomes and racial disparities have been consistently demonstrated in studies over the 30-year lifetime of these automatic transfer policies.

In 1982, Illinois enacted the automatic transfer law, which removed the ability of a juvenile court judge to consider each case individually and eliminated any consideration of factors including background, degree of participation in the offense, mental and physical health, educational issues, and availability of resources unique to juvenile court for rehabilitation. The “automatic” transfer law provided that juveniles, age 15 and older and charged with certain offenses (murder, armed robbery with a firearm, sex offenses, etc) would be automatically prosecuted in adult criminal court upon the mere filing of the charge. Thus, within hours/days of arrest, juveniles were transformed into adults by the filing of a charge.

The JJI looked into the impact of these automatic transfer provisions. The findings of the JJI research into the 257 automatic transfer cases in Cook County from 2010 through 2012 (children under the age of 18, held in the juvenile detention center but tried in the adult criminal court) included the following:

#### OVERLY BROAD

- The majority of cases “automatically” prosecuted in adult court ended up convicted of a lesser offense – an offense that could not have triggered transfer to the adult criminal court. The three year study revealed that **54% of all convictions were for lesser offenses and another 4% were found not guilty or nolle.**

#### NO COURT REVIEW AND NO TRIAL – NO CONSIDERATION OF YOUTH

- The vast majority (**90%**) of automatic transfer cases result in guilty pleas. Thus, at no point in the system is there any opportunity to have an individual hearing taking into consideration immaturity – the young age of the juvenile, his/her potential for rehabilitation, his/her mental health, educational background, etc.

#### DISCRIMINATORY

- **Automatic transfer disproportionately impacts children of color.** In three years of “automatic” trial of children in adult court in Cook County, all except one were children of color.

These findings are consistent with the findings of over thirty years of “automatic” transfer to adult court. Prior to 1982 when juvenile judges made the decision to transfer on an individual basis reviewing all the relevant factors, the profile of the transferred youth was sixteen or older charged with murder. Upon passage of the automatic transfer law, the number of youth tried in adult court nearly doubled and the profile shifted to those charged

with armed robbery with a firearm. Ten years later, Deborah Nelson in the Chicago Sun-Times reported an overwhelming disproportionate impact on children of color and poor outcomes for public safety from the “automatic” transfer provisions. The addition of drug offenses to the automatic transfer list substantially increased the number of transfers with particularly poor outcomes, convincing this legislature to remove drug offenses from the list of automatic transfers. A follow-up study on the impact of the removal of drug transfers by the Juvenile Justice Initiative demonstrated successful outcomes with no increase in juvenile court prosecutions and no detrimental impact on public safety – this report is posted on our website. The study revealed that the removal of drug offenses from the transfer category caused a two-thirds drop in automatic transfers in Cook County (from 361 in 2003 to 127 in 2005-2006), with no adverse impact on public safety.

The Illinois Supreme Court’s Special Commission on the Administration of Justice reported in December of 1993 that an increasing number of juveniles were transferred to criminal court over the past ten years without a corresponding deterrent effect, and with unintended negative consequences such as an overwhelmingly disproportionate impact upon African-Americans and other minorities. The Commission subsequently recommended in 1995 that the Illinois Legislature consider legislative alternatives to “automatic” transfer, and eliminate mandatory minimum sentences for juveniles convicted and sentenced in adult criminal court.

“Automatic” transfers are not the only means to try a child as an adult. Illinois has what the Chicago Daily Law Bulletin recently noted is a confusing mix of provisions to automatically, mandatorily, or presumptively send a child under 18 to adult court for prosecution. A full list of all the transfer provisions in this state is listed on page 19 of the attached report on Automatic Adult Prosecution of Youth by JJI. The complexity of these laws is staggering. It would be difficult for any lawyer in this state to accurately state all the mechanisms that trigger adult prosecution of a child – it is impossible for any child under the age of 18 to be aware of all the ramifications of a statement made to the police. Yet, children are routinely questioned by law enforcement without an attorney – and then “automatically” prosecuted in adult criminal court based on their statement.

One transfer mechanism stands out. Illinois has long had one of the broadest judicial transfer laws in the nation – the ability for a juvenile court judge to send a case to adult court for any offense involving any child age 13 or older. Any offense – any child, age 13 or older. Under the statute, the juvenile court judge reviews the age and circumstances of the charged offense, along with the history of the youth, including previous criminal conduct, previous history of abuse or neglect, and any mental health, physical or educational history of the minor. The judge then weighs the advantages of treatment within the juvenile system versus the security of the public, and decides – on an individual basis – whether transfer to adult court is appropriate.

This judicial – or discretionary – transfer mechanism is more than adequate to protect the public while ensuring that the most effective disposition is used in each case. Society has a public interest in utilizing adult court prosecution as a last resort – national research by the

Centers for Disease Control establishes that children tried in the adult court are 38% more likely to reoffend than similarly situated youth tried in the juvenile court.

Fundamentally, justice means that decisions are made on an individual basis and that punishment is proportionate to the offending conduct.

**Extended Juvenile Jurisdiction with adult sentence another juvenile court option –**

Transfer to adult court is not the only tool in the juvenile court – Section 405/5-810 sets out an Extended Jurisdiction for certain juveniles – age 13 or older charged with any felony offense – if designated an EJJ following a hearing reviewing all relevant factors, and then found guilty, the juvenile court can impose a juvenile sentence and a suspended adult sentence – upon successful completion of the juvenile sentence, the adult sentence is vacated. If the juvenile sentence is not successfully completed, the adult sentence may be imposed.

The prosecution can file for EJJ, and if denied then can file to transfer the juvenile to adult court – two bites at the apple. These provisions are more than sufficient to ensure that juveniles charged with violent offenses are prosecuted to the full extent of the law – while also ensuring that the most effective disposition is imposed to reduce the potential for future reoffending.

We urge three legislative reforms for children prosecuted in the adult court –

- **Ensure the decision to prosecute a child under the age of 18 in the adult court is made on an individual basis after reviewing all relevant information.** *Eliminate presumptive, mandatory and “automatic” transfer provisions, leaving in place the discretionary transfer provisions that already allow Juvenile Court Judges to make the critical decision whether to try a child under the age of 18 in adult criminal court. Juvenile court judges are familiar with the resources available in juvenile court for rehabilitation, and can best balance the interests in public safety and punishment versus the public’s interest in rehabilitating a young life. . Prosecutors and juvenile judges also have the option of imposing a suspended adult sentence through EJJ provisions.*
- **Provide youth at risk of adult prosecution with counsel during police encounters.** *The Illinois transfer provisions have become so complex that legal counsel is essential to ensure juveniles understand the consequences of statements made to law enforcement.*
- **Eliminate mandatory minimum sentences for children under the age of 18 who are convicted in adult court.** *This follows the recommendations of the Solovy Commission back in 1995 to ensure individualized and proportionate justice for children prosecuted in the adult court.*

There is good reason to use the juvenile court and juvenile treatment options, as these have proven remarkably effective over the past three decades – while adult punishment has proven extremely costly and ineffective.

Consider this –

Back in the late 1970's our adult prison population was around 10,000 .....today the adult prison population has grown to under 50,000. This is an unprecedented growth in prison cells, at great cost to taxpayers and with no impact on deterrence (according to the recent National Academy of Sciences report on the Causes and Consequences of Incarceration).

The juvenile prison population, on the other hand, hovered in the low 1000's (1245 in 1987, according to the IL Blue Book), while today we have decreased our juvenile prison population to 719 (as of 9/30/14, according to IDJJ) while increasing the age of juvenile court to 18 and expanding the array of community based alternatives to incarceration through Redeploy Illinois. [We do not mean to imply that the juvenile prison system is "right-sized" – there are still about 30% of the population confined for low level felony and misdemeanor offenses, and presumably a large percentage are incarcerated for technical probation and parole violations, so we can still do better – but as a state, we have made a good beginning.]

So, what can we learn from the success of the juvenile reforms?

#### **Lessons from Juvenile Success:**

- **Fiscal incentives and reinvestment:** Redeploy Illinois and the Juvenile Detention Alternatives Initiative have both demonstrated success in fiscal reinvestment to shift limited resources from incarceration and pre-trial detention to community based alternatives. The replication of Juvenile Redeploy Illinois on the adult side is evidence that this Legislature is taking that message seriously.

Two other juvenile mechanisms bear consideration for replication in the adult criminal sentencing system.

- **Police diversion authority:** One is the broad ability of the police to divert cases at the stationhouse. Unlike the adult system where police can send a case to court or send an accused offender home, in the juvenile system the police have wide-ranging discretion to informally handle allegations of misconduct within the station-house. Under provisions describing Station Adjustments (405/5-301) police in the juvenile system have wide authority to divert cases by releasing a minor with conditions ranging from community service, restitution, community mediation, teen court, attending school, abiding by certain restrictions, and abiding by curfew. This broad law enforcement diversion authority proved highly successful in diverting the nearly 16,000 seventeen year olds arrested in Illinois annually – raising the age to bring seventeen year old misdemeanants back to juvenile court was accomplished without a burden on the juvenile court – in fact, due to diversion of the low level offenses, both pre-trial detention and post-trial incarceration numbers declined after raising the age. Replicating police diversion authority in the adult criminal justice system – especially for Young Adults age 18-21 where 60% of the arrests are misdemeanors – could have successful outcomes for society in public safety, for taxpayers in lower jail costs, and for individuals in conflict with the law by giving them sanctions along with resources for a second chance.

- **Restorative Justice:** The other is the growing use of mediation and related practices within a restorative justice framework to divert, as well as to adjudicate and sentence persons in conflict with the law. Recent news articles document the use of peer juries in Winnebago County and in St Clair County, as well as the success of restorative justice practices in Chicago in diversion from school based discipline incidents that were previously sent to juvenile court. This is a world-wide movement away from punishment and towards restoring justice by repairing the harm to the community along with equipping the offender with the skills and resources necessary to become a productive citizen. Northern Ireland adopted Restorative Justice as its juvenile justice model in the early 2000's, as part of the Good Friday agreement following the end of the "troubles" in Ireland – and has nearly eliminated incarceration of juveniles while expanding public safety and public confidence in the juvenile justice system. Community mediation is part of the Illinois Juvenile Court Act (405/5-310) and restorative justice is, along with rehabilitation, the underlying philosophy of juvenile court. Replication of successful juvenile restorative justice practices in adult court would enhance community safety while ensuring offenders receive the skills and services necessary to become law-abiding citizens.
- **Replicate diversion and restorative justice options for Young Adults:** Of particular concern is the Young Adult population, age 18-21. The Juvenile Justice Initiative examined arrests of the Young Adult population in Illinois and found:
  - **Over 60% misdemeanors** - Over sixty percent of all the young adult arrests were for misdemeanor offenses. Less than 3% were Class X and murder arrests.
  - **Criminal offending falls off beginning at age 20** – arrests peaked at age twenty and decreased from that point on.

**This Young Adult population could particularly benefit from replication of successful juvenile police diversion options.**

In Conclusion –

We urge three legislative reforms for children prosecuted in the adult court –

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- **Provide youth at risk of adult prosecution with counsel during police encounters.** *The Illinois transfer provisions have become so complex that legal counsel is essential to ensure juveniles understand the consequences of statements made to law enforcement.*

- **Eliminate mandatory minimum sentences for children under the age of 18 who are convicted in adult court.** *This follows the recommendations of the Solovy Commission back in 1995 to ensure individualized and proportionate justice for children prosecuted in the adult court.*

We further urge the Illinois legislators to consider **replicating successful juvenile justice system models within the adult criminal justice system** – especially for Young Adults:

- **Fiscal reinvestment**
- **Police diversion**
- **Restorative Justice**

Thank you for taking the time this fall to review the criminal sentencing laws in Illinois – these hearings have proven wide-ranging and thoughtful, with the potential for comprehensive and evidence-based reforms that will serve our citizens well, by ensuring public safety within a sentencing framework that is individualized and proportionate.

Elizabeth Clarke  
President, Juvenile Justice Initiative