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“The Juvenile Justice Initiative of Illinois works to achieve humane, equitable and sustainable reforms for children and young adults in the justice system.”

PRETRIAL DETENTION OF CHILDREN DURING A PANDEMIC IN ILLINOIS

Reforms that Protect Children After Trial not in place for Children Before Trial

Findings and Implications for Reform

February, 2021

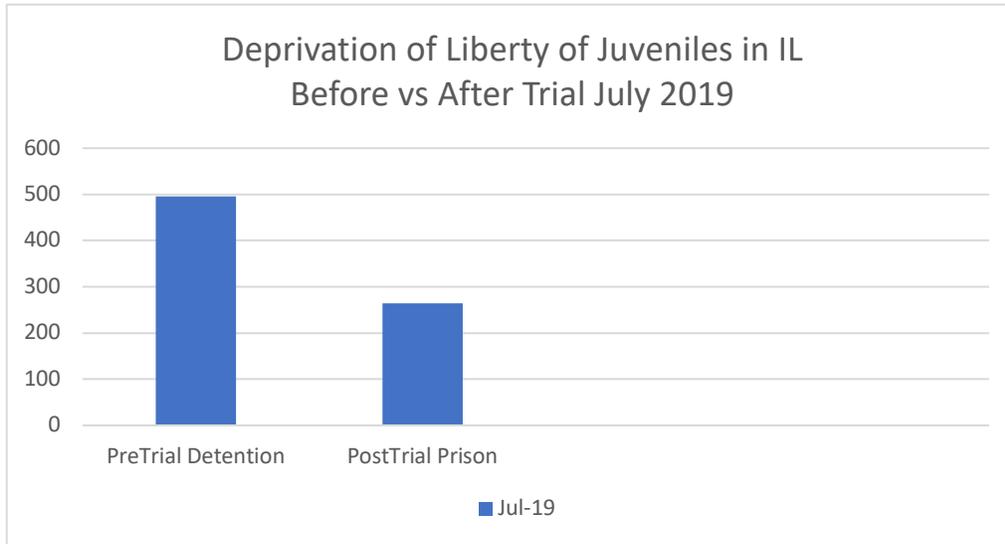
Over the past decade, Illinois made significant statutory and executive level reforms to shift resources to community-based alternatives and to limit the post-trial incarceration of children to a last resort. Reforms have ranged from limiting incarceration to felony offenses to small grants to counties to develop alternatives to incarceration through Redeploy Illinois.

These reforms proved particularly impactful to protect children after trial during the pandemic. However, similar reforms have not been adopted to protect children before trial. As a result, in Illinois in July of 2020 **more than four times as many children were locked up before trial as the number of children in prison after trial**. The cost to taxpayers, and harm to the youth and their families and communities is profound, and the racial disparities in pretrial detention reflect the statewide lack of uniformity in access to justice, to treatment and to individualized consideration that is essential to a just and safe society. This paper reviews the reforms that have proved successful in limiting post-trial incarceration of children to a last resort, examines the efforts to extend these basic protections to children at risk of pre-trial detention especially during the pandemic, and makes recommendations to ensure fair and just treatment of children before as well as after trial.

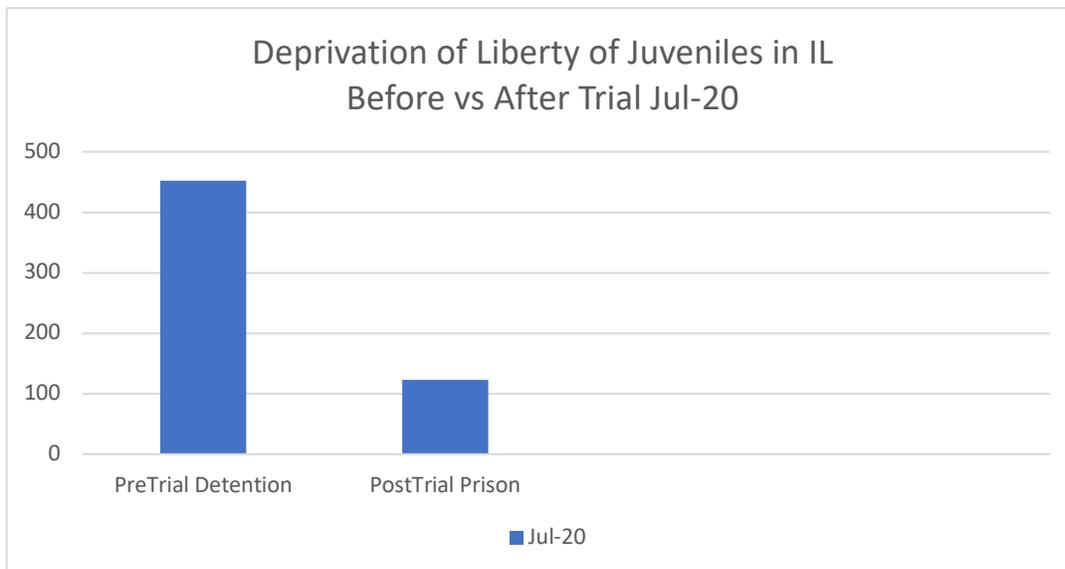
Children should not be locked up before trial, if they can't be imprisoned after trial. This is a basic principle to ensure pretrial detention is not overused.¹ Children too young, or charged with conduct that is too minor to be eligible for imprisonment after a finding of guilt, should not be locked up prior to trial. But in Illinois, this principle is frequently violated.

¹ https://prisonstudies.org/sites/default/files/resources/downloads/pre-trial_detention_final.pdf

ILLINOIS LOCKS UP MORE CHILDREN BEFORE TRIAL THAN AFTER TRIAL



And the disparity became worse during the pandemic:



<https://www2.illinois.gov/idjj/Pages/Data-and-Reports.aspx>

<http://ijjc.illinois.gov/publications/reports>

Problem: The issue in Illinois is that reforms made to expand the use of community programs and limit the use of state juvenile prisons after trial have succeeded in safely reducing the number of youths in IL juvenile prisons while simultaneously expanding community services and alternatives, but Illinois legislators have not made similar reforms to the pre-trial stage when children are locked up in county detention centers.

Reforms made at the post-trial sentencing stage include:

1. **Eliminating juvenile prison sentences for low level misdemeanor offenses & reforming juvenile parole** to expand services and reduce recommitments – Public Act 99-0268. Yet, children can be detained pretrial for these low-level misdemeanor offenses and technical violations.
2. **Least Restrictive Alternative for sentencing** – Codifies the least restrictive alternative as standard for sentencing youth to confinement and requires courts to ensure all reasonable efforts have been made to keep youth at home. Bi-partisan - Passed Senate with unanimous vote. Public Act 97-0362. Yet, there is no similar protection for children before trial.
3. **Redeploy Illinois** – In 2006, the State began a fiscal incentive program, offering counties funds for community programs to use rather than commit a child to juvenile prison. While some counties (most notably Cook) have failed to join the program, other counties around the state have dramatically reduced their commitments to prison through cheaper and more effective community programs using evidence-based approaches to address underlying issues that contribute to criminal conduct. The program was so successful, it was replicated for adults to reduce commitments to the Illinois Department of Corrections. Yet, there is no similar fiscal incentive to shift funding to develop alternatives to detention.
4. **Age limit** - Illinois law limits post-trial incarceration to **children age 13 and older** but pretrial detention remains set at the low age of 10, and Illinois has no minimum age for prosecution as a delinquent.

These reforms have successfully shifted state dollars away from prisons (3 of the 8 juvenile prisons have been closed) to less costly and more effective community investments in evidence-based programming to limit incarceration to a last resort. But these reforms have not been extended to protect children at the earlier pretrial stage.

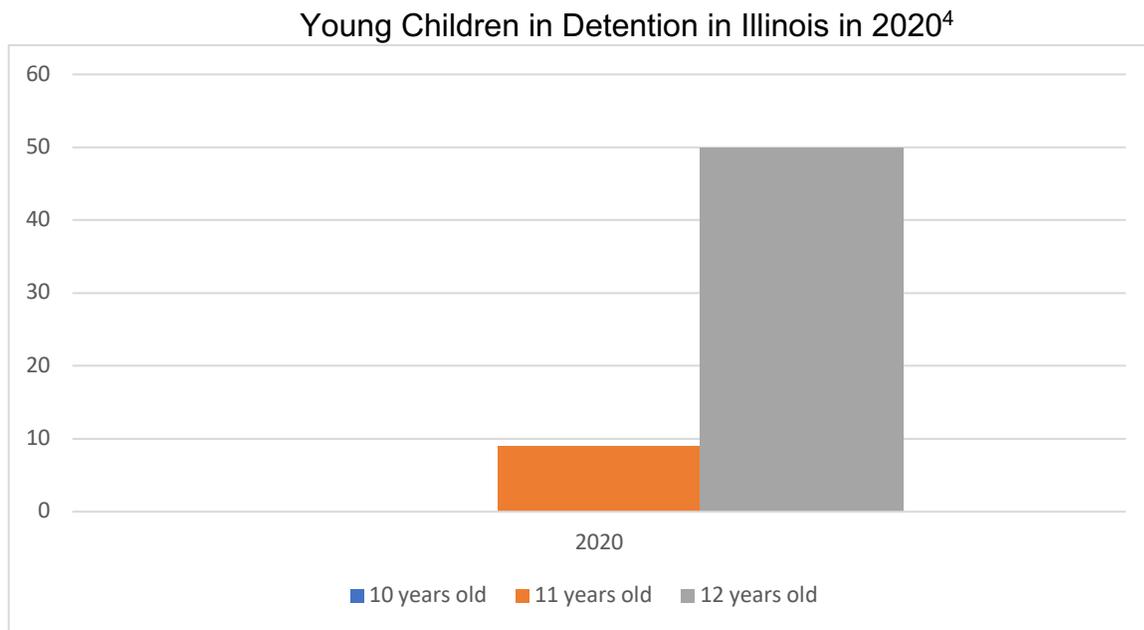
Young Children – one of the most stunning policy failures in Illinois is the lack of protection for young children in the pretrial phase. Detention of children leads to profound negative outcomes. The premier national longitudinal study documenting the profound and lifelong harm from even a short stay in juvenile detention was based on a sample of over 1,800 youth in detention in Cook County in the mid 1990's. Conducted out of the Northwestern Medical School, it documented profound mental health and other negative outcomes, including a mortality (death) rate four times as large as the general population.² Despite the presence of this stunning research in our own community, Illinois has yet to set a reasonable minimum age for juvenile detention. The

² https://www.njjn.org/uploads/digital-library/NJJN%20Policy%20Platform_RaiseTheMinimumAge_December2020.pdf

current minimum age to detain a child pretrial is ten, while a child has to be at least 13 to be locked up after trial.

A new report out of Loyola Law School in Chicago urges that Illinois, the home of the world's first juvenile court, adopt the international standard of 14 as a minimum age for prosecution as a delinquent – which would mean that 14 would become the minimum age of detention as well as of commitment to juvenile prison.³

A review of children in pretrial detention across Illinois during CY20 revealed that at least **59 children under the age of 13 were detained** in Illinois, even during the pandemic:



Racial Disparities Profound in Juvenile Detention.

The COVID-19 pandemic arguably exacerbated the already egregious racial disparities that existed in the use of pre-trial detention. Looking at 2018 county detention admission data, 58.3% of those admitted were Black, 25.9% were White and 12.4% were Hispanic.

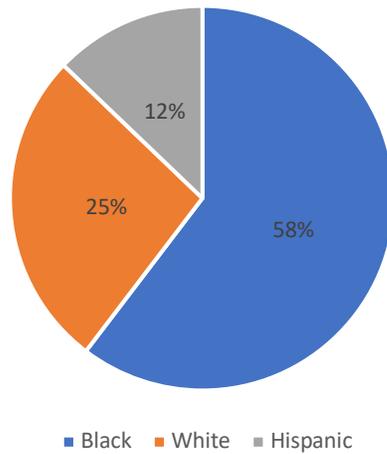
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https://www.luc.edu/media/lucedu/law/centers/childlaw/pdfs/incapable_of_criminal_intent.pdf

⁴ Based on data from JMIS but missing data from St. Clair detention center -

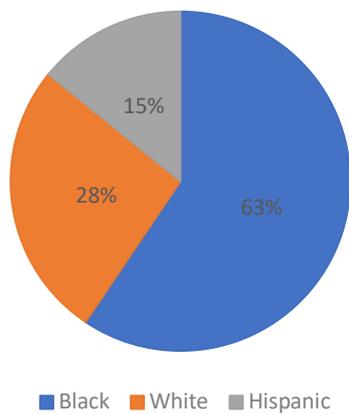
<http://ijc.illinois.gov/sites/ijc.illinois.gov/files/assets/JMIS%20Monthly%20Data%20Report%20November.pdf>

County Detention Admissions By Race, 2018



At the county detention centers in July 2020 (the last month with full reporting from all the juvenile detention centers in the state), **63% of admissions were Black**, 28% were White, 6% identified as “other” and 3% as multi-racial (15% identified as Hispanic).

County Detention Admissions By Race, July 2020



JJI led multiple calls to reduce the juvenile detention population from the onset of the pandemic. **On April 7th, 2020 the Illinois Supreme Court took the unprecedented step of suspending the right to a speedy trial** in the state at a time when detention hearings were also suspended in juvenile courts in Cook County. At the same time, the Department of Juvenile Justice had also suspended intakes from county facilities as part of their COVID protocols. JJI and other advocates wrote to the Court expressing concern that these actions, without equal measures to reduce the number of kids being

admitted to juvenile detention centers, would put added pressure to a system already struggling to deal with this new reality.⁵

The Juvenile Justice Initiative, along with two state legislators, academics, public defenders, faith organizations and providers recommended that county juvenile detention facilities:

- **Stop new admissions to juvenile detention placement facilities.** Unless youth pose an immediate and substantial risk to public safety, alternatives to out-of-home placements, including placement at home with terms and conditions, should be the default response.
- **Release as many young people from detention as possible.** This includes young children (those under the age of 14), and all children who do not present a substantial public safety risk. Illinois courts should immediately release all young people in detention for low level property offenses, for failure to appear in court, and for technical probation violations.
- **Release children at risk of COVID-19:** Illinois courts should also release youth who have pre-existing conditions, including asthma, that may make them particularly vulnerable to COVID-19 symptoms, as well as youth who are exhibiting COVID-19 symptoms themselves. These youth should not be released to other congregate care settings where the virus can spread; the default should be a presumption that the youth will return to a family member or guardian's home. Agency officials should take steps to ensure that youth have a place to live, have a plan to meet their basic needs, have a plan to receive medical care, and have immediate access to Medicaid.
- **Revise juvenile probation policies** to include the immediate suspension of any detention for technical violations, and early termination of probation and electronic monitoring orders.
- **Revise electronic monitoring policies** to ensure it is used sparingly, if at all, and only in response to immediate and substantial risks to public safety that outweigh the safety risks to probation staff inherent in the application and supervision of the devices.
- **Suspend fines.** The collection of any court, detention or probation fees should be suspended indefinitely.
- **Ensure transparency.** Juvenile courts who oversee detention facilities and juvenile probation services should be required to inform the public of their use of these extraordinary powers, especially during this crisis. The public needs to know how many children are in detention, as well as their age and the reason for their loss of liberty in this crisis.

These recommendations were consistent with those of prosecutors from around the nation for best practices to address the individual needs of those in custody and to protect the public from the health threat posed by congregate settings.⁶

⁵ <https://jjustice.org/wp-content/uploads/April-15-Letter-to-CourtFINAL.pdf>

⁶ <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>

None of these recommendations were adopted by the Illinois Supreme Court, nor were any of these recommendations adopted by circuit courts. Instead, the Supreme Court simply suspended the right to a speedy trial, which increased the average daily juvenile detention population.

Given that the public health threat has not abated and has in fact worsened, JJI recommends the following steps be taken:

1. End the pre-trial detention of young children by setting a reasonable minimum age for detention that is consistent with the age to imprison a child after trial,,
2. Limit pre-trial detention to individuals who pose an immediate and serious physical threat to an individual(s),
3. Provide full transparency on the use of detention to deprive children of liberty before trial, and
4. Require written findings by the court and regular reviews of decisions to detain children.

Children deserve our protection. Where the research clarifies the trauma and damage from pretrial detention, where racial disparities in the use of pretrial detention are profound, and where national leaders (including prosecutors) recommend limiting pretrial detention to a last resort, Illinois leaders must revise law and policies to adopt these best practices and protect all our children.