

Policy Brief:

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SB440 and the Need to Reform Georgia's Practice Of Sending Youth to the Adult Criminal Justice System

Background

In 1994, the Georgia General Assembly passed SB440, which gives the superior court exclusive jurisdiction to try and incarcerate children aged 13 to 17 in the adult criminal justice system who are alleged to have committed one of the following offenses (commonly referred to as the "Seven Deadly Sins"): Murder, Voluntary Manslaughter, Rape, Aggravated Sodomy, Aggravated Child Molestation, Aggravated Sexual Batter, and Armed Robbery if committed with a fire-arm. While the law gives district attorneys the power to send some cases back to juvenile court, more than 3700 juveniles have been arrested on SB440 offenses since 1994, and many children have been incarcerated in the adult criminal justice system as a result of SB440.

Nearly a decade after SB 440 became law, Georgians are actively reassessing the utility of trying so many youths as adults. In January, 2003, more than 200 parents, formerly incarcerated youth, judges, educators, advocates and youth policy experts attended a public hearing at the state capitol to tell state representatives and senators how SB 440 is failing to keep children, and their communities, safe. Legislators heard how the practice of trying youth as adults was failing in its public safety mission, was placing youth as young as 13 in dangerous adult prisons, and that the law was being applied in an unfair manner with a disproportionate impact on youth of color. Legislators also learned of new public opinion research that show the states' policies are out of step with the will of most Georgians. Finally, elected officials also heard stories of youth being threatened and victimized, and how the adult system was not meeting the rehabilitative needs of youth sent to adult prison.

To address many of these concerns, Republican and Democratic legislators have introduced HB 670. This bill will return the decision of whether a child should be tried as an adult to a juvenile court judge, keeps children incarcerated in the juvenile justice system at least until their 18th birthday, and exempts children from mandatory minimum sentences.

This policy brief describes the reasons in support of amending SB440, and how the language proposed by HB 670 will better achieve Georgia's public safety goals, without comprising the safety and future of its children.

What's Wrong with SB 440?

1. The Practice of Trying and Incarcerating Large Numbers of Youth in the Adult Criminal Justice System Fails to Keep Georgians Safe, and Increases the Chances that Youthful Offenders Will Re-offend

- The most extensive and comprehensive research on transfer of youth to the adult criminal justice system has shown conclusively that children are more likely to re-offend when they are tried and incarcerated in the adult criminal justice system. Research funded by the U.S. Justice Department has shown that in Florida, youth tried as adults were a third more likely to re-offend than those retained in the adult system. Transferred youth also re-offended twice as quickly, and were twice as likely to be arrested for serious offenses.
- The results found in Florida were almost identical to similar research conducted by Columbia University that compared youth tried for the same crimes in New York (where they went to prison) and New Jersey (where they went to the juvenile justice system) : Again, the New Jersey youth were less likely to re-offend than the New York youth who were sent to jail and prison.
- A study by the National Center on Institutions and Alternatives and Center on Juvenile and Criminal Justice found no relationship between states that transferred large numbers of children to the adult system, and states that transfer fewer youth in terms of lowering the juvenile homicide rate. In Florida, which has more youth in prison than any state in the country, the latest figures show the serious juvenile arrest rate was nearly twice the national average.
- "It seems unlikely, however, that teenagers who enter an institution at the age of fifteen and leave as adults at the age of twenty-five will successfully participate in society, after being locked up and ignored."-- Human Rights Watch, reporting on the lack of age appropriate programs for youth in Georgia's prisons.

2. Children Are Not Safe in the Adult Corrections System

One mother of a youth in prison said, "my son's 'friend' is a 46 year old."

A son called his father one night from prison and said, "Dad, I'm Afraid for my life in here."

A 15 year-old was told by a prison guard, "if you don't want to be the victim, you must become a predator."

- According to studies by the U.S. Justice Department, youth incarcerated with adults are 5 times more likely to report being sexually assaulted, and 8 times more likely to commit suicide than youth held in juvenile justice facilities.

- A recent report from the Campaign for Juvenile Justice documenting a visit to the Lee Arrendale State Prison, where youth incarcerated under SB440 are held, showed that youth imprisoned there were attending classes with, and housed in close proximity to, adult inmates.
- A representative from the Southern Center for Human Rights testified to an incident where several juveniles were escorted to a field outside and strip-searched in front of their adult counterparts while cars passed by on the side of the road.

3. Youth of Color are Being Disproportionately Impacted by SB 440

"If a disproportionate number of youth being prosecuted as adults under SB440 were White, middle class kids, I don't think we would let this law stand."--Marc Schindler, Staff Attorney, Youth Law Center, Washington, DC.

- African American and Latino youth are 45% of Georgia's youth population, but comprise 77.2% of the youth arrested under SB 440.
- White youth were 84% more likely than African American youth charged under SB 440 to have their case transferred back to juvenile court (46% of White Youth were transferred back, versus 25% of African American youth).

4. The Adult Criminal Justice System Is Not Designed to Rehabilitate Youth

Representatives from the Georgia Department of Corrections spoke about conditions, programming, education and mental health services available to adult and child inmates, but upon questioning, officials acknowledged inaccuracies, and admitted that certain programs were "ideas" rather than actual offerings.-- Report from the Campaign for Juvenile Justice, February 2003.

- While the overuse of any form of incarceration for youth is troubling, placing youth in the adult criminal justice system specifically denies them age appropriate educational, medical, nutritional and mental health services to enhance their transition to adulthood, and ensure the best chance for rehabilitation.
- Meals at Lee Arrendale State Prison do not appear to meet federal nutritional recommendations for children aged 13 to 17.
- Of 18 children imprisoned at the Lee Arrendale State Prison, 14 were reported to be in solitary confinement, in a 7 x 12 room for at least 23-hours a day, with no programming. Children were in isolation for reasons ranging from protective custody to not complying with behavioral rules.

5. Judges are best Equipped to Make the Decision of Whether a Child Should Be Tried As an Adult.

Ed Boyd, the father of Joshua Boyd, stated that he did not know about the bill [SB 440] until a year ago, when his son committed armed robbery with a BB gun.

- Juvenile court judges have the training and experience to best evaluate a child's amenability to treatment within the juvenile justice system, and to weigh public safety needs against the interest of the community in rehabilitation.
- In a recent public opinion poll, 81% of Georgians preferred giving judges greater flexibility w

hen sentencing minors rather than handing down the same mandatory sentences that apply to adult offenders.

- Only 44% of youth arrested under SB 440 plead guilty, or were found guilty in court. Nearly a third (29%) were transferred back to juvenile court, or were disposed of in another way. This suggests that a significant number of SB 440 cases never needed to be tried in adult court in the first place.

6. Many Children Are Not Competent to be Tried in Adult Court.

Judge Nina Hickson said that children are different, they think and act differently, and they have an opportunity for change.

- A recent study released by researchers from the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice found that a third of children aged 11 through 13, and a fifth of those aged 14 or 15, understood legal matters at a similar level as mentally ill adults who have been found incompetent to stand trial. This report showed that the transfer of children into the adult criminal justice system almost surely leads to the prosecution in adult court of children who are not competent to stand trial.
- The inability of adolescents to make reasoned decisions and to communicate effectively greatly affects their ability to participate in the criminal justice process, including communications with their attorney or understanding concepts such as their Miranda rights.
- Nearly 60% of the youth arrested under SB 440 were age 15 or younger.

7. The Public Supports a More Flexible Justice System for Children. A Recent Public Opinion Poll In Georgia Finds Support for Reform.

The people of Georgia clearly believe that the state's criminal justice system should treat juvenile offenders differently than adult offenders.--Poll results, the Carl Vinson Institute of Government, University of Georgia, December, 2002.

- While the adult system tends to emphasize punishment over rehabilitation, rehabilitation is at the core of the mission of the juvenile justice systems. 60% of Georgians say that the purpose of the justice system should be to rehabilitate young offenders.
- The vast majority of Georgians' believe that individuals are capable of making decisions that will determine the rest of their life at age at age 18, or older.
- Only 12 % of Georgians' believe minors should receive the same mandatory sentences as adults.
- A majority of Georgians want children (aged 13) who are accused of committing a violent crime tried in the juvenile court.

8. There are Less Costly and More Effective ways to Promote Public Safety, and Provide Youth a Chance at Rehabilitation.

Truvoris Fair was one of the first juveniles convicted under SB 440. After serving 5 years, he was recently released. Truvoris testified that his biggest challenge since being released has been trying to get a job. He believes that SB 440 only creates survivors and not rehabilitated, productive citizens.

- It costs \$100,000 to build a new prison cell, but only about \$1,700 to provide a summer job for youth, and \$3,000 to provide after-school care for a child.
- A study on the High/Scope Foundation's Perry Preschool project found that the program saved \$150,000 per participant in crime costs alone, with a net savings of over \$7 for every \$1 invested.

Conclusion: Research and Data Show that SB440 is Not Sound Public Policy and Should be Amended.

HB 670, a proposal to amend SB440, will:

- Return original jurisdiction to juvenile court to decide when a child should be tried and sentenced as an adult, with a juvenile court judge deciding after a full hearing whether a child should be transferred to the adult criminal justice system. This process, known as "judicial waiver," is supported by the American Bar Association.
- Require that all incarcerated children, whether tried as juveniles or adults, be held in a juvenile facility until the age of majority.
- Provide that if a youth has time left to serve on a sentence when they reach the age of majority, the superior court will decide if the youth should be transferred to the Department of Corrections, or remain under the purview of the Department of Juvenile Justice.