

Fact Sheet: SB440

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

What's Wrong with SB 440?

Transferring Youth to 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.¹ 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.

Children Are Not Safe in the Adult Corrections System

- According to studies by the U.S. Justice Department, youth incarcerated with adults are 5 times more likely² to report being sexually assaulted, and 8 times more likely to commit suicide than youth held in juvenile justice facilities.³

Youth of Color are Disproportionately Impacted by SB 440

- African American and Latino youth are 45% of Georgia's youth population, but comprise 77.2% of the youth arrested under SB 440.⁴
- 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).⁵

Many Children Are Not Competent to be Tried in Adult Court

- 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.⁶

- 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.⁷
- Nearly 60% of the youth arrested under SB 440 were age 15 or younger.⁸

The Public Supports a More Flexible Justice System for Children. A Recent Public Opinion Poll In Georgia Finds Support for Reform⁹

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 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.

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.

1. Bishop, Donna M. et al. (April 1996) "The Transfer of Juveniles to Criminal Court: Does it make a difference?" *Crime & Delinquency*, Vol. 42, No. 2,; and

- Florida Department of Juvenile Justice. Juvenile Transfer to Criminal Court Study: Final Report, January 8, 2002.
2. Fagan, 1989.
 3. Flaherty, Michael G "An Assessment of the National Incidences of Juvenile Suicides in Adult jails, Lockups and Juvenile Detention Centers." The University of Illinois, Urbana-Champaign, 1980.
 4. Juveniles Arrested As Adults Under SB440: Fiscal Year 2002-Final Report. (2002)
 5. Id.
 6. MacArthur Juvenile Adjudicative Competency Study (March, 2003), posted at <http://www.macfound.org>
 7. *Adolescent Brain Development and Legal Culpability*, ABA. Juvenile Justice Centers (Winter, 2003).
 8. Juveniles Arrested As Adults Under SB440: Fiscal Year 2002-Final Report. (2002) Atlanta, Georgia: Georgia Indigent Defense Council.
 9. Georgians' Views of the Juvenile Justice System. Carl Vinson Institute of Government, January 14th, 2003.