



**THE CONSEQUENCES AREN'T MINOR**





## WHAT IS THE LAW IN ILLINOIS?

In Illinois, most youth enter the criminal justice system without the benefit of an individualized hearing by a judge. Instead, they are automatically transferred to the adult criminal system based on age and charging offense. Some do enter the system after a judge has decided to transfer the youth to the adult criminal courts, but the number of youth charged as adults this way is much smaller. The following include the key features of Illinois' adultification laws.

### **The upper age of juvenile court jurisdiction in Illinois is 16.**

Seventeen-year-olds are automatically under the jurisdiction of the adult criminal court.<sup>1</sup> In other words, every 17-year-old arrested for any infraction, be it violent or nonviolent, is treated as an adult in the eyes of the law. Nine other states have the same "age of juvenile court jurisdiction," including Georgia, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin.<sup>2</sup>

### **Youth 13 and older face automatic transfer to adult court for certain felonies.**

In 1982, the Illinois Legislature passed legislation requiring certain youth to be automatically tried in the adult court based solely on age and the charging offense. These youth do not get the benefit of an individualized hearing. The initial cases that triggered automatic transfer were murders, armed robberies with guns, and aggravated sexual assaults for youth 15 years of age or older. Since 1982, other offenses have been added including drug crimes, possession of guns on school grounds, aggravated battery with a firearm, and aggravated vehicular hijacking. Most automatic transfers are for youth 15 and older, however Illinois also automatically charges youth 13 or older in the adult criminal court for murder and sexual assault charges. Youth who have been transferred and convicted in the criminal court once are automatically transferred to the criminal court no matter their subsequent offense.<sup>3</sup> As will be detailed later in the chapter, since 2003, the Illinois Legislature and the executive branch are allowing for more individualized discretion in the adult transfer decision.

### **Judges have discretion to transfer any youth age 13 or older to the adult court for any crime.**

For any crime, a state's attorney may ask that the case be transferred to adult court in a discretionary transfer hearing. In making the transfer decision, the juvenile court judge must consider certain factors including the youth's age or participation in the offense and his amenability for treatment. But any youth age 13 or older committing any infraction can end up in the adult court system after an individualized hearing by a juvenile court judge.

Every 17-year-old arrested for any infraction, be it violent or nonviolent, is treated as an adult in the eyes of the law.

Youth also may end up in the adult criminal court from a mandatory transfer or a presumptive transfer. Under the mandatory transfer provision, prosecutors can ask to have certain cases transferred. Upon a finding of probable cause, the juvenile court judge must transfer the case to adult court. Youth age 15 or older can be presumptively waived to the adult court for certain offenses (e.g., aggravated discharge of a firearm). The prosecutor can ask to have the youth transferred to the adult court, and the youth is presumed to be transferred unless he proves that he should remain in juvenile court.

#### **Illinois is a blended sentencing state.**

In the case of young people 13 and older who are charged with any felony in juvenile court, the prosecutor may file a petition for an “extended jurisdiction juvenile” (EJJ) hearing. If a prosecutor files the EJJ petition, the youth will have a hearing to determine if, in the event of conviction, he or she will be given both a juvenile sentence and an adult criminal sentence. If the youth loses the EJJ hearing, and is subsequently convicted, the court will impose both a juvenile and an adult criminal sentence. The adult sentence will be stayed or suspended as long as the juvenile refrains from violating the conditions of the juvenile sentence or committing any subsequent crimes. If the youth does not successfully complete the juvenile sentence, the youth must then serve the adult sentence. The EJJ statute allows for youth to serve adult time without being transferred to the adult court.

#### **Young people convicted in Illinois’ adult court end up in the adult pre-trial detention and corrections system.**

All 17-year-olds charged in adult court await trial in the adult jail system unless they pay their bonds or get one of the limited alternatives to incarceration. These limited alternatives are only available in certain counties. Any youth automatically charged as an adult but who is not yet 17 will remain in the juvenile detention system until he or she turns 17. Then the youth will be transferred to the county jail. In counties under 3,000,000, there is an option for youth of any age tried as adults to be detained pre-trial in the county jails, provided they are separated by sight and sound from adults until they turn 17. Once a 17-year-old is sentenced to prison, the youth will enter the adult corrections system, the Illinois Department of Corrections. If a youth under age 17 is tried and convicted in adult court, the youth will be sentenced to the Department of Juvenile Justice until the youth turns 17. At that time, the Department of Juvenile Justice has the option to ask the adult court judge to transfer the youth to the Illinois Department of Corrections. At age 18, the Illinois Department of Juvenile Justice has the discretion to transfer the youth, and at age 21 the transfer is mandatory. If a 15-year-old is charged with an offense, but convicted and sentenced after turning 17, the youth is automatically in the adult corrections system.

#### **There is no sight and sound separation between adults and 17-year-old youth in Illinois prisons, because the age of juvenile court jurisdiction in Illinois is 17.**

For those individuals under the age of 18 who are committed to the custody of the Illinois Department of Corrections, all males go to the reception and classification center at Joliet and then can be transferred to any one of the 20 facilities in the state. Youth age 17 can be assigned to the maximum-security facilities as well as to the Supermax facility. There is one facility designated for women.

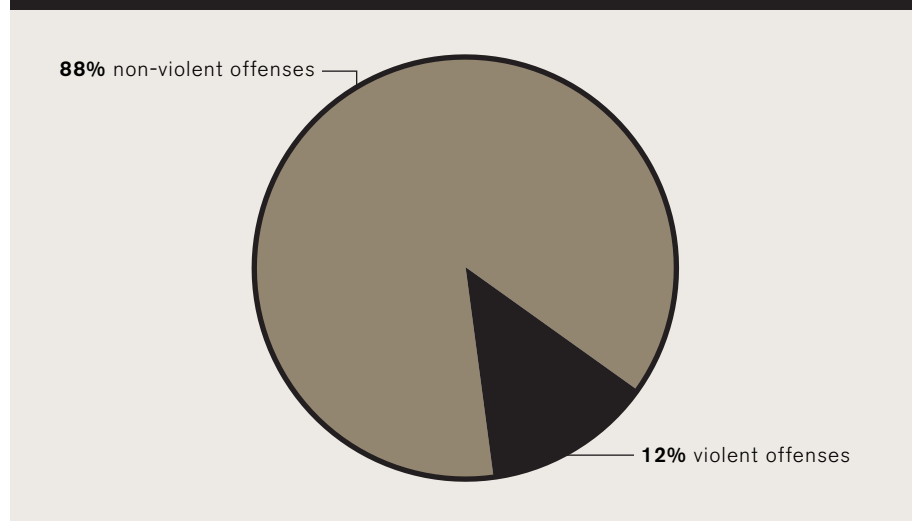
#### **WHO IS AFFECTED BY THE LAWS IN ILLINOIS?**

An estimated 16,000 17-year-olds enter the adult system in Illinois annually. The total petitions filed for all ages of youth in Cook County in 2003 was 9,168, and in the entire state it was 21,151. Although accurate data are not available on the actual number of 17-year-olds arrested each year, the authors estimate that approximately 16,000 youth age 17 are arrested and could be charged as adults in Illinois each year.<sup>4</sup> Seventy-one percent of all arrests of young people of all ages are for non-violent crimes, and in Cook County, fewer than 12% of 17-year-olds charged are charged with felonies, including non-violent

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felonies such as drug crimes.<sup>5</sup> The authors estimate that the majority of 17-year-olds in the adult system are arrested and charged with non-violent crimes.

**Eighty-eight percent of the 17-year-olds charged in Cook County and who are under adult justice supervision are charged with non-violent offenses**



Source: Analysis of Juvenile Justice Initiative of Illinois review of Judicial Advisory Council memorandum, April 2006. Exhibits A, B, and C of the Circuit Clerk of Cook County charges, March 29, 2005 to March 28, 2006.

**Hundreds of young people are transferred to adult court in Illinois, but due to reforms, the number of youth transferred is declining.**

Data on transfers to adult court are more accurate and more readily available than information on 17-year-olds who automatically end up in court. Starting in 1999, data on the automatic transfers to adult court became available through the Law Office of the Cook County Public Defender. The data showed that 66% of all automatic transfers were for non-violent drug crimes; all but one youth was a youth of color, and all but one was from the city of Chicago. The research showed that more than 60% of the youth had had no prior services in juvenile court, such as supervision or probation, before being automatically transferred to adult court. Whether they were youth charged with non-violent drug crimes or serious violent crimes, almost two-thirds had no prior services before the automatic transfer. Research over the next several years by the Juvenile Justice Initiative confirmed these findings. Virtually all youth automatically tried were youth of color. Sixty-six percent were tried for non-violent drug crimes, and two-thirds or more of the youth had had no prior services in juvenile court before being automatically transferred to the adult court.

In 1999, the data showed that 66% of all automatic transfers were for non-violent drug crimes; all but one youth were youth of color, and all but one were from the city of Chicago.

Based on this research, several rounds of changes were made to the automatic transfer laws. This has substantially reduced the number of youth entering the adult system via automatic transfer. Approximately 150 youth under age 17 are automatically transferred to adult court each year, down from well over 400 per year as late as 2004. Currently, the majority of these youth are tried in adult court for violent offenses, but there are some cases of non-violent offenses being automatically charged in adult court. Throughout the state, fewer than 100 youth are transferred each year via a juvenile court judge and a discretionary hearing.<sup>6</sup> Outside of Cook County, very few automatic transfers occur. In fact, in 2001, fewer than 25 transfers were reported to the Administrative Office of the Illinois Courts from all other counties other than Cook. When each case was analyzed further, only 14 of these cases were actual automatic transfers.

Judicial waivers in the form of discretionary, presumptive, or mandatory transfers also occur in Illinois, but they account for a much smaller number of youth in the adult court system. Cook County reported 52 discretionary transfers in 1998, while the other counties in Illinois reported 41. In 2003, all counties outside of Cook reported 10

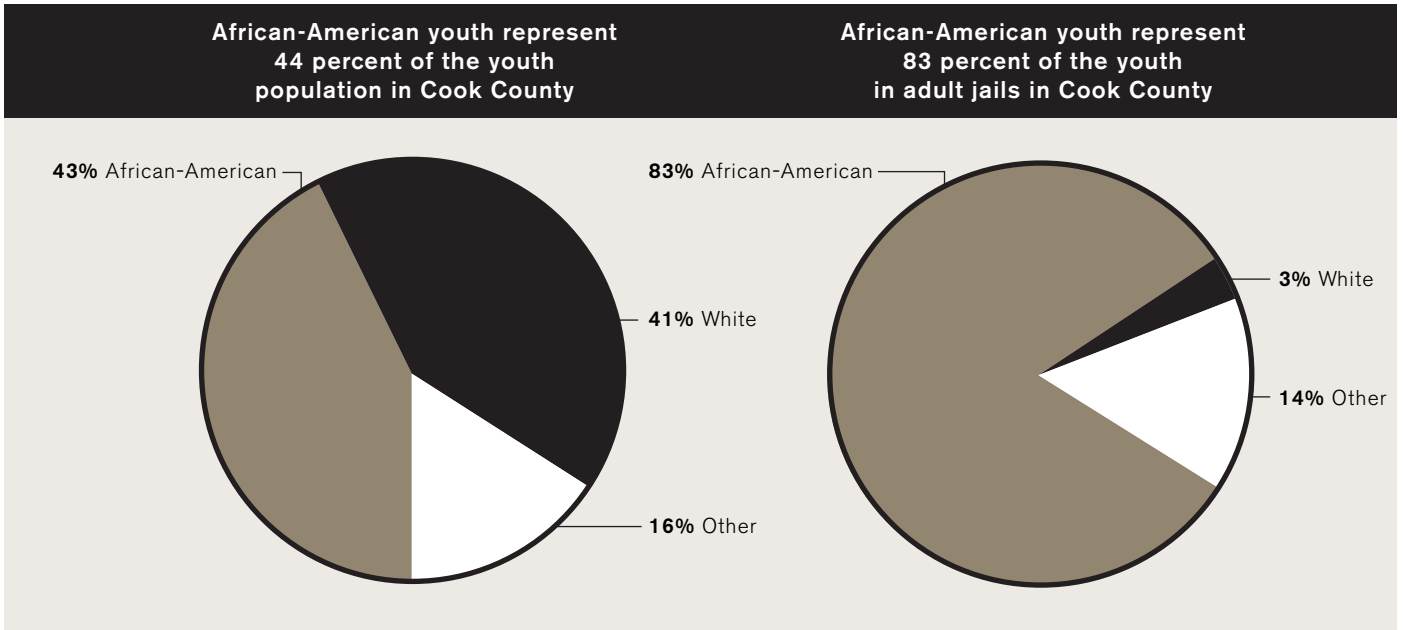
discretionary transfers and 25 automatic transfers.<sup>7</sup> However, it is unclear if these data are accurate. Since the laws on transfer are so complicated and easily misunderstood, it is unclear if officials reporting the transfers know how to classify each transfer.

**In Illinois, youth of color are about a third of the youth population, but have represented nine out of 10 young people in the adult system.**

Although prior to the reforms to the state's transfer laws data were not available to show the disproportionate impact statewide, there are data on Cook County. Over a three-year period (2000-2002), 99% of the youth automatically transferred to adult court in Cook County were African-American or Latino.

According to the Justice Department's analysis of Census data, in 2004 approximately 19% of Illinois youth aged 17 were African-American and 16% were Latino.<sup>8</sup> Although racial and ethnic information on 17-year-olds in the adult court system statewide is not available, a picture of 17-year-olds in the Cook County Jail reveals disproportionate representation of youth of color. White youth (defined as "Caucasian") represent 48% of the youth population<sup>9</sup> in Cook County, but 3% of the youth jailed in Cook County on a given day are white. African-Americans represent 44% of the youth population in Cook County, but they constitute 83% of the youth jailed.<sup>10</sup> Youth defined as Latino represent 14% of the young people jailed in Cook County. This means that 97% of the youth in the jail are non-white.

*Source: Juvenile Justice Initiative analysis of data from the U.S. Census and the Cook County Jail conducted for July 3, 2006.*



**YOUNG PEOPLE AND FAMILIES AFFECTED BY ILLINOIS' LAWS**

**“Armed robbery” of gym clothes lands Keith Pearl in jail and puts an adult conviction on his record.**

Keith Pearl was 17 years old when he was arrested for two counts of armed robbery and one count of attempted armed robbery. The incident involved three young people who were charged with taking two pairs of gym shoes, two white tee-shirts, two silver-colored chains, and six pairs of socks.

Pearl was charged under a theory of accountability; he never had possession or use of a weapon, nor was he an active participant in the robbery. According to Pearl, he was in the

wrong place at the wrong time. Pearl was the only “offender” apprehended, and he had no weapon and none of the stolen objects in his possession when he was arrested minutes after the robbery. He pled to one count of robbery, was placed on probation, and now has a felony conviction permanently on his record. Had Pearl gone to trial and been convicted for the original charge, he would have faced a mandatory minimum of six years in the penitentiary. Pearl had no previous arrests in either the juvenile or the adult criminal justice system. As a result of the charge, he was detained at the Cook County Jail for several weeks.

Pearl is the oldest of two children who were raised by their maternal grandmother. He has strong support from his immediate and extended family who attended all scheduled court dates. He has now graduated from high school and has every intention of attending college. Pearl was a junior deacon in his church and an active member of the youth group and youth choir. He is an avid basketball player who spends much of his spare time playing in organized sports in the community and at the youth center near his home.

As part of the legal representation, Pearl’s lawyers solicited input from school and church officials who interacted with him on a regular basis. His pastor said that he had always known Pearl to be “an honest and good young man.” His teachers all saw him as motivated, with great potential. In order to make up the several weeks he missed while he was in jail on this charge, he went to night school in addition to his day classes. He made up the credits and graduated on time.

The judge in this case was very impressed by the motivation and potential of this young man, but the sentencing options of the charges and the position of the state’s attorney’s office prevented him from modifying the sentence. The impact of the felony conviction on the rest of his life continues to unfold. As a result of this conviction, Pearl’s ability to get student loans will be extremely compromised, as will his job opportunities upon graduation.

## WHAT ARE THE POLICY OPTIONS IN ILLINOIS?

Over the past few years, the tide has shifted dramatically in Illinois’ juvenile justice policy. Legislation has been enacted to reform the transfer laws and to create a new Department of Juvenile Justice. The Legislature also has passed a bill to raise the age of majority to 18.

### Reforming the automatic transfer laws.

Beginning in 2001, the Illinois Legislature began reviewing the automatic transfer laws. With evidence that the policies had a much greater impact on youth of color from inner-city Chicago and that these policies resulted in mostly non-violent drug offenders being automatically transferred to the adult court without a hearing in front of a judge, the Legislature began considering a number of bills to change the automatic transfer statutes.

At first, there was some resistance to change within the prosecution community. But by 2003, the Illinois Legislature began a series of steps to create a positive change in the transfer laws. The first change allowed a reverse waiver for drug offenders automatically tried in the adult court. Youth charged with certain drug crimes were allowed to petition the adult court judges to transfer them back to juvenile court. The bill was sponsored by Senator Ed Petka, a Republican, pro-prosecution legislator, who was referred to as “Electric Ed”<sup>11</sup> for his pro-death penalty stance.

But legislators and advocates claimed the 2003 reverse waiver reforms did not significantly affect the number of youth ending up in the adult system. To find consensus for deeper reforms, the Legislature created a Task Force on Transfer in 2004. This task force was co-chaired by Senator John Cullerton and Representative Annazette Collins. Public hearings were held over the summer and fall of 2004 and discussions about

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possible changes were held in the spring of 2005. During these hearings, legislators learned about new research on the brain and adolescent development.

The outcome of the bi-partisan Task Force was more change to the transfer statute, including a return of drug offenders to juvenile court. It also clarified and corrected some inconsistencies in discretionary and presumptive transfer statutes and extended jurisdiction juvenile statutes. Although the reforms allowed more youth to have individualized hearings in front of a juvenile court judge, it did not allow youth eligible for transfer an individualized review. The Task Force also did not address raising the age of juvenile court jurisdiction to 18. In August 2005, Public Act 94-0574, allowing the changes to the transfer statute, was signed into law. By all accounts, this has lessened the number of youth automatically transferred by almost two-thirds.

### **Raising the age of juvenile court jurisdiction to 18.**

While the changes to the transfer statutes were happening, there was also legislation proposed to raise the age of juvenile court jurisdiction to 18. In 2004, a bill passed the House of Representatives with a sizable margin of victory and bi-partisan support. Interestingly, Representative Bill Black, a conservative out of downstate Illinois, was quoted on the House floor as saying, "I don't understand why anyone would oppose this bill. I think it is a common-sense measure."<sup>12</sup> This particular bill was not called in the Senate that year.

In 2005, a "raise the age" bill was introduced in the Senate, S. 458. It passed the Senate with bi-partisan support. The main opposition came from the Department of Corrections and Cook County. They claimed that the fiscal impact of this reform would be too great, particularly in Cook County. Indeed, symbolic of the new policy consensus around having developmentally appropriate, individually tailored juvenile justice policies, the only major concern has been that there will not be enough resources to service all youth. Legislators and local government were mainly concerned about costs. Despite these concerns, the Senate still passed the bill, with Senator Cullerton noting, "because it is the right thing to do."<sup>13</sup>

### **Will "raising the age" have a large fiscal impact on Illinois counties?**

Throughout 2006, researchers, legislators, and advocates have been working to get a clear sense of the true fiscal impact of raising the age, so that appropriate resources can be allocated to local and state government to help with the changes. Some legislators have said, "The problem now is inconsistency with the law. We should change it now and deal with the dollars later. We won't give new allocations before we actually change the law."<sup>15</sup> Local legislators have raised the biggest concerns. The Cook County Board of Commissioners' Legislative Committee held a hearing in April 2005 regarding S. 458 where it was clear that the commissioners wanted to see the change but had concerns about the fiscal impact. Because of these concerns, by November 2006 the County Board had changed its position on the bill to neutral.

The concern over the potential costs of raising the age of majority in Illinois does not fully account for the savings that would come from the lower recidivism rates, lower crime rates, and the increased economic productivity of young people who successfully leave a life of crime behind them. Although there is research from other states demonstrating that young people tried as adult recidivate at higher rates, Illinois does not collect the kind of data needed to make projections of the fiscal impact of these rates. Still, stakeholders know that raising the age will help reduce crime, and hence reduce the costs associated with higher crime rates. Judge George Timberlake, Chief Judge of the 2nd Judicial Circuit in Illinois, has said that, "If you want to reduce crime in our society, then it makes much more sense to include 17-year-olds in the classification of juvenile court."<sup>16</sup>

S. 458 failed to pass in the House in 2006. Like the reform to the transfer statutes, Illinois policy debate around the age of jurisdiction may take more time to come to conclusion. Legislators who have spoken out against the bill say they are only concerned about costs.

"Using 17-years-old as the cutoff in Illinois was an arbitrary number. With all of the research that we now have regarding juveniles, the juvenile court should be given jurisdiction for 17-year-olds." Judge Curtis Heaston, presiding judge of the Juvenile Justice Division, Cook County.<sup>14</sup>

Most stakeholders claim that they would like to see 17-year-olds in the juvenile court, but they do not want a bill to pass without appropriate funding. But legislators prefer to pass the bill first and then, once there is an actual fiscal impact, provide funding at that time. There are plans to reintroduce another bill to raise the age of juvenile court jurisdiction in the spring of 2007.

## ILLINOIS RECOMMENDATIONS

Although Illinois is a leader in reforming adultification of youth statutes, it can do more. With further reform, Illinois can reform the juvenile court so more youth will benefit from juvenile court services and avoid the consequences of adult convictions.

- **Raise the age for 17-year-olds.**

If passed, 17-year-olds will benefit from juvenile court services and communities will be safer, because youth with more treatment have lower recidivism rates.

- **Allow all youth individualized discretion in terms of transfer.**

All youth who are transferred to adult court should have a neutral party or judge make the decision on transfer. This would ideally be done by a judge familiar with adolescent development.

- **Review sentences in adult court for youth.**

Although the adult court is about punishment and adult consequences, the system needs to review the length of sentences for youth in adult court to make sure that they are age-appropriate.

- **Provide appropriate rehabilitative services in juvenile court.**

As the juvenile court changes with a new Department of Juvenile Justice and as the changes to the automatic transfer laws return more youth to the juvenile court, it is imperative that the juvenile court provide rehabilitative services to these youth so that they have opportunities to improve their lives.

## NOTES

<sup>1</sup> Since 1906, boys age 17 have been tried automatically as adults, and in 1973, after a legal challenge based on 'equal protection' issues, girls 17 years of age were treated automatically as adults.

<sup>2</sup> National Center for Juvenile Justice. (2006). *State juvenile justice profiles*. Pittsburgh, PA: Author. Retrieved January 28, 2007, from <http://www.ncjj.org/stateprofiles/>

<sup>3</sup> 705 ILCS 405/5-130.

<sup>4</sup> The number of 17-year-olds charged in adult court statewide is not available. Data do show that 10,183 youth age 16 were arrested in Cook County in 2003, and 5,135 youth age 16 were arrested in the other 101 counties in the state. According to the National Center for Juvenile Justice, 17-year-olds are arrested at approximately 112% of the number of 16-year-olds, and 102% over the number of cases for 16-year-olds. Although there would be some variation in arrest patterns between ages, the volume of juvenile arrests would increase much more for some offenses than for others, and the differences would cancel each other out. For example, because 17-year-olds have more access to cars and alcohol than younger juveniles, the largest percentage increase would be in juvenile arrests for driving under the influence—226%. See Snyder, H., Sickmund, M., Puzanchera, C., & Griffin, P. (2005, April 27). *Background briefing paper: The impact of raising the upper age of juvenile court jurisdiction from 16 to 17*. Pittsburgh, PA: National Center for Juvenile Justice.

<sup>5</sup> Analysis of Juvenile Justice Initiative of Illinois review of Judicial Advisory Council memorandum, April 2006. Exhibits A, B, and

C of the Circuit Clerk of Cook County charges, March 29, 2005 to March 28, 2006.

<sup>6</sup> Lan, Y. A., Hughes, E., & Stevenson, P. (March 2006). *Juvenile justice system and risk factor data for Illinois: 2003 annual report*. Chicago, IL: Illinois Juvenile Justice Commission, Illinois Criminal Justice Information Authority.

<sup>7</sup> Ibid.

<sup>8</sup> Puzanchera, C., Finnegan, T., & Kang, W. (2006). *Easy access to juvenile populations*. Retrieved January 28, 2007, from <http://www.ojdp.ncjrs.org/ojstatbb/ezapop/>

<sup>9</sup> Ages 10 to 19 in Cook County in 2003.

<sup>10</sup> Juvenile Justice Initiative analysis of data from the U.S. Census and the Cook County Jail conducted for July 3, 2006.

<sup>11</sup> Collar County endorsements [Editorial]. (2006, November 2). *The Chicago Tribune*.

<sup>12</sup> House Bill 4610, House Floor Debate, Final Action, March 25, 2004.

<sup>13</sup> Senate Bill 458, Senate Floor Debate, Final Action, April 14, 2005.

<sup>14</sup> Juvenile Justice Initiative of Illinois. (2006, October 19).

*Dialogue highlights imperative to recognize developmental differences with kids. Senate Bill 458 reflects current science, brings Illinois in line with majority of states* (Press Release). Chicago, IL: Author.

<sup>15</sup> Discussion on raising the age of juvenile court jurisdiction, Northwestern University School of Law, October 13, 2006.

<sup>16</sup> See Juvenile Justice Initiative of Illinois, 14.