



THE CONSEQUENCES AREN'T MINOR

INTRODUCTION

In the early 1990's, as a result of the Central Park jogger case, prominent and influential individuals, such as former Princeton professor and Bush Administration appointee John Dilulio, made doom and gloom predictions about the emergence of a "generational wolfpack" of "fatherless, Godless and jobless" youth. This superpredator phrase stuck and almost every state passed new laws to make it easier to try and sentence youth in the adult criminal justice system. Now researchers estimate that approximately 200,000 youth are prosecuted in adult courts every year. This places youth at risk of assault, suicide and death in adult jails and prisons. The consequences of an adult conviction are long-term, serious and life-threatening. This book is designed to help policymakers understand the full impact of these policies and highlights seven states: California, Connecticut, Florida, Illinois, North Carolina, Wisconsin and Virginia.

KEY FINDINGS

National and state research, and the experience of young people, their parents, and their families, give us a concrete picture of how the laws governing the trying, sentencing, and incarceration of youth do not promote public safety. The following are more than a dozen key findings from this research.

#1 The overwhelming majority of youth who enter the adult court are not there for serious, violent crimes.

Estimates range on the number of youth prosecuted in adult court nationally. Some researchers believe that as many as 200,000 youth are prosecuted every year. Despite the fact that many of the state laws were intended to prosecute the most serious offenders, most youth who are tried in adult courts are *there no matter how minor their offense*. Most of the youth who enter the adult court are charged with non-violent offenses. For example, more than 10,000 young people in Connecticut enter the adult court system each year the vast majority for non-violent offenses. In 2002, in Wisconsin, there were almost 14,000 admissions of 17-year-olds to adult jails—only 15 percent of these youth were arrested for violent crimes such as murder, rape, aggravated assault, and robbery.

#2 Increasing numbers of young people have been placed in adult jails where they are at risk of assault, abuse, and death.

Currently, 40 states permit or require that youth charged as adults be placed pre-trial in an adult jail, and in some states they may be required to serve their entire sentence in an adult jail. According to the National Council on Crime and Delinquency, since 1990 the incarceration of youth in adult jails has increased 208%. On any given day, more than 7,000 young people are held in adult jails. This policy places thousands of young people at risk as it is extremely difficult to keep youth safe in adult jails.

#3 State laws may contradict core federal protections designed to prohibit confinement of juveniles with adults.

Federal protections approved by the Congress in 1974 to protect youth by prohibiting the placement of youth in adult jails (except in rare and limited circumstances) do not apply to youth who are prosecuted as adults.

#4 In contrast to growing numbers of youth incarcerated in adult jails, adult prisons' admissions of youth are declining.

On any given day, more than 2,000 youth are in adult prisons. With the exception of Connecticut, which led the nation in the number of youth in adult prison and experienced

a nearly 20% increase in the number of youth in adult prison in 2005, this number has declined significantly over the past decade. One analysis of the discrepancies in the numbers is that even while more and more youth are being prosecuted as adults, few are found to commit crimes serious enough to warrant time in adult jails. Many youth could be safely kept in the juvenile justice system. Youth in adult prisons are at risk of abuse, sexual assault, suicide, and death, which has led experts to conclude that “clearly, juveniles are a vulnerable population within adult correctional facilities.”

#5 The decision to send youth to adult court is most often not made by the one person best considered to judge the merits of the youth’s case—the juvenile court judge.

In most instances, juvenile court judges do not make the decision about whether a youth should be prosecuted in adult court, despite the fact that a juvenile court judge is a neutral player who is in the best position to investigate the facts and make the decision.

#6 Access to effective legal counsel is a deciding factor on whether a youth is prosecuted as an adult.

The effectiveness of a youth’s lawyer can be the difference between whether a youth is prosecuted as an adult or as a juvenile by the justice system.

7 Youth of color are disproportionately affected by these policies.

In every state profiled in this report for which data are available, youth of color are disproportionately affected by these statutes. For example, of the 6,629 youth who entered the custody of the California Department of Corrections for an offense committed prior to their 18th birthday, seventy percent were African-American and Latino, and less than 10 percent were white. In Illinois, youth of color are about a third of the youth population, but research has shown that they have represented 9 out of 10 young people in the adult system.

8 Female youth are affected too, but little is known about them.

Very limited data are available on girls in the adult criminal justice system. No recent, comprehensive national research studies have been undertaken that document the impact of the placement of girls in the adult criminal justice system. There are model approaches to serve girls in the juvenile justice system that could be more viable alternatives to placing girls in the adult justice system.

#9 The consequences for prosecuting youth in adult court “aren’t minor.”

Youth tried as adults face the same punishments as adults. They can be placed in adult jails pre- and post-trial, sentenced to serve time in adult prisons, or be placed on adult probation with few to no rehabilitative services. Youth also are subject to the same sentencing guidelines as adults and may receive mandatory minimum sentences or life without parole. The only consequence that youth cannot receive is the death penalty. When youth leave jail or prison, are on probation, or have completed their adult sentences, they carry the stigma of an adult criminal conviction. They may have difficulty finding a job or getting a college degree to help them turn their lives around. The consequences of an adult conviction aren’t minor; they are serious, long-term, life-threatening, and in some cases, deadly.

10 The research shows that these laws do not promote public safety.

Although research on the full impact of these laws is ongoing, the most current results reveal an ever-increasing negative impact on youth adjudicated in the adult criminal justice system. In addition, studies by researchers throughout the country show that sending youth to the adult criminal justice system doesn’t work to reduce crime. In one study comparing the recidivism of youth waived to criminal court with those retained in juvenile court, the research found that those in the “adultified” group were

more likely to be re-arrested and to commit more serious new offenses; they also re-offended more quickly. Another study that compared the recidivism rates of youth in two states (New York and New Jersey), that differed only by the age at which they prosecuted youthful offenders in the adult system: This study found that, youth tried in adult court were much more likely to re-offend more quickly and with more serious offenses.

11 These laws ignore the latest scientific evidence on the adolescent brain—the same evidence that informed the Supreme Court’s decision on barring the juvenile death penalty.

The Supreme Court’s decision relied heavily on new scientific research showing that certain areas of the brain, particularly those that affect judgment and decision-making, do not fully develop until the early 20’s. State laws passed prior to these research studies do not take into account these findings. The laws need to be reexamined to reflect this latest scientific evidence on the adolescent brain.

12 Assessing the impact of youth incarceration is difficult because of a lack of available data.

As already mentioned, every year thousands of young people are tried, sentenced, or incarcerated as adults. Some researchers say that this could be as many as 200,000 youth every year. However, no one really knows how many young people this affects. There is no one single, credible, national data source that tracks all the youth prosecuted in adult courts. If researchers are not able to assess the magnitude of the impact of these state laws on youth, policymakers lack the information to make informed decisions. There is a need to collect more data so that we can understand just how many youth are affected.

13 The public should invest its dollars by strengthening the juvenile justice system.

The current juvenile justice system in states is a much more viable alternative than the adult criminal justice system in treating young people in conflict with the law. The long-term benefits to society nationwide of returning youth to the jurisdiction of the juvenile court far outweigh any short-term costs that may be incurred. New research shows that rehabilitative programs, including ones that treat serious, chronic, and violent offenders in the juvenile justice system, reduce juvenile crime. And, the cost of simply keeping the system as it is affects society in ways that cannot be calculated in dollars and cents.

THE OPPORTUNITY FOR CHANGE

#1 All the new research supports a change in policy direction.

State and local policymakers did not have the benefit of this new compelling research on recidivism, competency, adolescent brain development, and effective juvenile justice programs when they were considering changes to their state’s laws on trying youth as adults. Just as this research influenced the Supreme Court to eliminate the juvenile death penalty, this new research also provides a strong basis for re-examination of and substantial changes to state statutes and policies.

2 The nation recognizes the need for change, and some states are implementing reforms.

State legislators, juvenile and adult court judges, juvenile and adult detention, jail, and correctional administrators, and probation officials throughout the country are pushing for reforms nationally and in individual states. These public officials are supported by scores

of prominent national, state, and local organizations who are calling for major changes in national and state policy. A number of states have already begun to re-examine their state statutes and in some cases have implemented policy changes. In addition, youth, their parents, and their families, who have been most affected by these policies, are speaking out, organizing, and educating national and state policymakers.

3 When we invest in young people, they can succeed.

Researchers have not yet been able to quantify the benefits of helping individual youth, who may go on to make significant contributions to society, who directly benefited from the rehabilitative nature of the juvenile court include Olympic Gold Medalist Bob Beamon, U.S. Senator, Alan Simpson and entertainer Ella Fitzgerald, all who may not have made the contributions they went on to make if they had been treated like adults.

RECOMMENDATIONS

While experts from each state have developed their own state-specific recommendations on how the laws and policies in those states should be updated, the report findings support several recommendations that are national in scope. Federal, state, and local policymakers should consider these policies.

1. State and local policymakers should consider immediately adopting the reforms recommended in their state's section such as:
 - increasing the age of juvenile court jurisdiction to 18;
 - banning the placement of youth in adult jails and prisons;
 - providing waiver/transfer to adult court by judicial waiver only;
 - redirecting resources to expand developmentally appropriate treatment and services for youth in the juvenile justice system as an alternative to the adult criminal justice system; and
 - investing in quality and effective legal counsel for youth.
2. Federal policymakers should consider amending the Juvenile Justice & Delinquency Prevention Act (JJDP A) in 2007 by:
 - imposing a federal ban on placement of young people in adult jails and prisons; and
 - strengthening the federal "Disproportionate Minority Contact" provision by requiring states to invest federal and state resources in effective approaches to reducing racial disparities in the justice system.
3. Starting this year, federal, state, and local policymakers should make significant improvements in the juvenile justice system by investing in programs that are developmentally appropriate and evidence-based, through the JJDP A and other federal programs as well as through state appropriations.
4. This year federal, state, and local policymakers should invest in and undertake significant data collection efforts on the impact of prosecuting youth as adults.
5. Federal, state and local policymakers should commit to regularly visit youth in adult jails and prisons and hold public hearings on an ongoing basis to ensure that the youth and families most affected by these policies are involved in policy deliberations.

ABOUT THE ORGANIZATION--THE CAMPAIGN FOR YOUTH JUSTICE

The Campaign for Youth Justice (CFYJ) is dedicated to ending the practice of trying, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system. The goals of the campaign are:

- to raise awareness about the negative impact of prosecuting youth in the adult criminal justice system and of incarcerating young people in adult jails and prisons;
- to reduce the number of youth who are tried, sentenced, and incarcerated in the adult system;
- to decrease the harmful impact of trying youthful offenders in adult court; and
- to promote research-based, developmentally appropriate rehabilitative programs and services for youth.

DEDICATION

This report is dedicated to the thousands of young people and their families across the country who have been affected negatively by state laws in the name of public safety.

ACKNOWLEDGMENTS

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For a full list of contributors to *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, please see the acknowledgment section of the full report.



WHAT IS THE LAW IN WISCONSIN?

In Wisconsin, juvenile court jurisdiction runs until the age of 17.

Since 1996, 17-year-olds have been excluded from juvenile court jurisdiction by law.¹ After youth crime spiked in the early 1990s, then-Governor Tommy Thompson initiated a change in the juvenile laws for the state of Wisconsin. With the change, Wisconsin became one of only 13 states to statutorily exclude 17-year-olds from juvenile court jurisdiction.

Young people 10 and up can be tried in adult court. Under Wisconsin's statutory exclusion provision, youth as young as 10 years old must have their cases filed in criminal court for the following violent offenses: first- or second-degree intentional homicide, attempted first-degree intentional homicide, or first-degree reckless homicide. A young person who is accused of committing assault or battery while detained in a secure correctional facility also must be tried in criminal court.² Under the state's prosecutorial waiver provision, prosecutors can request that cases be waived to criminal court when youth as young as 14 are accused of felony murder, second-degree reckless homicide, first- or second-degree sexual assault, taking hostages, kidnapping, burglary, robbery with a dangerous weapon, manufacturing or distributing controlled substances, or the commission of a felony at the request of a gang.³ Under the same provision, youth 15 and older can be waived into adult court for any crime. Once a young person is in adult court, there is an opportunity to attempt a "reverse waiver." This waiver allows the youth to return to the jurisdiction of the juvenile court. The burden of proof for these cases rests on the youth; these cases are rarely successful.

In practice, youth as young as 13 have been tried as adults in Wisconsin. Some of the youngest people tried in the adult system are there because of a provision that mandates that youth who commit an assault in a juvenile correctional facility be automatically treated in adult court.⁴

Once an adult, always an adult.

After having been tried as an adult, an individual under age 17 cannot return to juvenile court for subsequent offenses.⁵ This provision affects youth disproportionately in counties that use the prosecutorial waiver provision more often. There is a wide disparity between counties in how the waiver is used. Some counties have not waived a youth in several

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years, while others waive upwards of 50 per year. In 2005, of the 377 juveniles waived into adult court, 10 out of the 72 counties accounted for 276 of the waivers.⁶

Young people convicted in the adult court end up in the adult jails and prisons.

In Wisconsin, youth age 15 or older under adult court jurisdiction can be detained pre-trial in the general adult population in local jails without the sight and sound separation allotted under federal law to youth held as juveniles.⁷ After sentencing, the Department of Corrections (DOC) has the final authority in matters concerning placement of waived youth. Any youth who has not reached the age of 15 can be placed in a juvenile correctional facility even if that youth has been sentenced to the DOC.⁸ However, the DOC can sentence youth as young as age 10 to adult prisons.

Youth held in adult facilities do not have access to the same programs as their counterparts in juvenile facilities. In juvenile facilities, youth must attend school. However, in adult jails and prisons, education, if available, is voluntary.

In Wisconsin, as is generally the case elsewhere, juvenile and adult correctional facilities operate with different presumptions and purposes. This affects the conditions and types of services a young person might encounter. Youth held in adult facilities do not have access to the same programs as their counterparts in juvenile facilities. For instance, in juvenile facilities, youth must attend school. However, in adult jails and prisons, education, if available, is voluntary. Additionally, group and individual therapy sessions are not provided in the vast majority of adult facilities but are mandatory in the bulk of juvenile programs. Rehabilitative programming such as conflict resolution classes or substance abuse treatment is more accessible in juvenile facilities than in jails or prisons.

In 2005, the Civil Rights Division of the U.S. Department of Justice (DOJ) undertook an investigation of conditions and practices at the Wisconsin DOC's Taycheedah Correctional Institution in Font du Lac, Wisconsin. That facility currently houses more than 700 maximum and medium security female inmates, including girls age 14 and older. The DOJ commended the state's efforts to detect, minimize, and prevent sexual misconduct, but it also concluded that "certain conditions at Taycheedah violate inmates' constitutional rights by failing to provide for inmates' serious mental health needs."⁹ Among the specific failures cited by the DOJ are:

- *"Failure to provide a minimal array of mental health programming, crisis services, and specialized treatment for inmates with acute mental illness."* Because the one inpatient psychiatric facility in the area is overcrowded and ill-equipped to handle inmates who pose a danger to themselves or others, "Taycheedah staff resort to the use of segregation and observation status to control inmates' dangerous behavior, which not only fails to solve the problem, but often exacerbates it." In June 2005, shortly after being discharged from the inpatient facility because "her behavior was too difficult to manage," an 18-year-old inmate fatally asphyxiated herself while in administrative segregation. When investigators from the DOJ visited Taycheedah in July 2005, they found 44 out of the 59 individuals in segregation had serious mental illnesses and appeared to be in significant distress. They also met a 15-year-old inmate who was placed in long-term segregation as a result of "problematic behavior." She had been diagnosed with attention deficit disorder and intermittent explosive disorder, but was not receiving medication, mental health treatment, or educational services. They concluded that the Monarch Special Treatment Unit at Taycheedah is supposed to "provide specialized treatment to those inmates...with the most acute mental illnesses," but the unit provides "almost no programming," leaving "the vast majority of inmates... unoccupied for most of the day."
- *"Grossly inadequate' staffing of mental health providers."* Taycheedah employs only two part-time psychiatrists and each carries a caseload of more than 400 patients at a time. As a result, "inmates with serious mental health needs are left untreated, sometimes for as long as several months." The ACLU's National Prison Project recently filed a class action lawsuit on behalf of four prisoners at Taycheedah who suffered invasive surgeries

and permanent disablement as a result of the prison's neglect of their medical needs.¹⁰ The suit is pending. The ACLU also noted a discrepancy in treatment options for seriously mentally ill women in the WI DOC.

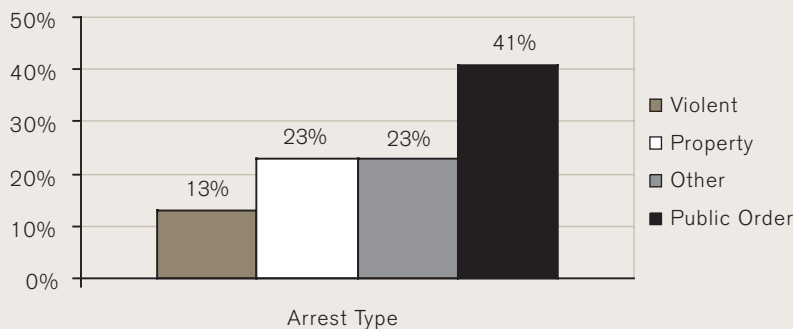
- “[Wisconsin Department of Corrections]’s February 2006 Status Report on adult correctional health care, produced at the request of the Joint Committee on Finance, concedes that although a much greater percentage of the female prison population has mental health needs, women prisoners do not have access to inpatient mental health care that is “comparable” or even “similar” in quality to the care available to incarcerated men at the Wisconsin Resource Center (WRC).”¹¹ And although juvenile boys with serious mental health problems have the Mendota Juvenile Treatment Center, operated by the Department of Health and Family Services, available to them for specialized treatment and inpatient care, the ACLU found that females under the age of 18 with serious mental health issues only have access to mental health treatment at Southern Oaks Girls’ School. This facility is operated by the juvenile corrections division, not the Department of Health and Family Services. Although women and girls constitute the minority of incarcerated people, many of these inmates have special needs that require more attention than male inmates. Incarcerated women are more likely than men to come from poverty-stricken neighborhoods and to be single parents of minor children.¹² Furthermore, female prisoners are at least three times as likely as their male counterparts to have experienced physical or sexual abuse, and are more likely to use drugs or have substance abuse problems.¹³ Denying services to this vulnerable population could negatively affect the children of incarcerated women, the community, and the prisoner herself.

In 2002, there were almost 14,000 admissions of 17-year-olds to adult jails; the vast majority was arrested for non-violent offenses. Only 15% of these youth were arrested for violent crimes such as murder, rape, aggravated assault, and robbery.

WHO IS AFFECTED BY THE LAWS IN WISCONSIN?

In 2002, there were almost 14,000 admissions of 17-year-olds to adult jails; the vast majority was arrested for non-violent offenses.¹⁴ Only 15% of these youth were arrested for violent crimes such as murder, rape, aggravated assault, and robbery.¹⁵ Seventy percent of these youth were held in adult jails prior to trial and 28% (more than 3,000 youth) were sentenced to serve time in jail. Almost half of all 17-year-olds in adult jails were housed in jails in a different county than where the crime was committed.¹⁶ This means that when in jail, youth are away from their homes, families, and community.

In 2003, 87% of all 17-year-old admissions to adult jails in Wisconsin were non-violent crimes



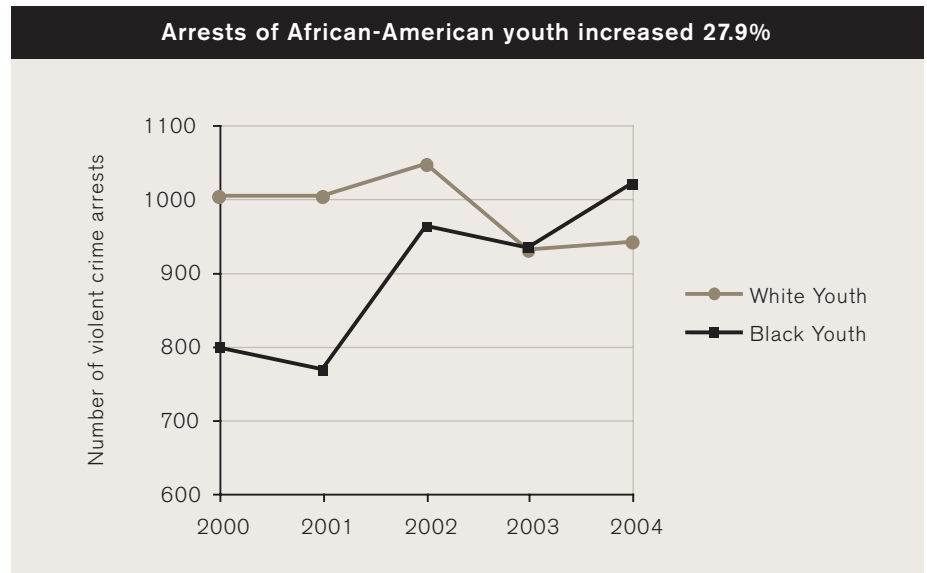
Source: Office of Justice Assistance. 2003 Adult Jail Populations Report.

Compared to 2004, youth arrests for both violent and non-violent crimes were down in 2005. In 2004, there were more than 28,000 arrests of 17-year-olds in Wisconsin, but only 1.5% of these arrests were for violent index crimes.¹⁷ Violent crime arrests for all youth under age 18 were down almost 12% and property crimes were down 18%; overall there was a 8.9% decrease in all juvenile arrests in 2005, mirroring a 10-year trend of decreasing juvenile arrests.¹⁸ In Milwaukee, “where prison terms are handed down on a daily basis to young men and women convicted of selling a gram or less of cocaine,” officials have cracked down on drug crimes in the last decade, prosecuting more people for non-violent drug offenses than the other 71 Wisconsin counties combined.¹⁹ In 2005, Milwaukee waived 20 youth to adult court.²⁰ As of July 2006, there were 46 youth age 17 and younger in adult prisons in Wisconsin.²¹ Forty-three of these youth were male, and one out of every five youth in adult prisons was 16 years old or younger. Further, 15% of the youth held in adult prisons were arrested for non-violent offenses such as property and drug offenses.

Despite the decrease in juvenile arrests, arrests of African-American youth are increasing. Between 2000 and 2004, violent crime arrests of white youth fell by 6.4% and overall white youth arrests decreased by 17%. However, during this time, African-American juvenile arrests for violent offences increased almost 28% and overall arrests increased 13%.²² These increases are cause for concern and constitute possible evidence of racial disparities in policing practices. National research from the Justice Department has shown no significant difference between youth of differing races and their propensities toward criminal behavior.²³

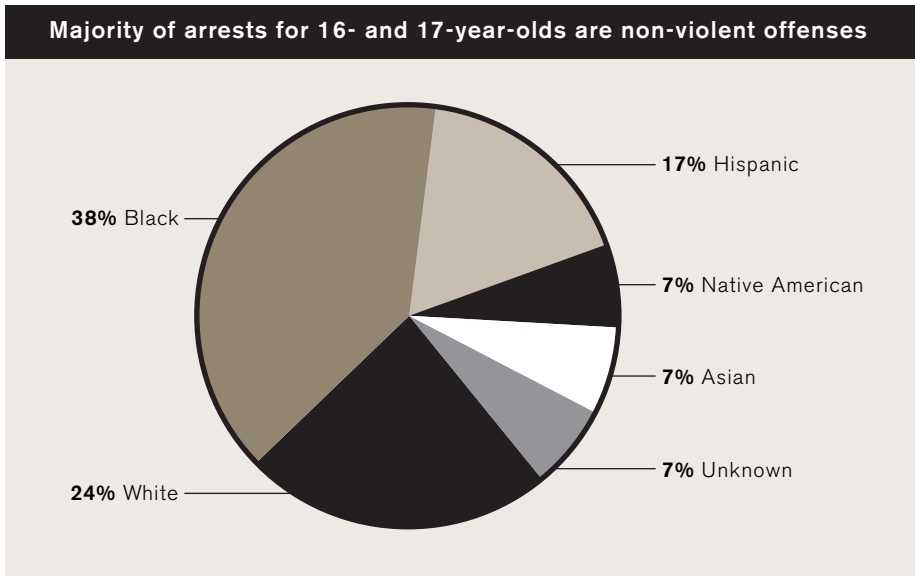
Source: Wisconsin Office of Justice Assistance. Crime and Arrests Reports. 2000-2004.

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In 2002, the Governor’s Juvenile Justice Commission started the Disproportionate Minority Confinement Reduction Initiative to address Wisconsin’s juvenile justice system’s growing racial disparities. At that time, youth of color made up only 17.3% of the youth population, but they accounted for 37% of youth waived to adult courts and 52.5% of youth in adult lock-ups.²⁴ Youth of color continued to be overrepresented in the number of youth waived to adult court in 2004; in some counties, youth of color were more than twice as likely to be waived as white youth.²⁵ In Milwaukee County, Wisconsin’s most populous county, of the 13 youth waived in 2004, only one was white.²⁶ Despite Wisconsin’s DMC Reduction Initiative, youth of color are still overrepresented in adult facilities.

African-American youth make up just 10% of Wisconsin's youth population,²⁷ but they represent 38% of all youth in Wisconsin adult prisons and 43% of non-violent juvenile offenders in adult prisons in 2006.²⁸ When combining Asians, Latinos, Native Americans, and African-Americans, non-white youth constitute 15% of the state's youth population, but they represent nearly 70% of youth in adult prisons.²⁹



Source: Robert Nikolay, Budget Director, Wisconsin Department of Corrections.

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YOUNG PEOPLE AND FAMILIES AFFECTED BY WISCONSIN'S LAWS³⁰

Jane: Running Late.

Jane, the first-born in her family, was raised by her mother in a small town in Wisconsin. Her working-class, Caucasian parents divorced when she was a toddler and throughout her life Jane's only regular contact with her father was over the phone. Her father is an alcoholic and cocaine addict who has been jailed for a number of misdemeanors. He is currently facing jail time for failing to pay back child support.

Jane attended Catholic school and earned good grades, but she was picked on alot. She was on the honor roll until eighth grade. Then she befriended a new crowd, began skipping school regularly, and her grades began to suffer. When she was 14, Jane started drinking alcohol and smoking marijuana. She got into trouble with the law, receiving tickets for truancy, disorderly conduct, trespassing, underage drinking, and cigarette possession.

Despite this early delinquency and her reported negative self-image, Jane managed to pass eighth grade. Upon entering ninth grade, in hopes of starting high school off right, she joined the cheerleading squad, but she was kicked off for smoking a cigarette in uniform. Jane continued skipping school and her academic performance suffered. She also got into fights with her brother because she was stealing money from him and other family members.

To help Jane treat her depression and marijuana use, Jane's mother got her admitted to a two-month outpatient drug program. While in the program, Jane met a young man, Steve, and they began dating. In the middle of the program, Jane stopped attending meetings, became depressed, and began drinking excessively. She never wanted to be at home. Her mother placed her in a 13-day inpatient program, but Jane didn't respond to the treatment.

At the same time, Steve moved to a different town and they stopped dating. Jane continued to date other young men, drink alcohol, and she frequently ran away from home.

To get a fresh start, Jane moved in with her aunt to another small town in Wisconsin. While there, she attended school, but again she befriended another “negative crowd.” After three months of improvements, she began to date a young man in secret and skip school. Jane’s aunt made her leave the home, and Jane moved back in with her mother. It was then that she reconnected with her ex-boyfriend, Steve, and the two resumed their relationship.

Jane described Steve as very “controlling.” Steve was a drug user and the two of them began to use ecstasy pills at least one to two times per week. She also experimented with cocaine, smoked crack a few times, snorted Attention Deficit Disorder medications, smoked opium, and occasionally smoked marijuana.

During this time, she took her mother’s car without permission. Her mother reported the theft to the police and Jane was arrested, charged as an adult, and spent the night in jail. She was later found guilty of the misdemeanor offense and was sentenced to probation and an ankle monitor. She later ended her relationship with Steve, who himself ended up in jail.

After this run-in with the law, Jane returned to school, got a job at Burger King, and by the time she turned 17, she had repaired her relationships with her mother and brother. She also began dating a young man whom she described as responsible. He held a steady job and encouraged her sobriety. Although she met her probation obligations, Jane said she did not take them seriously. Jane did try to get into a women’s issues group to help with her self-esteem and depression problems, but since she was 17, it took 10 months to get into this program. She was also supposed to go to anger management therapy and drug treatment. Jane, by her own account, was overcoming many of the issues she’d been facing.

Then, one day when she was late for school, Jane took her neighbor’s bike from their yard and used it to get to class. Later that day, she left the bike at school and got a ride home from a friend. Her neighbors, who had seen her using the bicycle, called the police and when confronted, Jane was told to apologize to her neighbor. It seemed as if the incident would be settled informally, but then Jane’s probation officer found out about the “theft.” The police charged Jane with a probation violation and she was jailed in adult jail.

This incident led to Jane being incarcerated for 75 days in two different jails. Jane was housed with adult women offenders where she had to try and avoid their negative influences. Every day, she watched television, claiming there were no “good” books to read in the jail. Although she attended Alcoholics Anonymous meetings and church services every week, Jane was not able to resume school. Her request for mental health services also went unanswered. She was often cold at night, having only two sheets, two thin blankets, and a thin mattress for sleeping. Every day for lunch the inmates were served a bologna sandwich: Jane said the dinners were disgusting and that the jail was unsanitary. After spending 75 days between the jails, Jane was sentenced to time served. The probation violation and her misdemeanor conviction will remain on her record.

John: Nowhere to go.

At age 11, John moved to Wisconsin with his family. He first came into contact with the juvenile justice system at 12, when he was arrested for driving without a license. As a result, he spent time in a juvenile detention facility and was placed on probation. At that point, his parents had split up and neither was able to care for him, so he lived in various group homes for five years.

One day when she was late for school, Jane took her neighbor’s bike from their yard and used it to get to class. The police charged Jane with a probation violation and she was jailed in adult jail. This incident led to Jane being incarcerated for 75 days in two different jails.

John stopped attending high school at 16, and at 17 he was no longer eligible for services in the juvenile justice system. As a result, when he needed a place to stay, he could not access any group home placements. Because he stopped attending school, he did not have a school identification card, and he never was able to get a driver's license. Because he did not possess an identification card, the food pantry would not distribute food to him.

One late, cold winter night, John didn't have a place to spend the night. Seeking a warm place to sleep, John climbed into a car in a downtown parking lot. A few hours later, he was woken up by a police officer who charged him with breaking and entering. John was placed in the local county jail and released the next day. Once released from the county jail, he went to stay at a relative's house. While there, he didn't receive the court documents notifying him of his upcoming court date. As a result, he missed his court date and the local law enforcement agency put out a warrant for his arrest. After he was arrested, John was sent to the county jail again, this time for six months.

All of his "cellies" were older than him. John says he tried to keep to himself so he wouldn't get into any trouble. John spent most of his daily time sleeping. Although he was interested in getting his high school equivalency degree, he didn't attend educational courses at the facility. He had difficulty reaching his lawyer. In addition, he often went hungry because he was not getting enough to eat in the jail and he didn't have anyone on the outside that could put money on his "commissary" so he could purchase additional food.

John doesn't believe that 17-year-olds should be automatically tried as adults and believes that youth like himself need additional support from the community. John would like to see more subsidized housing and food assistance programs in the community, especially for young men who are not eligible for services in the juvenile justice system or for programs that serve adults.

Jeffrey: Searching for a safe place.

Jeffrey, a 17-year-old white male, was born in a Wisconsin town of fewer than 2,000 people. As an elementary school child, Jeffrey attended classes for youth with emotional disabilities. He was regularly in trouble for not being able to sit still in class. He has been diagnosed with chronic depression and Attention Deficit Hyperactivity Disorder (ADHD) and has battled drug and alcohol dependence since his early teens.

Prior to his 15th birthday, Jeffrey had several juvenile arrests for minor infractions. In an attempt to get him services through the juvenile court, his parents had him arrested for using marijuana. He was placed in an alcohol treatment center for a year. During that year, his mother died.

When Jeffrey was released, he moved to his aunt's house in a larger city. That arrangement did not work out and so he moved from foster homes to group homes. Because he wanted to dull the pain of being rejected by his aunt and of his mother's passing, his use of alcohol and marijuana escalated. While in a group home, at 15 years old, Jeffrey was caught with marijuana. He was charged with possession and the district attorney moved to have his case waived into adult court. Jeffrey felt that it wasn't his choice to be waived – he remembers a short hearing on the issue, but recalls only the district attorney and his attorney testifying on the issue. He was given probation, but he didn't understand that his subsequent arrests would result in his being charged as an adult.

At age 17, after being arrest-free for two years, Jeffrey was arrested for misdemeanor disorderly conduct. Because of his previous arrest, he was sentenced to six months of jail time. Upon entering the jail at 17, he was placed with a 25-year-old awaiting trial for sexual

After John was released from the county jail, he went to stay at a relative's house. While there, he didn't receive the court documents notifying him of his upcoming court date. As a result, he missed his court date and the local law enforcement agency put out a warrant for his arrest. After he was arrested, John was sent to the county jail again, this time for six months.

assault. The cellmate talked about his sexual assault constantly. Jeffrey was intimidated by the size and demeanor of his cellmate and feared being assaulted by him. Rather than wait for this to happen, Jeffrey struck his cellmate. Jeffrey now awaits new charges for felony assault.

Jeffrey did succeed in getting a single cell, but he still does not receive alcohol or drug treatment nor does he attend any school classes. Jeffrey spends his entire day in his cell, sleeping for much of it. Although he is eligible for work release, he is unable to get a job. He is on a waitlist for a job within the jail and in the meantime has nothing to fill up his days.

Jeffrey wanted to join the military, but knows that his arrest history will prevent that. He hopes to receive the drug treatment that was ordered by the court, as well as grief counseling to deal with the death of his mother. Although he wants a second chance, he sees a very bleak future for himself at 17 with a felony record.

WHAT ARE THE POLICY OPTIONS IN WISCONSIN?

Between 1993 and 1994, youth violent crime arrests increased by 16%.³¹ Yet, during his tenure, then-Governor Thompson did not support funding for juvenile code reforms.³² The concern over rising crime caused Governor Thompson to appoint a commission to change the waiver statutes. This commission was assisted and supported by a number of juvenile court judges and prosecutors as well as officers of the court. Dennis Barry, Racine County Circuit Court Judge and the chairman of the 1995 commission enacted by former Governor Tommy Thompson and the Legislature, continues to affirm that the adult court should have jurisdiction over 17-year-olds.³³

Today, the impact of these decade-old changes has caused some court officials to rethink this approach. Initially, Assistant District Attorney Don Garber, from Dane County, supported the legislation in 1995.³⁴ However, he now believes it was a mistake. He sees this legislation as harmful to youth because it reduces their access to education and because adult court proceedings strip them of their confidentiality rights. He believes judges should retain the power to decide whether a youth should be prosecuted in juvenile or adult court. Mr. Garber is not alone in Dane County. Jim Moeser, the juvenile court administrator for Dane County, comments on the legislation, saying: "I think it was bad policy for the wrong reasons at the time it was made, and there is more and more evidence to assume it wasn't good policy."³⁵

Juvenile crime in Wisconsin peaked in 1994, prompting the more punitive legislative agenda in 1996.³⁶ But since 1995, juvenile crime has been on the decline in both Wisconsin and across the nation. In 2005, Assembly Bill 82 was introduced to the Wisconsin State Legislature to change the upper age of the juvenile court jurisdiction from 16 to 17 years old, removing 17-year-olds from adult court jurisdiction. Because AB 82 failed to pass before the end of the legislative session in May 2006, it will have to be reintroduced in future sessions to remain on the legislative agenda.

Prior to the introduction of AB 82, the Wisconsin Office of Justice Assistance published a report by the University of Wisconsin, *What Works, Wisconsin*, which analyzed the effectiveness of youth programs in preventing crime.³⁷ This report reviewed evidence-based prevention and juvenile offender programs to determine the most valuable and cost-effective programs for reducing crime, saving money, and providing youth with the opportunity for a positive future. The report concluded, "The strongest empirical evidence of cost-effectiveness is for diversion programs and therapeutic interventions that

Jeffrey was intimidated by the size and demeanor of his cellmate and feared being assaulted by him. Rather than wait for this to happen, Jeffrey struck his cellmate. Jeffrey now awaits new charges for felony assault.

provide a range of intensive services over relatively long periods of time." The researchers put forth numerous recommendations, including changing how funding decisions are made, providing a greater balance between prevention and intervention programs, and investing in more research, evaluation, and development for these programs. The media commended the report, saying that "We need more of this hard-headed approach," rather than one of despair.³⁸

Although most human services' officials and workers agree that 17-year-olds should be treated as juveniles, budgetary issues are a concern. In 1996 when the Legislature declared the age of juvenile court jurisdiction as 17, they removed a large portion of their juvenile justice population. Today, despite its Youth Aids funds, the juvenile justice system does not have enough money to adequately fund programs for its youth population. Unfortunately, the state budget does not have extra money to allot to these funds. Those against changing the statutes argue that these programs will have even less money to spend per youth if 17-year-olds re-enter the juvenile justice system. If this budgetary impediment remains unsolved, it will dominate the debate surrounding raising the age of juvenile court jurisdiction to 18, distracting those involved from focusing on the best measures to take to stymie youth crime and ensure public safety. Perhaps the best solution would be to find a better funding mechanism that would ensure developmentally appropriate services for youth involved in the juvenile justice system. Once those services are available, 17-year-olds could be folded back into the juvenile system.

WISCONSIN RECOMMENDATIONS

- **Return 17-year-olds to juvenile court jurisdiction.**

Research on adolescent brain development has shown that adolescents do not demonstrate the maturity of an adult when making decisions. Youth need developmentally appropriate services to ensure rehabilitation. Adult prisons and jails do not provide adequate rehabilitation programs for this age group.

- **Revise the Juvenile Justice Code so that only a juvenile court judge can waive jurisdiction and determine appropriate placement of youth.**

It is important that youth be given the chance to be evaluated for the appropriate sanctions on their behavior on a case-by-case basis by a judge. Juvenile court judges, who have been trained to evaluate culpability, are best able to determine where a youth in conflict with the law should be placed, not prosecutors. When youth lose the opportunity to be placed in juvenile court, they are denied access to adequate rehabilitative services as well as the safety provided within the juvenile court.

- **Expand services available to youth and ensure they are developmentally appropriate.**

Rehabilitative opportunities that have been evaluated and deemed successful have the greatest positive impact on recidivism rates. Furthermore, a large number of incarcerated youth suffer from mental health problems. While they are in custody, these issues could be addressed by trained and qualified youth support staff. Education and other rehabilitative programs can greatly reduce the likelihood that a youth will return to court. This ensures a better life for the child upon release and also enhances public safety.

NOTES

- ¹ Wis. Stat. § 938.02 (2006). <http://www.legis.state.wi.us/statutes/stat0938.pdf>
- ² Wis. Stat. § 938.183 (2006).
- ³ Wis. Stat. § 938.18 (2006).
- ⁴ Wis. Stat. § 938.183 (1)(a).
- ⁵ Wis. Stat. § 938.183 (2006).
- ⁶ Wisconsin State Circuit Court Statistical Reports. Juvenile caseload summary 2005. <http://wicourts.gov/about/pubs/circuit/circuitstats.htm>
- ⁷ Wis. Stat. § 938.209 (2006).
- ⁸ Wis. Stat. § 970.13(3m) (2006).
- ⁹ Letter from the U.S. Department of Justice to Wisconsin Governor Jim Doyle Re: Investigation of the Taycheedah Correctional Institution. (2006, May 1). http://www.usdoj.gov/crt/split/documents/taycheedah_findlet_5-1-06.pdf
- ¹⁰ American Civil Liberties Union (ACLU). (2006, May 2). *Women at Wisconsin's Taycheedah Prison suffer medical neglect and receive worse mental health care than men*. <http://www.aclu.org/prison/women/25405prs20060502.html>
- ¹¹ Ibid.
- ¹² Frost, N., Greene, J., & Pranis, K. (2006). *Hard hit: The growth of the imprisonment of women: 1977-2004*. New York, NY: Women's Prison Association. Available from www.wpaonline.org
- ¹³ Snell, T., & Morton, D. (1994). *Women in prison*. Washington, DC: Bureau of Justice Statistics. Retrieved December 20, 2006, from www.ojp.usdoj.gov/bjs/pub/pdf/wopris.pdf
- ¹⁴ Wisconsin Office of Justice Assistance. [2004]. *2003 adult jail populations report*. Madison, WI: Author.
- ¹⁵ Ibid.
- ¹⁶ Ibid.
- ¹⁷ Wisconsin Office of Justice Assistance. (2006). Madison, WI: Author.
- ¹⁸ Wisconsin Office of Justice Assistance. (2006). *Preliminary crime and arrests in Wisconsin 2005*. Madison, WI: Author.
- ¹⁹ Greene, J., & Pranis, K. (2006). *Treatment instead of prisons: A roadmap for sentencing and correctional policy reform in Wisconsin*. Washington, DC: Justice Strategies.
- ²⁰ Wisconsin State Circuit Court Statistical Reports. *Juvenile caseload summary 2005*. Available from <http://wicourts.gov/about/pubs/circuit/circuitstats.htm>. However, this number does not include 17-year-olds who automatically fall under adult court jurisdiction or youth under 17 subjected to mandatory waiver for certain offenses. These groups constitute a large portion of youth who are tried as adults.
- ²¹ Robert Nikolay, Budget Director, Wisconsin Department of Corrections.
- ²² Wisconsin Office of Justice Assistance. (2000-2004). *Crime and arrests reports*. Madison, WI: Author.
- ²³ Snyder, H. N., & Sickmund, M. (2006). *Juvenile offenders and victims: 2006 national report*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. <http://ojjdp.ncjrs.org/ojstatbb/nr2006/downloads/NR2006.pdf>
- ²⁴ Wisconsin Office of Justice Assistance. 2002. *Wisconsin's 3-year juvenile justice plan 2003-2005*. Madison, WI: Author.
- ²⁵ Wisconsin Office of Justice Assistance. 2005. *Wisconsin 2006-2008 Three-year plan*. Madison, WI: Author.
- ²⁶ Ibid.
- ²⁷ U.S. Census Bureau. *2005 American community survey*. Available from www.factfinder.census.gov
- ²⁸ Wisconsin Department of Corrections.
- ²⁹ Robert Nikolay, Budget Director, Wisconsin Department of Corrections.
- ³⁰ Names have been changed to protect the individuals profiled.
- ³¹ Wisconsin Office of Justice Assistance. Statistical Analysis Center. *Crime and arrests reports 1994*. Available from <http://oja.state.wi.us/>
- ³² Lisher, M. (1995, March 1). Thompson budget fails on juvenile issues, Doyle says. *The Milwaukee Journal*. http://www.findarticles.com/p/articles/mi_qn4207/is_19950301/ai_n10187128
- ³³ Schuetz, L. (2006, March 9). Report: Juvenile system is broken. *Wisconsin State Journal*. <http://www.madison.com/archives/read.php?ref=/wsj/2006/03/09/0603090044.php>
- ³⁴ Ibid.
- ³⁵ Ibid.
- ³⁶ Wisconsin Office of Justice Assistance.
- ³⁷ Small, S. A., et al. (2005, June). *What works, Wisconsin: What science tells us about cost-effective programs for juvenile delinquency prevention*. Madison, WI: University of Wisconsin-Madison.
- ³⁸ Stanford, G. (2005, October 16). Good programs exist, contrary to myth. *Milwaukee Journal Sentinel*. http://www.findarticles.com/p/articles/mi_qn4196/is_20051016/ai_n15710395