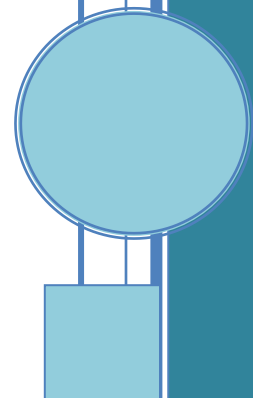


THE STATE OF JUVENILE JUSTICE IN WISCONSIN

What Do We Really Know?



October 2011



“FOR THE FIRST TIME IN A GENERATION, AMERICA HAS THE OPPORTUNITY TO REDESIGN THE DEEP END OF ITS JUVENILE JUSTICE SYSTEM. THE POLITICS OF THE MOMENT HAVE MADE IT POLITICALLY FEASIBLE (OR FINANCIALLY NECESSARY) FOR STATES TO SUBSTANTIALLY SCALE BACK THEIR LONG-STANDING INVESTMENT IN CONVENTIONAL YOUTH CORRECTION FACILITIES. MEANWHILE, A WEALTH OF NEW RESEARCH HAS CREATED THE KNOWLEDGE BASE NECESSARY TO BUILD A FUNDAMENTALLY NEW AND FAR MORE EFFECTIVE APPROACH TO JUVENILE CORRECTIONS THAT KEEPS OUR COMMUNITIES SAFE, MAKES BETTER USE OF SCARCE TAX DOLLARS, AND INCREASES THE ODDS THAT MORE YOUNG PEOPLE WILL DESIST FROM CRIME AND SUCCEED IN THE ADULT WORLD.

THE OPEN QUESTION IS WHETHER OUR SOCIETY WILL LEARN FROM AND ACT ON THIS INFORMATION, WHETHER IT WILL NOT ONLY ABANDON THE LONG-STANDING INCARCERATION MODEL BUT ALSO EMBRACE THIS MORE CONSTRUCTIVE, HUMANE, AND COST-EFFECTIVE PARADIGM FOR HOW WE TREAT, EDUCATE, AND PUNISH YOUTH WHO BREAK THE LAW”.

FROM: NO PLACE FOR KIDS:

THE CASE FOR REDUCING JUVENILE INCARCERATION

BY RICHARD MENDEL

FOR THE ANNIE E. CASEY FOUNDATION

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The State of Juvenile Justice in Wisconsin

SUMMARY

Like other states around the nation, juvenile crime in Wisconsin has undergone significant changes over the last decade—but in a direction that belies the common perception that things have gotten worse. Youth crime has declined, and in state after state, juvenile facilities that were full or overcrowded are seeing dramatic reductions in the numbers of youth placed. States and counties are facing unanticipated and unprecedented decisions about closing or consolidating facilities. In Wisconsin at least two counties (Waukesha and Sheboygan) have already made decisions about closing all or part of a juvenile detention facility, and three state Juvenile Correctional Institutions (JCIs) were consolidated into one site effective July 1, 2011.

One serious juvenile crime is one crime too many. One victim is one victim too many. But policy decisions regarding youthful offenders need to be made within the context of what we know works and what the data shows about what is really happening in the juvenile justice system. Lest we forget, it was not that long ago (circa 1995) that fears of “a coming

generation of superpredators” drove policy decisions. Some of those decisions improved the system. For example, the Juvenile Code, adopted in 1996, employed a “balanced approach” for goals (balancing community safety, youth accountability, and competency development) and increased victims’ rights.

But the fears and rhetoric of the early 1990s also led to one of the worst public policy decisions in the last twenty years, lowering the age of adult court jurisdiction to 17. Since that change in 1996, approximately 250,000 17-year-olds have been arrested for nonviolent offenses, resulting in an estimated 75,000 of them spending at least some time in an adult jail, and thousands more ending up with an adult record that too often has unintended consequences related to employment, housing, and education. **Less than 5 percent of juvenile arrests are being made for serious or violent offenses.**

That means that over 237,000 of those 17-year-olds faced unnecessary, and in some cases harmful, consequences in the adult system.¹²

Over the past ten years, Wisconsin's juvenile justice system has:

- turned dramatically toward reducing the level of youth confined in both short- and long-term secure facilities;
- moved systematically toward implementing research-driven practices that work; and
- reinvested some resources formerly spent on high-cost placements into community-based alternatives.

Over the past decade, particularly over the past five years, Wisconsin has experienced a decrease in the numbers of juveniles arrested, juveniles committing violent crimes, juveniles sent to correctional facilities and detention facilities, and juveniles waived into adult court.



Mixed in with this mostly good news, the following challenges remain:

- The racial disproportionality of minority youth who have contact with our justice system remains among the highest in the nation.
- Each year thousands of 17-year-olds are arrested and subject to involvement in the adult justice system, whether at the local or state level.
- Although progress has been made, Wisconsin statutes still permit youth who do not commit crimes to be confined with youth who do.
- Too little of the savings accruing from fewer youth arrested, fewer out-of-home placements, and declines in confinement at both the state and local level has been reinvested in proven prevention strategies.

This report summarizes the current status of key decision points in the juvenile justice system, utilizing data from the Office of Justice Assistance, the Division of Juvenile Corrections, and the Consolidated Court Automation Programs (CCAP) case management database. This data is only part of the story of the hard work done throughout the system to better assess which youth need our attention, to reconfigure resources to build effective local responses to youth crime, and improve to juvenile justice practices to be more consistent with the growing body of research about what works.

Begin at the Beginning—Juvenile Arrests

There are two measures of arrests typically reported:³

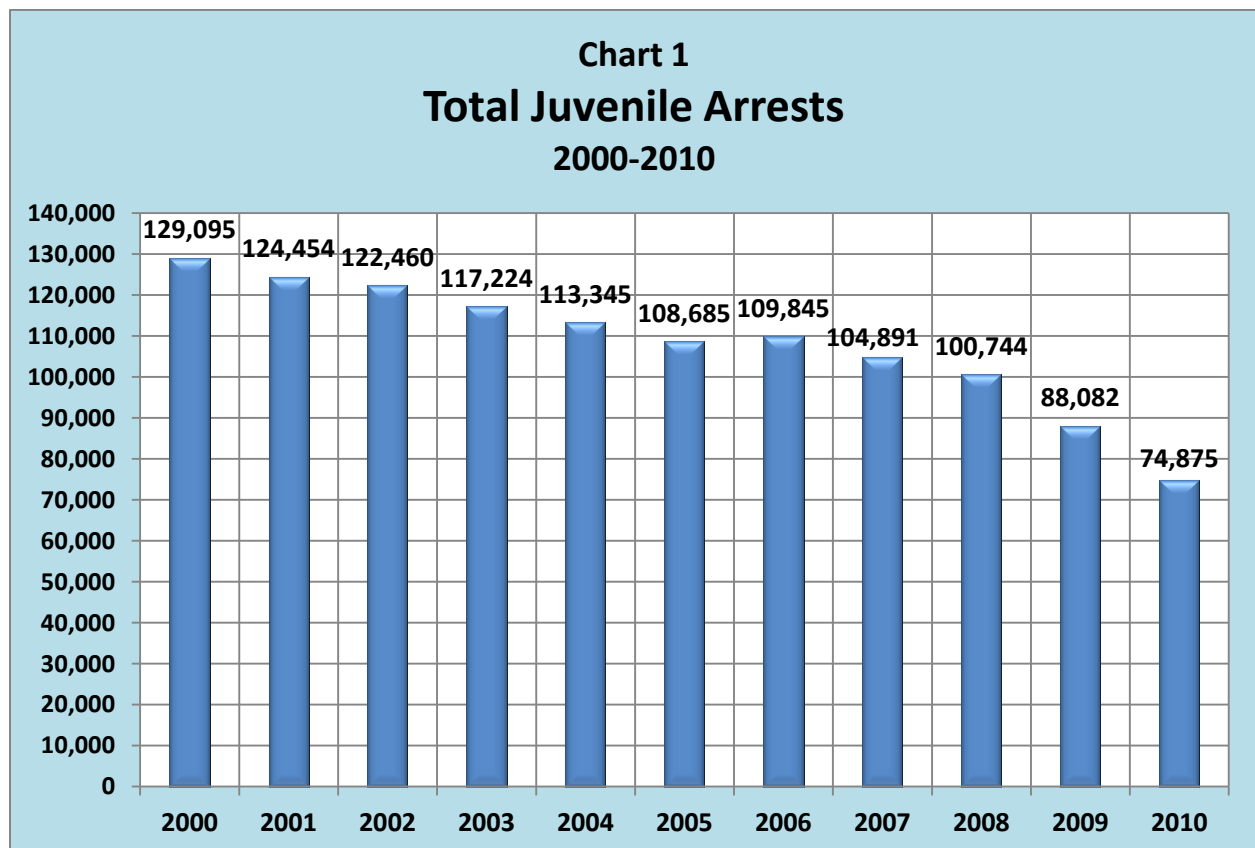
Number of Juvenile Arrests is simply the number of juvenile arrests reported by law enforcement.

Rate of Juvenile Arrests is a calculation that takes into account the number of juvenile arrests compared

to the number of youth in the population, thereby accounting for changes in demographics over time.

Number:⁴

The number of juveniles arrested has declined dramatically over the last decade, as illustrated by Chart 1.



Since 2000 the number of juveniles arrested has **declined 42 percent**.

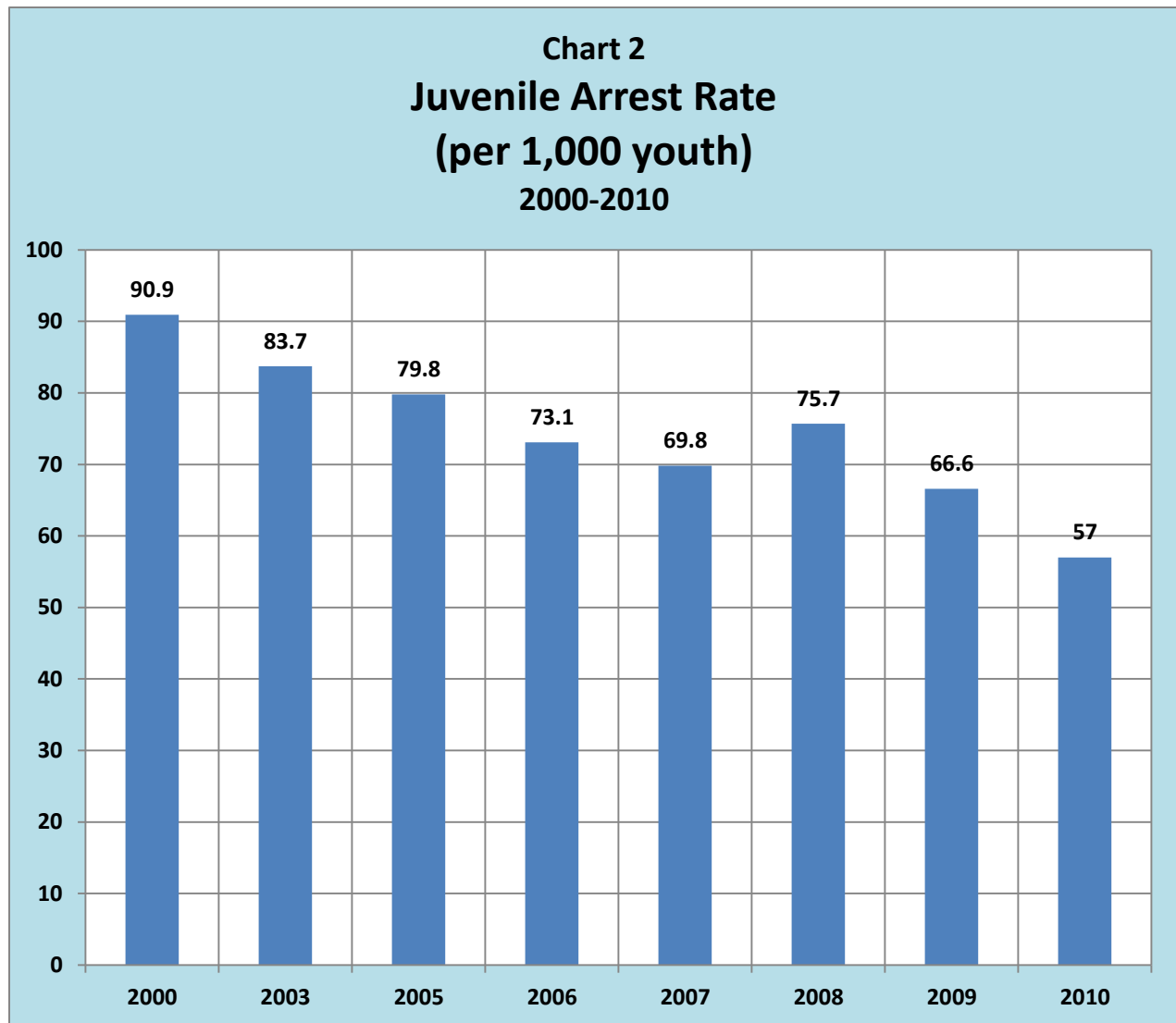
Over the last **five** years (2006 to 2010), the number of youth arrested has declined in all the reporting categories:

- Violent offenses (down 17.5 percent),
- Property offenses (down 29 percent),
- Drug offenses (down 19.5 percent),
- “Society” offenses (down 34 percent), and
- Other offenses (down 34 percent).

Rate:⁵

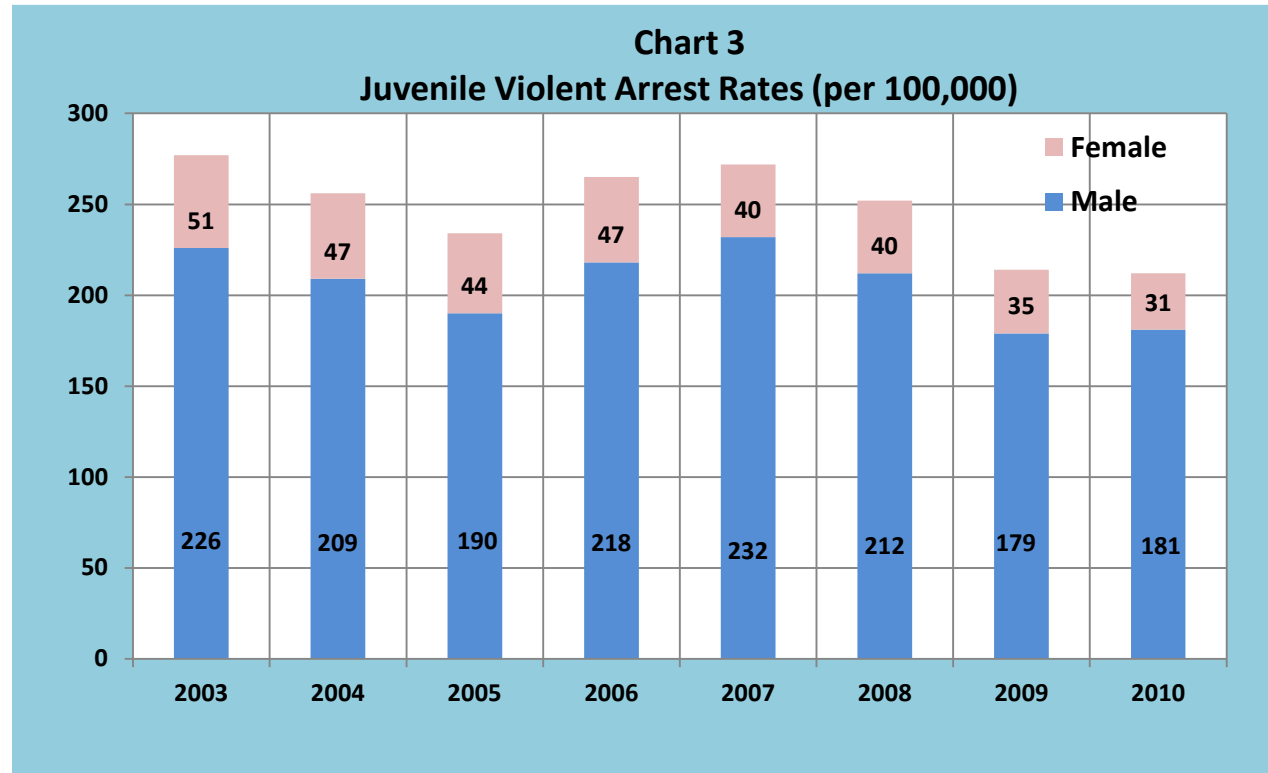
Likewise, the rate of youth arrests has also declined steadily (with the exception of an increase from 2007 to 2008) and significantly over the last decade, as illustrated by Chart 2.

These rates are reported as the number of juvenile arrests per 1,000 youth. The rate of juvenile arrests has **declined by over 37 percent since 2000.**



Perhaps the offenses of most concern to the community are arrests classified as “violent offenses.” Chart 3 illustrates the arrest rates per 100,000 (note change to denominator due to the small number of youth arrested for violent offenses) youth for both boys and girls over the last eight years.

Although not as steady a decline as in overall arrest rates, arrest rates for both boys and girls have declined significantly over the last eight years – boys are down by 20 percent from 2003 and down by 22 percent from the peak in 2007; girls are down by 39 percent since 2003.



Juvenile Population:⁶

Over the last decade, the number of youth ages 10 to 17 in Wisconsin has declined just under 10 percent. A simple way to think about the relationship between all of these measures is that if everything else remained the same over the last decade, one could expect the number of youth arrested to have declined

about 10 percent – equal to the decline in the population cohort. That is clearly not what has happened, even for the most serious offenses.

Instead, the decline has been much greater than that, even for the most serious offenses.

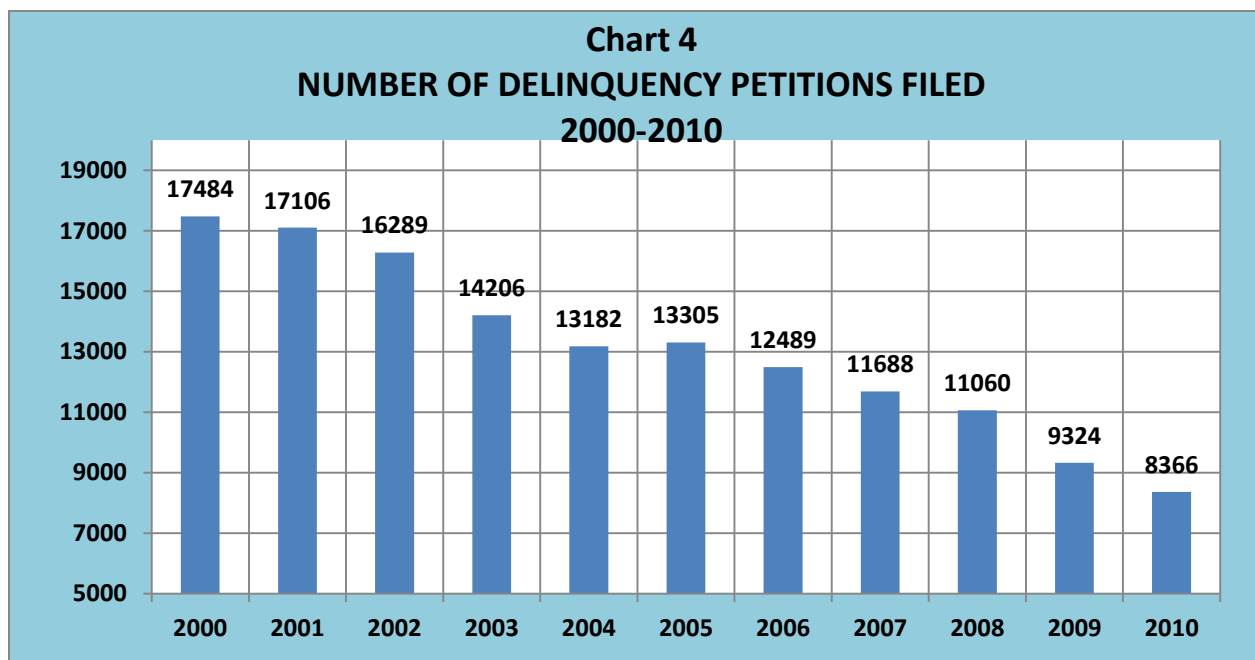
Formal Petitions Filed

In Wisconsin, as in other states, once an arrest is made by law enforcement there is considerable discretion in how the case is handled (as well as whether the arrested youth is taken into some form of physical custody) based on the nature of the offense. In simple terms, they can choose to essentially “warn” the youth, refer the youth - generally working with the parent(s) - to various community programs for services, issue a citation (ticket), or refer the case to the court for assessment and formal processing.

Within each county there are established procedures and guidelines for assessing those cases, with a goal of determining whether there is a need to file a formal petition (charge) or whether there are other informal means to accomplish the overall goals

of the juvenile justice system—holding youth accountable, ensuring safety for the community, and improving the competencies/skills of youth. A petition may include one or more “counts,” or charges, of the same type or different types. Multiple counts are often linked to a single incident. Generally, the more serious the offense, the more likely it is that it will result in a formal petition being filed.

The number of juvenile delinquency petitions filed across the state can be viewed as a rough approximation of the caseload of the courts dealing with youth delinquency. Chart 4 shows the number of juvenile delinquency petitions filed in Wisconsin over the last decade.



The number of delinquency petitions filed over the past decade has declined over 52 percent—no doubt in large part a reflection of the declines in the numbers/rates of youth arrested as well as the development of other alternative solutions to respond to

delinquent behaviors—e.g. deferred prosecution agreements, restorative justice programs, teen/peer courts, and restitution programs. Most often these programs are equally if not more effective, more timely, and less costly.

Sending Youth to Adult Court—What We Know Now

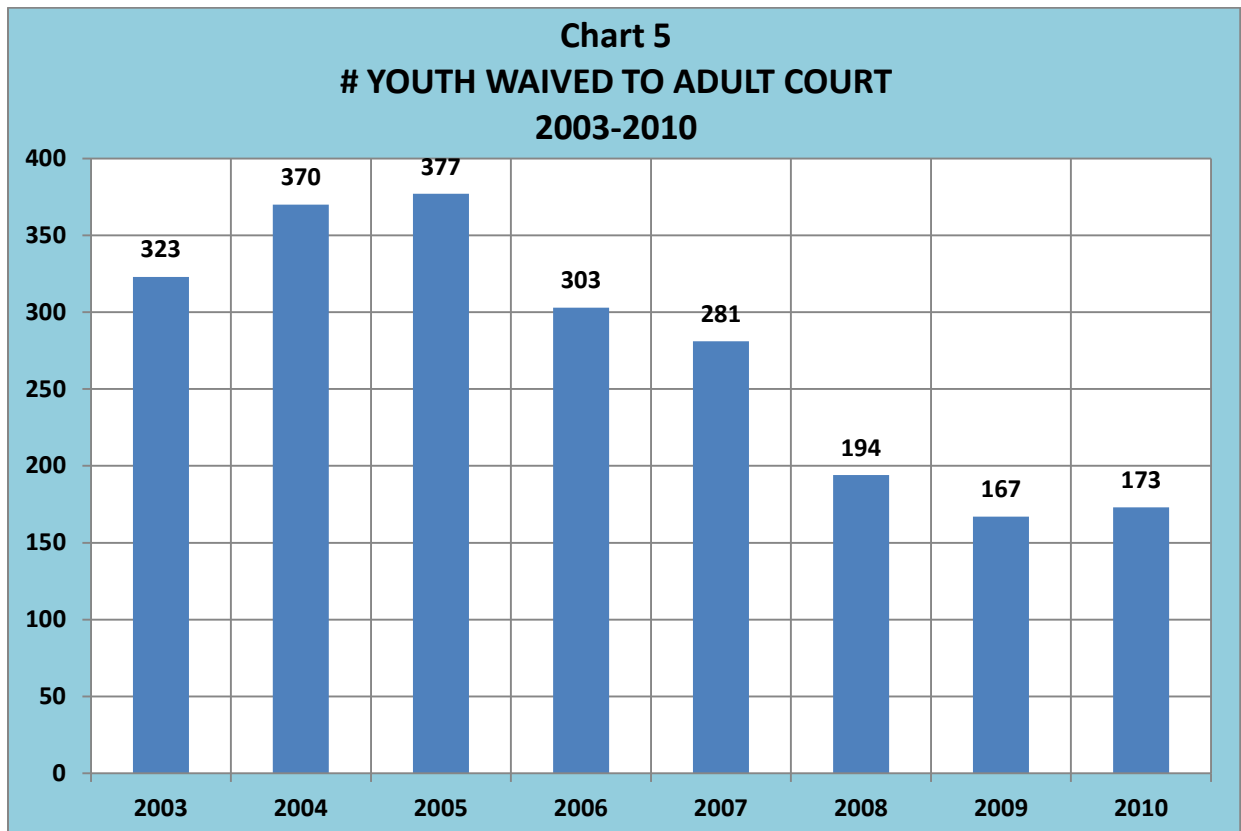
In Wisconsin, youth aged 15 and 16 can be waived into adult court for any delinquent offense, and for a few serious offenses youth as young as 14 may be waived. This waiver process is different than the “original jurisdiction” that applies to youth ages 10⁷ to 16 who commit one of a number of the most serious offenses. In order to waive a youth to adult court, the district attorney must file a waiver petition prior to the time of the first plea hearing. The judge may then, after a hearing at which parties have the opportunity to provide information to the court, make the necessary findings and order the youth’s case transferred to the adult system.

The data in Chart 5 represent the number of youth actually waived into adult court between 2003 and 2010.⁸ Note that after an increase in 2004 and 2005, the number of youth waived dropped steadily through 2010. The number of youth waived in 2010 represents a 54 percent drop from the peak in 2005, and over a 36 percent

reduction from the average over the eight-year period.



We may not know exactly what accounts for this decline. Have perceptions changed regarding the need for incarcerating youth for longer periods of time? Is there a growing awareness that the adult system is ill-equipped to deal with all but the most serious youthful offenders? What we do know is that the best research available suggests that if the primary goal of the system is to reduce reoffending behavior(s), waiver to the adult system has not been successful, and has in fact been counterproductive.⁹

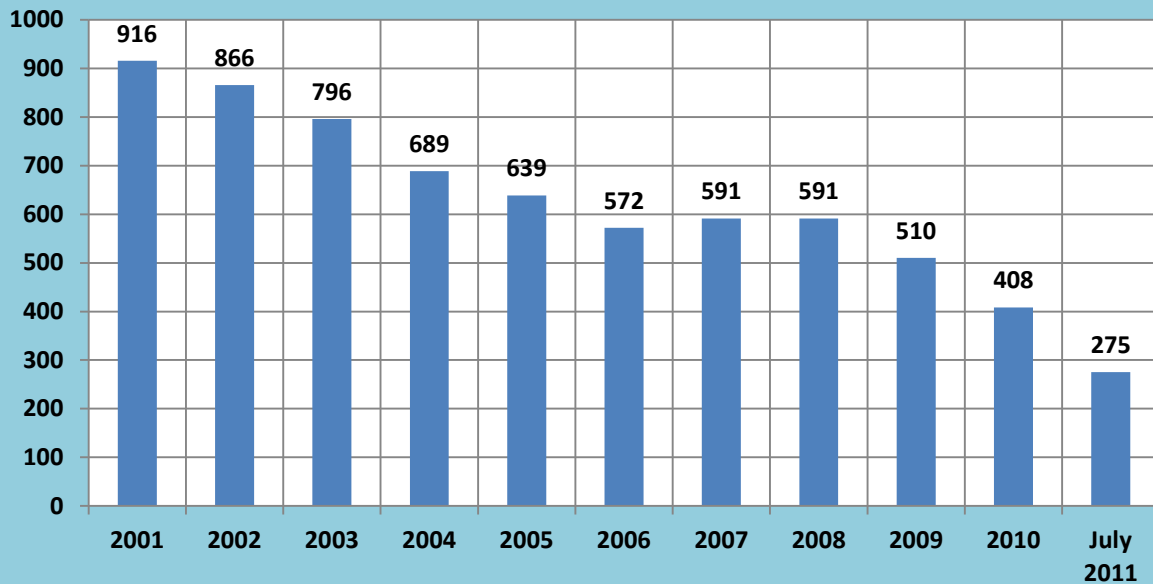


Finding Other Ways to Hold Youth Accountable and Protect the Community

One of the most dramatic declines has been in the number of youth housed in Wisconsin's most secure Juvenile Correctional Institutions (JCIs)—Ethan Allen School for Boys, Lincoln Hills School for Boys, and Southern Oaks School for Girls—operated by the Department of Corrections/Division of Juvenile Corrections (DJC). Youth are placed in a JCI pursuant to a court finding

that the youth (1) has committed an offense which if committed by an adult would subject them to at least six months incarceration; and (2) a restrictive setting is needed to ensure community safety. The following chart shows the average daily population (ADP) as a total for all three JCIs operating through the last decade, as well as the number of youth in JCIs at the time of consolidation in July 2011.

Chart 6
Average Daily JCI Populations
2001-2011



The average daily population is essentially a function of two variables: (1) the number of youth admitted to facilities; and (2) the length of stay for youth placed in the facilities. The decline of nearly 70 percent in the ADP over this past decade reflects declines in both of these variables, as fewer and fewer youth have been placed by the court in JCIs and as county human service departments and DJC have worked collaboratively to return youth safely and successfully to their communities.

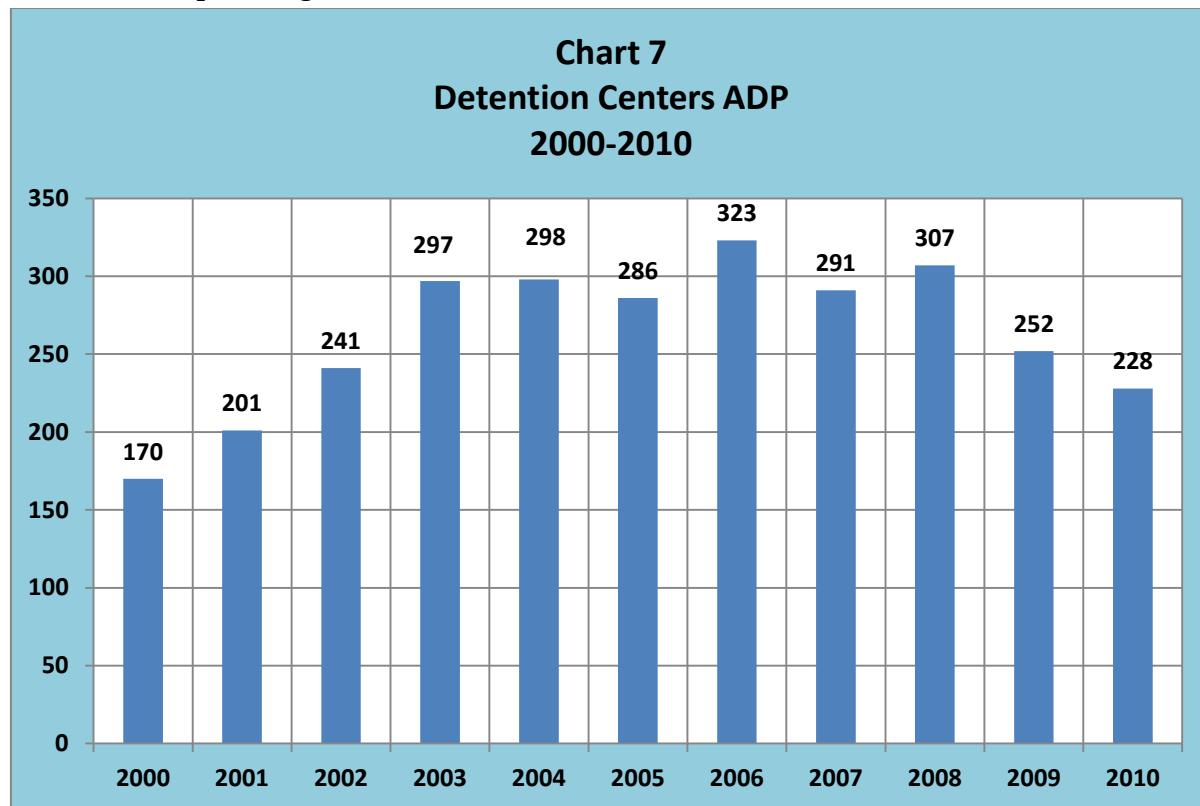
For the majority of youth placed in JCIs and for services provided by DJC following placement, the county making the placement is responsible for paying a daily rate to DJC. This

process was developed in 1980 as part of the Youth Aids system. As that daily rate has increased at a much faster rate than aid provided to counties by the state, counties have created additional alternatives to successfully deal with youthful offenders in their own community whenever possible. These changes not only allow counties to focus their investments at the local level, but are also consistent with an increasing body of research suggesting that for many serious youthful offenders, well-designed community-based services can be effective in reducing reoffending behaviors and increasing youth's positive engagement in the community.¹⁰

Using Juvenile Detention Strategically

The intent and best purpose of short-term juvenile detention facilities is to hold alleged delinquent youth who pose a substantial risk of physical harm to another person or are likely to run away so as to be unavailable for court. As the number and rate of youth crimes have declined, there has been a corresponding decline in the

number of youth held in the seventeen temporary juvenile detention facilities operated by counties authorized to hold youth in Wisconsin. Chart 7 illustrates the trend over the past decade in the number of youth held in juvenile detention centers on an average day in Wisconsin.



Following an increase in the first part of the decade, the population over the past five years has declined, with 2010 being lower than the peak in 2006 by nearly 30 percent. That decline would likely have been greater without some changes in practices at the local level in some counties that included: (1) an increase in the use of secure detention for status offenders—those youth who

have not committed an offense that would be considered a crime if committed by an adult but have violated a court order (e.g. truancy, repeated running away); and (2) an increase in holding youth for failing to comply with court ordered rules of supervision through either the 72-hour hold provision or the sanctions provision of the Juvenile Code.

Wisconsin's Greatest Challenge—Promoting Equity for All

Perhaps Wisconsin's greatest challenge remains in the high rates of disproportionality for minority youth at all points of contact with the juvenile justice system—generally referred to as Disproportionate Minority Contact (DMC). Across the United States, children and youth of color have been overrepresented at every stage of the juvenile justice system, from arrest through incarceration, **Wisconsin's DMC rates remain among the worst in the nation**. But under the leadership of the Office of Justice Assistance and with support of the Governor's Juvenile Justice Commission, Wisconsin jurisdictions are working hard to reduce these disparities. Much of this work is highlighted in the Governor's Juvenile Justice Commission's [Final Report to the Governor and Legislature 2003-2010](#).¹¹



In 2002, the Wisconsin State Advisory Group (SAG) via the Governor's Juvenile Justice Commission (GJJC) awarded funds to six counties with significant minority populations, with a mandate to devise strategies to

address DMC. Wisconsin gathers Relative Rate Index¹² (RRI) data from all counties, working in conjunction with the Department of Corrections and Office of State Courts. Local agencies collect, analyze, and submit their own RRI numbers. Currently, the state has the ability to gather data by race at three system points: arrest, secure detention, and placement in a secure juvenile correctional facility.

A review of this raw data indicates that while all race categories have experienced a decrease in arrest rates, particularly in 2009, there continues to be significant differences by race. Over the past several years, black and American Indian arrest rates have been consistently higher than white and Asian arrest rates. African American youth have been about three times as likely to be arrested, while American Indian youth have been over two-and-a-half times as likely to be arrested. Asian youth have been slightly less likely to be arrested.

Like juvenile arrests, the disparity for cases involving juvenile secure detention has been relatively consistent. On average, minority youth have been about two-and-a-half times more likely to have their cases involve juvenile secure detention than their white counterparts. More specifically, the data reports that African American and American Indian juveniles have been twice as

likely and Asian juveniles slightly more likely to be held in secure detention compared to their White counterparts.

The rates of disproportionate minority contact are most apparent when an adjudication of delinquency includes a stay in Corrections. The aggregate RRI trend for cases resulting in confinement of a juvenile in a correctional facility has varied over the last few years. From 2004 through 2006, minority juveniles were three times more likely to be sent to confinement than their white counterparts. In 2008, African

American juveniles were over four-and-a-half times more likely to have their cases result in confinement than their white counterparts; American Indian juveniles were three times as likely.

Disparities in poverty, child welfare issues, school performance, drop-out rates, teen pregnancy, AODA use, and a host of other indicators are all consistent with what we have seen in juvenile justice, and present us today with the task of ensuring that we do not lose this next generation of young people to these at-risk behaviors and their harmful consequences.

Being Smart About Promoting Community Safety

We can have high expectations for youthful offenders. We can hold them accountable for the harm they have caused others. We can help teach them new skills and competencies that will help them become contributing members to our communities. When absolutely necessary to ensure community safety, we can confine them securely for a period of time. The purpose of the Wisconsin Juvenile Code mirrors the goals of the Balanced Approach developed in the late 1980s: (1) promoting community safety; (2) holding youth accountable; and (3) developing pro-social competencies in youth.

With the increase in the use of strategic, research-supported practices, counties and the State Division of Juvenile Corrections are working together with a host of successful community-based programs to meet these goals.

The data included in this report should dispel the notion that in order to promote community safety, large numbers of youth need to be locked up. If that were true, one would expect the arrest numbers and rates to have gone up as the number of youth confined has decreased over the years, something that has not happened.

What About the Future?

No one can reliably predict what the future holds in terms of youthful offending behaviors. Trends over time suggest that youth crime tends to follow or mirror what happens with adult crime which ebbs and flows over generations.¹³ We may be at the “bottom” of the recent decline, or we may be on our way to continued decreases in the numbers and rates of youth getting involved in the delinquency system and youth held in confinement facilities.

We are often easily swayed by sensational stories in the media. After all, serious offenses and the tragedies they bring to those affected make for compelling headlines.

In so many ways, youth behaviors model what they see around them in adults on a whole range of risk

behaviors. As adult crime has declined, so has youth crime. But as has happened in the past, it is too easy to become complacent about youths’ behaviors and forget about the investments we have made to support positive changes—investments in quality early learning and development, quality 4K-12 education, access to health care, and access to meaningful opportunities for youth to join the “world of work.”

The economic recession has not been kind to children in Wisconsin, especially children of color. As a whole, the poverty rate for Wisconsin’s children rose more than twice as fast over the last decade as the overall national rate. That is not a good sign given the historic link between poverty and crime.

Recommendations Going Forward

This document contains a part of the story about what is happening with youthful offenders in Wisconsin.

There is much more to tell. We too seldom see the stories about what is working; yet each youth who gets in trouble but then gets back on track is a success for us all. And each failure in which a youthful offender repeats their behavior harms us all. Yet, we know more than ever about how to promote positive youth development and successfully redirect young people who get “off track.” We need to ensure that our public policy decisions are guided by what we know rather than by our fears, and we need to share the success stories as well as the challenges.

In summary, we need to:

1. ***Return 17-year-olds to the juvenile justice system.*** The overreaction to rising youth crime of the 1980s and early 1990s led to a decision that has unnecessarily pushed too many youth into the adult system or left them with an adult record. A small percentage of the most serious youthful offenders may need the longer-term confinement provided in the adult system, but the growing body of research and public policy consensus around the country is that the juvenile system is more effective than the adult system in

promoting long-term community safety.

2. ***Reaffirm that we know what works with youthful offenders.*** More and more, the research about what works supports cost-effective intervention practices and programs that promote community safety, restore the harm caused to communities and victims, and provides youth and their families with the skills needed to become contributing members of our community. To learn more about these strategies, one can start with the [What Works Wisconsin](#)¹⁴ project, and additional information comes out every month.
3. ***Reinvest what we save*** through reduced incarceration costs into local, community-based, proven prevention; early intervention; and supervision strategies that work. The capacity at the local level to deal effectively with youthful offenders has grown but needs continued support to reinforce the gains that have been made.

If we understand the whole story, we can make good decisions about the future of juvenile justice in Wisconsin. Decisions we are making now will impact this generation of children, and will ultimately affect all of us. Let us make those decisions wisely.

¹ See *Risking Their Futures. Why trying nonviolent 17 year olds as adults is bad public policy.* Available at http://www.wccf.org/pdf/risking_their_futures.pdf

² Nellis, Ashley. July/August 2011. The Sentencing Project. *Addressing the Collateral Consequences of Convictions for Young Offenders* at <http://sentencingproject.org/doc/publications/Collateral%20Consequences%20NACDL%202011.pdf>

³ Note: Arrests are reported by law enforcement through the Uniform Crime Report (UCR) system and/or the National Incident Crime Reporting System (NICRS) to the Wisconsin Office of Justice Assistance. That system includes 17-year-olds as juveniles, and the percentage of juvenile arrests accounted for by 17-year-olds varies depending on the type of crime, but is generally within the range of 18-24%.

⁴ Source: Wisconsin Office of Justice Assistance Crime and Arrest Reports

⁵ Source: [The Annie E. Casey Kids Count Data Center](http://www.annieecasey.org/). Note: Data not available for all years.

⁶ Source: Puzanchera, C., Sladky, A. and Kang, W. (2010). "Easy Access to Juvenile Populations: 1990-2009." Available: <http://www.ojdp.gov/ojstatbb/ezapop/>

⁷ Wisconsin's lowest age of automatic adult court jurisdiction (age 10) is the lowest in the nation – Source: Griffin, Patrick, Sean Addie, Benjamin Adams, and Kathy Firestine. *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*. September 2011. US Department of Justice.

⁸ Source: Wisconsin Circuit Court Automation Project (CCAP) reports available at <http://www.wicourts.gov/publications/statistics/circuit/circuitstats.htm>

⁹ Department of Health and Human Services Center for Disease Control. November 2007. *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System. A Report on Recommendations of the Task Force on Community Preventive Services.* Available at: <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>

¹⁰ See *Pathways to Desistance: A study of serious juvenile offenders as they transition to adulthood and out of crime*, available at <http://www.pathwaysstudy.pitt.edu/index.html>

¹¹ Wisconsin Office of Justice Assistance. <http://oja.wi.gov/docview.asp?docid=20899&locid=97>.

¹² Note: The Relative Rate Index is a statistical calculation of the relative impact of various decisions made about youthful minority offenders in the system as compared to decisions made about majority (white) youth. More information about the RRI in Wisconsin is available at <http://oja.state.wi.us/docview.asp?docid=20847&locid=97>.

¹³ Males, Michael. 1996. *The Scapegoat Generation: America's War on Adolescents*. Common Courage Press.

¹⁴ University of Wisconsin-Extension. *What Works Wisconsin: Effective Prevention Programs for Children, Youth, and Families*. Available at: <http://whatworks.uwex.edu/> or materials available through the Wisconsin Office of Justice Assistance at http://www.oja.wi.gov/section_detail.asp?linkcatid=1319&linkid=708&locid=97&sname=Programs%200&%20Projects

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