

**Testimony of Marc Schindler, Staff Attorney  
Youth Law Center  
Georgia State Senate Legislative Hearing  
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**Senator Fort and Members of the Committee:**

Thank you for permitting me to testify today. By way of background, I am a staff attorney with the Youth Law Center, a national public interest law firm with offices in Washington, DC, and San Francisco, California. For the past 25 years the Youth Law Center has worked with legislators, judges, probation officers, police, prosecutors and defenders, parents, citizens groups, children's advocates, and young people in virtually every state in the union on juvenile justice issues, particularly problems in juvenile detention and adult corrections facilities. We have provided advice, counsel, public education, training, technical assistance, and legislative and administrative advocacy. We have also brought litigation over conditions of confinement in 20 states to protect incarcerated youth from abuse, maltreatment, and violation of their civil and constitutional rights.

During my tenure with the Youth Law Center I have visited and inspected scores of jails, local juvenile detention facilities, state juvenile corrections institutions, private juvenile facilities, and prisons throughout the country. In addition, I am currently a member of the American Bar Association's Juvenile Justice Committee, and for the past five years I have co-chaired the national Juvenile Justice & Delinquency Prevention Coalition in Washington, DC (a coalition consisting of more than 80 national organizations working on juvenile justice issues in Congress). I have also provided training and technical assistance through the federal Office of Juvenile Justice and Delinquency Prevention in numerous states and jurisdictions around the country, and have been called on to provide guidance to representatives in Congress and state legislators across the country.

I am pleased to be here today to talk with you about one of the most pressing issues facing the juvenile justice system today: the transfer of youth to adult criminal court and the subsequent incarceration of young people in adult jails and prisons. More specifically, as you consider whether SB 440 represents sound public policy or not, I would like to address my remarks to national trends in this area and recent research examining the implications of these policies, both in terms of public safety and fairness.

As you may already be aware, during the 1990's nearly every state changed its laws to make it easier to prosecute young people as adults. Traditionally, since a separate court for children was created in Chicago in 1899, youth who broke the law were brought before the juvenile court. In rare cases, judges decided which youth were so violent or such chronic offenders that they were not "amenable to treatment" in the juvenile court. In such cases the jurisdiction of the juvenile court was "waived" and the youth was transferred to adult criminal court. Some states had legislation that automatically excluded youth charged with the most serious offenses, notably murder, from juvenile court jurisdiction.

During the 90's, however, states throughout the country, including Georgia, passed a variety of measures to send more youth to criminal court. These measures include any or a combination of the following: lowering the age at which youth can be prosecuted as adults; greatly expanding the categories of crimes for which youth are automatically prosecuted in criminal court; giving prosecutors the exclusive authority to decide which youths are charged as adults; and limiting the discretion of judges to overturn decisions by prosecutors and law enforcement officials.

With so many states having changed their laws in this area, in many respects over the past ten years or so we have witnessed a massive social experiment occurring in our country, with the question being whether transferring large numbers of young people to the adult criminal justice system is sound public policy. That is to say, are we getting the public safety results that were promised by politicians who pushed supposedly "get tough" and "you do the adult crime, you do the adult time" policies and laws. At this point in time, with extensive research having been conducted on these policies, it is now appropriate, and in many ways I believe we are obligated, to ask three basic questions about such a policy: (1) Does it work? (2) Is it safe? And (3) Is it fair?

### **Does it work?**

The most extensive and comprehensive research on this issue has been conducted in Florida, a state that has led the way in transferring young people to the adult criminal justice system for the past 10 years. The top researchers in the field, funded by the US Justice Department, conducted a series of studies on Florida's practice of trying youth in adult court which have now shown conclusively that young people fare worse when they are tried as adults. Even when controlling for prior record and current offenses, youth tried as adults in Florida were a third more likely to re-offend than those retained in juvenile court. The transferred youth also re-offended twice as quickly, and were twice as likely to be arrested for serious offenses. These results were almost identical to similar research conducted in New York and New Jersey by researchers from Columbia University.

Indeed, the young people themselves recognize the superiority of the juvenile justice system over the adult system. The researchers interviewed 50 youth in Florida prisons and 50 youth in a maximum-security juvenile facility. Only two percent of the youth in the juvenile justice system reported that they were "learning new ways to commit crimes" while incarcerated, while 40 percent of the youth in the adult system said that they were learning new ways to commit crimes.

One of the youth confined in the juvenile facility stated "They helped me know how to act. I never knew any of this stuff. That really helped me, cause I ain't had too good a life." By comparison, a youth in the adult prison said, "When I was in juvenile programs, they were telling me that I am somebody and that I can change my ways, and get back on the right tracks. In here, they tell me I am nobody and I never will be anybody."

Indeed, since 1993, the year before Florida's legislature made it much easier for prosecutors to try juveniles as adults, Florida's serious juvenile arrest rate fell by 13 percent, while the serious juvenile arrest rate for the US declined by a much more impressive 53 percent - four times the decline experienced in Florida. In 1993, Florida's serious juvenile arrest rate was twice the national average. Now, Florida's serious juvenile arrest rate is nearly four times the national average.

Both common sense and research tell us why this is so. After all, if you lock up a teenager with murderers, rapists and robbers, guess what he'll want to be when he grows up? Unfortunately, there is absolutely nothing to suggest that youth prosecuted in adult court in Georgia would fare any better than the results that were seen in Florida.

**The second question: Is it safe?**

Clearly the answer here is no. Sending young people to adult prisons is tantamount to giving up on them. National data shows that young people incarcerated with adults are five times as likely to report being a victim of rape, twice as likely to be beaten by staff and 50% more likely to be assaulted with a weapon than youth held in juvenile facilities. A Justice Department report found that youth confined in adult facilities are nearly 8 times more likely to commit suicide than youth in juvenile facilities.

**And finally, and maybe most importantly considering the answers to the first two questions, is it fair?**

This shift in policy has occurred at a time of growing awareness and concern about disproportionate representation of youth of color in both the adult and juvenile justice systems. Numerous reports have shown that youth of color are over-represented in the population held in detention facilities and in the transfer of youth from juvenile to adult court. In a report by the Justice Policy Institute, *The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California*, the research demonstrates that minority youth experience a "cumulative disadvantage" as they move from arrest to referral on charges, to adjudication, to disposition or sentencing, and finally to incarceration.

Another study commissioned by *Building Blocks for Youth* and prepared by the Pretrial Services Resource Center in Washington, *Youth Crime/Adult Time*, (which I have provided to the committee) is also instructive on this issue. This report is the most comprehensive and in-dept national study of the prosecution of minority youth in criminal court. It is distinctive in several ways. First, it includes the full range of "transfer" mechanisms, e.g., judicial decisions, prosecutorial decisions, and legislative exclusions. Second, the study is broad-based, examining all the major decision points in criminal case processing, from arrest to final disposition. Third, there are a sufficient number of Latino youth to consider them separately in the analysis. Fourth, this is a multi-jurisdictional study of juvenile cases prosecuted in adult courts in 18 large urban counties across the country. Finally, the findings are based on data gathered specifically for this study and not from secondary sources.

This study showed findings similar to earlier reports regarding over-representation and disparate treatment of youth of color, with over 80% of juvenile cases filed in adult court in the 18 largest jurisdictions in the country involving youth of color. The report also revealed disturbing aspects of the transfer process. In effect, in most cases, there is no longer an actual "transfer" process. In a marked departure from tradition, most determinations (85%) to prosecute juveniles as adults are not made by judges, but instead by prosecutors or legislatures. Moreover, although prosecution in criminal court is thought to be reserved for youth charged with the most serious offenses, this study indicates that many youth who are sent to the adult system have cases that are dismissed, resolved without conviction or transferred back to the juvenile justice system, scarcely justifying their prosecution in adult court, detention in adult jails, and subsequent confinement in adult jails and prisons. Thus, this research raises serious questions about the fairness and appropriateness of prosecuting youth in the adult criminal justice system.

As we can see, the answers to these three basic questions show that the policy of transferring youth to the adult criminal justice system fails to meet any standard of sound public policy - it doesn't work to reduce crime, it puts youth at great risk of harm, and it is applied in a discriminatory and unfair manner.

There is no question that violent and dangerous youth need to be securely confined for our safety and theirs. But incarcerating youth with more sophisticated adult prisoners renders them vulnerable to attack and more damaged when they return to society. This is tantamount to giving up on them - something we should never do. Our challenge as responsible adults is to create a fairer and more effective youth justice system, where there is a balance between prevention, treatment and punishment that gives kids a chance to make a better choice. Based on all of the research conducted on transferring young people to the adult criminal justice system, and I have not seen any research at all to contradict the data I have cited in my testimony, in my view it is clear that SB 440 should be repealed.

I appreciate the opportunity to speak with you today and am hopeful that these comments may serve as a catalyst for change. I am also more than happy to answer any questions that you may have and appreciate your time and consideration.