



September 7, 2005

To: Members of the Assembly Committee on Criminal Justice and Homeland Security  
From: Charity Eleson, Executive Director  
Re: Support for Assembly Bill 82

Thank you for the opportunity to provide testimony today on Assembly Bill 82, which would, once again, treat 17 year olds as juveniles in the juvenile justice system.

The Wisconsin Council on Children and Families is on record as supporting AB82. WCCF is a private, non-profit non-partisan organization. We work on policies that, based on research and analysis, we believe will improve conditions for children. We also provide public education on issues affecting children and families. This has included for the past six years a major initiative on brain development, examining the most recent research on how a child's brain develops from infancy to adolescence and helping those who work most closely with children understand how external influences, from poverty to nurturance, contribute to or harm a child's development. We also look at what conditions are best for children and how our public policies can either foster or inhibit conditions that will ensure children's healthy development.

Several years ago, the Council began to delve more deeply into new research coming out about adolescent brain development. While it is now common knowledge that 85 percent of a child's core brain structure is developed by age 3, more recent research has shown that the frontal lobe of the brain undergoes greater change during adolescence than during any other stage of life<sup>i</sup>. This, scientists tell us, is the area of the brain that is responsible for reasoning and impulse control. This area of the brain is also the last to develop, meaning that adolescents may be fully capable in other areas, but that they, in fact, are less adept at controlling their behavior than are adults.<sup>ii</sup>

For many years, the state has treated adolescents differently: 17-year-olds cannot legally drink or purchase alcohol, purchase cigarettes and, for purposes of the children's code, they are considered minors in cases of abuse or neglect. Children 17 years of age and younger also cannot join the military and they cannot vote.

For these purposes, policy-makers have decided that 17-year-olds are different and they are not ready to assume the responsibilities of adulthood and the privileges and opportunities it brings. We now know, based on recent research of the adolescent brain, that there is scientific fact behind policy-makers' reasoning that this age group is not able to take advantage of certain privileges in a responsible manner and, as a society, we

ought to assist them by setting limits on what they can do at what age until they are more mature.

Yet, the standards are different when it comes to prosecuting 17-year-olds for crimes. In this arena, and in this arena alone, the state puts these young people, most of them juniors and seniors in high school, in the same classification as adults. In doing so, we hold them fully responsible for their behavior and eliminate the historic commitment that our state and many others have had to rehabilitating juveniles through effective treatment. Thousands are placed in county jails with adult criminals each year, and since 1996, when the first year 17 year olds were prosecuted and charged as adults, 1,453 17- year-olds have been admitted to adult correctional facilities.<sup>iii</sup>

At the time the law was changed to make 17-year-olds adults for purposes of criminal prosecution, there was an underlying belief that this would be the most effective way of deterring adolescent crime. Cash-strapped counties also advocated for this change, eager to realize the cost savings that went along with it. Yet, a national study done in 1996 found that juvenile offenders sentenced to adult facilities were more likely to recidivate than juvenile offenders treated in juvenile facilities. In fact, the study found that offenders are more likely to re-offend earlier and commit more serious subsequent crimes.<sup>iv</sup> A second study, completed in 2001, found that youth receiving adult sentences—including those in local jails and in prisons—were 81 percent more likely to have a technical violation or a new case against them than youth receiving a juvenile sanction.<sup>v</sup>

The availability of rehabilitative services to juveniles is largely responsible for this disparity in outcomes. Consistent with the philosophy behind the creation of the juvenile justice code, rehabilitation is considered to be an effective approach with juveniles still going through various stages of maturation and development. While the juvenile justice system holds juveniles responsible for their actions, it also takes into account that they are still children and still learning how to appropriately behave and interact with others.

The US Supreme Court ruled, this past spring that the death penalty was “cruel and unusual punishment” for teens, 17 and younger, and therefore no longer allowed. A major argument influencing the majority of judges was based on recent research findings about adolescent brain development. The teen brain predisposes young people to react from the gut, without considering consequences. They have a fully-developed emotional response system that leads them to engage in risk-taking, sensation-seeking behaviors. They are looking for the next “thrill.” Unfortunately, they do not yet have the capacity, in situations of high emotional intensity, to consider consequences.

The research clearly shows that it is not until later—into young adulthood—that most teens have the *cognitive skills* (using rules and strategies) and the *emotional self-control* to make good decisions in risky situations of high emotional intensity.

The goal when working with these juveniles is to help them stop destructive behaviors. Our systems need to help them become competent to handle (or avoid) highly emotional situations. Their brains can become sculpted for socially-acceptable behaviors, but they need to learn and practice those behaviors. They desperately need competent adult

guidance. That has a greater chance of happening in a juvenile facility or in community-based supervision and services than it does for 17-year-olds being sanctioned in the adult system.

While we understand the concerns that the counties have about the cost of this bill, we would also point out that the cost of prosecuting and sanctioning 17-year-olds has not disappeared. It is being borne at the local level in increased county jail costs and at the state level in increased costs of adult corrections. Further, communities and the state also bear the longer-term costs of incarcerating teens in adult facilities associated with higher rates of unemployment, criminal activity, and higher economic assistance dependence amongst this population because they were not able to obtain the rehabilitative services they needed and could have benefited from.

It is for these reasons that the Wisconsin Council on Children and Families supports AB82 and strongly urges you to support it as well.

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<sup>i</sup> Sowell, Elizabeth R, Paul M. Thompson, Colin J. Holems, Terry L. Jernigan and Arthur W. Toga. *In vivo evidence for post-adolescent brain maturation in frontal and striatal regions*. 2 Nature Neuroscience 10 (1999), also Paus, Tomas, Jay Giedd, et.al. *Structural maturation of neural pathways in children and adolescents: in vivo study*. Science, 283 (1999)

<sup>ii</sup> Sowell, Elizabeth R, Paul M. Thompson, Kevin D. Tessner and Arthur W. Toga. *Mapping continued brain growth and gray matter density reduction in dorsal frontal cortex: inverse relationships during post-adolescent brain maturation*, 21 Journal of Neuroscience 22 (2001), at 8819, also Reiss, A.L., et.al., *Brain development, gender and IQ in children, a volumetric imaging study*. Brain, 119 (1996)

<sup>iii</sup> Wisconsin Department of Corrections

<sup>iv</sup> D. Bishop, C. Frazier, L. Lanza Kадuce, and L. Winner, *The Transfer of Juveniles to Criminal Court: Does it Make a Difference?* Crime & Delinquency, Vol. 42 No. 2, April 1996. *Excluding Violent Youths from Juvenile Court: The Effectiveness of Legislative Waiver*, David Myers, University of Maryland, 1999. *The Comparative Advantage of Juvenile vs. Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders*, Jeffrey Fagan, Law and Policy, Vol. 18 #1 and 2, Jan/April 1996.

<sup>v</sup> Craig A. Mason and Shau Chang, *Re-Arrest Rates Among Youth Sentenced in Adult Court*, Evaluation report for Juvenile Sentencing Advocacy Project, Miami Dade County Public Defender's Office, (October, 2001), p. 8.