RAISING THE AGE OF JUVENILE COURT JURISDICTION

The future of 17-year-olds in Illinois' justice system

ILLINOIS JUVENILE JUSTICE COMMISSION

ACKNOWLEDGEMENTS

The Illinois Juvenile Justice Commission (the Commission) serves as the federally mandated State Advisory Group to the Governor, General Assembly and the Illinois Department of Human Services (DHS) in developing, reviewing and approving the State's juvenile justice plan for the expenditure of funds granted to Illinois by the United States Office of Juvenile Justice and Delinquency Prevention (OJJDP). The Commission members include:

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> **[D]ifferences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders…The *Thompson* plurality recognized the import of these characteristics with respect to juveniles under 16. <u>The same reasoning applies to all juvenile offenders under 18.</u>**
>
> ***Roper v. Simmons*, 543 U.S. 551, 553 (2005) (internal citations omitted) (emphasis added)**

> **[It is] not exactly an equal protection issue, but it's still weird to me, that if the basis for changing [Illinois] law was the development of the juvenile brain…[it] doesn't make any sense [to say a 17-year-old has an adult] *mens rea* for residential burglary but not for theft. Nonsensical.**
>
> ***Prosecutor interview***

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

In Illinois, 17-year-olds cannot vote or play the lottery; they need permission to join the military or pierce their ears; they are unable to obtain a full driver's license or credit card. Abusing a 17-year-old is child abuse; failing to provide adequate food to a 17-year-old is child neglect; teachers and other professionals who work with 17-year-olds must report such incidents or face criminal charges themselves. When 17-year-olds damage someone's property, their parents can be sued. A 17-year-old arrested for shoplifting an iPod Touch is subject to the juvenile justice system. In all of these respects, the law treats 17-year-olds as it does 16-year-olds: as minors.

Yet Illinois law treats a 17-year-old who shoplifts an iPhone as an adult criminal: held with adults in jail, tried in adult criminal court, sent to adult prison if incarcerated, and issued an employment-crushing permanent criminal record—an adult felony conviction. In 38 other states, such a youth would go through the juvenile justice system instead.

In 2009, in keeping with legal, criminological, and scientific trends, legislative advocates in Illinois supported moving 17-year-olds from criminal to juvenile court jurisdiction. The proposal was vigorously debated, with opponents raising concerns over public safety, staggering probation caseloads, overcrowded detention facilities and unmanageable fiscal costs. In response to these concerns, the General Assembly passed an innovative compromise; Illinois would be the first and only state in the nation to send exclusively misdemeanants through the juvenile system. Any and all felony charged 17-year-olds would stay in adult criminal court for the time being—until the effects of the change were known and the impact of further change could be considered.

Since the misdemeanor age change took effect on January 1, 2010, none of the predicted negative consequences on the juvenile court system have occurred:

- Adding 17-year-old misdemeanants to the juvenile justice system in 2010 did not crash it. In fact, due to a sharp decline in juvenile crime, there are currently fewer juvenile arrests than when the General Assembly began debating the change in 2008.
- Public safety did not suffer. In fact, crime reports have continued to decline, including a 14 percent decrease in violent crime statewide since the law was changed.
- County juvenile detention centers and state juvenile incarceration facilities were not overrun. In fact, one detention center and two state incarceration facilities have been closed and excess capacity is still the statewide norm.
- Illinois is not wasting costly resources on youth who will not change. In fact, we now know that even felony-level 17-year-old offenders are very good candidates for juvenile court interventions and that there is a net fiscal benefit from sending youth to juvenile rather than adult court. Multiple federal juvenile policy briefs have now offered new insight into the potential for adolescent offenders to grow and change—and have also warned of serious negative public safety consequences of sending minors through an adult criminal system.
- Illinois' seemingly reasonable compromise did not, in the end, draw a wise, safe, or clear distinction between minor and serious offenses. In fact, years after the change, jurisdictional questions still regularly arise when 17-year-olds are arrested; some are being unnecessarily housed in adult jails and others are receiving adult convictions for misdemeanor offenses; decisions with lifelong collateral consequences for youth are being made without judicial oversight or a clear, uniform statewide process.
- Regardless of legislative action on this jurisdictional issue, Illinois cannot continue its status quo of housing felony-charged 17-year-olds with adult inmates without financial cost. In fact, monitoring for compliance with new federal Prison Rape Elimination Act (PREA) guidelines begins in 2013. PREA will require all offenders under

18, even those in the criminal system, to be housed separately from adults in all lockups, jails, detention centers, and prisons. Noncompliance can result in a 5 percent penalty on several federal formula funds and block grants, which support state and local law enforcement agencies throughout Illinois.

- The operational impact of raising the age for approximately 4,000 17-year-olds arrested for felony offenses will not crash the system. In fact, most practitioners interviewed for this report believe the change will relieve some administrative burdens inherent in a "bifurcated system" in which some 17-year-olds are handled as adults and others are considered juveniles.

Of course, adding felony arrests cannot be expected to have the same operational effects as adding misdemeanor arrests. Some of the original fiscal projections and concerns over raising the age focused primarily on expensive interventions for more serious offenders (detention, incarceration, more intensive probation); these were minimally affected by adding up to 18,000 misdemeanor arrests to the juvenile system but do become more relevant concerns upon shifting 4,000 felony youth arrests from the adult system to the juvenile system. Yet many original objections to raising the age focused on the effect of the raw numbers being shifted to front-end processing and diversion functions (arrest, probation screening, juvenile court caseloads, and probation services). At the front end of the system, the hardest stage of change is over, and it has been much more successful than anticipated.

While serious youth crime continues to afflict communities, the overall reduction in juvenile crime and increased diversion options have created a smaller and more resilient juvenile justice system. Appropriately resourced, it will be able to absorb the second phase of raising the age while increasing public safety. Since the juvenile jurisdiction compromise changes went into effect in 2010, taking the next step with felonies has become less risky and more manageable while the enormous economic and safety costs of maintaining the destructive status quo have become more apparent in many neighborhoods, as well as in the research. A great deal of the resistance to further change has dwindled and our state is being presented with the opportunity to do right by youth, their parents, the public, and practitioners. It is time to treat 17-year-olds who are arrested in Illinois as we do their 16-year-old classmates.

SUMMARY OF FINDINGS

Raising the age

- Is consistent with legal trends
- Is consistent with adolescent development and behavior
- Is an efficient use of juvenile court resources
- Improves public saftey
- Decreases long-term costs

Rasing the age for misdemeanors (2010)

- Did not overwhelm the juvenile justice system
- Created procedural uncertainty and inconsistent outcomes

Raising the age for felonies (future)

- Anticipated to be manageable
- Will promote uniformity, clarity
- Youth will still be tried as adults for serious offenses (transfer)

Based on these findings, the Commission has adopted the following recommendation:

> To promote a juvenile justice system focused on public safety, youth rehabilitation, fairness, and fiscal responsibility, Illinois should immediately adopt legislation expanding the age of juvenile court jurisdiction to include 17-year-olds charged with felonies.

Notes for Implementation:

Incorporating the following practices into Illinois' juvenile justice plan will ease transition, promote clarity, and ensure system integrity during the jurisdictional change:

- Housing youth under 18 in juvenile facilities, not adult jails or lockups, whenever possible.
- Creating state or local workgroups to resolve specific technical or procedural questions including:
    - Identifying specific practitioner education and training needs.
    - Distinguishing state Juvenile Court Act requirements from the new federal Prison Rape Elimination Act (PREA) requirements for housing minors charged as adults under the criminal code.
- Assisting detention centers with providing safe, developmentally appropriate care and supervision to adolescents and facilitating compliance with PREA, by raising the minimum age of juvenile detention from 10 to 13 (to match the juvenile incarceration age) and developing appropriate placement alternatives for children under 13.
- Aggregating information from screening and assessment tools, analyzing system performance and youth outcomes to inform local and state juvenile justice planning and resource allocation.
- Realigning the juvenile expungement statute to match juvenile jurisdiction.
- Identifying opportunities to harness federal, state, and local funds to support evidence-based, effective programs delivered in community settings, alternatives to detention, juvenile probation departments and Redeploy Illinois, focusing scarce incarceration resources on only the highest-risk youth.

Supplemental Recommendations:

Responding to changes in the scientific, legal, and regulatory landscape, Illinois' comprehensive juvenile justice policy planning should include:

- Using (1) research, (2) evidence-based practices, and (3) validated screening and assessment tools to inform policy, practice and individualized decision-making at all stages of the juvenile justice system, including:
    - Law enforcement contact, arrest and diversion decisions;
    - Community-based service provision;
    - Detention admission and detention alternatives;
    - Facility-based (detention and DJJ) services and care;
    - Commitment and sentencing decisions;
    - Community-based supervision (probation and parole) strategies, including responses to probation or parole violations; and
    - Aftercare and reentry services and strategies.
- Examining policy and practice regarding mandatory minimum five-year probation sentences for certain youth adjudications.
- Evaluating the transfer statutes under which youth are transferred into adult court for consistency with public safety, youth rehabilitation, and fairness. These statutes will not be affected by raising the age of jurisdiction, but the effects of sending minors to the adult system, particularly higher recidivism rates, indicate that Illinois should ensure that its transfer laws are adequately tailored to reduce violence.

AUTHORIZATION AND PURPOSE

This report is submitted by the Illinois Juvenile Justice Commission in fulfillment of its mandate to "study the impact of, develop timelines, and propose a funding structure to accommodate the expansion of the jurisdiction of the Illinois Juvenile Court to include youth age 17 under the jurisdiction of the Juvenile Court Act of 1987." Ill. Pub. Act 096-1199 (eff. 1/1/11). The act was a follow-up to Public Act 095-1031, which included 17-year-old misdemeanants in juvenile court jurisdiction effective January 1, 2010.

BACKGROUND

Effective January 1, 2010, Illinois raised the general age of adulthood for criminal offenses to 18—but only for misdemeanor offenses. In doing so, Illinois became the only state in the country to simultaneously route youth of the same age (17) to both juvenile court and adult criminal court by default.[1] Instead, 17-year-olds are split between adult and juvenile court based on each county prosecutor's ordinary use of felony indictment, not because an offense is unusually severe or because a judge has noted specific aggravating factors (as happens with younger teens). Resulting practices are especially harsh because Illinois lacks several safeguards found in other states to protect against permanent adult consequences for 17-year-olds who are arrested for ordinary felonies, including property and drug crimes.

Illinois' age of juvenile jurisdiction was and is an outlier in the United States[2] and abroad[3] and runs contrary to professional legal standards.[4] Importantly, jurisdictional age is still not the sole means of entry for juveniles into adult court. As a result of "transfer," "direct file," and other jurisdictional provisions, each of the 50 states is able to prosecute, try, and sentence older adolescents as adults when they are charged with very serious offenses.[5]

Illinois' own transfer provisions are broader than those in many other states, permitting youth as young as 13 to be tried and sentenced as adults instead of juveniles—for any type of crime.[6] However, as the name suggests, "transfer" provisions are applied only after the default application of juvenile court rules.

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1 The customary way for minors to enter adult court in other states and for younger offenders in Illinois, is via automatic, mandatory, presumptive, or discretionary transfer provisions. In such cases, there is one singular default jurisdiction (juvenile), but youth may be transferred to adult court due to the severe nature of a particular offense or other aggravating factors.

2 Currently, only 11 other states currently set the delinquency age below 18. *See* note 7, *infra*.

3 Canada sends 17-year-olds to juvenile court; Mexico additionally considers 18-year-olds to be juveniles. Youth Criminal Justice Act, R.S.C. 2002, c. 2(1) (Can.); Constitución Política de los Estados Unidos Mexicanos, Art. 18, Diario Oficial de la Federación, 13 de Octubre de 2011 (Mex.). Austria, Germany, Lithuania, and Spain send offenders under 21 to juvenile court; the UK and nearly all of Europe set the age of adulthood at 18. Josine Junger-Tas, *Trends in International Juvenile Justice: What Conclusions Can be Drawn? in* International Handbook of Juvenile Justice 505, 516-21 (Josine Junger-Tas & Scott H. Decker eds., 2006). The United States is a signatory to the United Nations Convention on the Rights of the Child, defining as children "every human being below the age of eighteen years." U.N. Convention on the Rights of the Child, G.A. Res. 44/25, Art. 1, Annex, at 167, U.N. GAOR 44th Sess., Supp. No 49, U.N. Doc. A/44/49 (Nov. 20, 1989) (entered into force Sept. 2, 1990) (signed by the United States on Feb. 16, 1995, but not ratified). United Nations rules specific to juvenile delinquency use similar language ("A juvenile is every person under the age of 18."). U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, at 205, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc A/45/49 (Dec. 14, 1990). The United States and Somalia are the only signatory nations that have not yet ratified the Convention on the Rights of the Child. *Status of the Convention on the Rights of the Child*, United Nations Treaty Collection, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

4 The American Bar Association has recommended using 18 as the age of adulthood for decades. *See*, *e.g.*, John M. Junker, Inst. Of Judicial Admin., Am. Bar Ass'n, Standards Relating to Juvenile Delinquency & Sanctions 14-17 (1980).

5 Patrick Griffin et al., *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting,* Office of Juvenile Justice and Delinquency Prevention Bulletin (Sept. 2011), http://www.ncjj.org/pdf/Transfer_232434.pdf.

6 *See* 705 ILCS 405/5-805(3) (authorizing discretionary transfer of youth 13 and up for any offense type, based upon a juvenile judge's determination that, based on certain criteria, it is not in the best interests of the public to proceed under the Juvenile Court Act).

The number of states that routinely treat 17-year-olds as adults is dwindling, since states are trending toward making 18 the default age of adult criminal responsibility. Only 11 other states use an age under 18 as the default age of adulthood for criminal charges.[7] The age of majority for federal prosecutions, like many other federal programs, is also 18. Even among states using an age under 18 to determine adulthood, Illinois is unique. Several states with adulthood ages under 18 still provide criminal courts with the ability to send cases for younger offenders to juvenile court when warranted. Half of all states have what are known as "reverse waiver" provisions, allowing youth in adult court to be transferred to juvenile court under certain circumstances (Illinois has no such mechanisms).[8] Other states provide special sentencing mechanisms, such as "youthful offender status" for defendants under 21, which can prevent the lifelong difficulties presented by a criminal conviction.[9]

Illinois criminal courts, by contrast, *must* hear *all* felony cases relating to 17-year-olds—and when a 17-year-old felony defendant is found guilty of (or pleads guilty to) a felony, Illinois criminal courts are categorically unable to take age into consideration when issuing a permanent felony conviction.[10] Few states circumscribe judicial discretion so tightly regarding offenders so young. No other state routinely gives more jurisdictional weight to a prosecutor's initial filing decision than to an offender's age.

JUVENILE JUSTICE IN ILLINOIS

To understand the current patchwork of Illinois criminal, juvenile, and transfer statutes applicable to 17-year-olds, it is important to understand our state's legal history and philosophical changes regarding young offenders.

Before the creation of the Illinois Juvenile Court, youth could only be tried in criminal court.[11] However, state law set an outer boundary on the criminal court's jurisdiction and granted judges the discretion to exclude youth from the court.[12] Youth under 10 could not be tried in criminal court, and youth between 10-14 could only be tried if the judge decided that the youth had the maturity necessary for criminal accountability.[13] Moreover, youth under 18 could not be incarcerated at the state penitentiary unless they were found guilty of robbery, burglary, or arson.[14]

Illinois created the country's first juvenile court in 1899 based on the philosophy that delinquent youth should be

7 Georgia, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin use the age of 17. New York and North Carolina currently set the age at 16. At least four of these states have recently introduced legislation to raise the age. Connecticut successfully raised the age to include 17-year-olds effective January 2010; Mississippi raised the age for most offenses effective July 1, 2011. *Legislative Victories from 2005 to 2010 Removing Youth from the Adult Criminal Justice System,* Campaign for Youth Justice: State Trends 29 (2011), *available at* http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf.

8 Griffin, *supra* note 5, at 3.

9 *Id.* at 3, 7; *see, e.g.,* Crim. Proc. § 720.15 et seq. (N.Y.); Conn. Gen. Sat. Ann. § 54-76 (West 2011).

10 Expungement and court supervision are never available for any felony criminal conviction. *See* 730 ILCS 5/5-6-1(a)(1)(c). In Illinois, only two drug-related felony statutes provide for any judicial discretion regarding conviction. *See* 720 ILCS 550/10; 720 ILCS 570/410. For only these two types of charges, judges may issue conditional discharge sentences (which allow the court to vacate the convictions of first-time offenders of any age after successful completion of court-ordered treatment, probation, or other conditions). Convictions for all other felony types are permanent. Criminal courts cannot consider an offender's age before entering an adult felony conviction. Courts may only take age into account during sentencing, although some mandatory sentences still apply.

11 Joan Gittens, Poor Relations: the Children of the State in Illinois, 1818-1990 91 (1994).

12 *Id.*

13 The minimum age to prosecute a youth for rape was 14. *Id.*

14 *Id.* at 92.

rehabilitated, not punished.[15] The juvenile court initially had jurisdiction over all youth under 16.[16] Six years later the court's jurisdiction was extended to boys under 17 and girls under 18.[17] The court was given more expansive jurisdiction over girls so it could use its *parens patriae* power to remove girls from "unseemly environments" in order to "protect their virtue."[18] The Illinois Supreme Court held that the unequal treatment was unconstitutional and in 1972 the law was modified, setting the maximum age of juvenile court jurisdiction for both boys and girls at 17.[19]

When the juvenile court was created in 1899, only juvenile court judges had the power to transfer youth to criminal court, and the transfer decision was completely within the judge's discretion.[20] However, the juvenile court legislation was unclear as to whether a prosecutor could simply charge a youth in criminal court, bypassing the juvenile court entirely. Initially, there was a "gentleman's agreement" between the juvenile court and prosecutors, whereby almost all charges against youth were filed in juvenile court, allowing the juvenile court judges to decide whether a youth should be tried in criminal court.[21] In exchange, the juvenile court did not exert its jurisdiction when prosecutors charged some youth in criminal court, usually older youth who committed serious crimes while on probation.[22]

By the mid-1920's, the agreement had eroded, leading to an ever-increasing number of youth being tried in criminal court.[23] The Illinois Supreme Court addressed the issue in *People v. Lattimore*, holding that the juvenile court legislation did not give the juvenile court exclusive original jurisdiction over youth.[24] However, the General Assembly overturned *Lattimore* with the Juvenile Court Act of 1965.[25] The law explicitly required that prosecutors file all charges against youth in juvenile court, allowing the judges to decide the appropriate court for each youth.

The juvenile population in Illinois increased in the 1970s as a swell of late Baby Boomers entered adolescence.[26] The population increase was accompanied by a corresponding increase in juvenile offenses.[27] The attendant public outcry led to the passage of an automatic transfer offense scheme in 1983.[28] Once a youth is charged with

15 David S. Tanenhaus & Steven A. Drizin, *"Owing to the Extreme Youth of the Accused": The Changing Legal Response to Juvenile Homicide*, 92 J. Crim. L. & Criminology 641, 646 (2003).

16 Gittens, *supra* note 11, at 108.

17 *Id.* at 116.

18 *Id.* at 116-124.

19 People v. Ellis, 311 N.E.2d 98 (Ill. 1974); Ill.Rev.Stat., 1972 Supp., ch. 37, ¶ 702-7(1).

20 While juvenile court judges initially assumed the transfer power, the legislature codified this power in 1907. Gittens, *supra* note 11, at 132.

21 Tanenhaus, *supra* note 15, at 647.

22 The juvenile court retained jurisdiction over youth sentenced to probation until 21. Therefore, the juvenile court could have asserted jurisdiction when prosecutors charged youth on probation in criminal court. *Id.*

23 *Id.* at 662; David S. Tanenhaus, Juvenile Justice in the Making 150 (2005).

24 *See* People v. Lattimore, 199 N.E. 275, 276 (Ill. 1935).

25 Gittens, *supra* note 11, at 156.

26 *Id.* at 155.

27 The juvenile crime rate decreased in the late 70s and early 80s as the Baby Boomers left adolescence, causing a drop in the juvenile population. *Id.*; James Alan Fox & Alex R. Piquero, *Deadly Demographics: Population Characteristics and Forecasting Homicide Trends*, 49 Crime & Deliq. 339, 344 (2003).

28 Gittens, *supra* note 11, at 155.

one of these offenses, the youth is automatically transferred to criminal court, eliminating judicial discretion. The 1983 amendment required that any youth 15 or older charged with murder, rape, sexual assault, or armed robbery be automatically transferred to criminal court. [29] Additional automatic transfer offenses were added in 1985.[30]

The juvenile crime rate increased again in the late 1980s and early 90s.[31] Public outcry led legislators to add new automatic transfer offenses in 1990, 1995, 1996, 1998, and 2000.[32] A scheme of presumptive transfer offenses was also added to the Juvenile Court Act—these maintain judicial discretion but place the burden on the youth to establish that he/she should not be transferred.

The juvenile crime rate dropped at the end of 1990s.[33] In 2005, the legislature, for the first time, reduced the list of automatic transfer offenses, returning transfer discretion for certain drug offenses to juvenile court judges.[34]

RAISE THE AGE HISTORY

In 2005, the General Assembly considered raising the age of juvenile court jurisdiction to 18.[35] Proponents argued that 17-year-olds are still maturing and therefore make impulsive and childish decisions.[36] Consequently, these teens should not suffer the stigmas and impediments that result from a permanent criminal record.[37] Because they are still maturing, proponents noted, 17-year-olds are still capable of positive growth and change when given the right support and opportunities. Thus, they argued, 17-year-olds should be adjudicated in juvenile court because the juvenile justice system recognizes their capacity for positive change and provides the rehabilitative services necessary to bring about that change.[38]

29 Pub. Act 82-0973.

30 For example, "between 1985-1989, the Illinois legislature expanded automatic transfer legislation to include 15- and 16-year-olds charged with drug offenses that took place within 1,000 feet of a school or public housing." Jason Szanyi, Reforming Automatic Transfer Laws: A Success Story, Center for Children's Law and Policy (Dec. 2012), http://www.modelsforchange.net/publications/348.

31 While there is no consensus as to the cause of the 1990s juvenile crime rate increase, one likely cause is the unprecedented increase in offenses committed by youth aged 14-17. Fox, *supra* note 27, at 345.

32 Angela Caputo, *Seventeen*, Chicago Reporter, Aug. 31, 2010, *available at* http://www.chicagoreporter.com/news/2010/08/seventeen.

33 Fox, *supra* note 27, at 345.

34 Public Act 94-0574, (eff. Aug. 12, 2005).

35 S.B. 0458, 94th Gen. Assemb. (2005).

36 Jeff Long, *Illinois Increases Juvenile Court Age Cutoff to 17*, Chicago Tribune, Mar. 12, 2010 ("Young adults' brains really don't develop until their mid-20s, in terms of judgment, in terms of impulse control—what we would call maturity") (quoting Paula Wolff); Liza Hoffman & Alex Keefe, *A Decade After Reforms, A Smarter Juvenile Court Takes Shape*, Medill Reports, Mar, 12, 2009 ("What is the fundamental difference between a 16-year-old sophomore and a 17-year-old junior?...Any mother will tell you there isn't much of one.") (quoting Judge George Timberlake). Sen. John Cullerton commented, "These are juveniles that are still in school, most are living at home under the control of their parents, and we should treat 'em that way." IL S. Tran. 2008 Reg. Sess. No. 147, 159. Rep. Art Turner stated, "Many of us remember when we were seventeen (17). There were things that you did at seventeen (17) that if you were accused of doing at later at twenty-five (25) or thirty (30), you know that that's an entirely different mind that we're working with." IL H. Tran. 2008 Reg. Sess. No. 277, 200.

37 Chris Dettro, *Juvenile Court Age Limit to Change*, State Journal-Register, Feb. 16, 2009 ("Young adults sometimes make stupid mistakes....The law's intent is to prevent one bad mistake, such as a theft, from haunting you for the rest of your life.") (quoting Sangamon County State's Attorney John Schmidt). Sen. John Cullerton commented, "We want [17-year-olds] to be given a chance—a second chance and avoid having...a record for the rest of their life." IL S. Tran. 2005 Reg. Sess. No. 30, 246. Rep. Roger Eddy stated, "[W]e need to give those kids every possible chance we can not to be labeled, not to...have the feeling that they have something to carry with them for the rest of their lives that's going to affect employment, going to affect opportunities." IL H. Tran. 2008 Reg. Sess. No. 277, 210.

38 IL H. Tran. 2008 Reg. Sess. No. 277, 201 ("We're talking about our seventeen-year-olds that, as I said, those kids under eighteen (18) should be dealt with in our juvenile justice court system because that's what that system was set up for. They are much better prepared for dealing with our

Critics claimed that extending juvenile court jurisdiction would be too costly.[39] While raising the age would undoubtedly increase the number of youth in juvenile court, administrators and legislators debated the extent of the increase and its financial impact.[40] The proposed legislation passed the Senate but died in committee in the House.[41]

In 2008, both sides reached a compromise: include 17-year-olds charged with misdemeanors in juvenile court and revisit the feasibility of including all 17-year-olds once the consequences are better understood.[42]

The compromise legislation garnered greater support. However, some legislators argued that even including misdemeanors would be too costly.[43] Other legislators argued that because 17-year-olds know the difference between right and wrong, they should all be tried in criminal court.[44] Proponents of the compromise argued that the financial impact would be small and manageable and that the well-being of Illinois' children was worth the price.[45] The compromise legislation passed, changing jurisdiction for 17-year-olds beginning January 1, 2010.[46] The General Assembly later charged this Commission with studying the issue and devising recommendations for the inclusion of felony-charged 17-year-olds.[47]

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youth.") (statement of Rep. Art Turner).

39 IL S. Tran. 2005 Reg. Sess. No. 30, 246 ("The concern over the bill, quite frankly, is the fiscal impact that it would have on certain counties.") (statement of Sen. John Cullerton).

40 *Id.* at 247 ("The Department of Corrections has indicate (sic) that the ten-year fiscal note on this is about a hundred and twenty-six million dollars. I appreciate that some may think that that's an overblown figure, but I think they're the ones who'd be in a position to know that.") (statement of Sen. Dale Righter).

41 *Id.* (Senate passing S.B. 0458); House Comm. Status Report, 94th Gen. Assemb., 194 (2008) (listing final status of S.B. 0458 as "Session Sine Die").

42 S.B. 2775, 95th Gen. Assemb. (2008) (enacted); IL S. Tran. 2008 Reg. Sess. No. 175, 46 ("The [] bill was significant, though, and it also represented a compromise. It increases from seventeen to eighteen years the age in which offenders can be incarcerated, but it only applies to misdemeanors. That was done in an effort to accommodate the opponents, who were county governments, who felt it was going to be too costly.") (statement of Sen. John Cullerton); IL H. Tran. 2008 Reg. Sess. No. 277, 204 ("[L]istening to state's attorneys and listening to the sheriffs and everybody's got a different set of numbers and you know, it depends on who you talk to around here, it goes from A to Z. And so that's why we're creating a task force to try to do this study ourselves and see what exactly what are the number of cases, how many are involved.") (statement of Rep. Arthur Turner).

43 Mike Wiser, *State's Changes to Juvenile Age Cutoff May Raise Costs for County*, Rockford Register Star, Dec. 26, 2009 ("[I]t's another unfunded mandate from the state to the counties.") (quoting Winnebago County Board Chairman Scott Christiansen); IL S. Tran. 2008 Reg. Sess. No. 147, 160 ("I think that they're only against it—not because they think it's not a good idea, but they think it'll cost more.") (statement of Sen. John Cullerton); IL H. Tran. 2008 Reg. Sess. No. 277, 205 ("We all have to represent our areas and I have received things from both Kane and Kendall Counties against this Bill and this is really concerning the cost issue.") (statement of Rep. Patricia Lindner).

44 Steve Stout, *New Juvenile Law Packs Punch*, Times, Dec. 25, 2009 ("As a prosecutor for more than 18 years now, I believe that, even at the young age of 17, these kids know what is right or wrong and should face the full consequences of their (criminal) actions.") (quoting LaSalle County State's Attorney Brian Towne); Mike Wiser, *State's Changes to Juvenile Age Cutoff May Raise Costs for County*, Rockford Register Star, Dec. 26, 2009 ("When you're 17 you know what you're doing. This is just a way to give people an easy out.") (quoting Rep. Jim Sacia); IL H. Tran. 2008 Reg. Sess. No. 277, 204 (Here's a seventeen-year-old individual who obviously knows the difference between right or wrong and that really is the general decision as to what we're trying to look at here....So, I would urge a 'no' vote") (statement of Rep. Dennis Reboletti).

45 IL S. Tran. 2008 Reg. Sess. No. 147, 159 ("I have reasons to believe that the cost would be very minimal.") (statement of Sen. John Cullerton); H. Tran. 2008 Reg. Sess. No. 277 ("[T]here's talk about the financial aspects of this. I don't think it's...the numbers are...are as dramatic as people have said. The numbers are going to be very low.") (statement of Rep. Jim Durkin); IL H. Tran. 2008 Reg. Sess. No. 277, 201 ("I don't think there's a dollar figure here that we can put on spending for our kids. We want to get more for their schools; let's get more to help them with another problem that's just as important and that is trying to correct the criminal justice system and the impact that it has on our seventeen-year-olds.") (statement of Rep. Art Turner).

46 Ill. Pub. Act 95-1031 (eff. Feb. 10, 2009).

47 Ill. Pub. Act 096-1199 (eff. Jan. 1, 2011).

METHODOLOGY

The Commission identified four key research activities necessary to fulfill this legislative mandate:

1. **Legal Research and Analysis**: The Commission conducted research, information collection and analysis of Illinois law, emerging United States Supreme Court jurisprudence on juvenile issues, and law, policy and practice in other states. This analysis included examination of other jurisdictions' ages of juvenile jurisdiction, documented the benefits and challenges of various age cut offs and historical and recent efforts to extend juvenile court jurisdiction to include 17-year-olds.

2. **Best Practices Research**: The Commission collected and analyzed current research on adolescent development and "best practices" in intervening with youth in conflict with the law. This analysis focused on the developmental characteristics of youth, the range of interventions shown to be effective in reducing youth offending and the impact of trying youth as adults on both youth outcomes and public safety.

3. **Stakeholder Input**: The Commission conducted outreach, interviews and small focus groups with juvenile justice practitioners in communities across the state. These discussions provided feedback and perspectives from police and sheriff's departments (including jail personnel), detention centers, prosecutors, defenders, probation departments, state corrections officials and other justice system practitioners. Anonymous interviews explored the impact of raising the age of juvenile jurisdiction to include 17-year-old misdemeanants and the projected impact of raising the age to include 17-year-olds charged with felonies.

4. **Data Collection and Analysis**: The Commission acquired and analyzed a significant body of data to study the impact of raising the age for misdemeanor offenses and to project the impact of raising the age for youth charged with felonies. Data was collected at all possible stages of the justice system, including arrest, pretrial and post-adjudication detention, delinquency petitions filed, adjudication of youth (findings of guilt), probation caseloads and commitments to the Illinois Department of Juvenile Justice.

The Commission owes a great deal of thanks to several state agencies for their assistance in providing valuable data and perspectives about statewide trends. Current and historical statistics regarding 17-year-olds, younger and older comparison groups, caseloads, populations, and institutional capacities were provided by:

- Administrative Office of the Illinois Courts
- Illinois Criminal Justice Information Authority
- Illinois Department of Commerce Census 2010 Research Unit
- Illinois Department of Corrections
- Illinois Department of Juvenile Justice
- Juvenile Management Information System[48]

Because county and municipal actors are largely responsible for public safety, diversion, rehabilitation, accountability and adjudication programs for young offenders—regardless of whether they are treated as juveniles or adults—the Commission also sought input from local practitioners. The Commission invited opinions from practitioners located in 12 urban, suburban, and rural counties around the state, all of which frequently deal with juvenile justice issues.

48 Managed by the Center for Prevention Research and Development, University of Illinois.

Opinions and experiences were solicited from and received by:

- Law enforcement (police department in the county's largest city; county sheriff's office);
- Corrections and detention (county jail; juvenile detention); and
- Court practitioners (adult and juvenile probation offices; adult and juvenile prosecutors; adult and juvenile public defenders).

These interviews illuminated each jurisdiction's practices, successes, and challenges in a way that numeric data could never express. The Commission sincerely thanks each responding entity for its public spirit and service to the State of Illinois.

FINDINGS: WHY SHOULD 17-YEAR-OLDS BE IN JUVENILE COURT?

Including 17-year-olds in juvenile jurisdiction is consistent with legal trends based on adolescent development and is an efficient use of juvenile court resources, producing safety and economic benefits.

BRAINS, BEHAVIOR, AND THE LAW

Parents of teenagers often deal with moody and impulsive behavior that can be infuriating and has historically seemed inexplicable. Over the last decade, however, scientists have drastically expanded our understanding of adolescent brain development. **We now know that the brains of 17-year-olds are still developing, causing 17-year-olds to engage in risky and impulsive behavior, particularly in conjunction with peers.** This explains why even a straight-A student with an impressive résumé of volunteer activities and a talent for the trombone can be prone to that one reckless night of riding around in a car with a friend who has been drinking. Young people can be incredibly clever and clueless at the same time—even the most responsible teenagers have a combustible combination of youth, opportunity, and still-developing judgment.

There is a reason that a teenager may at times seem blithely unaware of sensible decision-making: the brain isn't fully wired—even at seventeen, it's still deep into the process of remodeling itself and maturing toward adulthood. Modern brain scanning technology has enabled scientists to understand how the brain changes over time. Based in large part upon these findings, the U.S. Supreme Court has held that all 17-year-olds, even those who commit the most serious crimes, must be held to a different standard of accountability than adults.[49]

Adolescent Brain Development Research: Youth are Different

In recent decades, behavioral and physical sciences have demonstrated that youth are simply and significantly different from mature adults. Youth make decisions differently (and thus engage in risky or criminal conduct) for different reasons than those of adults. Fortunately, youth are also capable of significant positive growth and change, often simply by "growing out of it." Specifically, current behavioral research indicates that, compared to adults, 17-year-olds are (1) more prone to risky behavior; (2) less capable of impulse control; (3) less able to regulate emotions; (4) less able to engage in moral reasoning; (5) less able to consider the long term consequences of their actions; and (6) more prone to the effects of stress and peer pressure.[50] Scientists have

49 *See* Graham v. Florida, 130 S. Ct. 2011, 2017 (2010).

50 *See* L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 Neuroscience & Biobehav. Revs. 417, 420-29 (2000) (summarizing scientific research regarding the behavioral effects of adolescent brain development); MacArthur Foundation Research Network on Adolescent Development & Juvenile Justice, Issue Brief 3: Less Guilty By Reason of Adolescence 2, http://www.adjj.org/downloads/6093issue_brief_3.pdf (summarizing research showing that adolescents make short-sided decisions, have poor impulse control, and are more vulnerable to peer pressure); Elizabeth Cauffman & Laurence Steinberg, *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 Behav. Sci. & L. 741,742 (2000) (examining more than 1,000 adolescents and adults and concluding that psychosocial maturity is incomplete until age 19); Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 Law & Hum. Behav. 221, 231 (1995) (noting that adolescents place greater emphasis on the short-term benefits of their actions and discount the long-term consequences); Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference and Risky Decision-Making in Adolescence and Adulthood: An Experimental Study*, 41 Developmental Psychol. 625, 632 (2005) (examining 306 participants in multiple age groups and concluding that adolescents are more inclined toward risky behavior, largely due to the heightened influence of peer pressure).

demonstrated that these differences are caused by the biological properties of adolescent brains. [51] Researchers examining high-resolution images of adolescent brains using MRI scanners have made two complementary observations. First, the frontal lobes of 17-year-olds are less developed than adults.[52] The frontal lobe is responsible for making decisions, assessing risk, controlling impulses, making moral judgments, considering future consequences, evaluating reward and punishment, and reacting to positive and negative feedback.[53] Second, because the frontal lobe is less developed, 17-year-olds rely more heavily on the amygdala and other parts of the instinct-driven limbic system to make decisions than adults do.[54] The amygdala, located deep within the temporal lobe, is one area of the brain associated with strong negative emotions,[55] including impulsive and aggressive behavior.[56] The amygdala develops in early childhood and is responsible for our "fight or flight" response.[57] The amygdala "evolved to detect danger and produce rapid protective responses without conscious participation."[58] These two findings are supported by imaging studies that show teens struggling to reason through a dangerous scenario, while adults identify and react to a bad idea with considerably less effort expended in the later-developing frontal lobe.[59] As the brain continues to mature through late adolescence and young adulthood,

> **"[W]e get better at integrating memory and experience into our decisions. At the same time, the frontal areas develop greater speed and richer connections, allowing us to generate and weigh far more variables and agendas than before. When this development proceeds normally, we get better at balancing impulse, desire, goals, self-interest, rules, ethics, and even altruism, generating behavior that is more complex and, sometimes at least, more sensible. But at times, and especially at first, the brain does this work clumsily. It's hard to get all those new cogs to mesh."[60]**

Adolescents are intelligent and perfectly capable of making many responsible decisions, particularly when using "cold cognition" (analysis done in settings with low emotional stimuli), but applying reasoned thought to emotionally-stimulated decisions made in the moment (using still-developing "hot cognition" skills) is far more difficult.[61] The challenges adolescents face when responding to a problem using "hot cognition" are exacerbated

51 *See* Elizabeth R. Sowell et al., *Mapping Cortical Change Across the Human Life Span*, 6 Nature Neuroscience 309 (2003) ("Structural brain imaging studies in normal children and adolescents have been helpful in relating the dramatic maturation of cognitive, emotional, and social functions with the brain structures that ultimately underlie them.").

52 *See* Elizabeth R. Sowell et al., *In Vivo Evidence For Post-Adolescent Brain Maturation In Frontal And Striatal Regions*, 2 Nature Neuroscience 10 (1999) (finding that the frontal lobe does not mature until the early 20s and undergoes far more change during adolescence than any other stage of life).

53 *See* Brief of Amici Curiae, American Medical Association et al. at 12, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633).

54 *See* Gargi Talukder, *Decision-Making Is Still a Work in Progress for Teenagers*, Brain Connection, July 2000, http://brainconnection.positscience.com/topics/?main=news-in-rev/teen-frontal (summarizing research showing that "as teenagers age into adulthood, the overall focus of brain activity seems to shift from the amygdala to the frontal lobes").

55 *See* Elkhonon Goldberg, The Executive Brain: Frontal Lobes & the Civilized Mind 143 (2001).

56 *See* American Medical Association, *supra* note 53, at 12.

57 Goldberg, *supra* note 55, at 31.

58 Abigail A. Baird et al., *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 J. Am. Acad. Child & Adolescent Psychiatry 1, 1 (1999).

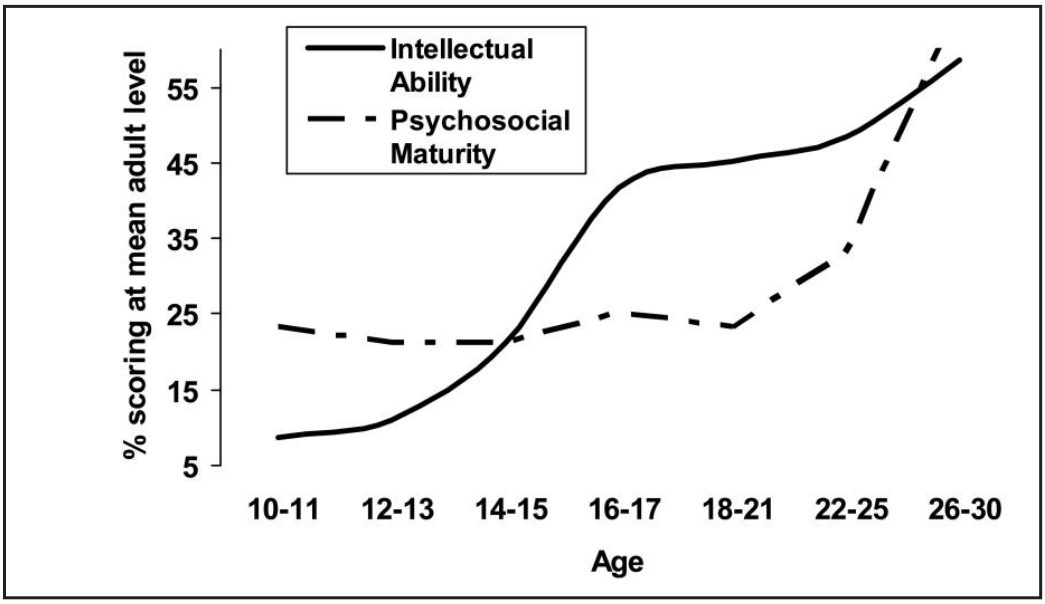
59 *See* Baird, A.A. Fugelsang, J.A., Bennett, C.M. *What Were You Thinking?* Vassar College, http://faculty.vassar.edu/abbaird/research/projects/good-idea.php (last visited October 3, 2012).

60 David Dobbs, *Beautiful Brains*, Nat'l Geographic (October 2011), *available at:* http://ngm.nationalgeographic.com/2011/10/teenage-brains/dobbs-text.

61 National Juvenile Justice Network, *Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocates* at 2 (Sept. 2012).

by other changes taking place during teenage development, including "[h]ormonal changes related to developing sexual maturity."[62] In these cases, and based on the stage of their brain development, adolescents are more likely to act on an urge and less likely to think twice, change their minds, or pause to consider the consequences of their actions.[63] The implication of these findings is clear—**because the brains of 17-year-olds are predisposed to making more impulsive, aggressive, and shortsighted decisions than those of adults, 17-year-olds are physically unable to make the same type of reasoned and responsible decisions we expect of adults**. Or, as noted juvenile psychologist Laurence Steinberg put it, "[d]uring the time these processes are developing, it doesn't make sense to ask the average adolescent to think or act like the average adult, because he or she can't—any more than a six-year-old child can learn calculus."[64]

Furthermore, adolescents engage in risker behavior because their psychosocial maturity—which is measured by impulsivity, risk perception, sensation-seeking, future orientation, and resistance to peer influence—develops later than basic intellectual ability.[65]



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As the figure indicates, basic intellectual abilities reach adult levels around age 16, long before the process of psychosocial maturation is complete—well into the young adult years.[67] This means that adolescents are more vulnerable to peer influences and more susceptible to risk-taking behavior than adults. The confusing differential between intellectual and psychosocial ability for older teens is directly relevant when holding youth accountable for destructive behavior and attempting to prevent it in the future, including through court sentencing. Adults

62 *Id.*

63 *See, e.g.,* Jason Chein et. al., *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry*, Dev. Science F1 (2010).

64 Laurence Steinberg, *Juveniles on Trial*, 18 Crim. Just. 20, 22 (Fall 2003).

65 *See* Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, Dev. Rev. 78-106, 28 (2008).

66 *See id.*

67 *See id.*

are constantly tempted to mistake teen intellect—school smarts—for accelerated maturity ("I know you know better than that") and may perceive actions as less opportunistic or impulsive and more calculated, punishing accordingly and concentrating less on devising opportunities for youth to practice and develop impulse control or peer resistance strategies.

United States Supreme Court Findings: Reduced Culpability and Strong Capacity for Positive Growth

Since 2005, the United States Supreme Court has explicitly recognized and relied upon the emerging adolescent development research in ruling that youth are fundamentally different from adults and must be treated differently under the law. In *Graham v. Florida*, the U.S. Supreme Court has held that because of the biological differences between adolescents and adults, all 17-year-olds are categorically less culpable than adults.[68] Because 17-year-olds are still developing, they "are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults."[69] As 17-year-olds become older and their brains finish developing, they will obtain the capacity to make reasoned and responsible decisions: "[t]he evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences."[70] Because youth are capable of remarkable positive change and growth and can benefit greatly from rehabilitative services and support, the Supreme Court has therefore made it clear that minors should be given the opportunity and resources to rehabilitate.[71]

Crucially, from 2005-2012, the Supreme Court has issued four successive opinions affirming the principle that youth (defined as minors under 18) are different from adults and should be treated differently.[72] Even when explicitly presented with opportunities to draw legal distinctions based on different constitutional rights, the nature or severity of an offense, or being 17 as opposed to 15, the Supreme Court consistently chose to deliver opinions stating that, while offense and age are relevant in many respects, minors are still minors, not adults. Indeed, "none of what [*Graham*] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific."[73] Offense severity does not turn children into adults.

The Illinois juvenile justice system was created to accommodate the distinctive juvenile level of culpability. The system emphasizes both accountability and rehabilitation, acknowledging that adolescents are less culpable and more capable of change than adults.[74] Juvenile court principles, such as capacity-building and confidentiality,

68 Graham v. Florida, 130 S. Ct. 2011, 2025-26 (2010) (citing "developments in psychology and brain science" showing "fundamental differences between juvenile and adult minds" and concluding that offenses committed by youth younger than 18 are "not as morally reprehensible as that of an adult"). *See also* Roper v. Simmons, 543 U.S. 551, 599 (2005) ("juveniles as a class are generally less mature, less responsible, and less fully formed than adults.").

69 *Graham*, 130 S. Ct. at 2026.

70 Ruben C. Gur, *Brain Maturation and the Execution of Juveniles*, The Pa. Gazette, Jan.-Feb. 2005, *available at* http://www.upenn.edu/gazette/0105/0105expert.html.

71 *Graham*, 130 S. Ct. at 2030 ("[T]he State must...give defendants...some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.").

72 Miller v. Alabama, 132 S. Ct. 2455 (2012); J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011); Graham v. Florida, 130 S. Ct. 2011 (2010); Roper v. Simmons, 543 U.S. 551 (2005).

73 *Miller*, 132 S. Ct. at 2465.

74 *Compare* 730 ILCS 5/3-2.5-5 (2011). (The purpose of the Department of Juvenile Justice is "to provide treatment and services through a comprehensive continuum of individualized educational, vocational, social, emotional, and basic life skills to enable youth to avoid delinquent futures and become productive, fulfilled citizens."), *with* Agency Overview, Illinois Department of Corrections, http://www2.illinois.gov/idoc/aboutus/Pages/IDOCOverview.aspx (last visited Feb. 4, 2013) ("The mission of the Department of Corrections is to protect the public from criminal offenders through a system of incarceration and supervision.").

permit youth to transition into productive adulthood after they have successfully completed their period of supervision and matured out of their delinquent behavior, and most will. **Because all 17-year-olds, including those arrested for felony offenses, are less culpable and have a greater chance of rehabilitation than adults, juvenile court jurisdiction should be extended to include all 17-year-olds.**

SAFETY BENEFITS

The Commission's analysis has revealed that keeping 17-year-olds in the juvenile justice system will not reduce public safety in the short term, can enhance long-term community safety and can ensure youth safety while in the justice system. This analysis has produced four inter-related findings:

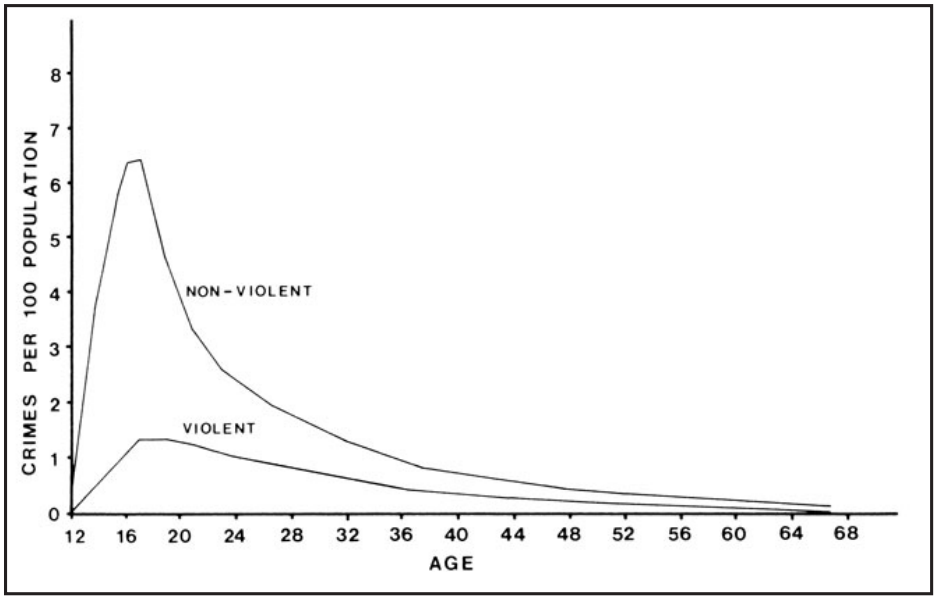
1) Research on youth "desistance" from crime shows marked similarities between reoffense patterns of younger adolescents and 17-year-olds, thus supporting similar approaches with these groups of young people;
2) Studies of youth transferred to adult courts indicate higher recidivism rates than similar youth handled by juvenile courts, suggesting that handling youth in adult systems can increase risks to public safety;
3) There is no evidence that prosecuting youth as adults "deters" youth crime; and
4) A significant body of research demonstrates that youth are safer in juvenile facilities in comparison to adult facilities and systems.

Most 17-Year-Olds Can and Do Stop Offending

A great proportion of youth programming, prevention, and juvenile justice policy focuses primarily or even exclusively on the youngest and lowest-level delinquent youth. Some early intervention and support programs are worthwhile investments in youth, but the juvenile justice system is not intended only, or principally, for addressing low-risk youth offenders who would most likely abandon illegal activity as they mature without any intervention *(see figure, next page)*. Too often, juvenile justice policymakers rely on two false assumptions: 1) that interventions are certain to benefit, or at least not harm, low-risk youth[75] and 2) that "the vast majority of offenders at the more serious end of the justice system are uniformly treading down the path of continued, high-rate offending."[76] Studies of serious adolescent offenders as they transition from adolescence into early adulthood show otherwise.

75 According to the Executive Director of the American Probation and Parole Association, "low risk offenders are more likely to recidivate with too much correctional intervention than no intervention." Carl Wicklund, *Probation and Parole FAQs,* Am. Prob. & Parole Assoc., http://www.appa-net.org/eweb/DynamicPage.aspx?WebCode=VB_FAQ#9. An article published by the National Institute of Corrections confirms this assessment, explaining why offenders need to be given treatment commensurate with their offense level; most parole programs studied *increased* the likelihood that low risk offenders would recidivate—by as much as 36 percent. Christopher T. Lowencamp & Edward J. Latessa, Nat'l Inst. of Corr., Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low Risk Offenders (2004), *available at* www.yourhonor.com/dwi/sentencing/RiskPrinciple.pdf. The study also reviewed existing research on parole programs for both juvenile and adult offenders and concluded that programs targeting low risk offenders were less effective. *Id.*

76 Edward P. Mulvey et. al., *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 Development and Psychopathology 453, 470 (2010) [hereinafter Trajectories of Desistance] (challenging such assumptions as unproven rhetoric underlying juvenile justice law and policy). However, high-risk juvenile offenders gain a great deal more from services compared to low-risk juvenile offenders. *See generally* Randy Borum, *Managing At-Risk Juvenile Offenders in the Community: Putting Evidence-Based Principles Into Practice*, 19 J. Contemp. Crim. Just. 114 (2003); Karen Hennigan, et al., Final Report, Five Year Outcomes in a Randomized Trial of a Community-Based Multi-Agency Intensive Supervision Juvenile Probation Program, U.S. Dep't of Justice, Grant No. 2007-JF-FX-0066 (Dec. 2010).



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Pathways to Desistance, a critical federally-sponsored longitudinal study,(78) followed 1,354 serious juvenile offenders aged 14-18 over a period of seven years.(79) The study was limited to youth found guilty of at least one serious (almost exclusively felony-level) violent crime, property offense, or drug offense.(80) Instead of a uniform path, several markedly different trajectories for felony-convicted youth emerged. A small portion of youth maintained a high level of criminality (persisters), but over 91 percent reported decreased or limited illegal activity during the first three years following their court appearance.(81) Most youth who had committed felonies greatly reduced their offending over time. A significant portion of those with the highest levels of offending reduced their reoffending dramatically (desisters).(82) This finding of the *Pathways to Desistance* study is very clear: "[t]he most important conclusion of the study is that even adolescents who have committed serious offenses are not necessarily on track for adult criminal careers."(83)

77 Kelly Richards, *What Makes Juvenile Offenders Different from Adult Offenders?*, 409 Trends & Issues in Crime and Criminal Justice 1, 2 fig.1 (2011), *available at* http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi409.html.

78 The United States Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) sponsored the study, in partnership with the National Institute of Justice, the Centers for Disease Control and Prevention, the John D. and Catherine T. MacArthur Foundation, the William T. Grant Foundation, the Robert Wood Johnson Foundation, the William Penn Foundation, the National Institute on Drug Abuse (Grant Number R01DA019697), the Pennsylvania Commission on Crime and Delinquency, and the Arizona State Governor's Justice Commission. Investigators for this study are Edward P. Mulvey, Ph.D. (University of Pittsburgh), Robert Brame, Ph.D. (University of North Carolina–Charlotte), Elizabeth Cauffman, Ph.D. (University of California–Irvine), Laurie Chassin, Ph.D. (Arizona State University), Sonia Cota-Robles, Ph.D. (Temple University), Jeffrey Fagan, Ph.D. (Columbia University), George Knight, Ph.D. (Arizona State University), Sandra Losoya, Ph.D. (Arizona State University), Alex Piquero, Ph.D. (Florida State University), Carol A. Schubert, M.P.H. (University of Pittsburgh), and Laurence Steinberg, Ph.D. (Temple University). Pathways to Desistance, www.pathwaysstudy.pitt.edu/ (last visited Feb. 4, 2013).

79 Edward P. Mulvey, U.S. Dep't of Justice, Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders (2011), *available at* https://ncjrs.gov/pdffiles1/ojjdp/230971.pdf [hereinafter OJJDP Desistance Fact Sheet].

80 *Id*. at 2.

81 *Id*.

82 *OJJDP Desistance Fact Sheet*, *supra* note 79; Edward P. Mulvey, et. al., *Trajectories of Desistance*, *supra* note 76.

83 *OJJDP Desistance Fact Sheet*, *supra* note 79, at 3.

Particularly relevant to Illinois juvenile justice policy and our state's jurisdictional split for felony-charged 17-year-olds: the rates of rearrest, reported antisocial behavior, and persistence in criminal activity are not significantly different between serious youth offenders at age 14, 16, and 17.[84]

In other words, **17-year-old felons are no less likely candidates for rehabilitation through juvenile court intervention than are younger serious offenders, as measured by their patterns of future criminal behavior**. The 17-year-olds had similar static risk factors (parent criminality, mental health, and antisocial history) as the 14 and 16-year-olds and significantly lower rates of one risk factor (antisocial attitudes).[85] At the same time, the 17-year-olds "were at higher risk than the other two age groups concerning...factors that increase their likelihood of continued offending, but are also addressable with targeted interventions (peers, school, and substance use)."[86]

Because lower levels of substance use, higher stability in living arrangements, and work and school attendance are related to higher rates of desistance in general and are particularly relevant to the risk factors common among 17-year-olds, juvenile court is appropriate. Interventions that incorporate substance abuse treatment into community-based services and emphasize school continuity may be particularly well-suited to reduce serious offending among 17-year-olds.

Youth in Adult Court Recidivate More

The existence of discretionary transfer laws around the country present a unique opportunity to directly compare the effects of the adult and juvenile systems, allowing comparisons between similarly situated defendants—specifically examining how each system impacts recidivism rates. Studies about transfer laws and recidivism are therefore instructive in analyzing system effectiveness to inform juvenile jurisdiction policy.

Conclusions from a Centers for Disease Control Prevention (CDC) Task Force suggest that recidivism rates for youths who have been sent through the adult system are far higher than those of similar youths who remain in the juvenile system. **Through a comprehensive review of every published or government-conducted study on transfer policies, the CDC found that a youth was 34 percent more likely to be rearrested after going through the adult system.[87]**

The CDC is not alone in these findings. In its June 2010 Bulletin, the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP) also compiled results from several large studies on the impact of youth in adult court. The Bulletin examined six studies in total. Each study involved between 494 and 5,476 teens;[88] youth were matched into pairs, where one member was sent through the adult system while one remained in the juvenile system.[89] The nearly-identical "pairings" closely matched multiple variables, including: geography, age, gender, race, gang involvement, number of previous juvenile referrals, most serious prior offense, current offense, victim injury, property damage, use of weapons, etc.[90]

84 *See* Ed Mulvey and Carol Shubert, "Memorandum re: Analyses of Age Groups," December 5, 2012, included at Appendix B.

85 *Id*.

86 *Id*.

87 U.S. Dep't of Health and Human Services, *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*, 56 Morbidity and Mortality Weekly Report 1, 6 (2007), *available at* http://www.cdc.gov/mmwr/PDF/rr/rr5609.pdf.

88 Richard E. Redding, Office of Juvenile Justice and Delinquency Prevention, Juvenile Transfer Laws: An Effective Deterrent to Delinquency? (2010), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf.

89 *Id* at 6.

90 *Id* at 4-5.

The results are staggering. Every single study examined by OJJDP showed higher recidivism for youth in the adult system, even when youth were given probation instead of incarceration. Though there are many potential reasons for this increased recidivism, some significant factors impacting youth include: stigma associated with felony convictions; fraternization with adult criminals; incarceration trauma; lack of rehabilitation focus in adult facilities; de-emphasis on family support more available in juvenile system; feelings of injustice; loss of employment opportunities post-incarceration, and the associated decrease in lifelong earning potential.[91]

Youth May Not be Deterred by Adult Consequences

While transfer laws were intended in part to deter youth from serious crime, there is no evidence this is the case. A recent study conducted by the John Jay College of Criminal Justice found that in states that allow fair comparisons (i.e. where all 17-year-olds are originally subject to juvenile court jurisdiction regardless of the charges), transfer to adult court "bears no relationship to changes in juvenile violence," which continues to drop nationally.[92] In fact, "to the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good [and] the use of transfer laws and strengthened transfer policies is counterproductive to reducing juvenile violence and enhancing public safety."[93] One obvious reason for such disparity between intent and effect is simply that adolescents "are at a fundamentally different developmental stage than adults."[94] Immaturity is relevant not only in assessing culpability, a tenet long-established within the juvenile justice system, but also in evaluating the efficacy of deterrence.[95] As such, deterrence strategies between the two groups are not interchangeable; the notion that a threat of being transferred to the adult system acts as a deterrent for juveniles appears unsubstantiated. In fact, research on adolescent development generally, and brain development specifically, "suggest[s] that incomplete decision-making capacities, low impulse control, and the power of peer influence help explain why [both] the threat and experience of adult court do little to deter juvenile actors."[96] As discussed earlier in this report, certain parts of the brain, particularly those governing self-control and rationality, continue to develop well beyond the age of 18.[97]

Perhaps the most significant implication of these findings is that "[l]aws that make it easier to transfer youth to the adult criminal court system have little or no general deterrent effect[, as y]outh transferred to the adult system are more likely to be rearrested and to reoffend."[98] **If preventing recidivism and promoting deterrence are important public safety goals of the criminal justice system, policies that keep youth in the juvenile justice system wherever possible must be pursued.**

91 *Id.* at 7.

92 Jeffrey A. Butts, John Jay College of Criminal Justice, Transfer of Juveniles to Criminal Court is Not Correlated with Falling Youth Violence (2012), *available at* http://johnjayresearch.org/wp-content/uploads/2012/03/databit2012_05.pdf.

93 U.S. Dep't of Health and Human Services, *supra* note 87.

94 Jill M. Ward, *Deterrence's Difficulty Magnified: The Importance of Adolescent Development in Assessing Deterrence Value of Transferring Juveniles to Adult Court*, 7 U.C. Davis J. Juv. L. & Pol'y 253, 267 (2003).

95 *Id.* at 269.

96 *Id.* at 283-84.

97 *See* "Brains, Behavior, and the Law," *supra* 17.

98 Laurence Steinberg, Juveniles in the Justice System: New Evidence from Research on Adolescent Development 4, *available at* http://www.familyimpactseminars.org/s_wifis25c01.pdf.

The Adult System is Dangerous for Youth

Studies unequivocally demonstrate that youth accrue major safety benefits from being sent through juvenile court and juvenile facilities as opposed to adult facilities.[99] Whether or not youth in adult facilities are housed with the adult population or whether they are kept separated from the adult population, adult facilities are clearly far more dangerous for youth than juvenile facilities. As stated by the National Institute of Corrections within the U.S. Department of Justice, "[j]ail administrators can face a difficult choice on this issue: They can house youth in the general population where they are at a differential risk of physical and sexual abuse, or, house youth in a segregated settings where isolation can cause or exacerbate mental health problems."[100] Moreover, whether or not youth are isolated in adult facilities, they face challenges simply because adult facilities are not intended, and thus not equipped, to deal with youth.[101]

When youth are housed with the general adult population, they are subjected to heightened risk of physical and sexual abuse.[102] Regarding sexual violence, the U.S. Department of Justice's Bureau of Justice Statistics has found that state prison inmates under 18 are *eight times* more likely than the average state prison inmate to suffer sexual abuse from another inmate while in prison.[103] Furthermore, there is a significantly higher risk that youth will be physically abused in adult facilities, with studies suggesting that youth in adult facilities are "twice as likely to be beaten by staff and fifty percent more likely to be attacked with a weapon than minors in juvenile facilities."[104]

The second option, isolating youth from the general adult jail and prison populations, can aggravate the mental health issues that many youth already face.[105] In addition to causing or exacerbating mental health problems, isolation can lead to cutting and self-harm.[106] Indeed, "75 percent of all deaths of youth under 18 in adult jails were due to suicide."[107] Furthermore, isolation can also cause other physical harm, because the lack of adequate exercise and inadequate nutrition stunt the growing teenage body.[108] Finally, isolation deprives youth of basic programming and services, thus causing lasting social and developmental harm to the youth.[109]

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99 This disparity in safety between youth and adult facilities pertains to both jails and prisons. U.S. Dep't of Justice, Nat'l Inst. of Corr., You're an Adult Now: Youth in Adult Criminal Justice Systems 9, 15 (2011). *See also* Campaign for Youth Justice, Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America (2007); Human Rights Watch, Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across America (2012).

100 U.S. Dep't of Justice, Nat'l Inst. of Corr. *supra* note 99, at 12.

101 *Id.* Because youth have different nutritional requirements, different health requirements, and various other specific needs with which adult facilities lack the capacity to deal, youth are inherently at greater risk in adult facilities. *Id.*

102 *Id.*

103 National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37,106 (June 20, 2012) (to be codified at 28 C.F.R. pt. 115). Likewise, the Bureau of Justice Statistics found that youth under 18 in adult prisons have the highest sexual victimization rate of any prisoner demographic. U.S. Dep't of Justice, Bureau of Justice Statistics, Sexual Victimization Reported By Former State Prisoners 16 tbl.8 (2008).

104 Human Rights Watch, *supra* note 99, at 19.

105 U.S. Dep't of Justice, Nat'l Inst. of Corr., *supra* note 99, at 11.

106 Human Rights Watch, *supra* note 99, at 29.

107 U.S. Dep't of Justice, Nat'l Inst. of Corr., *supra* note 99, at 11.

108 Human Rights Watch, *supra* note 99, at 37, 38.

109 *Id.* at 41.

ECONOMIC BENEFITS

Raising the age of jurisdiction for felony charges can be expected to have long-term economic benefits for citizens of the state of Illinois—even more so than raising the age for misdemeanors. The juvenile justice system has higher up-front costs than the criminal justice system, but the economic destruction caused by an adult felony conviction is avoided, along with its rippling effect through families and communities. Additionally, the lower recidivism rate of youth in the juvenile justice system creates additional cost savings to crime victims, taxpayers, and state correctional agencies.

Analogous Cost-Benefit Analysis

In 2011, the VERA Institute of Justice performed a cost-benefit analysis of North Carolina's proposed plan to raise the age of juvenile jurisdiction from 16 to 18, concluding that the economic benefits of the plan to raise juvenile jurisdiction in North Carolina outweighed the economic costs.[110] It is important to note that although crime, including juvenile crime, has been declining nationwide for three decades,[111] the study does not consider any future declines in crime other than those directly attributable to reducing recidivism via the juvenile court, and thus overestimates system costs of raising the age.

The study estimated the costs of the plan to raise the age of juvenile jurisdiction by looking at its impact of the change of law enforcement, the courts, and the juvenile justice system.[112] It calculated considerable increases to the costs of the juvenile system, anticipating additional burdens to courts and law enforcement due to the increased demand of juvenile arrests and case processing.[113]

However, the analysis showed that the benefits to taxpayers, victims, and youth outweighed the costs of raising the age. [114] With regard to taxpayer benefits, lower recidivism rates for juveniles mean that fewer people are likely to be arrested in the future, which in turn means fewer people referred to court.[115] Furthermore, taxpayers would save money based on lower use of adult jails and prisons.[116] Crime imposes substantial costs on victims and because of the lower recidivism rates of juvenile offenders, crime will be reduced and consequently the monetary losses to victims will also decline.[117] Finally, the study found major benefits, especially better employment prospects, for youth.[118] Importantly, these additional earnings generated by youth will in turn mean more taxes paid to the state.[119] While the study pointed out that the family and communities of youth would

110 Christian Henrichson & Valerie Levshin, VERA Institute of Justice, Cost-Benefit Analysis of Raising the Age of Juvenile Jurisdiction in North Carolina (2011), at iii-iv, *available at* http://www.vera.org/pubs/cost-benefit-analysis-raising-age-juvenile-jurisdiction-north-carolina (assessing "the economic impact of implementing a plan to transfer 16- and 17-year-olds who commit misdemeanor and low-level, non-violent felony offenses to the juvenile system, while keeping 16- and 17-year-old who commit serious violent felonies in the adult criminal system").

111 *See* "Record Issue: Record-Breaking Declines in Juvenile Crime," *infra* at 31.

112 VERA Institute of Justice, *supra* note 110, at 3.

113 *Id.* at 12-13, 15. Calculated as constants, system costs in the North Carolina study are overestimated when applied in an environment of decreasing juvenile crime, similar to the NCJJ cost analysis performed for Illinois. *See* NCJJ Study, *infra* note 134, and related discussion at "Predicted Effect," *infra* at 30.

114 VERA Institute of Justice, *supra* note 110, at 17, 21.

115 *Id. at* 18.

116 *Id. at* 18-19.

117 *Id. at* 19.

118 *Id. at* 20.

119 *Id.* at 20 n.29.

also benefit from the policy change, the study did not include any of these benefits in the analysis because of the difficulty of monetizing them.[120]

Costs and Benefits (in Millions) of Adding 30,500 North Carolina Youth Aged 16-17 to Juvenile Jurisdiction

	Recidivism Reduction[121]	
	30 percent	40 percent
Direct Taxpayer Costs	$ (70.90)	$ (70.90)
Direct Taxpayer Benefits	$ 29.00	$ 32.70
Avoided Losses to Crime Victims	$ 10.80	$ 14.40
Net Youth Earnings Benefit[122]	$ 77.15	$ 77.15
Youth-Paid State and Local Taxes (10.9 percent)[123]	$ 10.67	$ 10.67
Youth-Paid Federal Taxes (10.3 percent)[124]	$ 10.08	$ 10.08
Net Benefit of Raising the Age	**$ 66.80**	**$ 74.10**

120 *Id. at* 6.

121 The Vera study calculated costs and benefits at recidivism reductions ranging from 0-40 percent. *Id*. at 37, Appendix G. The body of the report used an extremely conservative estimate (10 percent) but noted that its own broad literature review suggested a 34 percent recidivism reduction. *Id*. at 5. Calculations for 30 percent and 40 percent are presented here as they are more consistent with recent studies; for more on the recidivism benefits of juvenile courts over criminal courts, see "Youth in Adult Court Recidivate More," *supra* p. 21.

122 The salary estimate in this calculation assumes high school completion but no college, 35 years in the workforce (age 20-65), and a 72 percent employment rate across 1,586 youth with no criminal record who otherwise would have had one. *Id*. at 20. "A recent study finds that individuals who were convicted of an offense when young earn 13 percent less than those who were not convicted, which means that individuals with a high school degree alone earn $3,046 less a year ($32,552 x 0.13 x 0.72)." *Id*. The cost-benefit analysis did not adjust the youth employment benefit when calculating different recidivism rate reductions. *Id*. Additionally, the study calculated only gross annual pre-tax salary ($97.9M). *Id*. Here, taxes are separately estimated.

123 The effective Illinois state tax rate on the second income quintile ($18,000-$36,000) is 10.9 percent (including sales tax, excise tax, property tax, and income tax). Institute on Taxation & Economic Policy, Who Pays? A Distributional Analysis of the Tax Systems in All 50 States, 3d Ed. (2009) at 42, *available at*: http://www.itep.org/whopays3.pdf.

124 In 2007, households with income in the second quintile (averaging $ 45,600 before-tax income) paid an average of 10.3 percent in federal taxes (income, excise, social insurance, and corporate income tax, less refundable tax credits). Congress of the United States, Congressional Budget Office, The Distribution of Household Income and Federal Taxes, 2008 and 2009 (July 2012) at 11.

Collateral Family and Community Benefits

In addition to the public safety benefit of reduced recidivism, raising the age of juvenile jurisdiction will have a positive economic effect, particularly on poor and disenfranchised communities throughout Illinois. Numerous studies demonstrate that persons convicted in the adult system face severely limited employment opportunities.[125] In fact, serving time lowers a man's annual earnings by 40 percent.[126] Furthermore, the higher recidivism rate of adult offenders, combined with their limited economic prospects, has severe negative effects on the communities to which they return.[127] For example, the economic problems faced by former inmates "can also reduce the opportunities for and interest in employment among young men in poor neighborhoods who otherwise might not engage in crime."[128] Moreover, these costs "are borne by offenders' families and communities, and they reverberate across generations."[129] Indeed, children who have a formerly-incarcerated parent are thereby severely economically disadvantaged.[130] Thus, the reduction in recidivism that will result from raising the age of juvenile jurisdiction will have important positive collateral effects on communities across Illinois.[131]

Cost-Effective Programming Available in Illinois

Research consistently indicates the return on investment in evidence-based interventions with juvenile offenders. In fact, Illinois' juvenile justice system currently implements several cost-effective and evidence-based programs that will enhance recidivism reductions anticipated by the literature review and comparable cost-benefit analysis. Although some adult criminal courts have implemented a few discrete programs, youth in the juvenile justice system are routinely screened for family and social history, risk level, and mental health needs in order to determine the most appropriate service delivery. Several programs and therapies available to youth in juvenile courts in Illinois are listed below. The cost-effectiveness of these programs, measured by return-on-investment (ROI), was recently assessed by the Washington State Institute for Public Policy.[132] **Raising the age of juvenile jurisdiction and increasing the availability of these and similar programs, including through programs such as Redeploy Illinois, will result in more 17-year-olds engaged in these proven, cost-effective programs—access which is not meaningfully afforded to them through the adult system.**

125 Harry Holzer, *Collateral Costs: Effects of Incarceration on Employment and Earnings Among Youth Workers*, *in* Do Prisons Make Us Safer? The Benefits and Costs of the Prison Boom 239, 240, 263 (Steven Raphael and Michael Stoll eds., 2009); Sam Allgood, David B. Mustard, & Ronald S. Warren, Jr., The Impact of Youth Criminal Behavior on Adult Earnings (2003).

126 The Pew Charitable Trusts, Collateral Costs: Incarceration's Effect on Economic Mobility 4 (2010), *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs(1).pdf.

127 Holzer, *supra* note 125, at 242.

128 *Id.*

129 The Pew Charitable Trusts, *supra* note 126, at 3.

130 *Id*. at 20.

131 Collateral effects also include broad economic benefits stemming from violent crime reduction. In 2010, violent crimes cost U.S. citizens more than $42 billion in direct costs, which include the cost of police, courts and correctional facilities, medical expenses for victims, and lost earnings for both victims and their convicted assailants. Robert J. Shapiro and Kevin A. Hasset, *The Economic Benefits of Reducing Violent Crime: A Case Study of 8 American Cities*, Center for American Progress iv (June 2012), http://www.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/violent_crime.pdf. In Chicago, the annual direct cost of violent crime is $1.1 billion and pain and suffering to victims is another $4.2 billion. *Id.* Reducing violent crime by 25 percent in Chicago would save over $1.5 billion in direct and indirect costs while adding $5.5 billion to property values. *Id.* at iv-v.

132 *See* Washington State Institute for Public Policy, *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes* (Apr. 2012), http://www.wsipp.wa.gov/rptfiles/12-04-1201.pdf.

Program	Return on investment per $1 spent[133]
Multi-Systemic Therapy	$4.07
Functional Family Therapy (inside institutions)	$21.57
Functional Family Therapy (via probation)	$10.42
Family Integrated Therapy	$2.51
Aggression Replacement Training (via probation)	$20.70
Victim-Offender Mediation	$6.94

133 *Id*.

ANALYSIS: THE IMPACT OF RAISING THE AGE IN ILLINOIS

PREDICTED EFFECT

When legislation proposing to raise the age of juvenile court jurisdiction was debated in 2005 and 2008, there were dire predictions that such a step would prove unmanageable and would swamp the juvenile system. One analysis, conducted by the National Center for Juvenile Justice (NCJJ) in 2005, concluded that "[r]aising the upper age of juvenile court jurisdiction from 16 to 17 would probably increase the overall juvenile justice system workload by about a third."[134] For instance, the NCJJ study estimated that adding 17-year-olds to the juvenile justice system would make the juvenile arrest category about 35 percent larger and would increase the Illinois juvenile detention population by 25 percent to 35 percent.[135]

> **"The higher volume resulting from inclusion of 17-year-olds would be fairly uniform from the front to the back end of the system, if national case processing data are any indication. For example, petitioned cases would increase by 32 percent as a result of the change, adjudicated cases by 31 percent. Cases involving predisposition detention would increase by 33 percent. Cases receiving a probation disposition would increase by 28 percent and those getting residential placement dispositions by 30 percent."[136]**

This study, and other predictions, were based on "worst case scenarios," projections of continuing high juvenile crime rates and sometimes inapplicable national data and trends.[137] These concerns prompted the legislature to adopt a "bifurcated" approach, with 17-year-olds charged with misdemeanors shifting to juvenile jurisdiction and 17-year-olds charged with felonies remaining in the adult system. Fortunately, these worst-case scenarios have not come to fruition and raising the age to include 17-year-olds charged with misdemeanors in the juvenile system has proved manageable and has not overwhelmed local and state juvenile justice systems.

134 National Center for Juvenile Justice, Background Brief Paper: The Impact of Raising the Upper Age of Juvenile Court Jurisdiction from 16 to 17 at 2 (Apr. 27, 2005) (hereinafter "NCJJ study").

135 *Id.* at 2, 6.

136 *Id*. at 5.

137 First, and most significantly, the NCJJ study used data from 2000-2004 and assumed that youth crime and system practices would remain constant, but these were in rapid flux, with diversion options growing at the same time arrests declined. Second, the report included several offenses, such as murder and forcible rape, which are excluded from juvenile jurisdiction. NCJJ study, *supra* note 134, at 3. Third, the study relied primarily on federal classifications rather than Illinois agency data sources, so its projections could not reasonably be used for any agency budgeting or planning. For example, NCJJ estimated that the number of "committed juveniles" would increase from 1,932 to 2,410. *Id.* at 9. The federal statistic for this projection includes some (but not all) youth in county detention centers as well as state (DJJ) facilities. (For the federal definition of "committed" *see* Office of Juvenile Justice and Delinquency Prevention, *Easy Access to the Census of Juveniles in Residential Placement: 1997-2010*, http://www.ojjdp.gov/ojstatbb/ezacjrp/asp/glossary.asp#Placement.)

Of course, the NCJJ study estimated the effect of adding both felonies and misdemeanors, while Illinois eventually raised the age only for 18,000 misdemeanor arrests, leaving the question of roughly 4,000 felony arrests open until now. Still, it is important to note that the estimates of misdemeanor impact were inaccurate; using the same methodology to predict felony impacts on the system will also produce unreliable results. Adding 17-year-old felons to the juvenile system will certainly not have the impact on the juvenile system's workload as estimated—in large part because the juvenile system's existing workload is simply far lower than it was in 2003-2005.

IMPACT OF RAISING THE AGE FOR MISDEMEANORS

JUVENILE SYSTEM AFTER RAISING THE AGE FOR MISDEMEANORS

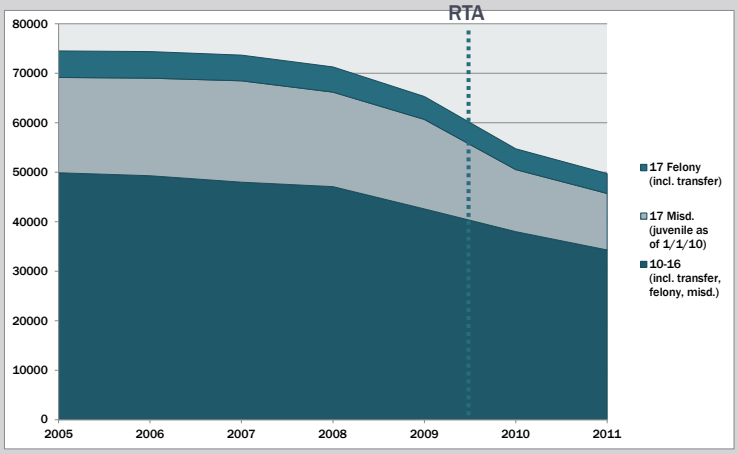
- ARREST
  - -24% Statewide, youth 10-17 (2011)
- PETITION
  - +03% Statewide, all ages (2011)
- ADJUDICATION
  - -06% Statewide, all ages (2010) (Cook not reporting)
- JUVENILE PROBATION
  - -03% Statewide, all ages (2011)
- JUVENILE DETENTION
  - -18% Statewide, all ages (2012); -08% non-Cook, -31% Cook
- INCARCERATION
  - -22% Statewide, all ages, IDJJ (as of 1/2013)
  - -15% Statewide, 17yo adult felony admissions to IDOC (FY09-FY11)

Based on the most recent arrest data available at the time (2009) and using the NCJJ method of prediction, adding roughly 18,000 misdemeanor arrests of 17-year-olds would have impacted the juvenile justice system by a **38.4 percent increase at the arrest stage** (with increases echoing through the rest of the juvenile system at lower percentages since only misdemeanors were added).

The actual effect of adding misdemeanors could not be more different than predicted; even supporters have been surprised by the system's ability to absorb thousands of misdemeanants.

Issue: Record-Breaking Declines in Juvenile Crime

STATEWIDE ARRESTS OF MINORS (10-17) 2005-2011



Data: ICJIA and KidsCount Data Center

There is a simple explanation for the ability of the juvenile justice system to handle expanded jurisdiction: **nationwide, the violent crime rate among youth under 18 is at a 30-year low, falling by a full 33 percent just between 2008 and 2011.**[138] The marked and consistent downward trend in juvenile crime is important

138 Jeffrey A. Butts, *Violent Youth Crime Plummets to a 30-year Low*, John Jay College of Criminal Justice: DataBits (Nov. 2, 2012), *available at* http://johnjayresearch.org/rec/files/2012/11/databit201211.pdf.

to discuss and understand. Youth crime reduction contradicts popular crime theories of the 1990s. Most critically, overall reduction patterns in youth crime can be difficult or impossible to detect in the face of specific community concerns, especially in the face of tragedies and violent flare-ups.

Presented with facts about youth crime reduction, many seek another explanation. Speculation frequently includes: a) juvenile *arrests* may be down, but that just means youth are not getting caught; b) crime *reports* may be down, but perhaps police aren't responding to incidents or submitting data to the FBI; c) downward trends may hold true nationwide but Illinois is an exception; or d) downward trends may hold true in some parts of Illinois, but Chicago is an exception. All of these theories are false. Even taking into consideration variations in policing strategies and reporting practices and despite periodic flare-ups of youth violence, the trends hold. Crime is down—not just arrests, and not just police reports of crime.[139] Crime has been decreasing in Illinois, too, and Illinois has far fewer youth crimes than it has generally had in recent years, including in Cook County.[140]

Acknowledging and reporting the stunning reductions in juvenile crime in no way minimizes the seriousness of the dangerous conditions many Illinois communities face. It is critical to continue to address juvenile offenses, especially violence. However, **in order to adequately address and prevent juvenile crime, Illinois must responsibly assess what is working and what capacities already exist. Public safety can be further improved by expanding juvenile jurisdiction, and declines in youth crime permit our state to act now without unduly expanding systems**.

STEP BY STEP: SYSTEM RESPONSES TO JURISDICTIONAL CHANGE

One of the most important lessons learned from Illinois' experience with adding misdemeanants is that juvenile crime trends and ongoing juvenile justice reform efforts[141] combine to present a uniquely dynamic environment for both practitioners and administrators. In such an environment, precise caseload and fiscal projections related to any single proposed reform are unlikely to fall within a reasonable margin of error, no matter how carefully analyzed and calculated.

It is possible, however, to draw general conclusions and implementation recommendations for raising the age for felonies that will be useful to policymakers and administrators.

139 Through its Uniform Crime Reporting systems, the FBI collects and measures offenses known to law enforcement; in 2011, the violent crime rate was 21.9 percent lower than 2002 while the property crime rate was down 19.9 percent. Federal Bureau of Investigation, *Crime in the United States 2011* (Oct. 2012). The National Crime Victim Survey measures crime by surveying individuals to assess victimization; it therefore captures crimes that have and have not been reported to police. Bureau of Justice Statistics, U.S. Dep't of Justice, *Criminal Victimization 2011* (Oct. 2012). "Since 1993, the rate of violent crime has declined by 72 percent from 79.8 to 22.5 per 1,000 persons age 12 or older." *Id.*

140 For at least thirteen consecutive years, violent and property crime rates in Cook County as well as the rest of the state of Illinois have steadily declined. IL State Police, *Report: Crime Trends* (2009), *available at* http://www.isp.state.il.us/docs/cii/cii09/cii09_Section_I_Pg9_to_26.pdf. The statewide total index offense rate was 28 percent lower in 2007 than it was a decade prior, while violent offense rates dropped dramatically in Cook Coounty compared to the rest of the state--by 44 percent. Christine Devitt, Erica Hughes, & Idetta Phillips, *Illinois Crime and Criminal Justice Trends: 1997-2007*, Research and Analysis Unit of Illinois Criminal Justice Information Authority (Mar. 2009), *available at* http://www.icjia.org/public/pdf/TIUpdate/Web%20Edition%20CRIME%20TRENDS%20032509.pdf. It is obviously impossible to tell whether a crime decrease applies to juveniles until an arrest is made, but juvenile arrests in Illinois and in Chicago have also been decreasing over this same period.

141 Beyond simply complying with the federal Juvenile Justice and Delinquency Prevention Act, the IJJC pursues "many activities designed to strengthen the juvenile justice system." Illinois Department of Human Services, *Illinois Juvenile Justice Commission Annual Report to the Governor and General Assembly 2009-2010*, http://www.dhs.state.il.us/page.aspx?item=55604. Recent activities include: pursuing juvenile justice data collection; promoting better access to counsel; exploring better detention alternatives; improving mental health screening, services and facility upgrades; combating domestic battery; and developing reentry services supported by the members of a new state job position, Youth and Family Specialist. *Id.*

The following sections walk through each stage of the juvenile justice system step-by-step:

- analyzing legal and practice differences between the juvenile and criminal justice systems;
- sharing data on the system impacts prior to and after raising the age for misdemeanors; and
- summarizing practitioner experiences and future expectations about raising the age for felonies.

Where pertinent, illustrative (and sometimes conflicting) practitioner viewpoints are shared. Specific issues raised by their experiences are discussed.

STEP 1: INVESTIGATION AND ARREST

Felony-charged in juvenile court (16 and under)	Felony-charged in adult criminal court (17)
According to the Juvenile Court Act	According to the IL Criminal Code
Juvenile investigation procedures, including a youth officer to ensure the minor's safety upon arrest	Adult investigation, interrogation, arrest procedures
Parents/guardians must be notified of arrest	Parents/guardians are not notified of arrest

Law enforcement is familiar with the uncertainty and inefficiencies that can result from overlapping geographic or interagency jurisdiction. Similar difficulties arise from overlapping procedural jurisdiction:

> "From the standpoint of crimes [that] officers run into where age makes a difference: [felony] mob action at school means two or more people in a fight. So, if a 16-year-old and a 17-year-old fight, one is a juvenile justice case, but the other goes to adult court. Some confusion over things like that. I don't think [current law] gives the judiciary the latitude [to route cases]. Even though they're both equally guilty, one is offered more opportunity to be diverted and other programs....[S]eparating the kids [into different systems brings] inherent confusion." [*Police Department*]

> One public defender recounted an example of a 17-year-old with no history of drug use or sale. Her mother used, dealt, and manufactured methamphetamines. Due to related problems in the home, the youth had moved out (was effectively homeless and staying with various friends and relatives) but was visiting when police raided her mother's house. As a 17-year-old on the scene during the raid, the youth was presumed to be an adult by police and was charged with many of the same drug-related felonies as her mother, including a felony charge for drug-related child endangerment (a younger sibling lived in the house). Under the same law, the police could instead—or simultaneously—have viewed her as a second endangered child victim of her mother's. Had police called the Department of Children and Family Services to assess the same scenario, the agency could have opened an abuse and neglect investigation and sought protection for the youth due to the dangerous environment created by her mother. Instead, the minor was charged in criminal court and eventually accepted a plea agreement for an adult misdemeanor. [*Public Defender*]

Age is the most reliable proxy for juvenile jurisdiction and procedures; without being able to rely on it, officers encounter difficulties during patrol, investigation, and arrest. Uncertainty can arise from borderline crimes and "gray area" misdemeanor/felony laws, as well as uncertainty about how the case will eventually be prosecuted.

When police arrest a juvenile suspect, they must follow the procedures in the Juvenile Court Act, including contacting a parent as soon as possible and taking the minor to a youth officer.[142] Adult suspects, by contrast, receive only the standard Miranda warning upon arrest.

Prior to the change in law for misdemeanor offenses, law enforcement determined whether to apply juvenile procedures by using date of birth. Since the change in the law, police are forced to either prophylactically apply the more extensive juvenile procedures to all 17-year-olds, or draw very early conclusions about the nature and extent of a crime, deciding whether a 17-year-old is most likely to be arrested and ultimately charged with a felony or a misdemeanor crime.

The pressure to adopt conclusions during an investigation carries a risk; premature assumptions increase the chances of error because some evidence that does not "fit" a particular assumption may be overlooked and not pursued.[143] Further, once the decision to pursue a felony arrest has been made (e.g., an insurance claim form lists the value of stolen goods over the felony limit), it can be difficult to reverse course even in the face of specific evidence to the contrary (e.g., recovered items are not worth the amount claimed). **A decision to investigate or prosecute a crime as a misdemeanor later on means applying Juvenile Court Act requirements (parental notification, place of custody) mid-stream and retroactively, resulting in confusion, or failure to implement a necessary protection**.

142 705 ILCS 405/5-405 (1999). In misdemeanor cases, the youth officer may also be authorized to release the youth without charge. *Id.* The youth officer serves as a physical guardian of the minor throughout police custody, ensuring that the youth's physical person is protected and that other police officers are not improperly using the age of the minor against him to obtain a confession. *In re Marvin M.*, 890 N.E.2d 984, 1003 (Ill. App. 2d Dist. 2008).

143 This is a phenomenon known as cognitive bias, an error in judgment caused by memory, preconceived notions, or other social factors. Cognitive bias occurs "because people tend to see what they *expect* to see, and this typically affects their decision in cases of ambiguity." American Bar Association, ABA Standards for Criminal Justice: DNA Evidence 67 (3d ed. 2007). Premature decision making results in "distorted judgments and faulty analyses," affecting the course of criminal investigations. Dr. Kim Rossmo, *Failures in Criminal Investigation*, 76 The Police Chief 54, 56 (Oct. 2009). "Officers consciously or unconsciously need to come up with a theory of the case that makes *sense*. Once that is done, there can be a tendency to have tunnel vision. Other leads or avenues that do not fit into this theory may be ignored or are viewed in the light of confirmatory bias." Michael D. Ranalli, *Wrongful Convictions and Officer Safety: Shifting the Focus to the Process*, 79 The Police Chief 26, 29 (Jan. 2012). Avoiding premature decisions counteracts bias; when there is "reliable and adequate data, and time for proper analysis, reasoning produces the most accurate results." Rossmo, *supra* note 143, at 56.

Issue: Bifurcated Jurisdiction and "Borderline" Crimes

Most police (as well as court practitioners) remarked that determining whether some crimes constitute felony or misdemeanor offenses is a "judgment call" or "gray area." Commonly-cited examples of behavior that could result in a 17-year-old receiving either a misdemeanor juvenile adjudication or an adult felony conviction include:

Scenario	Available Misdemeanor Charges	Available Felony Charges
Stealing iPhone from car	Criminal trespass to a vehicle, theft under $500	Burglary, theft over $500
Defacing school property after hours, $20 damage	Criminal trespass, criminal damage to property under $300	Burglary, criminal damage to property (school location felony enhancement = any value)
Getting in a fight with a peer at school, park, or sporting event	Battery	Aggravated battery (location felony enhancement), mob action
Shoplifting at the mall	Retail theft under $300	Retail theft over $300
Stealing beer from a neighbor's garage	Criminal trespass, theft, underage possession of alcohol	Residential burglary
Using parent's debit card without permission	Theft under $500	Violation of IL Credit Card and Debit Card Act

> "Seems most 17-year-old [felonies] are residential burglary—always one 17-year-old in the group... breaking into a garage for beer, or a friend's house while they're on vacation to get Xbox games is residential burglary. Maybe retail theft or criminal damage to property. Likely [to receive an] adult felony and probation, [spending] a significant number of days in adult jail. I think we have a disproportionate number of cases like this." *[Public Defender]*

Managing the next phase: Most police departments interviewed expect the benefits of predictability and uniformity to mitigate or outweigh their operational burden of raising the age of adulthood to 18. **While some police did not initially support raising the age, 62.5 percent of police departments interviewed preferred treating all 17-year-olds as juveniles to keeping the law as it is now**.[144] Although several participants noted that any change to criminal laws initially creates stress on their departments, a uniform change should be accepted relatively quickly and with far less confusion than the last one. The most often-cited reasons for support were clarity and efficiency. Other reasons frequently mentioned were treating high-school-aged youth alike and the

144 Another 25 percent opposed including felony youth; the rest were neutral.

fact that the existence of transfer statutes to deal with more serious situations made them comfortable about the public safety impact of the change:

Police Departments Say:

> "We have the misfortune of being located in [multiple] counties.... [Including misdemeanors was a] nightmare for us, but we're doing it. Like any change, it was difficult.... [Raising the age] would probably simplify things. We already have a mechanism [transfer] to go after particularly bad [offenses] if 17 and under is juvenile. First preference: go back to how things used to be. Second preference: make the age uniform. Third preference: current law."

> "When dealing with juveniles, use the age of majority. The thing we're trying to do is keep them out of the system. Our job is to get them every kind of course correction: mental health, drug treatment, community-based services. Do them the justice of course-correcting. In the adult system, there's less ability."

> "Simpler if 17 for all. With alcohol it's 21, tobacco 18, standard for years and ingrained in how we do things. Flip-flopping between ages depending on how [they're charged breeds confusion]. If the General Assembly says you're a juvenile for everything, there are provisions—murder suspects can still be transferred to adult if a judge thinks it's appropriate. The way things are, it's inefficient. [Raising the age] might save money because it's standardized. The only law enforcement impact is calling parents, interrogation procedures."

> "Would be kind of trying [to change the law again] but I think it would be better just to set an age. I thought 17 was good, but just make it the same."

> "Personally, I think they should have made it 18 and called it even. They're splitting hairs. The federal level is 18. We're close to [another state] where 17 is always juvenile. Example: in a drug conspiracy case, with a large amount of cocaine, we can't take a 17-year-old to the feds—he will be a juvenile. We simply need to make it 18, period. That's my strong advice. Then we'll fall into line with other states and the federal system."

Those who opposed changing the law primarily cited the opinion that 17-year-olds who commit felonies are mature adults:

Police Departments Say:

> "I don't agree with [including felonies]. Main concern: they know right from wrong at 17, do the same thing over and over, but nothing is being done. They know there is no punishment."

A small minority preferred the increased exercise of police discretion to uniformity:

Police Departments Say:

> "We should not route [felonies] to juvenile system because of just a few [first-timers]. It's just a delay in graduation to the adult system by that point in time. [It would be a] huge financial burden. Now, they just go to the big house, that's where they need to go. Now, with the split [in jurisdiction], you have some options. Example: felony criminal damage to property at [a local private school]—we really don't want to give them felonies for a homecoming issue, stupidity that kids in the past had done. [We have] more to play with [with the bifurcation]."

Applying juvenile procedures requires more time and personnel than adult arrests, but the number of juvenile arrests including all 17-year-olds is equivalent to the number of juvenile arrests in 2005. Some departments mentioned that they might hire an additional youth officer, while others mentioned reassignment. Because most police academies in the state currently incorporate youth officer certification as part of their standard curriculum, most police officers hired within the last 10 years are certified as youth officers. Police noted the difference between experienced officers with youth expertise, as opposed to officers who were merely certified during training. The Commission agrees, but notes that because of broad certification, police departments should be able to remain compliant with juvenile procedures by reassigning officers until they know the extent of the impact upon their department. Therefore, the policing function of law enforcement is almost instantly capable of absorbing the change in the law to perform juvenile felony arrests on 17-year-olds, although some municipalities may eventually need to designate and train additional youth officers.

ANOTHER

Felony-charged in juvenile court (16 and under)	Felony-charged in adult criminal court (17)
Multiple agencies with youth experience may assess for diversion	Prosecutor may assess for adult diversion programs

In many jurisdictions across the state, juvenile suspects are screened by law enforcement, probation departments, and/or prosecutors to determine whether formal court proceedings are required or whether alternatives to a formal court petition may be appropriate. Law enforcement frequently uses procedures such as "station adjustments" to end prosecution either before or after an official arrest is made.[145] Some larger police departments have additional diversion programs aimed at high-risk youth that may prevent or delay arrest and prosecution.[146] In some jurisdictions, juvenile probation officers are authorized to issue "probation adjustments," plans developed after conferencing with the youth, parent, victim, juvenile police officer, and state's attorney, to decide whether a youth's successful completion of informal sanctions (probation or supervision with the family, sometimes in conjunction with community service, mental health, substance abuse, or anger management treatment) may make prosecution unnecessary. [147]

145 705 ILCS 405/5-301 (1999). Station adjustments may be formal or informal and may carry conditions such as curfew, geographic restrictions, no-contact orders, school attendance, community service, mediation, peer court, and restitution. *Id.*

146 For an example of police-run screening and outcomes, *see* JISC Data, Appendix C.

147 705 ILCS 405/5-305 (2001).

While juvenile diversion programs are primarily administered by police or probation officers, adult diversion programs, often called "Second Chance" programs, are designed and run exclusively by prosecutors. Because these are voluntary programs, many state's attorneys choose not to develop one, and many counties do not have formal diversion programs. Some are robust, while others are very tightly controlled.[148] No adult diversion program requires an assessment by practitioners with youth expertise.

Diversion programs were impacted by the influx of 17-year-old misdemeanants but can expect to be significantly less impacted by 17-year-olds arrested for felonies. **Some felony arrests may still be good candidates for diversion screening, however; for instance, possession of any amount of a controlled substance (other than cannabis and steroids) is always a felony**.[149] Substance abuse programming as an alternative to prosecution may be appropriate in some cases and is much more widely available in the juvenile justice system.

Issue: Community-Based Service Funding and Availability

Whether part of a diversion program or alternative to prosecution, or as part of an adjudicated disposition (sentencing) for probation, service funding and availability are critical components of the juvenile justice system. Illinois is not alone in delivering crushing cuts to its social service infrastructure during the economic downturn, including cuts to programs that support mental health and substance abuse treatment for delinquent youth. However, it is near the top; between FY09 and FY12, Illinois cut 31.7 percent of its mental health budget, or $187 million; only South Carolina, Alabama, and Alaska cut a greater share.[150]

> "We're doing a lot more in court now: doing things that should be done by other agencies, referring to drug treatment facilities and mental health treatment....[Youth] can't fulfill [probation] obligations while waiting for treatment....[There are long] waiting lists and before getting into treatment [the youth] committed another crime—couldn't make it the two months—I don't know whether it would have helped or not. Then they lose priority because of the arrest/detention, and the waitlist status or the bed goes to someone else while [the youth is] in the detention center." *[Prosecutor]*

> "Juvenile court has been disproportionately affected by cuts. [There has been an] increase in detention days and electronic monitoring/home confinement days...Kids waiting on [treatment] beds, for sure. Suspect that drug/alcohol refuse to accept, more selective in who they permit. Used to have three strikes, now [have] no tolerance for kids who run. Now they are less likely to serve [delinquent youth]." *[Public Defender]*

> "Yes, [cuts] affected the probation department. All different social services. A court liaison interfaced with parents/juveniles: [that] person was cut. Across the board requirement to do more with less, but the reality is that we do less with less. Quality management of juvenile court services is weaker because of fewer resources." *[Prosecutor]*

> "Funding is diminishing for services—could result in reoffending if you're not providing services." *[Probation]*

148 *See, e.g.,* Lee County State's Attorney Office, *Second Chance Deferral Program*, http://www.leecountyil.com/index.php?option=com_content&view=article&id=50&Itemid=243 (last visited Feb. 6, 2013); Kane County State's Attorney Office, *Second Chance*, http://saopublic.co.kane.il.us/Pages/SecondChance.aspx (last visited Feb. 6, 2013).

149 720 ILCS 570/402(c) (2010).

150 National Alliance on Mental Illness, *State Mental Health Cuts: The Continuing Crisis* (Nov. 2011), http://www.nami.org/Template.cfm?Section=state_budget_cuts_report.

Worse in some ways for community-based service providers than certain program budget reductions are uncertainties regarding payment for services already provided. "Slow pays" plague all vendors to the State of Illinois, including those who serve delinquent youth. As service cuts and reimbursement delays have deepened, programs around the state have felt the impact:

> "State is behind [on service payments], but we're lucky that [our local provider] has absorbed this so far—they've been able to withstand 8-10 month payment delay. Drug/alcohol treatment and outpatient counseling exist—some inpatient facilities have closed." [Probation]
>
> "State social service cuts—yes, this is one reason we hired our own therapist. Mental health services—costs, wait lists, etc.—were a BIG issue, [with] one provider, one agency. Trouble getting kids in." *[Probation]*
>
> "[It] KILLED us, the state social service cuts. [There are] very few options for kids who can't be home. . . money for placing 5 kids/year in residential treatment: sending them home or to DJJ are the only options. DCFS doesn't want delinquent minors, period....Mental health services [are] impacted and this is a huge, huge number of delinquent kids....[We have] longer detention stays because [there is] no placement." *[Prosecutor]*
>
> "Treatment providers are closing. One reason we got our own mental health and substance abuse provider is because there is nothing [in the community] and the kids are coming here because it doesn't exist." *[Detention]*

Providing indigent juvenile offenders with needed mental health and substance abuse programming in community settings is always cheaper than both crime and punishment and must be made available whenever appropriate. Regardless of whether there is any jurisdictional change, the state must strengthen these critical systems for youth rehabilitation by fully funding programs like Redeploy Illinois.

STEP 3: PROSECUTION, COURT PROCEEDINGS, AND PLEA AGREEMENTS

Felony-charged in juvenile court (16 and under)	Felony-charged in adult criminal court (17)
Parents/guardians are accountable to participate in adjudication process. If they do not, a juvenile judge may issue a bench warrant	Parents/guardians are not permitted a role in criminal court unless summoned to testify by either the prosecution or defense (usually not permitted until sentencing)
Juvenile court judge presides over trial proceedings and decides the case. Youth usually does not have the right to a jury trial	Criminal court judge presides over trial. Defendant has the right to a jury trial and may waive the right to a jury trial in favor of a guilty plea or a bench trial, a legally sufficient waiver at 17
Youth has the right to an appointed public defender. In some serious cases, youth cannot waive the right to counsel	Defendant has the right to a court-appointed public defender upon demonstrating indigence to the court's satisfaction. Defendant may waive the right to counsel

"We should have made the change wholesale; this did nothing but cause confusion." *[Prosecutor]*

"I don't like the bouncing between courtrooms in general; they're so immature, they don't understand the consequences." *[Public Defender]*

"I'd like to think we're not charging felonies because we don't want procedural impediments of juvenile court, but I don't know." *[Prosecutor]*

Prosecutors always make the jurisdictional decision about a 17-year-old before the youth's first court appearance and in the absence of judicial advice. This practice for 17-year-olds sharply contrasts with Illinois' usual process for allowing youth to be tried as adults. Mandatory, presumptive, and discretionary transfer provisions assign the jurisdiction decision to a neutral party, the juvenile judge.[151]

- Transfer hearings occur after a full investigation, in the presence of the youth and parents, and are based on information presented to the juvenile judge by both the prosecution and defense.
- Mandatory transfer hearings require specific probable cause findings regarding offense characteristics, offense history, and/or gang activity.[152]
- Presumptive and discretionary transfer hearings allow the introduction and consideration of other relevant information, including but not limited to the severity of the offense, degree of participation or premeditation, whether a weapon was involved, probation history, school engagement, mental and

151 705 ILCS 405/5-805(1)-(3) (2007). For youth 16 and under, only automatic transfer crimes may be transferred to criminal court without a judicial hearing. Compared to the large swath of borderline misdemeanor/felony crimes cited by interviewees, automatic transfer crimes are incredibly clear-cut: first-degree murder, aggravated criminal sexual assault and aggravated battery with a firearm. 705 ILCS 405/5-130(1)(a) (2001).

152 705 ILCS 405/5-805(1) (2007).

physical health history, history of abuse or neglect, services available in the juvenile system, and likelihood of rehabilitation.[153]

A prosecutor deciding whether to pursue an ordinary felony indictment against a 17-year-old, however, frequently does not have access to much of this information and is never required to take any of these factors into consideration when sending 17-year-olds to adult court.[154] Further, while Illinois' transfer provisions explicitly target violent and repeat offenders,[155] the 17-year-old jurisdictional split affects a much broader cross-section of youth, significantly larger in number and including first-time and nonviolent offenders. **The negative consequences of sending all felony-charged 17-year-olds through the adult system therefore fall disproportionately upon youth charged with the lowest-level felony offenses.**

Issue: No Standard Procedure for Charge Reductions

Prosecutors do not simply charge cases exactly as they appear on police reports; it is their duty to review the sufficiency of the evidence provided and exercise independent judgment regarding the nature and severity of a crime and the interest of justice. This discretion is long-standing and appropriate. If police have already applied adult procedures during questioning and arrest but a prosecutor believes it is appropriate to charge the youth with a juvenile misdemeanor—either because a review of the case indicates misdemeanor charges are appropriate or because a misdemeanor plea agreement is strategic—the sudden application of the Juvenile Court Act can present evidentiary, legal, or administrative difficulties.

Parental notice is a significant hurdle to filing a juvenile petition after an adult arrest. Adult arrest cards, unlike those for juveniles, do not include collection of a parent or guardian's name, address, or telephone number. This information is vital to prosecutors wishing to file a juvenile petition; parents must be served with notice of the proceeding.[156] Attempting to gather parental information after the fact places a significant administrative burden on juvenile prosecutors, particularly since youth often do not wish to provide it. Police and prosecutors alike have reported some youth stating that they *would prefer to be charged as adults (with felonies), specifically because their parents would not have to be contacted*.

Confessions that police obtain from juveniles without applying the Juvenile Court Act (interrogations outside the presence of a youth officer, without access to a parent, and without special attention paid to ensure the youth understands juvenile *Miranda* rights, including access to a parent and appointed attorney) can be found involuntary and therefore inadmissible as evidence in juvenile court.[157] Confessions given by 17-year-olds under the same circumstances are perceived by practitioners to be routinely admissible in criminal court. Prosecutors with 17-year-olds who have confessed to borderline crimes under adult procedures may therefore find themselves "stuck." If they reduce the charge to a misdemeanor and file a juvenile petition, the outcome of the case is far less certain. If they file felony charges and keep the case in adult court, they will more reliably obtain a conviction.

153 705 ILCS 405/5-805(2)-(3) (2007).

154 Relocating the jurisdiction decision point to indictment (rather than transfer) and the decision-maker to state's attorneys (rather than judges) is procedurally equivalent to the minority of states (15) that permit prosecutors to "direct file" youth charges in adult court, a mechanism otherwise disallowed in Illinois. Griffin, *supra* note 5, at 3.

155 705 ILCS 405/5-805 (2007).

156 705 ILCS 405/5-525 (1999).

157 "Although the presence of a youth officer does not per se make a juvenile's confession voluntary, it is a significant factor. The failure to have a juvenile officer present is material to determining the voluntariness of defendant's statement. The presence or absence of a parent is also a factor in evaluating the voluntary nature of a confession. The relevant inquiry is whether the absence of an adult interested in the defendant's welfare contributed to the coercive circumstances surrounding the interview, not whether contact with a parent was denied." In re A.R., 693 N.E.2d 869, 874 (Ill. App. 1st Dist. 1998) (internal citations omitted).

Presumption of juvenile status for 17-year-olds, at least until felony indictment in adult court, could have avoided much of this confusion. There are no clear-cut procedures for transferring cases "down" to juvenile court. Moving "up" to adult criminal court when warranted is procedurally simpler and, due to transfer laws, more familiar. Additionally, properly-made juvenile arrests and properly-obtained juvenile confessions are always valid in adult court. Uniform presumption of juvenile status by law enforcement provides a greater degree of charging discretion and room for negotiation for prosecutors, ensuring that fewer youth become "stuck" in between adult and juvenile court as their cases progress. However, only a small minority of police departments reported that they treated all 17-year-olds as juveniles until they were informed that the State's Attorney intended to pursue felony charges in adult court. Most stated that they would routinely use juvenile procedures for 17-year-olds only if and when the age of jurisdiction is raised for felony offenses. Similarly, most state's attorneys have not specifically recommended that local law enforcement apply juvenile procedures prophylactically to all 17-year-olds. Even police and prosecutors, who expressed support for raising the age of jurisdiction partly to avoid confusion, stated that they will wait to revise their current procedures until after the law is changed.

Plea agreements in criminal court are artificially hamstrung by bifurcation. The criminal code is structured to allow for increased or reduced charges based on aggravating or mitigating factors, providing a significant amount of room for negotiation surrounding plea agreements. To a large degree, this ambiguity is intentional and is how the criminal (and juvenile) court system avoids gridlock; the overwhelming majority of criminal prosecutions result in a guilty plea agreement.[158]

For an overwhelming number of adults, particularly first-time or younger offenders, felony charges are reduced to misdemeanor guilty pleas at this stage. Illinois law does not provide for or anticipate pleading from an adult charge to a juvenile charge, in either in the Juvenile Court Act or the Criminal Code. As a result, felony-charged 17-year-olds who (if they were either 16 or 18) would ordinarily be considered likely candidates for a misdemeanor plea for a low-level felony are in uncharted territory. One troubling example: a 77 percent jump in Cook County felony theft convictions for 17-year-olds since the law was changed—now the most common reason 17-year-olds in Cook County receive felony convictions.[159]

Seventeen-year-olds arrested for borderline crimes receive different outcomes around the state:

> "[Youth] waive into adult court so they get a misdemeanor....**I have never seen any felony charges go down to [juvenile court for a] misdemeanor, but you do go up** [to adult court] and [17-year-olds] serve time as adults." *[Public Defender]*

> "I have gone to many seminars; **102 counties are doing it differently.**... Some have really substantive issues [with] too much room for interpretation." *[Public Defender]*

> "Those who come to juvenile court are those we catch the first morning at screening, before routing. **First filing drives the outcome [adult vs. juvenile]**. We will transfer between adult and juvenile court only one or two days into the process (at screening). [If charges are later reduced, youth] **plead in adult court to misdemeanors—[youth] waive juvenile jurisdiction**. [Cases are] not being refiled in juvenile court." *[Prosecutor]*

158 In 2010, more than 80 percent of felony cases disposed of in the Circuit Courts of Illinois were resolved through the defendant pleading guilty. Illinois Sentencing Policy Advisory Council, Research Briefing Update Illinois Felony Sentencing: A Retrospective 4 (2012), http://www.icjia.org/spac/pdf/A%20Retrospective.%20March2012.pdf.

159 Angela Caputo, *Minor Misconduct*, Chicago Reporter (Nov. 1, 2012), http://www.chicagoreporter.com/news/2010/08/seventeen. "The crime category that saw the biggest increase since the law changed was felony theft, which grew by 77 percent. In 2010, it surpassed drugs as the No. 1 reason that 17-year-olds were convicted of felonies." *Id.* Felony *arrests* of 17-year-olds in Cook County in 2011 were roughly the same as before the age was raised (dropping by less than 1 percent from 2009 to 2011). Source: ICJIA juvenile arrest data. Yet even as felony *arrests* remained stable, felony *convictions* increased to a 5-year-high, jumping 17.5 percent between 2009-2011 (772 to 907). Caputo, *supra*. Inability to plead to lesser offenses could account for this disparity.

> Charge reduction process: "We have first appearance and plea in one [criminal court] proceeding. [The case is placed on the juvenile] docket, notice [is sent] to the defense lawyer and the defense rounds up everybody and handles the process [for juvenile sentencing]....**[Misdemeanors] may still be slipping through [adult court]. When that happens, I tell someone, 'That was an illegal sentence.'"** *[Prosecutor]*

> "[Misdemeanor] plea is negotiated in adult court [and then sent to] juvenile court for sentencing, to make sure there is no trial...[**youth receive a] juvenile [adjudication] and a juvenile sentence**." *[Prosecutor]*

Managing the next phase: Court practitioners look forward to ending charging and process confusion; 66 percent of prosecutors and 100 percent of defenders interviewed supported raising the age. Most prosecutors and defenders stated that they would be able to handle the addition of felony-charged 17-year-olds with little or no additional personnel transferred to juvenile from criminal court.

Practitioners in one rapidly-growing county reported having only one juvenile courtroom to hear all abuse, neglect, and delinquency cases, citing long waits to get in front of a judge (in one case, up to six months). However, these practitioners acknowledged that the addition of 17-year-old misdemeanants was not responsible for the crowded juvenile court docket and that they needed an additional juvenile courtroom regardless of any past or future change in jurisdiction.

STEP 4: DETENTION

Felony-charged in juvenile court (16 and under)	Felony-charged in adult criminal court (17)
Detention decision is driven by a risk assessment score	Bond is set by criminal court judge
If risk assessment indicates secure detention, youth awaits hearing in regional juvenile detention center If held in adult facility, must be separated from adults	If unable to make bond, youth awaits trial in general population, adult county jail
Mandatory provision of age-appropriate educational services	May attend GED classes with adults

Federal guidelines[160] in conjunction with the provisions of Illinois' Juvenile Court Act[161] apply to the decision of where to house 17-year-olds who are detained pending trial. Under Illinois law, youth (of any age if held on juvenile charges; 16 and under if held on adult charges) are ordinarily unable to be detained inside adult county jails or otherwise with adults. When they are, they must be kept "sight and sound separate" from adult detainees,

160 28 C.F.R. § 31.303 (2006). *See also* U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention, Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002 (Oct. 2010), http://www.ojjdp.gov/compliance/guidancemanual2010.pdf.

161 705 ILCS 405/5-410 (2011).

for protection.[162] It can be difficult to determine whether persons aged 17-20 (and beyond)[163] who are being detained related to a juvenile adjudication are "juveniles" or "adults" for the purposes of housing them separately from both younger and older detainees. The Juvenile Court Act currently permits 17-year-olds to be housed in county jails even if they have juvenile delinquency petitions pending.[164] It appears as though jurisdictions rarely do this, however. Several practitioners interviewed stated that it was not simply allowed. Most cited local policy but seemed unsure of the source; a few referenced the Juvenile Court Act. Some interviewees mentioned that it had happened in their county but was rare and done after a court order. Several juvenile detention centers routinely house juvenile offenders up to age 21, while others transfer youth to county jail at 17 or 18. Felony-charged 17-year-olds are held in adult jails.

> "We transfer youth to [adult jail] whenever possible—98 percent of the time. If we have a 15-year-old on automatic transfer, we transfer to the jail when they turn 17." *[Detention]*

> "Our chief judge and sheriff got together and issued a sheet of instructions. We currently have a 23-year-old girl on a 15-year-old juvenile delinquent warrant. First time that's happened. We were doing up to 21. Our interpretation is that the Juvenile Court Act runs to 21. Usually after 21, we just ask the state's attorney to remove." *[Detention]*

Many county jails around the state are overcrowded. When 17-year-olds are housed in county jails due to pending felony charges, they are treated under the same rules as other offenders. Jails use a threat assessment to assign housing and cellmates to detainees. Although age is a factor in assessing risk, it is only one factor; no institution interviewed had a specific housing policy particular to youthful (18-20) offenders, much less 17-year-olds. For discussion on housing 17-year-olds with adult detainees, see "The Adult System is Dangerous for Youth," *supra* p. 25.

Issue: Age Range—Education and Safety

> "Programming concerns? No. Juniors/Seniors in HS, still participate in school. Not one iota of a problem. As a matter of fact, for those who had dropped out and are seeking a GED, parents bring their books and we accommodate. Education is our philosophical statement—highest priority." *[Detention]*

> "We are concerned that you will be using the misdemeanor experience to raise the age....[Felonies] will totally change the dynamic of the system...impact[ing] detention the most. Programming is different, recreation time, safety for different sized youth [is a concern]; 17-year-olds take way more food, school grades are [already] 6 grades diverse, now [will increase to] 7-10 years…what do we do when they have graduated high school. Huge impact on detention because these are bigger, stronger kids, different needs, bigger problems, adding staff....The problem is making the change revenue-neutral. Supervision isn't as heavy in jail." *[Probation/Detention]*

162 *Id.*

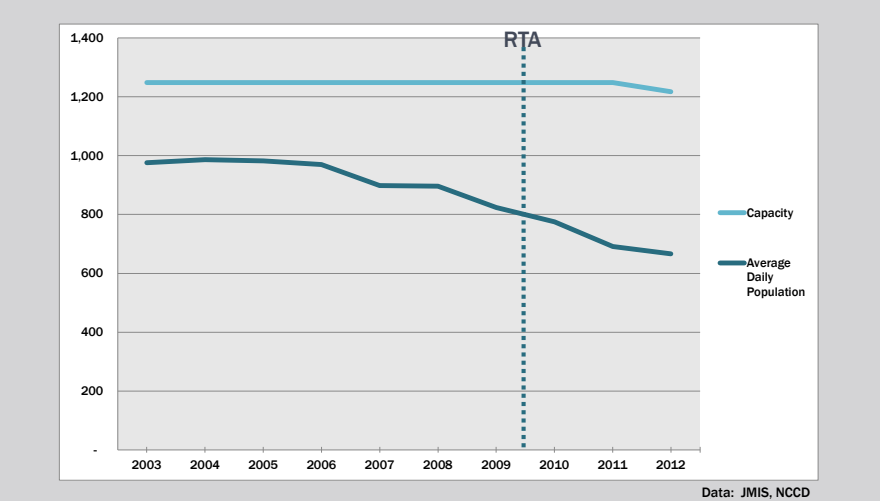
163 The extended age is due to lengthy supervision on probation. While juvenile parole can last only until a youth turns 21, juvenile probation for some offenses lasts for five years. Depending on the length of the adjudication process, a youth receiving five years of probation for an incident committed at 17 could be on juvenile probation at 23. Related jurisdictional policies vary.

164 705 ILCS 405/5-410(C)(5) (2011).

> "Believe me, there is absolutely no difference between a misdemeanor state of mind and felony.... The youth should still have a chance of being rehabilitated, but won't have that chance in the adult system." *[Detention]*

One fundamental difference between juvenile detention and county jail is the availability of school. With the exception of Cook County, county jails do not offer high school credits; GED classes in jails are optional and open to detainees of any age. Juvenile detention centers have teachers and classes, usually in cooperation with a local school district. Some juvenile detention centers even work with the junior high or high school in which a detainee is enrolled, to ensure they stay on track during their stay. Some juvenile detention centers also offer GED classes, but these are not to take the place of school for youth who are currently enrolled in school or wish to receive a high school diploma. Although 17-year-olds in the community are normally allowed to quit high school if they no longer wish to attend, most detention centers require youth to attend school. First of all, school attendance is often a condition of juvenile probation. Second, detention centers are supposed to provide education, programming and treatment during each youth's stay; as funding for programming has shrunk, education has become some facilities' only significant daytime activity to engage youth in productive enterprises and give them time outside of their housing unit.

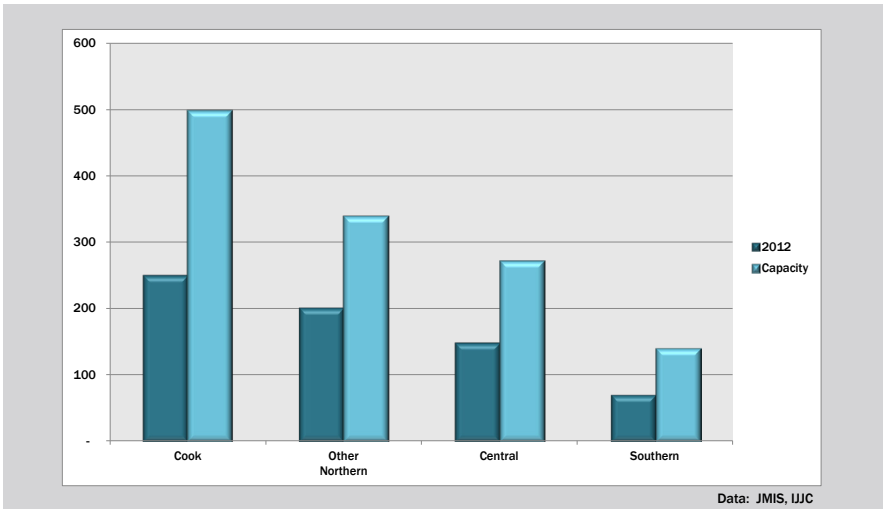
POPULATION TREND, STATEWIDE JUVENILE DETENTION CENTERS



Most detention centers mentioned that they had insufficient educational programming or other programming with which to occupy youth who have already earned a high school diploma or GED. As the average age of youth in detention centers rises, this programming challenge will become more urgent. As with probation (following section), post-secondary education and employment skills training programs are an increasingly obvious need for detention centers functioning within a juvenile justice system that seeks to rehabilitate youth up to the age of 21.

Managing the next phase: Every single detention center invited to interview participated; 62.5 percent supported raising the age. Though a couple of detention centers cited an inability to house additional youth, the required bed capacity exists in each region of the state; capacity concerns are a local issue, not systemic, suggesting that capacity issues can be addressed with local practice changes and jurisdictional cooperation (as opposed to new construction).

REGIONAL DETENTION CENTER POPULATION AND CAPACITY



Many detention centers have seen their funding shift from state to county sources; they (and the county governments funding them) are frustrated by headcount-based state funding formulas. Interviewees characterized the formulas as misaligned funding incentives that reward both fuller detention centers and out-of-county placements. Despite any such financial incentives to detain youth, almost all detention centers are well under capacity. Though they will require additional resources to house additional youth, most were unconcerned about the operational effects of raising the age.

Detention Centers on Felony Implementation:

> "[Raising the age for misdemeanors was] not as devastating as we expected.... We need more detention money but [including felonies] will 'break' neither detention nor probation. When they discussed 17-year-olds, I was against it, but I've only worked in the juvenile system. I have softened my position on that. There are so many transfer [options], so more serious 17-year-olds still have a mechanism (to go through the adult system). [It] hasn't turned out as horribly as I thought two years ago....Any age is arbitrary because of human growth and development. Depends on the kid. We're looking forward to not having the blended jurisdiction. Whether the money is there, I don't know."

> We won't know what we need until after it happens. Think we'll average 5-6 extra [youth]. If more, we will need more staff, one or two, depending on gender of increase, but will have to wait to see how it goes. If so, we'll need more food and clothing costs, other things, but nominally, not huge....No need to be negative about these changes, [we're] trying to do it."

> "Significant impact. I don't know if we'd have the bed space to accommodate them.... We would need more staffing. Don't currently have enough staff to conduct the hour per day of large muscle exercise off the housing pod and ensure safety of the residents."

"Do we mind that they're coming here? No. They're still in high school.... If felonies come, we'll have another increase, but it's appropriate, just because they're in high school. [Their issues] could be serious, but we've got plenty of those who are 15 and 16, too, what's the difference."

"[Including misdemeanors had an] impact, obviously, but more shock value. There was a dramatic increase [of 17-year-old], but we cut off some of the younger kids (aged 10-11). [We] tightened our screening instrument, which is probably a good thing. Didn't change operations....We just treated them under the Juvenile Court Act. [Other detention centers] developed criteria to separate [older youth] for schooling, different rules, isolated [17-year-olds] more. I thought it was ridiculous. To me, they're the same, 14 and 17".

STEP 5: PROBATION

Felony-charged in juvenile court (16 and under)	Felony-charged in adult criminal court (17)
Judge may sentence youth to probation. Youth is accountable for meeting terms of probation. Parents/guardians are accountable to enforce terms of probation and may be sanctioned if they do not	Judge may sentence defendant to probation. Defendant is solely accountable for meeting terms of probation
Probation focuses not only on accountability but education, service provision and rehabilitation, and building competencies and skills	Probation focus is on compliance monitoring

From police to public defenders, nearly every practitioner interviewed responded that there was a noticeable difference between juvenile and adult probation. Several emphasized that the difference was not that adult probation was lower-quality than juvenile probation but that its mission and purpose are distinctly different.

"So much emotion, a perception that juvenile court is a "slap on the wrist," I've heard that. Actually, juvenile court is much better, because our probation is so much more. Adult is [basic requirements]—juvenile [probation requirements are] two pages, single-spaced: school, urine, curfew, gang affiliation. There is a perception that [going through] juvenile court is easier, but that's not necessarily true. Getting people to understand what juvenile court really is, is the problem." *[Prosecutor]*

"Oh yeah, lots more robust probation for juveniles and the social history and risk categorization is more intense. More programs for juveniles than adults." *[Detention]*

"Juveniles have a high level of services and attention. Don't get that as much in adult world. Our juvenile officers are very high quality. Adult officers don't have to file court reports and don't have as much information as juvenile officers." *[Prosecutor]*

> "Adult probation only works with adults after they go to court—with probation sentence, court supervision, and conditional discharge—after sentencing. Juvenile probation staff work with youth at all points in the system. At police contact, diversion programs, with detention staff before trial, youth when they are sentenced to probation . . ." *[Court Services]*

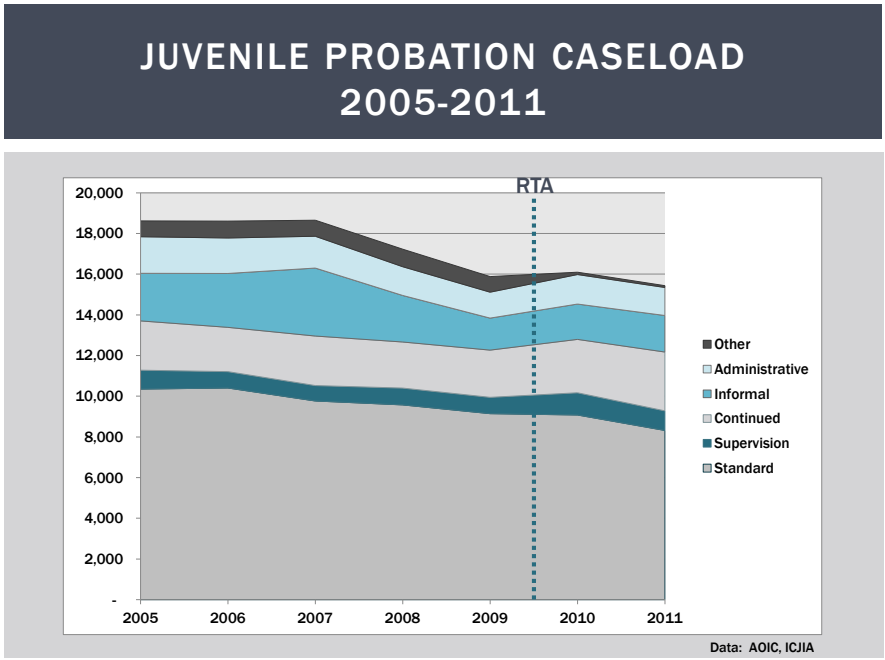
> "[Adult probation is] treating someone as responsible for their own behavior. . . not paying attention to where the kid is staying, school attendance, just adherence to court orders.... Juvenile [probation means] interacting with parents, school, service providers. [There is a focus on] connection to school/curfew accountability/quality of interactions. With adult probation, you're just dealing with adults, not collateral people. Juvenile officers call a parent to notify about noncompliance. In adult, that never happens." *[Probation]*

> "Juvenile probation has more programming. We have some fantastic probation officers. One officer visited a girl's house to see why she was not attending school. She said 'I have no clothes,' but there were piles on the floor. The probation officer asked her why she didn't clean the clothes she had: 'I have no quarters.' The officer went with her to the [coin laundry]. I don't see that happening with adult probation. Juvenile officers are much more attuned to being involved and they are more specific to each geographic area/neighborhood services. [Juvenile probation] promotes community connection: there is no expectation of reporting to a central location (like adult probationers)...this makes a huge difference. Probation officers are in the neighborhoods and are much more in tune with what's going on at a particular high school." *[Public Defender]*

Juvenile officers have a unique array of functions. For instance, they can screen youth to determine whether prosecution is warranted ("probation adjustment"). They can assess youth to determine whether secure detention is warranted ("detention screening"). They complete social histories for youth who have been adjudicated delinquent and who may be committed to DJJ (see next section). In these capacities, they work with prosecutors, defense attorneys, victims, police, and family members of the accused.

Juvenile officers also monitor youth on probation. Most interviewees agreed that juvenile probation is "more intense" than adult probation, both because of the additional access to services offered and because there are more contacts between the juvenile probation officer and the youth. Juvenile probation officers are also in close contact with others in the youth's life—primarily family members, but also teachers, school officials, and treatment providers. Whereas adult probationers are considered to be solely responsible for obtaining needed services and complying with court orders, juvenile probation officers do not solely monitor youth but can help to guide them through the system.

Because of juvenile probation's more holistic approach, officer caseloads should average 50-60 percent of those of adult probation officers.



Managing the next phase: **Though cautioning of the need for services and supervision resources,** [165] **probation departments were overwhelmingly (71 percent) supportive of raising the age for felonies**.[166] Stakeholders at every stage of the juvenile justice system agree that, along with detention, juvenile probation will be most impacted by the change in the law. Some offices, however, do not seem concerned; when asked about having to do a social history for felony adjudication, adding more youth on probation, etc., they mentioned that a 17-year-old who commits a felony may already be involved with their offices, reducing the additional work required to perform intake, monitor a youth, assess sanctions, etc. However, many mentioned caseloads that were already too high to do the kind of work they wanted to do. Allocating supervision and resources based on risk level, focusing resources on evidence-based services, and developing age-appropriate programming can assist probation in managing the addition of felony-charged 17-year-olds.

> "I am a believer that raising the age to all 17-year-olds is the right thing to do. Now you have a junior in high school charged as a kid, but the senior in high school playing basketball with him is an adult? Raise the age...provided that system resources [are] there. [I'd] love to take kids through high school graduation." *[Probation]*

> "We had a philosophical change years ago, about low-risk offenders: supervise only kids who need it rather than being stretched thin on high numbers.... Processing system [screening and diversion] drives these numbers." *[Probation]*

165 *See* "Step 2: Diversion Programs and Community-Based Services," *supra* at 37-39.

166 Another 14 percent were neutral or took no position.

Issue: Career Transition Programming

> "Pretty tough [here] for teen employment. [Youth are] even asking for volunteer community service hours, but can't find anybody to take them. Probation says nobody's hiring those kids. I don't know of ANY job programming." *[Prosecutor]*

> "[Youth] need job readiness training—they might not be headed toward traditional college, though some do, but they need something—community college, vocational-technical school, etc. We need to make a much more concerted effort on how to serve this population. The Special Education District goes to 21; I met with them last week to discuss [our] older population and services needed. We need to continue to think more globally about where they're going—being home with mom and dad might not happen. They may be headed out on their own [and we need to learn] how to handle [that]. I see these reach-outs about how to transition young offenders into adulthood happening more on the juvenile side." *[Probation]*

> "Youth employment—a big problem—looking at creating our own program. [A local provider] has a nonprofit foundation looking at creating employment opportunities...develop[ing] an 'older kid track.' They could do janitorial/cleanup for local parks, benefit to the Park District." *[Probation]*

While ensuring youth complete a high school diploma or equivalent is the first educational priority for juvenile probation, several departments mentioned the need for educational opportunities and job readiness training beyond high school. Because many local economies are struggling, traditional "first jobs" for teenagers (grocery stores, fast food, warehouses) are increasingly held by adults, reducing opportunities for youth to practice basic employment skills. Probation offices described cuts to formal youth employment and training programs that provide, in addition to work experience, instruction in interviewing, resume creation, and other employment skills. While some probation offices mentioned planning new programming for older youth, more resources and attention still need to be directed to this important stage of youth successfully transitioning into adulthood.

Issue: Mandatory Five-Year Probation

A few probation offices mentioned the increase in five-year probation sentences as a caseload contributor and recommended examining this policy. For most offenses, youth in juvenile court cannot be sentenced to probation for a period exceeding five years and juvenile courts have the authority to terminate a probation sentence at any time "warranted by the conduct of the minor and the ends of justice."[167] Exceptions to the probation sentencing cap are made in cases of first-degree murder (committed by youth 12 and under),[168] Class X felonies, and forcible felonies,[169] all of which carry a mandatory-minimum sentence of five years of probation. The entire term of probation must be served by the youth regardless of the court's evaluation of the minor's conduct or the interest of justice. It is unclear that it is an advisable policy to include all forcible felonies in the mandatory-minimum exception to the Juvenile Court Act's indeterminate sentencing scheme.

167 705 ILCS 405/5-715 (2013).

168 The mandatory minimum period of probation for first-degree murder applies only to children 12 and under. Youth aged 13-14 who are adjudicated delinquent for first-degree murder must instead be incarcerated in a Department of Juvenile Justice facility for a minimum of five years. 705 ILCS 405/5-750 (2012). Alternatively, youth aged 13 and 14 may be prosecuted and sentenced as adults in certain circumstances. 705 ILCS 405/5-130 (2011). Youth aged 15 and older facing first-degree murder charges are always tried as adults. *Id*.

169 *Id*.

Forcible felonies are defined within the adult criminal code, not the Juvenile Court Act, and are intended to represent inherently dangerous conduct that foreseeably could lead to death.[170] For this reason, forcible felonies are used in criminal court to determine murder charge enhancements, application of the felony-murder rule, and sentencing enhancements for repeat offenders.[171]

The extensive list of forcible felonies includes not only the most serious and violent offenses, but also some property crimes (e.g. burglary), violent crimes with minimal force (e.g. robbery without a weapon or injury), and indeed any felony involving any use or even the threat of force.[172] The definition of forcible felony therefore includes felonies falling within all of the adult sentencing ranges (Class X, 1, 2, 3 and 4). In criminal court, several forcible felonies are nonprobationable, but when a sentence of probation is available and can be imposed, the maximum adult sentence is always lower than the minimum sentence under the Juvenile Court Act. Adults who receive probation for Class 1 and 2 felonies cannot be sentenced to more than four years on probation. Adults receiving probation for Class 3 and 4 felonies cannot be sentenced to more than two and a half years—exactly half of the juvenile court mandatory minimum for forcible felonies in the Class 3 and 4 range.[173]

Older youth and those charged with more serious offenses are more likely to be transferred to the adult system. **Because the adult probation sentencing maximum (where available) is lower than the juvenile minimum, the forcible felony probation rule disproportionately impacts younger offenders and those who commit lower-level felonies.**

Certainly some youth who have committed acts on the forcible felony list are very high-risk and will remain so for a significant period of time. One important purpose of the Juvenile Court Act, however, is "[t]o provide an individualized assessment of each alleged and adjudicated delinquent juvenile, in order to rehabilitate and to prevent further delinquent behavior through the development of competency in the juvenile offender."[174] A single mandatory minimum probation for all youth adjudicated for offenses considered forcible felonies may not be consistent with the individualized assessment and competency development anticipated by the Juvenile Court Act. Further, the probation oversight and resources available to help prevent delinquent behavior among high-risk youth are diluted when courts are unable to discharge lower-risk and rehabilitated youth.

The forcible felony list was not designed to address juvenile delinquency behaviors, nor does the list impose uniform sentences upon adults in criminal court. Because of the wide-ranging seriousness of offenses on the list, the inability of juvenile courts to issue individualized sentences, and potential differences between reasonably foreseeable dangers in an adult versus juvenile behavioral context, the law requiring a five-year mandatory minimum probation for all youth adjudicated for a forcible felony offense should be reviewed for proportionality and consistency with the purpose of the Juvenile Court Act.

Due to the frequency of charges like burglary among youth of all ages and the fact that the mandatory minimum probation period applies to youth as young as 10 and does not offer the opportunity for older offenders to "age out" at 21,[175] removing these offenses from the forcible felony list could have a significant impact on juvenile

170 720 ILCS 5/2-8 (2012). For application *see generally* People v. Hickman, 59 Ill. 2d 89 (1974).

171 *See*, *e.g.*, 720 ILCS 5/9-1 (2011).

172 720 ILCS 5/2-8 (2012). Forcible felonies are defined as: "treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual." *Id*.

173 730 ILCS 5/5-4.5-30(d) (2012) (Class 1: 4 years); 730 ILCS 5/5-4.5-35(d) (2012) (Class 2: 4 years); 730 ILCS 5/5-4.5-40(d) (2012) (Class 3: 2.5 years); 730 ILCS 5/5-4.5-45(d) (2012) (Class 4: 2.5 years). Class X felonies are nonprobationable. 730 ILCS 5/5-4.5-25(d) (2012).

174 705 ILCS 405/5-101(1)(c) (1987).

175 705 ILCS 405/5-715(1) (2013) ("The period of probation or conditional discharge shall not exceed 5 years or until the minor has attained the age

probation caseloads without a corresponding decrease in public safety. If the mandatory minimum requirement were adjusted, juvenile court judges could still sentence high-risk youth to lengthy probation periods, including a five-year term when warranted.

STEP 6: SENTENCING

16-year-olds face felony charges in juvenile court	17-year-olds face felony charges in adult court
Juvenile probation conducts an investigation in advance of hearing and recommends a disposition to juvenile court based on this information	Criminal court does not conduct independent investigation of family, social history, or living circumstances (even if 17-year-old is a DCFS ward)
Judge may sentence youth to a set term in a juvenile detention center	Judge may sentence defendant to a set term in a county jail
Conditional discharge is available for offenses other than for first degree murder, Class X felony, or a forcible felony[176]	Conditional discharge is limited to two drug crimes
Judge may remove youth from custody of parents and commit the youth to the custody of the Illinois Department of Juvenile Justice for an indeterminate (open-ended) sentence	Judge may sentence defendant to a set term of incarceration in the Illinois Department of Corrections; all adult mandatory minimum sentences and enhancements apply

In response to a court order, juvenile probation prepares a social investigation at least three days before a disposition (sentencing) hearing (this must be completed in every case involving commitment to DJJ).[177] The social investigation report includes "an investigation and report of the minor's physical and mental history and condition, family situation and background, economic status, education, occupation, personal habits, minor's history of delinquency or criminality or other matters which have been brought to the attention of the juvenile court, information about special resources known to the person preparing the report which might be available to assist in the minor's rehabilitation, and any other matters which may be helpful to the court or which the court directs to be included."[178] The probation office also recommends an appropriate disposition based on whether it believes the youth would be amenable to and benefit from juvenile probation and what programs are available. The entire history of the youth's involvement with the juvenile justice system (including arrests and station adjustments that were not prosecuted) may be introduced during the sentencing hearing. The juvenile court judge determines an appropriate sentence and in certain circumstances [179] may commit the youth to

of 21 years, whichever is less, except as provided in this Section for a minor who is found to be guilty for an offense which is first degree murder, a Class X felony or a forcible felony. The juvenile court may terminate probation or conditional discharge and discharge the minor at any time if warranted by the conduct of the minor and the ends of justice; provided, however, that the period of probation for a minor who is found to be guilty for an offense which is first degree murder, a Class X felony, or a forcible felony shall be at least 5 years.").

176 705 ILCS 405/5-710(1)(a)(i) (2010).

177 705 ILCS 405/5-701 (2004).

178 *Id.*

179 Note that there are new, particular factors the court must consider before commitment to DJJ. 705 ILCS 405/5-750(1)(b) (2012).

state custody (DJJ). Sentencing options available in juvenile court are highly dependent upon the availability of community-based programming.[180]

Sentencing in adult criminal court is comparatively limited in range, is not indeterminate (cannot normally be revisited based on progress or need), and is nearly always permanent. Once someone is convicted of a felony, judges are mostly unable to issue sentences that, when successfully completed, could result in suspension or removal of the felony conviction.

STEP 7: INCARCERATION

Felony-charged in juvenile court (16 and under)	Felony-charged in adult criminal court (17)
If alternatives are inappropriate or unavailable, youth may be committed to DJJ for an indeterminate sentence based on rehabilitation	May be sent to DOC for a set term
If youth is an older repeat juvenile offender with a felony committing offense, may spend significant time in DJJ Remains under DJJ control in facility or parole until 21 or adult maximum term unless discharged for cause	Likely to be treated as a first-time offender; will not serve much, if any, time at DOC for low-level offense

As a result of its recent in-depth report on juvenile reentry systems,[181] the Commission is more confident than ever that the Illinois Department of Juvenile Justice (DJJ) can and must provide rehabilitative services to youth in its custody in secure facilities and upon reentering the community—services that are almost never available to teens housed in the overcrowded Illinois Department of Corrections (DOC). Many felony-charged 17-year-olds who are sentenced to a term in DOC will be housed in minimum security facilities, currently the most overcrowded in the prison system.[182] As first-time adult offenders, many teens sentenced to DOC for lower-level felony offenses would be unlikely to be incarcerated long enough to reach the top of existing waitlists for the few rehabilitative programs offered at DOC, such as the Sheridan Drug Treatment program.[183]

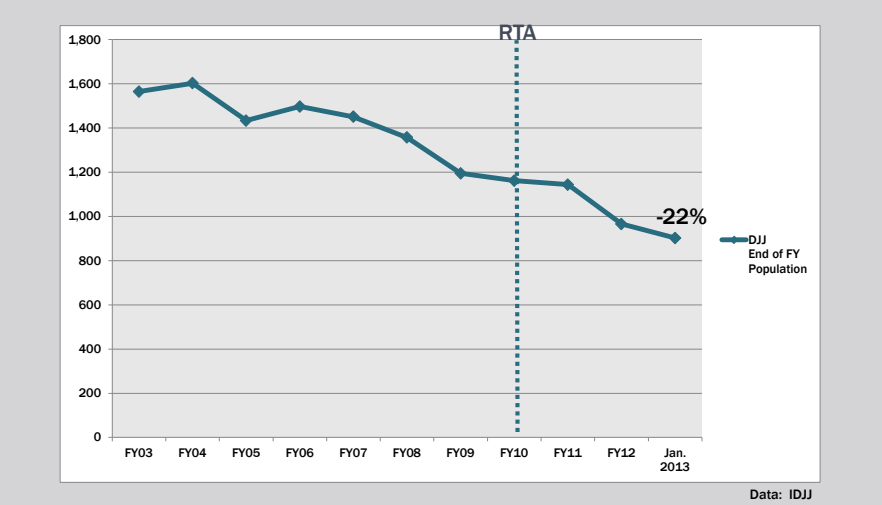
180 *See* "Issue: Service Funding and Availability," *infra* p. 37.

181 Illinois Juvenile Justice Commission, Youth Reentry Improvement Report (Nov. 2011), http://www.dhs.state.il.us/page.aspx?item=58025.

182 Illinois houses over 49,000 inmates in a system designed to support only 34,000. John Howard Association of Illinois, http://www.thejha.org/sb2621 (last visited on Feb. 6, 2013) (citing DOC population data; updated 6/22/12); John Maki, *Illinois' Rendezvous with Prison Overcrowding*, Chicago Sun Times, Mar. 2, 2012, at 24. As a result, the Illinois Department of Corrections is dangerously overcrowded and medium and minimum-security facilities bear the brunt of it; hundreds of minimum security inmates are housed in dilapidated dormitories, gymnasiums, and flooded basements. *Id.* Just how overcrowded are these prisons? Vienna, Illinois' worst offender, is designed to hold 685 inmates, yet as of September 2011, housed nearly 1,900 people, 260 percent of design capacity. John Howard Association of Illinois, Monitoring Visit to Vienna Correctional Facility 6 (Sept. 27, 2011). Such overcrowding not only exacerbates violent and criminal behavior among prisoners, creating a dangerous environment for inmates and staff, but it also may trigger constitutional issues. The U.S. Constitution's prohibition against cruel and unusual punishment has been applied to prison overcrowding in California, forcing the state to alleviate its overcrowded prisons by releasing more than 30,000 inmates. Maki, *supra*. Some Illinois facilities are themselves teetering on the edge of constitutionality—as evidenced by a June 2012 class action lawsuit filed on behalf of Illinois' Vienna Correctional Center inmates, claiming human rights abuses worse than those in California. Complaint, Boyd v. Godinez, (S.D. Ill. 2012) (No. 3:2012cv00704).

183 Illinois Department of Corrections, Sheridan Correctional Center, http://www2.illinois.gov/idoc/facilities/Pages/sheridancorrectionalcenter.aspx (last visited Feb. 6, 2013).

IDJJ POPULATION FY03-2013



Managing the next phase: Although 17-year-old misdemeanor admissions increased, DJJ's population continued its rapid decline; since raising the age for misdemeanors, population is down 22.4 percent (to 902) as of January 21, 2013. Therefore, even after closing two facilities (IYC-Murphysboro and IYC-Joliet), DJJ will still be at only 72 percent of its capacity (1,254); the agency has the bed space to handle additional youth.

Because it currently houses youth through age 20, DJJ is unconcerned about the potential change in the law in terms of the types of programming and services it would offer to 17-year-olds adjudicated for felonies. The Department stated that an increase in population would require additional staff, but that it was impossible to predict the exact number of judicial commitments as a result of the change in the law—whether there would be an increased rate of DJJ commitments with 17-year-olds, an increased use of transfer, or neither.

STEP 8: RECORDKEEPING AND EXPUNGEMENT

Felony-charged in juvenile court (16 and under)	Felony-charged in adult criminal court (17)
Confidentiality rules apply to arrest and court proceedings	Arrest and court proceedings are public records
Commercial background checks do not reveal juvenile arrests or adjudications, but they are available to law enforcement	Commercial background checks by employers, educational institutions, and insurance carriers reveal arrests and convictions
Juvenile adjudication is rarely an absolute bar to employment Adjudication prevents public safety employment, state professional licensure, and military service in only limited circumstances	Felony conviction is frequently an absolute bar to employment Felony conviction frequently prevents public safety employment, state professional licensure, and military service
Juvenile expungement statutes apply to arrests and some adjudications	Criminal expungement statutes apply to arrests for which there was never a conviction Felony convictions may be sealed in certain cases but cannot be expunged by courts

Processing 17-year-olds through both the adult and the juvenile systems presents data collection, analysis and management problems for the state. Juvenile arrest records contain more information than adult arrests, particularly about parents/guardians, parental employment, and school attended. However, not only are juvenile arrests confidential, but certain juvenile misdemeanor arrests are not required to be reported to any state data collection agency.[184] This can result in underestimating the number of youth in contact with the juvenile justice system in some way.

Adult arrests for both felonies and misdemeanors are always required to be reported to central state recordkeeping agencies. Adult arrests are not treated with privacy shields, so law enforcement releases the names of 17-year-olds arrested as adults. Like criminal convictions, adult arrest histories are always available as part of an individual's criminal history, or "rap sheet," although arrests for which there was no conviction can be expunged. Because adult arrests for both felonies and misdemeanors are always required to be reported, state and local agencies rely upon that data for management purposes.

It is thus impossible to compare data regarding misdemeanor arrests before and after the law was changed regarding 17-year-olds; prior to calendar year 2010, every misdemeanor arrest was reported to the state, but reporting for some offenses is now optional. State data shows a sharp decline in misdemeanor arrests for 17-year-olds (see Appendix D), an unknown portion of which is attributable to mandatory versus optional data reporting.

When a 17-year-old is arrested on a felony charge, the arrest itself is adult and not confidential, even if prosecutors eventually file a juvenile court petition for a misdemeanor charge. It is only at that point in the process that the proceedings are overseen by the juvenile court and become confidential. Related court records are then maintained in an entirely separate juvenile records system, and the juvenile adjudication may be

184 705 ILCS 405/5-301(3) (1999); 20 ILCS 2630/5 (2010).

expunged according to the juvenile expungement statutes in proceedings overseen by the juvenile court.[185] Meanwhile, the adult felony arrest separately remains part of local and statewide databases and is likely to show up during future background checks for employment. This file is normally the jurisdiction of adult criminal courts, applying separate criminal arrest expungement statutes.[186] Even in cases where a youth never appeared before a criminal court judge, the youth may be required to file an expungement petition for the arrest in criminal court, in addition to any juvenile record expungement the youth must pursue.

Although expungement is a "back-end" issue arising after the conclusion of the court process, expungement issues from the change in 2010 have already emerged. The Illinois Office of the State Appellate Defender (OSAD) generates informational material for individual citizens and their attorneys regarding expungement procedures for both adults and juveniles. Since the change, the OSAD expungement unit has observed growing statewide confusion over exactly what records are being kept, which agency keeps them, how confidential they are or should be, which expungement statutes apply to those records, and which court will oversee expungement.

OSAD has encountered multiple cases where an individual's private attorney simply could not determine whether to petition for expungement in juvenile court, criminal court, or both. Courts do not appoint attorneys (e.g. public defenders) to assist indigent individuals with the civil expungement process. Some volunteer and pro bono programs exist, but most individuals filing expungement petitions appear on their own behalf (pro se). Both adult and juvenile expungements are already comparatively rare to begin with, suggesting significant procedural hurdles to the process.

Questions resulting from 17-year-olds being involved in two separate court record systems unacceptably burden an already over-complicated and expensive process. The expungement section of the Juvenile Court Act must be revised to match jurisdiction. Future expungement reforms are necessary to close juvenile confidentiality loopholes.

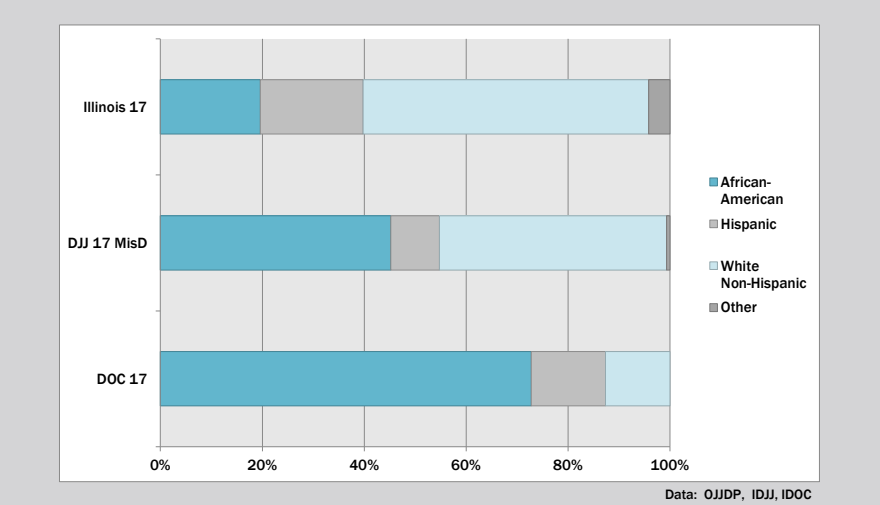
185 705 ILCS 405/5-915 (2010).

186 20 ILCS 2630/5.2 (2013).

BROADER THEMES

Disproportionality and Discretion

REDUCTION OF DISPROPORTIONATE MINORITY IMPACT



Due to non-mandatory reporting of misdemeanor arrests, the racial makeup of 17-year-old misdemeanor arrests is unavailable and unknown. Even when youth crime patterns do not vary too widely between races, however, perceptions about youth misconduct do.[187] While the juvenile justice system's many diversion programs are commendable and produce favorable outcomes for youth who receive them, the cumulative effect of their discretionary nature is racial disproportionality. The implicit racial biases that underlie system actors' perceptions of youth crime and risks to public safety generate more severe consequences for minority teens, who tend to travel "deeper" into the juvenile justice system for the same conduct as their white peers.[188]

> "Law enforcement won't be able to remain objective about the arrest charge if they know 17-year-olds [can be processed as either adults or juveniles]. It leads to uneven treatment of arrestees and might even run into racial considerations/unequal treatment (I am speculating)." *[Prosecutor]*

Reducing disproportionate minority contact (DMC) with the juvenile or criminal justice system is a longstanding focus of both the federal juvenile authority (OJJDP)[189] and this Commission. The Commission has used its federal juvenile delinquency prevention funds to support various DMC reduction strategies in Illinois communities. In addition, standardized screening instruments and evidence-based programming recommendations can

187 ILLINOIS DISPROPORTIONATE JUSTICE IMPACT STUDY COMMISSION, FINAL REPORT 14, 30 (Dec. 2010) (noting that while drug use does not vary significantly by race, over twice as many non-whites are arrested for drug charges than whites).

188 *Id*. at 3, 4, 15 (noting that African Americans are arrested at a higher rate than whites relative to their representation in the general population, are 1.8 times more likely to be prosecuted for a crime, and are 23 times more likely to be incarcerated for a drug offense).

189 42 U.S.C. § 5633(a)(22) (2006); 42 U.S.C. § 5661(a)(1)(B)(viii) (2006).

help to guard against disparate impact by helping practitioners to curb reliance on intuition alone. Providing decisionmakers with more objective and evidence-based criteria for assessing an individual youth's risk and protective factors may help to counteract or contain unacknowledged biases.[190]

Police and prosecutors determining whether misconduct is a felony or misdemeanor offense, however, do not have any access to any objective or evidence-based screening criteria on which to base their arrest and charging decisions. They are frequently pressured to make such decisions in the absence of critical background information about the youth that would help them to assess risk in a more racially-neutral manner.

Juvenile screening and diversion programs run by clinical and public safety professionals can use such tools, but they are only applied *after* youth are already determined to be juveniles, not adults. This raises a substantial concern as to whether unfettered discretion in determining juvenile and adult jurisdiction for 17-year-olds, combined with limited objective information, may have a racially disparate impact.

Due to recordkeeping issues, it is impossible to track the number and proportion of felony arrests statewide that are later reduced to misdemeanor cases in juvenile court, or obtain statewide racial data for the use of this discretion. Criminal court convictions are not publicly reported by age and race. A recent investigation by the *Chicago Reporter* into Cook County conviction data is instructive: over 75 percent of 17-year-olds convicted of felonies were African-American.[191] Only 34 percent of Cook County 17-year-olds are African-American.[192] Available data combined with the lack of any race-neutral screening instruments for determining juvenile versus adult charges for 17-year-olds indicates that raising the age to include felony charges can help to reduce Illinois' disproportionate minority youth contact with the criminal justice system.

Clear Guidelines for Implementation

Many system actors shared the opinion that when the jurisdiction was split for 17-year-olds, little consideration must have been given to widespread procedural fallout from the change. The legislative change was minimal and did not include explicit direction regarding juvenile and criminal procedure.[193] No statewide advisory opinions were issued advising law enforcement, prosecutors, courts, or other actors about how to handle changes in juvenile and criminal charges against 17-year-olds.

Jurisdictions prepared for the change in the law in different ways. Some state's attorneys issued advisory opinions and procedures for various system actors, either alone or in conjunction with juvenile and criminal judges, detention personnel, police departments, and the county sheriff's office. A few continued to follow up, particularly with law enforcement, to ensure uniformity of procedure. Others simply encouraged each system entity to devise its own procedures for dealing with 17-year-olds.

Many stakeholders remarked that when the age of jurisdiction is raised, they will need new guidelines and explicit instructions. **However, in contrast to the unprecedented misdemeanor compromise bill, raising the age of jurisdiction for felonies is procedurally very simple: 17-year-olds will be treated as 16-year-olds currently are under the Juvenile Court Act**.

190 See, e.g., Elizabeth Cauffman, Does the Use of Formal Guidelines for Dispositional Decision-Making Reduce Disproportionate Minority Contact?, MODELS FOR CHANGE, http://www.modelsforchange.net/about/research/piquero.html (last visited Feb. 6, 2013).

191 Caputo, *supra* note 159.

192 Estimate of 17-year-old population in 2011. Puzzanchera, C., et al, *Easy Access to Juvenile Populations: 1990-2011,* U.S. Dep't of Justice (2012), *available at: http://www.ojjdp.gov/ojstatbb/ezapop.*

193 2008 Ill. Legis. Serv. P.A. 95-1031 (S.B. 2275) (West).

The only remaining procedural confusion regarding older youth going forward concerns detention practice and compliance with the new federal Prison Rape Elimination Act (PREA) guidelines for housing all minors (under 18) in lockups, jails, and detention centers, even when facing criminal charges.[194] Jurisdictions are aware of, and should already be planning, compliance strategies for the PREA standards and will therefore need to clarify procedural differences between state Juvenile Court Act requirements (as amended) and federal guidelines for housing youth. It is the Commission's recommendation that these PREA planning groups explicitly take raising the age into consideration when calculating the number of criminal court youth subject to PREA limitations. However, understanding PREA versus Juvenile Court Act standards would be an issue to resolve even if the age were not raised for 17-year-olds.

Transfer and Accountability

It is unknown how many of the more severe or violent felony offenses for 17-year-olds will result in transfers to adult court. Illinois' transfer provisions are so broad that even the lowest-level felony charges are transfer-eligible, if a judge finds that certain criteria are met. Juvenile judges will be able to review the juvenile arrest and court history of felony-charged 17-year-olds and they may conclude that the youth should be more properly routed to adult court.

Practitioners have warned that increased reliance on transfer provisions could be an unintended consequence of raising the age of juvenile jurisdiction. It is the position of the Commission that some of Illinois' current transfer provisions may be overly inclusive, especially given the higher recidivism rates for youth who are transferred to adult criminal court.[195] Transfer-eligible crimes, aggravating factors, and the scope and application of accountability statutes (and other legal theories involving a foreseeability requirement) must be revisited in the future for their applicability to minors of various ages. Many current routes to adult accountability for minors aged 13 and over do not appear to comport with adolescent development behavioral science and may no longer be in keeping with developing community standards.[196] Especially given Illinois' recent positive experience with the unprecedented act of removing and reforming some transfer laws,[197] the justifiability of such provisions should be re-examined.

For the time being, however, the Commission sees no barrier to raising the age of jurisdiction in the form of any unintended consequence of transfer increases. When the age was raised for misdemeanants, many juvenile advocates and criminal defenders warned that the state's longstanding culture of viewing 17-year-olds as adults, exacerbated by the front-end cost incentive to counties for keeping youth in adult court, could result in exponentially greater felony arrests of 17-year-olds who might otherwise have been treated as misdemeanants. Though the jurisdictional split carried many negative mechanical consequences that complicated plea bargains, concern over decisionmaker bias among law enforcement was unfounded. Felony arrests of 17-year-olds did not

194 PREA imposes three new requirements for housing minors in adult prisons: 1) agencies must place youth in a housing unit separated by sight, sound, and physical contact with any adult inmate, including shared and common spaces such as showers, dayrooms, and sleeping quarters; 2) in areas outside of housing units, agencies must maintain sight and sound separation between youth and adults, or provide direct staff supervision of youth, and; 3) agencies must make the "best efforts" to avoid placing youth in isolation to comply with this requirement and if youth are isolated, facilities may not deny youth large muscle exercise and special education services absent "exigent circumstances." National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37,106 (June 20, 2012) (to be codified at 28 C.F.R. pt. 115).

195 *See* Safety Benefits at 22-23.

196 Trop v. Dulles, 356 U.S. 86, 100-01 (1958) ("[T]he words of the [Eighth] Amendment [prohibition on cruel and unusual punishment] are not precise, and...their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.").

197 Illinois Juvenile Justice Initiative, Changing Course: A Review of the First Two years of Drug Transfer Reform in Illinois (June 2008) (analyzing the effects of legislation that removed automatic transfer for drug crimes and accountability-related charges of aggravated battery with a firearm). After reform, drug crimes were still transferrable under presumptive transfer laws, but once they became subject to judicial review in juvenile court, far fewer cases were transferred to adult court and some of the racially disparate impact of drug laws considered the "most racially biased" in the country also decreased. *Id* at 4.

dramatically increase, but rather have continued to decline, since January 1, 2010.[198] The Commission believes that any broadened use of transfer provisions after raising the age will be a limited and short-term effect. In any case, it is still far preferable for neutral and knowledgeable Illinois juvenile judges and court staff to evaluate an individual 17-year-old's history due to the seriousness and circumstances of a particular act, than it is for 17-year-olds charged with lesser offenses to continue to be treated as adults as a matter of course.

CONCLUSION

To promote a juvenile justice system focused on public safety, youth rehabilitation, fairness, and fiscal responsibility, Illinois should immediately adopt legislation expanding the age of juvenile court jurisdiction to include 17-year-olds charged with felonies.

Adding between 14,000-18,000 misdemeanor arrests per year to juvenile jurisdiction was absorbable. Declining crime and increasing use of evidence-based juvenile justice practices have contributed to caseload reductions in the most costly parts of the juvenile justice system since Illinois law began treating 17-year-old misdemeanants as juveniles in 2010. However, the current law placing some 17-year-old offenders in the juvenile system and some in the adult system is unfair and unworkable for both youth and practitioners due to confusion over exactly which 17-year-olds are adults.

Current legal and scientific trends are clear: by putting all felony-charged 17-year-olds in criminal court by default, Illinois is becoming a national outlier, is ignoring research findings about adolescent development and behavior, and is squandering the potential of many of its youth. Illinois should act to raise the age. Adding fewer than 4,000 felony arrests per year to the juvenile system can be expected to be manageable and will promote uniformity and clarity among system actors.

It is counterproductive and cruel to impose the lifelong collateral consequences of felony convictions on minors who are likely to be rehabilitated. Illinois can achieve better long-term outcomes for 17-year-olds, public safety, and the state economy by expanding juvenile jurisdiction. In doing so, it is critical to ensure the juvenile justice system is robust, by adequately funding and supporting diversion, probation, and community-based services, as well as the public educational, health, and human service infrastructure upon which many at-risk youth must rely. Efforts at reducing the extent of youth contact with the juvenile justice system by focusing on front-end services are working; in order to be most effective, however, these services must be fully-funded, available, and extended through all developmentally-appropriate ages.

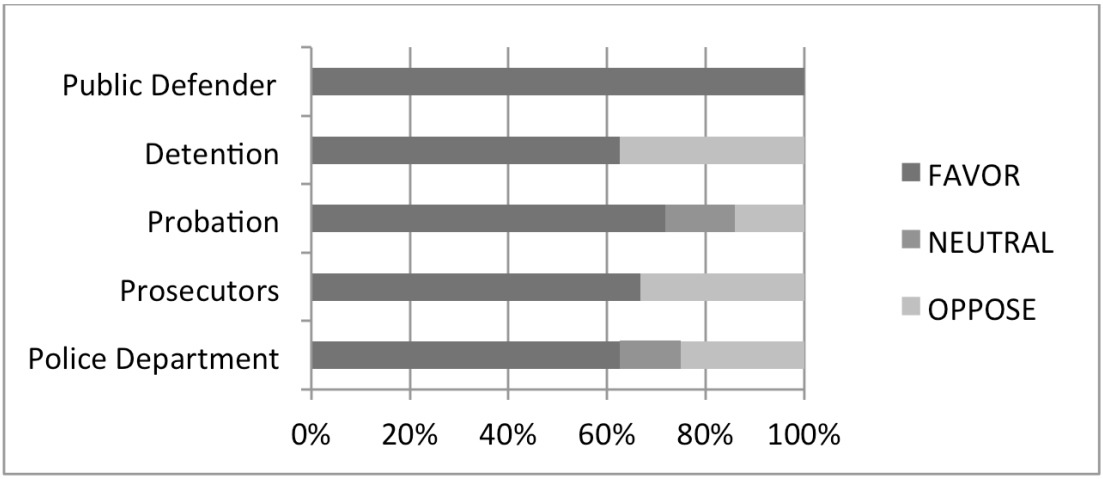
198 *See* "Number of 17-Year-Old Arrests Since 2005," Data Charts, Appendix D.

Appendix A:
Stakeholder Counties and Aggregate Opinions

County[1]	Total youth arrests, CY2008	Largest City
Cook	29,519	Chicago
Kane	1,981	Aurora
Marion	124	Centralia
McHenry	684	Crystal Lake
Morgan	254	Jacksonville
Ogle[2]	110	Rochelle
Peoria	352	Peoria
Sangamon	499	Springfield
St. Clair	308	Belleville
Vermilion	165	Danville
Will	1,429	Joliet
Winnebago	2,048	Rockford

1 Counties in bold typeface house 8 of the state's 17 juvenile detention centers.

2 After an invitation was sent to the State's Attorney in this county, the Governor appointed him a member of this Commission. No responses from his office are included in this report.



Appendix B:

Memo from Pathways to Desistance Authors

Memorandum

To: Stephanie Kollmann

From: Ed Mulvey, Carol Schubert

RE: Analyses of age groups

Date: December 5, 2012

When we met recently in Chicago, you asked whether we saw any marked differences according to age in our sample of serious adolescent offenders in the Pathways to Desistance study. This issue is obviously relevant for your work with the Illinois legislature regarding possible changes in the current state statute delineating the age of jurisdiction for the juvenile court. The Pathways sample is appropriate for looking for differences according to age groups because the sample consists of felony offenders from two major metropolitan locales. It is my understanding that part of the issue regarding the jurisdictional boundary of the court rests on whether 17 year old felony offenders are qualitatively different from felony offenders of age 14 and 15.

In your email to me, you posed three questions. I will give the short answer to each question, and then show you some results from our data that we relied upon to construct these answers.

1. Do felony-charged 17-year-olds tend to become career criminals, or do they tend to cease criminal activity as they mature?

In general, the serious offenders in our sample decrease offending over time (as measured in both self-reported antisocial activities and arrests). Because we know when these adolescents went in and out of institutions, we are able to calculate the number of arrests generated for the time they spent in the community (the rate of re-arrest rather than just the number of re-arrests). We looked at the rate of re-arrest for the different age groups over the seven year follow up period. This rate was not statistically significant among the groups, i.e., none of the three groups differed significantly from the others in their rate of re-arrest. In addition, none of the age groups differed from each other in the amount of time they spent in the community during the follow-up period. They were in institutional care (either juvenile facilities, jails, or prisons) for equivalent proportions of time.

2. Do they desist in meaningfully different ways (rates, patterns) than felony-charged 16-year-olds?

We identified five groups of adolescents who followed different patterns of offending over time. The different group patterns are shown in Figure 1. Two of these groups are of particular interest, i.e., those who persist in offending at high levels and those who drop off in their rate of offending over time. Each of these groups has roughly equivalent representation of 14, 16, and 17 year olds. Each of the identified groups with different offending patterns contains a mix of these age groups.

In addition, if you then look at each of the age groups, you also see that the offenders in each age group distribute across the different offending pattern groups. Figure 2 shows what percent of each age group are found in the different offending trajectory groups. There is no significant association between age groups and the offending trajectory groups.

Based on the results from Figures 1 and 2, the answer so far to the first two questions seems to be “no”.

3. Are felony-charged 17-year-olds LESS likely to reoffend as adults than felony-charged 14-year-olds?

We did not run analyses to see the likelihood of having an adult arrest for each group because this would have required sorting through our arrest data to separate out juvenile and adult re-arrests for each study participant. It would have simply required too much work to re-arrange the data. Based on the above results, however, it seems unlikely that we would have found any group differences. If the groups are all showing the same rate of re-arrest and they are all spending about the same amount of time in the community, it seems logical to conclude that they are being arrested about the same number of times. There may be different likelihoods for getting arrested for particular types of crimes, but these analyses would be too involved to do right now. We do know that the sample as a whole decreases over the seven year period in the seriousness of the offenses that produce an arrest.

We conducted some other analyses to see if the different age groups looked different on background characteristics related to continued offending. We have developed seven composite measures indicating the level of risk/need that the adolescent has at the time of enrollment into the study. In these analyses, we saw that the 17-year old adolescents were at higher risk than the other two age groups concerning their antisocial peers, school performance, and substance use. The 14-year olds were at higher risk for their antisocial attitudes. There were no differences among the age groups on their levels of parental criminality, mental health problems, or criminal history. These differences are summarized on the next slide of the attachment to this email. The differences among the groups on the scales are shown in the figures that follow.

In terms of their risk for future offending, the 17 year olds seem to present a mixed picture. They are higher on some risk/need indicators and no different on others. They have accumulated several factors that increase their likelihood of continued offending, but are also addressable with targeted interventions (peers, school, and substance use). At the same time, they are not different in some of the more “set” factors related to future offending (parental criminality, mental health issues, and criminal history).

We hope that this information is useful. Please let us know if we can supply anything else.

Appendix B:

Pathways to Desistance

Data Analysis Report

For Stephanie Kollmann, by Carol Schubert, Ed Mulvey, December 5, 2012

Overall Approach

Reviewed background characteristics and subsequent offending patters for three groups of youth in the Pathways study, i.e., those enrolled at 14, 16 and 17 years of age.

Number of youth in each age group:
- 14 year olds: 160
- 16 year olds: 668
- 17 year olds: 480

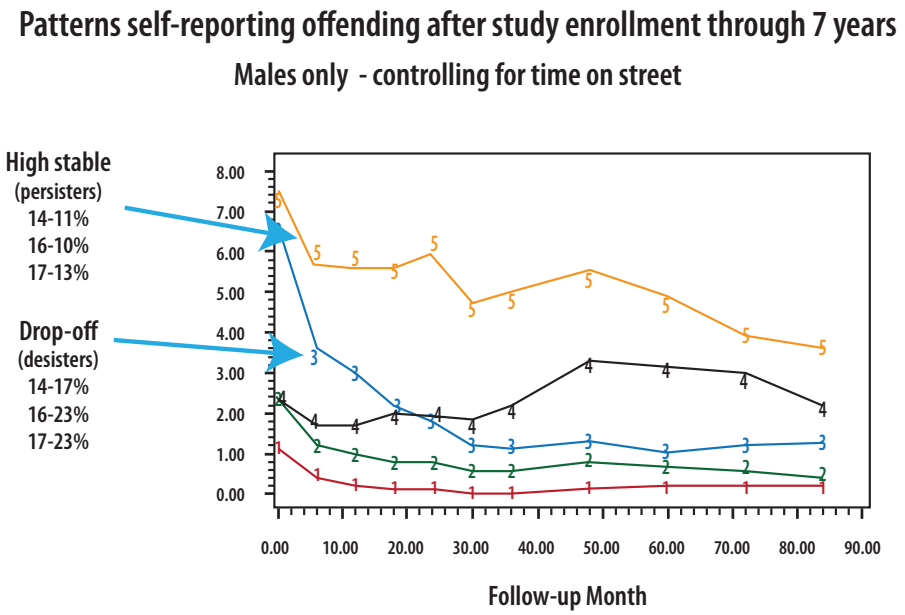
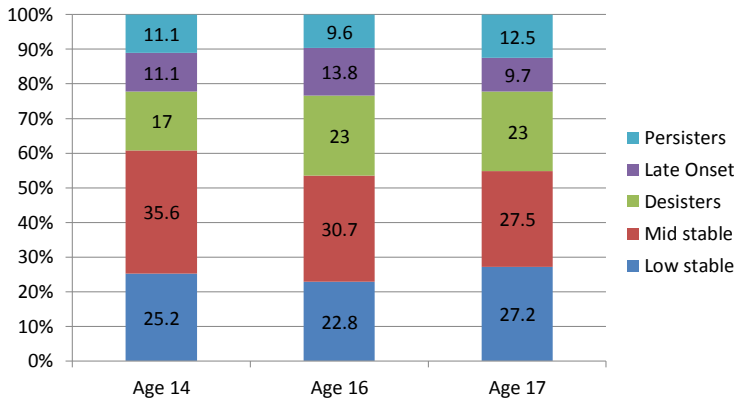


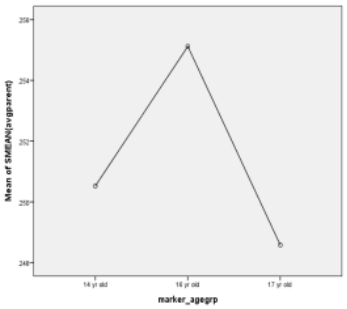
Figure 1. 7-yr offending patterns for individuals who entered the study in age groups of interest



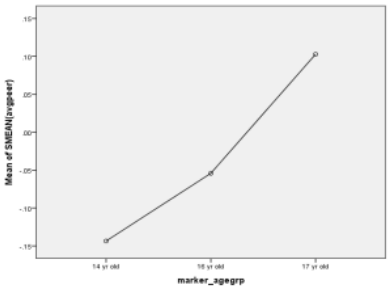
DIFFERENCES ON BASELINE RISK/NEED INDICATORS

- Looked between group differences (ANOVA) for the 7 risk/need factors by age at baseline
- Youth enrolled at age 17 are significantly worse off on the following risk need factors
  - » Antisocial peers
  - » School performance
  - » Substance Use
- Youth enrolled at age 16 are significantly worse off on
  - » Antisocial attitudes
- There are no significant differences by age for
  - » Parent criminality
  - » Mental health
  - » Antisocial history

Illustration of differences on baseline risk/need indicators

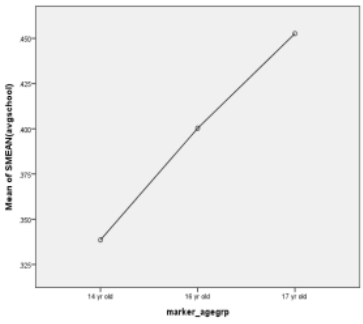


Antisocial Attitudes

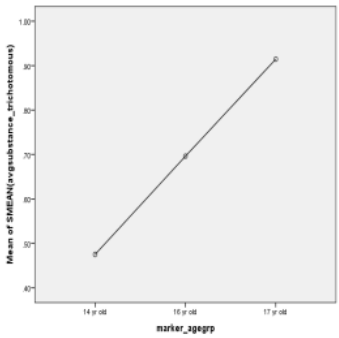


Association with antisocial peers

Illustration of differences on baseline risk/need indicators



School problems



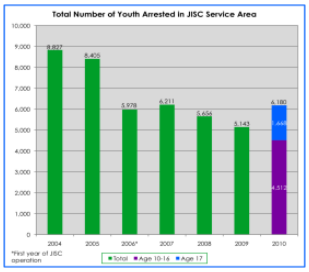
Substance use

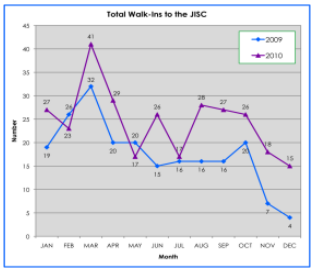
Appendix C:

JISC Data Dashboard

Azim Ramelize, *Department of Family and Support Services, February 19, 2013*

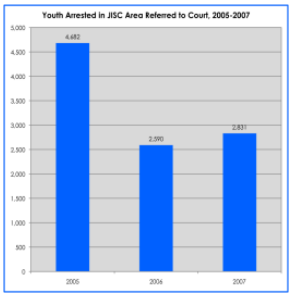
JISC Indicators: Arrests and Walk-Ins

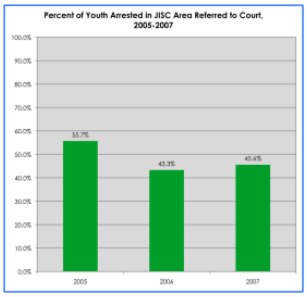




Youth Arrests: A count of youth arrested in the JISC service area and processed at the JISC. 2010 includes 17 year-olds processed as juveniles and is for the months January – November. | **Walk-Ins:** A count of all youth who come, sometimes at parent direction, to the JISC for services. These youth may be referred to case management if necessary.

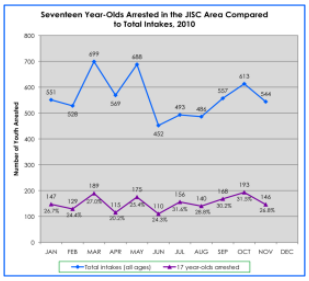
JISC Indicators: Youth Disposition & Arrests at CPS

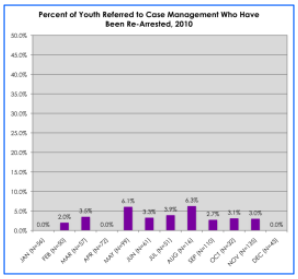




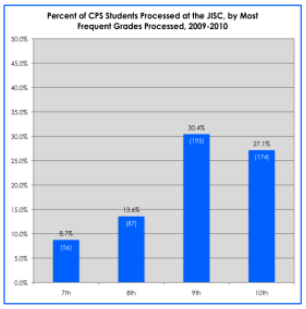
Youth Referred to Court: The count of youth arrested in the JISC service area. In 2005, 1,592 youth (18.9%) were referred to juvenile detention.

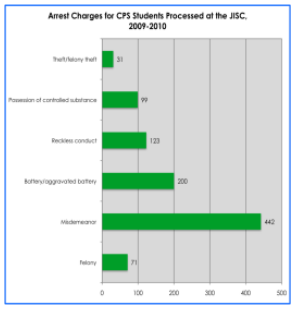
Seventeen Year-Olds Arrested: A count of all seventeen year-olds arrested in the JISC area compared to the total number of intakes to the JISC in that same month. Total intakes include walk-ins as well as arrested youth. **| Re-Arrests:** The number of youth who received case management at the JISC who were rearrested within three months of enrollment. Future versions will include a comparison for youth referred to court.





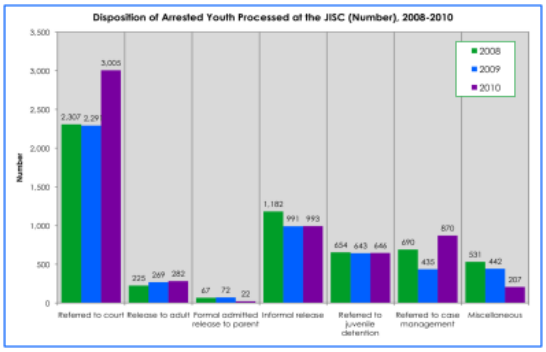
CPS Arrests by Grade: Represents the four grades level with the largest number of arrests at schools in the JISC area. 641 youth were arrested at CPS in the JISC area in the 2009-2010 school year. | **Arrest Charges for CPS Students:** Felonies and Misdemeanors together represent the total arrests for students arrested at CPS in the JSC area. The four more specific charges detailed are the four most frequent charges for students arrested at CPS. Data are for the school year 2009-2010. CPS students processed through the JISC are typically age 12-16.





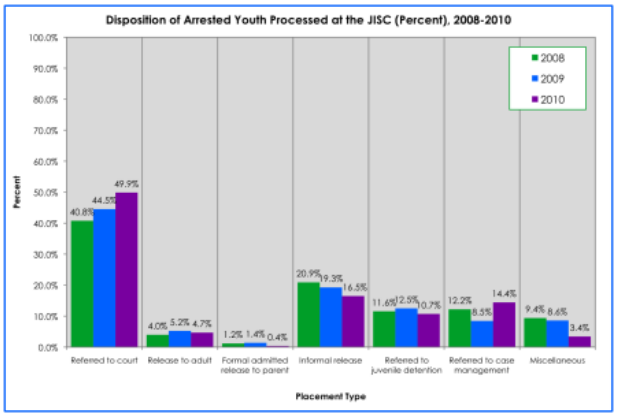
Appendix C:

JISC Indicators: Youth Disposition



Number of Youth Dispositions : Depending on the offense and their criminal history, youth are processed in a variety of ways . "Released to adult" indicates that youth were released to a parent or guardian pending a court date . "Formal admitted release" indicates that youth admitted to the crime and were released . "Informal release" indicates that youth would not admit to crime, but police could not charge them with a crime .

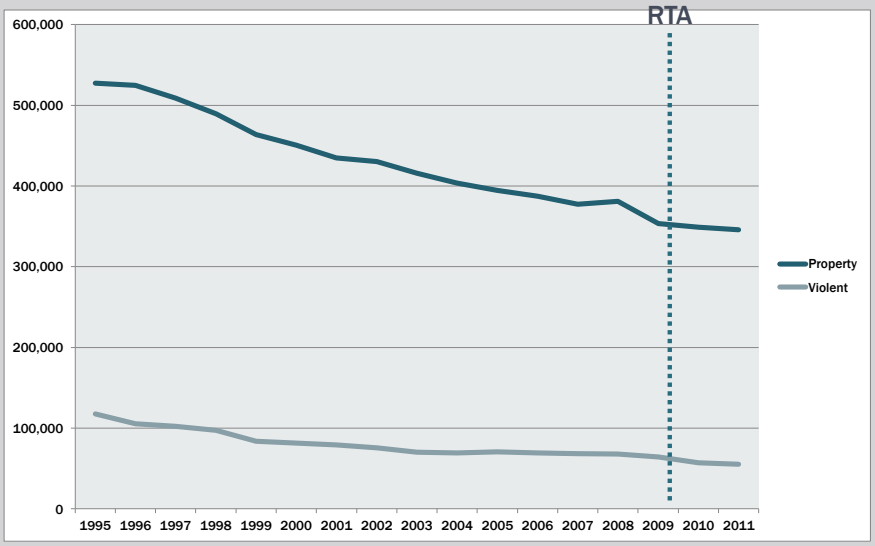
Percent of Youth Dispositions: Data for 2010 includes January – November for all dispositions except Miscellaneous, which only includes figures from January – June.



Appendix D:

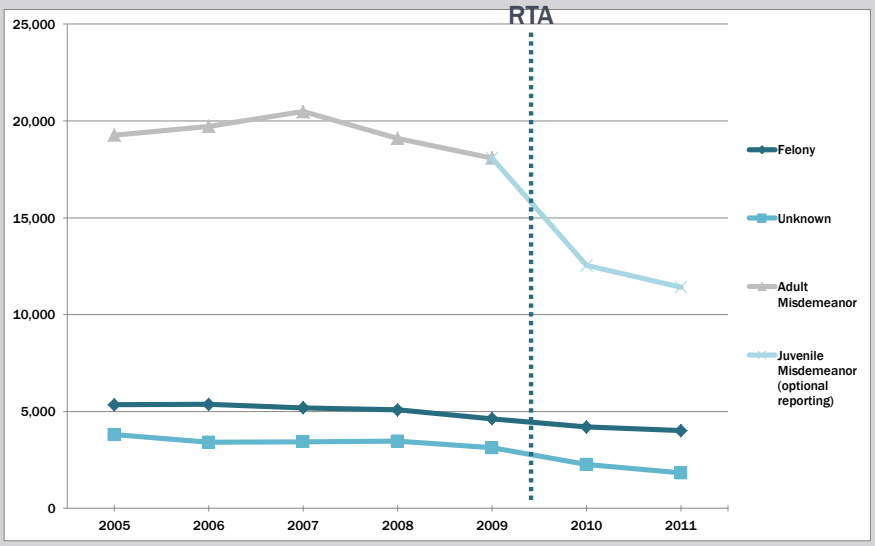
Additional Agency Data

CRIMES REPORTED IN ILLINOIS 1995-2011



Data: FBI (UCR)

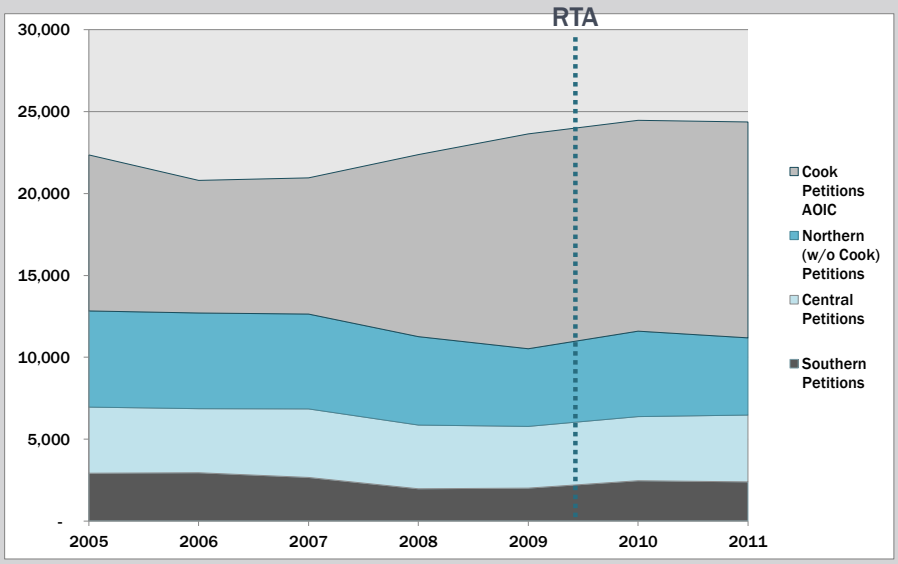
NUMBER OF 17-YEAR-OLD ARRESTS SINCE 2005



Data: ICJIA

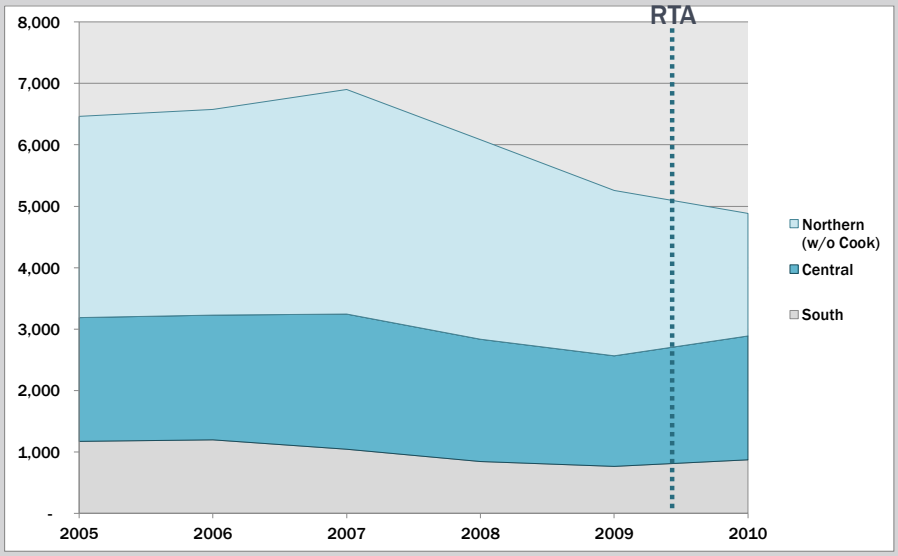
Appendix D:

STATEWIDE JUVENILE PETITIONS 2005-2011



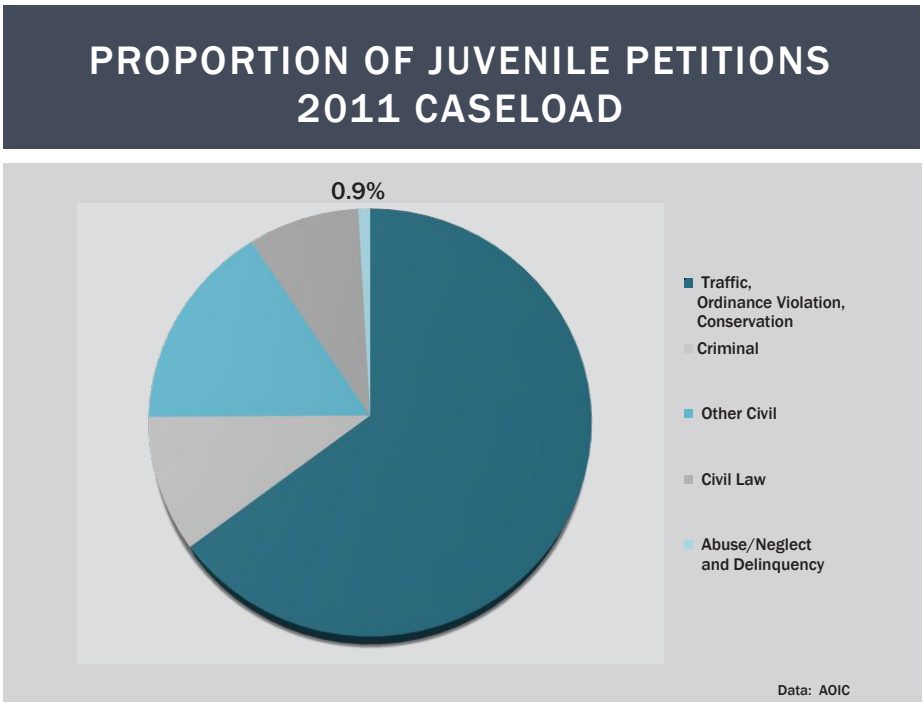
Data: AOIC, ICJIA

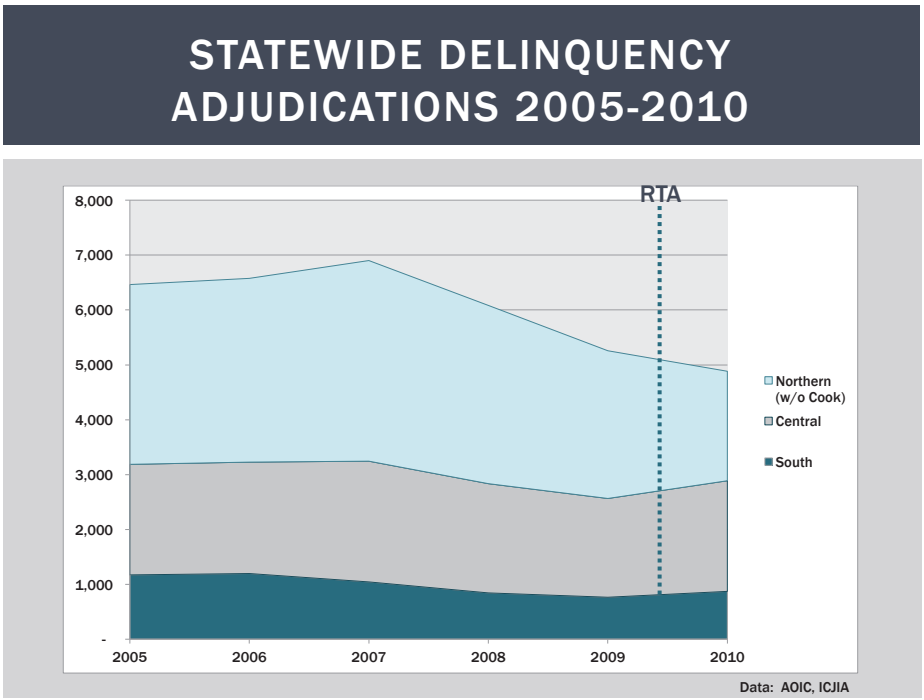
STATEWIDE DELINQUENCY ADJUDICATIONS 2005-2010



Data: AOIC, ICJIA

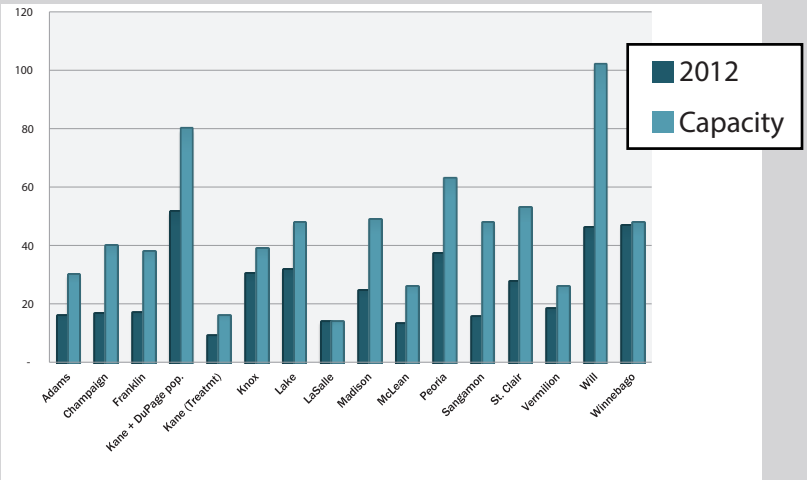
Appendix D:


PROPORTION OF JUVENILE PETITIONS
2011 CASELOAD
0.9%
Traffic, Ordinance Violation, Conservation
Criminal
Other Civil
Civil Law
Abuse/Neglect and Delinquency
Data: AOIC


STATEWIDE DELINQUENCY
ADJUDICATIONS 2005-2010
RTA
8,000
7,000
6,000
5,000
4,000
3,000
2,000
1,000
-
2005
2006
2007
2008
2009
2010
Northern (w/o Cook)
Central
South
Data: AOIC, ICJIA

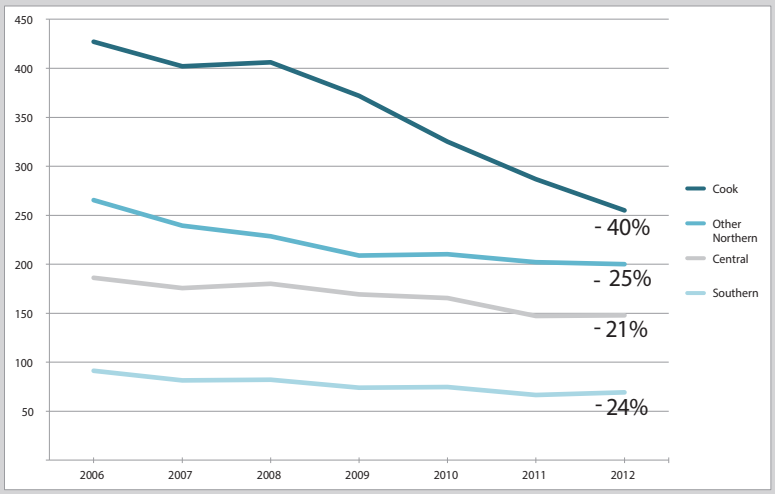
Appendix D:

VARIANCE, NON-COOK DETENTION CENTER POPULATION AND CAPACITY



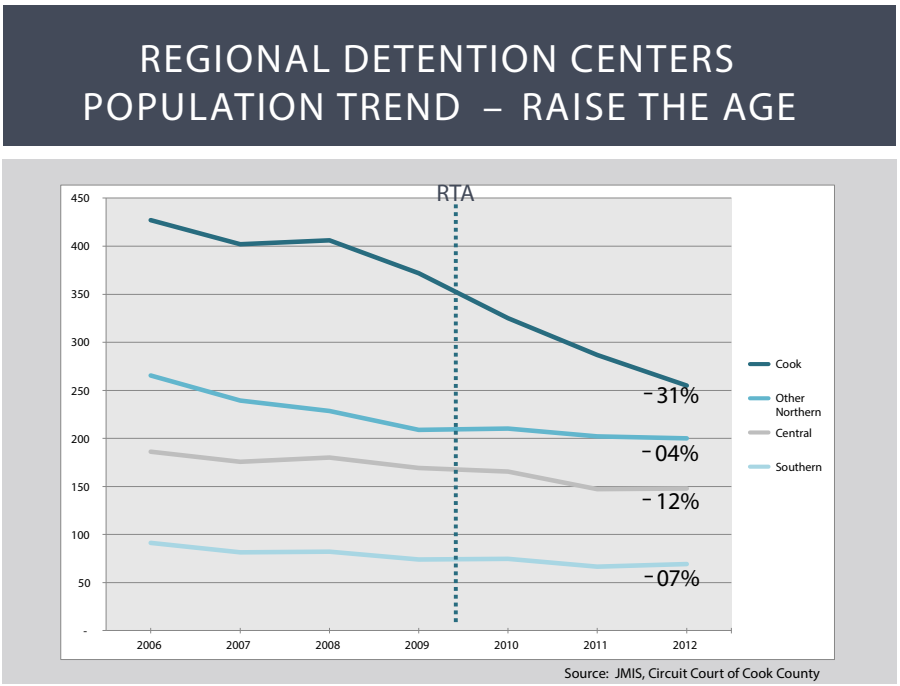
Data: JMIS, IJJC

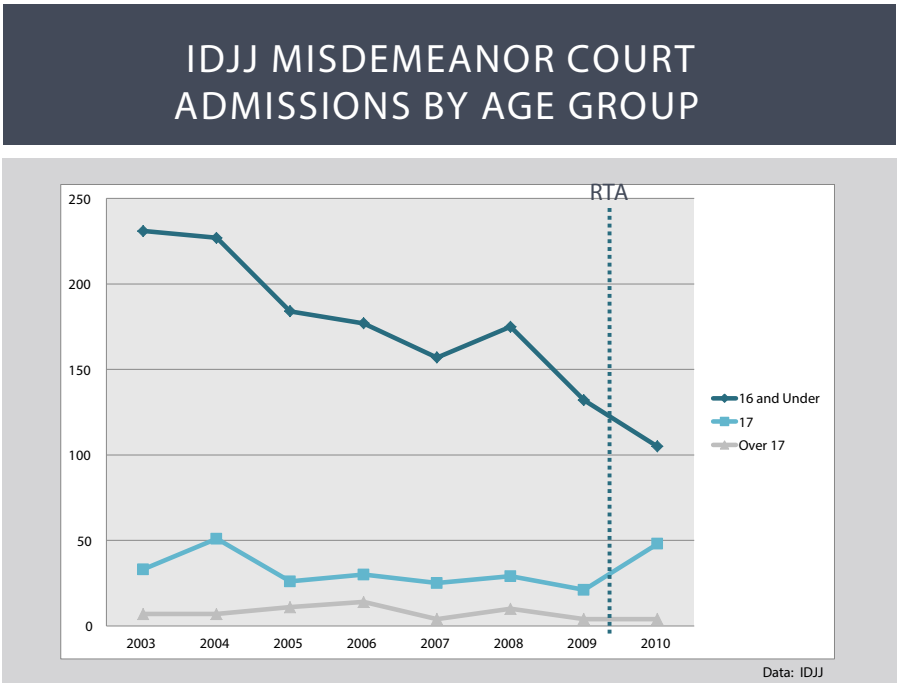
REGIONAL DETENTION CENTERS POPULATION TREND SINCE 2006



Data: JMIS, Circuit Court of Cook County

Appendix D:


REGIONAL DETENTION CENTERS
POPULATION TREND – RAISE THE AGE
RTA
450
400
350
300
250
200
150
100
50
-
2006
2007
2008
2009
2010
2011
2012
-31%
-04%
-12%
-07%
Cook
Other Northern
Central
Southern
Source: JMIS, Circuit Court of Cook County


IDJJ MISDEMEANOR COURT
ADMISSIONS BY AGE GROUP
RTA
250
200
150
100
50
0
2003
2004
2005
2006
2007
2008
2009
2010
16 and Under
17
Over 17
Data: IDJJ

Appendix D:

OVERVIEW: TRANSFER LAWS

Automatic Transfer (Excluded Jurisdiction)	
15yo (or over)	Murder, Agg. Criminal Sexual Assault, Agg. Battery with Gun, Armed Robbery with Gun, Carjacking with Gun
Mandatory Transfer	
15yo + Presumptive Transfer Crime + History	
15yo + Forcible Felony + Felony + Gang	Any Felony
Presumptive Transfer	
15yo + aggravating factors (unless clear and convincing evidence of amenability to juvenile court)	Most Class X Felonies; Firearms Discharge
Discretionary Transfer	
Any minor over 13 + probable cause + judicial finding that juvenile court is not in public's best interest	Any Offense