

RECOMMENDATIONS FOR REFORM

JUVENILE and YOUNG ADULT JUSTICE in ILLINOIS

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BACKGROUND

Over a century ago, progressive reformers set up the world's first juvenile court in Cook County, IL. The court grew out of the vigorous progressive movement in Chicago, along with restrictions on child labor and establishment of mandatory public education. The purpose of the court was to remove children from adult jails and courts, and give them a second chance.

The juvenile court has been described as Illinois' most significant legal achievement – the model was rapidly adopted across the nation and in nearly every country in the world.

For sixty years, the juvenile courts in Illinois functioned without significant change until confronted with due process concerns mid-century. In the mid-60's the U.S. Supreme Court issued a series of significant decisions, beginning with *In re Gault*, 387 U.S. 1 (1967) that ensured the right to a lawyer and due process for children in juvenile court. The due process reforms strengthened the juvenile court model, and were subsequently included in international human rights law, particularly in the 1990 Convention on the Rights of the Child.

However, in the 90's, Illinois began to veer away from the promise of the juvenile court. One of the first categories of law and order reforms was "automatic" prosecution of children in adult court, but more soon followed including a punitive rewrite of the Juvenile Court Act in 1999. These reforms had a significant and costly impact. Automatic transfer increased the number of children prosecuted in adult court from an average of 50 in the '70's to a high of 438 in Cook County in 2001.¹ The numbers of children in pre-trial detention and post-trial prison both expanded, creating a crisis that fueled a massive juvenile detention building spree in more than a dozen counties downstate.²

Reforms over the past two decades have gradually chipped away at the '90's "law and order" provisions in order to return to the promise of the original juvenile court. **These reforms have all proved successful, and have had significant impact – Illinois has decreased incarceration by two-thirds and closed 3 of the 8 juvenile prisons, has expanded diversion and prevention programming, has nearly ended "automatic" adult prosecutions of children – all while also raising the age of juvenile court from seventeen to eighteen.** Diversion and community based alternatives to incarceration have been widely embraced and expanded through Redeploy Illinois. Restorative justice programs have been developed in schools and communities, increasingly embraced as an alternative vision of justice that ensures community safety by expanding peace-building skills while directly addressing the immediate harm of conflict and underlying root causes including education/vocation skills and housing stability.

But while the juvenile justice system has undergone a radical transformation over the last two decades, the adult system has virtually ignored the success of these significant reforms. Other than adopting Redeploy Illinois on the adult level, Illinois policymakers continue to examine the adult system in a vacuum without consideration of lessons learned from the juvenile reforms, as was evident in the reports from the Commission on Criminal Justice and Sentencing Reform. This paper documents the significant and successful systemic reforms in the juvenile justice system over the past two decades, and sets forth lessons learned with recommendations for reforms for both the juvenile and young adult criminal justice systems.

SIGNIFICANT JUVENILE JUSTICE REFORMS over the past two decades:

JURISDICTIONAL BOUNDARIES:

Reducing prosecution of Children in Adult Court
Raising the Age of Juvenile Court

REDUCING INCARCERATION:

Detention Reforms

Ending detention of children under the age of 13
Weekend and holiday detention review

Reducing post-trial incarceration in Dept of Juvenile Justice
Redeploy Illinois
Incarceration as a last resort

FAIRNESS:

Lawyers for children during police interrogation
Confidentiality & expungement of records

I. JURISDICTIONAL BOUNDARIES

A. Automatic Transfer (adult prosecution) In 1982, the Legislature moved away from the practice of individualized review – prior to 1982, a juvenile court judge reviewed motions by prosecutors to try a child as an adult. In 1982, the Legislature created “automatic” prosecution of children in adult criminal court. The “automatic transfer” meant that children age 15 and older who were charged with murder/armed robbery with a firearm/sex offenses would be “automatically” in adult court from the minute the charge was filed – with no ability to have a hearing on the issue of transfer and no ability to get out of adult court. *Within hours of arrest, and with little background on the minor or much information regarding the offense, a decision was made by the prosecutor that permanently closed the door to juvenile court.*

Initial studies on the impact of the change showed it nearly doubled adult prosecutions and had a disproportionate impact on minority youth. The automatic transfer statute was significantly expanded in the mid-1980’s adding a “Safe School Act” that automatically sent youth with drug or weapons charges to adult court – more than doubling the number of transfers in Cook and resulting in serious racial disparities. Gang-related offenses were added, followed by drug and weapon violations within 1,000 feet of public housing. The last addition was children age 13 or older charged with first degree murder in the course of a sexual assault or aggravated kidnapping. Presumptive transfers for most of the Class X offenses were also added in 1995. By the mid-90’s, automatic adult court prosecutions of children in Cook County had increased from an average of 50 in the mid-70’s to over 400 by 2001.

Research – Youth less likely to reoffend if kept in juvenile court: Meanwhile, research found that children kept in juvenile court were less likely to repeat offend than children tried in adult court – in fact, **youth who are tried in the adult system are approximately 34% more likely to be re-arrested** for a violent or other crime than youth kept in the juvenile court system.³

First Transfer Reform – ending automatic adult prosecution of youth charged with drug offenses: Illinois began to back away from automatic transfer in 2005, when the Legislature ended automatic adult prosecution based on drug offenses. *A study by JJI of the first year of the drug transfer reform revealed the number of children automatically transferred to adult court in Cook County decreased by approximately two-thirds, with no adverse impact on public safety.*⁴

Second Transfer Reform – P.A. 99-0268 ended automatic adult prosecution of 15 year old youth, and ended automatic adult prosecution of children charged with armed robbery with a firearm. This transfer reform guaranteed that each case would receive individual review in a hearing in juvenile court. **A panel of juvenile court judges in Cook County and from three counties outside Cook (Winnebago, DuPage and Franklin) revealed that all of the judges felt that they could handle the individualized transfer hearings without any problem.**

CURRENTLY – The number of children subject to automatic transfer has decreased from a high of 438 annually in 2001 in Cook County to under a 100 today.

The only cases that are still “automatically” transferred to adult court are those of youth age 16 or 17 charged with murder, aggravated criminal sexual assault and aggravated battery with a firearm. The numbers are low and could easily be accommodated in juvenile court hearings on transfer petitions.

RECOMMENDATION – End “automatic” adult prosecution of children, (prosecutors will still be able to petition to transfer any child age 13 and older charged with any offense – juvenile court judges will review prosecutor’s petition and decide whether to keep child in juvenile or transfer to adult court.) ***Lesson learned – automatic “cookie-cutter” policies do not work –justice demands individualized review.***

B. Raising the Age of Juvenile Court

In 2010, Illinois raised the age of juvenile court from 17 to 18 for misdemeanors. Public Act 095-1031 provided that over 16,000 seventeen-year-olds charged with misdemeanors statewide would move from adult to juvenile court jurisdiction effective January 1, 2010. The legislation also required a study on the impact of the new law with recommendations on raising the juvenile court age to 17 for felony charges.

The report was prepared by the Illinois Juvenile Justice Commission two years following the raise the age change, and concluded that the reform resulted in a smaller, not larger, juvenile system & said the state should raise the age further to include seventeen year olds charged with felonies in the juvenile justice system. The report noted the initial misdemeanor reform had not resulted in increased costs (a stunning finding since opponents had argued that raising the age would result in an increase of about a third in the juvenile court caseload):

*The Illinois juvenile justice system can manage the final phase of raising the age: **The state’s juvenile justice system is smaller now than it was before it included 17-year-olds.** Because of this, many practitioners who were initially concerned about raising the age are now prepared to end the confusing jurisdictional split by accepting felonies. Raising the age will not require new detention or youth incarceration facilities. <http://ijjc.illinois.gov/rta>*

The Legislature then passed P.A. 98-0061, raising the age from 17 to 18 for felony offenses.

Impact of raising the age of juvenile court – more youth diverted, more youth given community services/sanctions &: fewer youth incarcerated:

- **Number of children in state juvenile prison decreased by two-thirds** from 1,162 in 2010 to under 400 today – AND the state closed three of the eight juvenile prisons.
- **Number of children in pre-trial detention decreased – statewide** juvenile detention admissions decreased by 26% from 14,975 in 2008 to 10,081 in 2016. (per JIMIS, Juvenile Information Management System).

ILLINOIS reforms are in line with national trend: A report on state trends by the Campaign for Youth Justice noted that since 2005, **36 states** and the District of Columbia have passed **70 laws** to reduce the number of youth prosecuted, tried and incarcerated in the adult system.⁵

C. EMERGING ADULTS:

Attention in Illinois, and in other states that recently raised the age of juvenile court, has now turned to the issue of emerging adults (18, 19, and 20 year olds) in the justice system.

Rep. Laura Fine sponsored legislation (HB 4581) to raise the age of juvenile court to 21 for misdemeanor offenses. The bill passed out of the House Judiciary Criminal Committee, with significant community support including the Illinois Parent Teacher Association (the PTA released a report supporting raising the age and reimagining young adult justice).

Legislation in Vermont raises the age of juvenile court to 21 – with a few exceptions for violent offenses, the law will begin placing those under age 19 in the juvenile justice system by 2020, and those under 20 in the juvenile system by 2022. ⁶ An article on the reform reports:

“Lawmakers said increasing the age in the juvenile system may prevent young offenders from committing future crimes. A study from the United States Sentencing Commission found those under 21 have the highest rate of recidivism, but the hope is that by placing them in the juvenile system and placing a greater emphasis on rehabilitation, the criminal justice system can help them age out of criminal behavior.

"If they make a couple of mistakes, they'd be dealt with in the adult court, where failure is a likely outcome," said Sen. Dick Sears, a Democrat from Bennington County and sponsor of this year's bill. "Or, they could be dealt with in a combined juvenile and adult system where some success is more than likely possible in preventing further criminal activity."

The Massachusetts Legislature passed a bill to study raising the age of juvenile court from 18 to 19 The Boston Globe ran an editorial in support:

.....For generations now, families of means have been providing young adults with a remarkably effective shield against their indiscretions.

“It’s called college,” says Vincent Schiraldi, a former director of juvenile corrections in Washington, D.C., and probation commissioner in New York City. “Forget the education part for a minute. If you just wanted to design something that could keep kids out of trouble during this period, you’d send them to a residential program where people understand their stupid adolescent behavior, they’re productively occupied, and, to the degree they’re hanging out with peers, they’re hanging out with pro-social peers.” A young man who gets into a fight on a Harlem street corner goes to jail. A young man who gets in a fight in his dorm does not.

You’re going to get past this as you age. It’s true. And not just for the college kids. A bell-shaped trend line, universal in Western cultures, shows criminality peaking in the late-teens and early-20s and dropping off sharply after that. Many youthful offenders simply “age out” of crime as they mature and take on adult responsibilities.

That’s the big idea behind the push to raise the age for the juvenile justice system to 21, 23, or 25. You can hold young adults accountable by sending them to juvenile lock-ups and keeping them on probation after release. But spare them time in adult prisons, where they’re likely to absorb counterproductive lessons from seasoned criminals. And spare them felony convictions that will haunt them for decades, making it difficult to find work and housing. Together, that could change the trajectory of hundreds of thousands of lives.⁷

RECOMMENDATION – Raise the Age of Juvenile Court to 21. *Lesson learned – the juvenile court rehabilitative emphasis on diversion, programs and services is more effective than adult court.*

II. REDUCING INCARCERATION:

A. Ending detention of children under the age of 13 – By statute, children as young as 10 can be placed in pre-trial detention in Illinois – but must be at least 13 years old to be sent to juvenile prison after a finding of guilt. State Rep. Robyn Gabel sponsored Public Act 99-0254 that took effect Jan of 2016, to limit the use of detention of children under the age of 13 by first requiring a call to see if a less restrictive placement was available. The number of young children in detention is decreasing – from 436 in detention statewide in 2008, down to 173 in 2016. Cook County Commissioner Larry Suffredin sponsored Cook County Ordinance 18-4955 which ended the use of detention for youth under 13 in Cook County. The Cook County Board of Commissioners unanimously voted on September 12, 2018 to support this ordinance. Prior to the ordinance Cook County virtually eliminated the practice of detaining children under the age of 13 – occasionally there is a 12 year old in the Cook County detention center, but that is rare. As of October 31, 2018 there was one 12 year old, and three 13 year olds in the Cook detention center. This past Spring, Rep. Gabel sponsored legislation to end the practice of detaining children under the age of 13 (HB 4543).

Champaign County Task Force recommends ending detention of children under 13: A Racial Justice Task Force in Champaign County issued a report recommending (on page 52 of the report) that the county board pass a resolution to stop detaining youth under the age of 13 in the Juvenile Detention Center.

<http://www.co.champaign.il.us/countyboard/rjtf/1710RJTFReport.pdf>

Detention of children under age 13 is inconsistent with national and international standards - Eliminating detention of young children is consistent with international norms and with the recommendation in the Convention on the Rights of the Child that nations set a reasonable minimum age for juvenile Court jurisdiction. Forty percent (40%) of European nations set the minimum age of criminal responsibility at 14 or higher.

Eliminating detention of young children is also consistent with national standards – the Annie E Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI) has promulgated detention inspection standards that recommend against detaining children under the age of 13.

Poor outcomes from detention - Detention of young children has lifelong adverse health consequences, according to the American Pediatrics Association. A study by the APA, *How Does Incarcerating Young People Affect their Adult Health Outcomes*, concludes that youth who are incarcerated have poor health outcomes as adults, including adult depressive symptoms from even short terms of detention (less than a month).

Findings from a policy brief from the Justice Policy Institute released in 2006 found that incarcerating youth in secure detention centers across the country can contribute to their future delinquent behavior and harm their education, employment, and health.

Instead of reducing crime, the act of incarcerating youth may facilitate increased crime by interrupting and delaying the normal pattern of “aging out” of delinquent behaviors. Detention interrupts their natural engagement with families, school, and work. Detention can also make mentally ill youth worse, and can increase the rate of suicide.

B. Weekend and holiday detention review – Over the past two years, Rep. Robyn Gabel has also championed legislation to ensure all children statewide have a hearing in juvenile court within 24 hours of the decision to place them in detention. Cook County has taken the lead on this reform as well..

On November 5, 2016, the Juvenile Court in Cook County held its first weekend detention hearing. Since that date, the court has held a detention hearing daily. A year later, court officials reported that approximately 40% (215 children) had been released as of October 24, 2017.

RECOMMENDATIONS:

End detention of children under the age of 13.

Require a juvenile court hearing on the issue of detention within 24 hours for every child in Illinois. Ensure adequate representation for children during the hearing, and monitor the outcomes of the detention hearings to ensure equality of treatment, best practice, and positive outcomes.

Lessons learned – individualized and timely review of the critical decision to detain is essential to justice.

C. Reducing post-trial incarceration in Dept of Juvenile Justice

CREATION OF IL Dept. of Juvenile Justice – Legislative concerns over conditions in juvenile facilities within the Dept of Corrections led to the creation of a separate agency for juvenile prisons – the IL Dept of Juvenile Justice, in Public Act 94-696 in 2006. The Department had a therapeutic mission, and was supposed to shift the culture in the facilities to a treatment focus rather than punishment. In 2007, the juvenile population was over 1,400 and expected to rise to 1,769 by 2016.

In June of 2018, the Dept of Juvenile Justice reported a population of 379 – a 73% decline over the past decade.

Redeploy Illinois – Part of the reason for the reduction in juvenile prison was the creation of Redeploy Illinois. In 2004, Illinois created Redeploy Illinois (P.A. 93-0641), a fiscal incentive program to grant funds for alternatives to incarceration to counties that agreed to reduce incarceration by 25%. By 2014, Redeploy reported success in saving the state nearly \$60 million over the 8 years of Redeploy, with a 54% reduction in commitments to juvenile prison.

In addition, other reforms, including ending commitments to juvenile prison for misdemeanor offenses and juvenile parole reform (P.A. 99-0268), helped to keep commitment numbers low.

One additional key reform was clarifying that incarceration was a last resort – In 2011, Rep. Robyn Gabel was a co-sponsor of Public Act 97-0362 that required courts to ensure incarceration was the last resort and to make reasonable efforts to keep youth at home.

Conditions in remaining large juvenile prisons continue to raise alarm - The juvenile prisons in the Dept. of Juvenile Justice have been under class action litigation since 2012. Conditions concerns included the lack of mental health services, the overuse of solitary confinement, safety of young people in the facilities from violence from staff as well as from other youth. Reports document that lack of adequate programming remains a serious concern at IYC St. Charles – with youth spending lengthy periods in room confinement. In addition, news articles over the past year documented reports that staff at one of the two remaining large prisons, the juvenile prison at Harrisburg, went outside the agency’s structure for discipline and took complaints to the local prosecutor – who then charged some of the youth in adult court.⁸ As the article notes, the cases threaten to undermine the reform efforts in the Illinois prisons.

Three of the eight juvenile prisons have been closed - IYC Murphysboro and Joliet both closed in 2013, due to a population reduction and IYC Kewanee closed in 2016. Today only two large institutions remain at St Charles and Harrisburg. The other three facilities (Warrenville, Chicago and Pere Marquette) are small and have had an easier time adapting to the shift in culture.

In light of the low population in IDJJ, and in light of continuing concerns over conditions in the remaining two large correctional institutions, it is time to close IYC Harrisburg and St. Charles.

RECOMMENDATIONS:

**Close IYC Harrisburg and IYC St. Charles.
Fully fund Redeploy Illinois.**

Lesson learned: Limiting incarceration to a last resort while funding community alternatives works to protect public safety while building up community resources.

IV. FAIRNESS:

A. Lawyers for children during police interrogation - concerned that the Chicago Police Accountability Task Force reported less than 1% of children and adults had the assistance of a lawyer during police interrogation, the Legislature passed Public Act 99-082 in 2016 – the bill required a lawyer be present a child under the age of fifteen throughout interrogation in murder/sex offenses. The bill also required that all interrogations of children be videotaped.

Cook County Public Defender Amy Campanelli was subsequently appointed to represent all children and adults during interrogation. She frequently points out that police fail to follow the law in posting notice of right to a lawyer:

POSTING OF RIGHTS

(725 ILCS 5/103-7) (from Ch. 38, par. 103-7)

Sec. 103-7. Posting notice of rights.

Every sheriff, chief of police or other person who is in charge of any jail, police station or other building where persons under arrest are held in custody pending investigation, bail or other criminal proceedings, shall post in every room, other than cells, of such buildings where person are held in custody, in conspicuous places where it may be seen and read by persons in custody and others, a poster, printed in large type, containing a verbatim copy in the English language of the provisions of Sections 103-2, 103-3, 103-4, 109-1, 110-2, 110-4, and sub-parts (a) and (b) of Sections 110-7 and 113-3 of this Code. Each person who is in charge of any courthouse or other building in which any trial of an offense is conducted shall post in each room primarily used for such trials and in each room in which defendants are confined or wait, pending trial, in

conspicuous places where it may be seen and read by persons in custody and others, a poster, printed in large type, containing a verbatim copy in the English language of the provisions of Sections 103-6, 113-1, 113-4 and 115-1 and of subparts (a) and (b) of Section 113-3 of this Code. (Source: Laws 1965, p. 2622.)

Across Europe, children in serious cases are given a lawyer, and this has been the law in England since the PACE Act in the 80's. Research on the impact of lawyers in the stationhouse reveal that lawyers do not impede investigations – in fact, there tends to be a fuller exchange of information with the lawyer present. Fundamental fairness requires that all children – especially those who may face adult prosecution – receive the assistance of an adequately trained lawyer throughout interrogation.

RECOMMENDATION: Expand the requirement of a lawyer for every child throughout interrogation – especially in any case that could end in adult prosecution.

Lesson learned – lawyers during interrogation are critical for procedural justice, especially for children and young adults.

B. Restorative Justice – One of the most promising developments in justice in Illinois is the Restorative Justice Community Court in North Lawndale. With a juvenile court judge, it oversees a population of young adults up to age 26 charged with non-violent offenses.⁹ The court was designed by the community & the juvenile court judge, Hon. Sheehan, and was partly inspired by the peace-building impact of restorative justice practices in juvenile court in Northern Ireland. **Restorative justice practices are growing across Illinois, and now need the assurance of confidentiality protections.**

RECOMMENDATIONS:

- 1. End automatic adult prosecution, leaving intact statute that allows prosecutor to petition to transfer any child age 13 and older charged with any offense – juvenile court judges will review prosecutor's petition(s) and decide whether to keep child in juvenile or transfer to adult court.**
- 2. Raise the age of juvenile court to 21.**
- 3. End detention of children under the age of 13.**
- 4. Require a juvenile court hearing on the issue of detention within 24 hours for every child in Illinois.**
- 5. Close IYC Harrisburg and IYC St. Charles.**
- 6. Fully fund Redeploy Illinois.**
- 7. Expand the requirement of a lawyer for every child throughout interrogation – especially in any case that could end in adult prosecution.**
- 8. Ensure confidentiality protections for restorative justice proceedings.**

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- ¹ *Automatic Adult Prosecution of Children in Cook County, IL 2010-2012*, Juvenile Justice Initiative, <https://jjjustice.org/wp-content/uploads/Automatic-Adult-Prosecution-of-Children-in-Cook-County-IL.pdf>
- ² *Detention of Juveniles in Illinois*, Juvenile Justice Initiative, <https://jjjustice.org/wp-content/uploads/JJI-Detention-Report-May-4-2018.pdf>
- ³ <http://static.nicic.gov/Library/025555.pdf>
- ⁴ <https://jjjustice.org/changing-course-a-review-of-the-first-two-years-of-drug-transfer-reform-in-illinois/>
- ⁵ *Raising the Bar: State Trends in Keeping Youth Out of Adult Courts, 2015-2017*, http://www.campaignforyouthjustice.org/images/StateTrends_Report_FINAL.pdf
- ⁶ <https://www.csmonitor.com/USA/Justice/2018/0706/Vermont-rolls-out-a-new-idea-to-rehabilitate-young-offenders>
- ⁷ <https://www.bostonglobe.com/ideas/2017/11/02/year-olds-can-barely-rent-cars-are-they-old-enough-for-jail/mbfcFdWLVDadHPxj2Hi1mN/story.html>
- ⁸ <https://www.propublica.org/article/illinois-youths-adult-prison>
- ⁹ <https://www.chicagotribune.com/news/local/breaking/ct-community-court-north-lawndale-met-20170720-story.html>