

Chairman Noland, Chairman Zalewski, members of the Committee, thank you for the opportunity to provide testimony today. TASC appreciates your focus on evaluating and reforming the criminal justice and corrections systems in Illinois. The need for this deliberate and strategic effort is critically important, and we are pleased to offer our support and assistance to the Committee.

My name is Pamela Rodriguez, and I am president and CEO of TASC. Founded in 1976, we are a statewide, nonprofit agency designated by the State to conduct substance use disorder assessments, case management, monitoring, and referral to treatment and other recovery support services for the Illinois criminal justice system, in partnership with courts, jails and prisons, and probation and parole departments. We work to break the cycle of drugs, crime, and incarceration, and to support people as on pathways to restored health and citizenship.

Our programs offer a probation-supervised alternative to incarceration through case management and community-based drug treatment. For some people released from Illinois prisons, we provide similar services in support of successful community reentry and stable recovery.

Faced with the stark reality that Illinois' prison population has grown over 700 percent since the mid-1970s, and that one in four Illinoisans has an arrest record and the collateral consequences that go with it, we are committed to help shrink the scale and scope of Illinois' oversized criminal justice system. We are likewise committed to changing the fact that the justice system is inadvertently and all too often the first place where we identify and address people's behavioral health problems — and even then, often this does not happen until individuals with mental health or drug problems have cycled through the system many times.

This Committee has heard testimony of system leaders, practitioners, and criminal justice experts. Many strong ideas and proposals have come forth, such as implementing evidence-based decision-making, making procedural changes to improve system efficiencies, and modifying public policies to reduce incarceration of people who have non-violent charges and behavioral health conditions. We support these recommendations.

Today I want to **highlight diversion programs and practices** — particularly “No Entry” policies and programs at the front end of the justice system, prior to a criminal conviction. These policies have untapped potential to help reduce recidivism, save system and taxpayer costs, and address the behavioral health and social issues that often contribute to or exacerbate criminal behavior. With good screening and assessment upfront, we can identify people who are eligible for diversion and put them on pathways to recovery and restored citizenship instead of incarcerating many of them unnecessarily.

Today we have an unprecedented opportunity to make this happen. Medicaid expansion provides the prospects of increasing community capacity and access to services. We can begin to make significant criminal justice reforms that allow people to get treatment for behavioral health issues as soon as or even *before* they come in contact with the justice system.

In light of the unique opportunity in front of us, I offer the following recommendations to the Committee:

- 1) **Expand eligibility for and access to existing diversion and alternative-to-incarceration programs.**
  - Eligibility should be expanded to include nearly all non-violent offenses, with program acceptance then based on established screening and assessment criteria. At a minimum, non-violent class 4 felony offenses should be included in eligibility, even for individuals with previous criminal records.
  - Eliminate prohibition on repeated participation in programs.

Diversion and alternative-to-incarceration programs offer a significant way to focus limited public resources where they will have a lasting and valuable impact. They offer opportunities for people to become healthy and responsible, while still holding them accountable for their actions. They can ease the fiscal and procedural burden on courts and jails while providing an opportunity for people to earn restoration as self-sufficient citizens, and as fully participating members of families and communities. And sometimes these programs can afford the opportunity to do these things without resulting in a criminal conviction that has lifelong consequences.

It is important to note that these programs are not novel in Illinois, and they have a long record of success. Policymakers have endorsed and codified a robust assortment of diversion and alternative-to-incarceration options, including:

- Drug School — 55 ILCS 130
- First Offender Probation — 720 ILCS 550/10; 720 ILCS 570/401; 720 ILCS 646/70
- Offender Initiative Program — 730 ILCS 5/5-6-3.3
- Second Chance Probation — 730 ILCS 5/5-6-3.4
- Probation with designated program (TASC) supervision — 20 ILCS 301/40
- Specialty/Problem-Solving Courts — 730 ILCS 166; 730 ILCS 167; 730 ILCS 168
- Adult Redeploy Illinois — 730 ILCS 190

The Cook County Drug School Program provides education on the consequences of drug use. Since 2007, the program has resulted in dismissal of charges and avoidance of formal prosecution for, on average, more than 3,000 individuals per year. Routinely, 90 percent of participants complete the program successfully, and they are almost four times less likely to have a new drug arrest in the first year after the program than their peers who do not complete successfully. The State's Attorney's Office has estimated that the program reduces costs to Cook County by more than \$1.5 million per year.

Likewise, the TASC alternative-to-incarceration program, which provides linkage to community-based drug treatment and case management as an alternative to prison, diverted over 2,000 people in FY14, saving the State \$36 million in prevented incarceration costs.

However, these types of successful programs have never been implemented at a scale to which they can be most effective. An informal survey we conducted earlier this year among selected Illinois counties found limited implementation of many of these programs.<sup>7</sup> Expanding "No Entry" diversion programs and practices offers the potential to not only slow the numbers of people collecting conviction records and their collateral consequences, but also to slow the numbers admitted to prison.

Rates of substance use and mental health conditions among people who are arrested and incarcerated are far higher than rates among the general public — estimates indicate they are up to eight times greater. Over the past several decades, public policies across the U.S. have overwhelmingly imposed punitive measures over restorative ones, especially for drug-related offenses. This has resulted in the United States having by far the highest incarceration rate in the world, and in state budgets being overwhelmed by corrections costs.

Here in Illinois, we have witnessed a gradual "chipping away" of the TASC program, which serves as an alternative to incarceration for qualified, non-violent individuals. For example:

- a. The eligibility criteria for TASC have been narrowed, so that certain offenses that previously qualified for alternative sentencing now make people automatically ineligible for TASC. For example, in the height of the methamphetamine crisis, offenses related to this drug were made ineligible for TASC participation — even if they were non-violent offenses that called for treatment.

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<sup>7</sup> TASC is working on a more comprehensive survey that will further illuminate exactly where and how front-end diversion programs and practices are being used across the State, as well as their impacts. We anticipate publication of survey results in 2015.

- b. Certain offenses that were previously probationable were made non-probationable, and consequently ineligible for TASC. For example, possession with intent to manufacture or deliver of 3 grams of heroin, an amount that someone with severe dependence might ingest in less than a week, became a non-probationable offense.
- c. The option to participate in the TASC program via deferred prosecution was eliminated. Currently, TASC's statutorily authorized court-based services require a guilty plea and criminal conviction in order to access community-based treatment.

Some existing diversion programs permit participation according to arbitrarily narrow offense categories. Additionally, many limit participation to first or second offenses. These limitations preclude the consistent, repetitive engagement that is often necessary to manage and achieve lasting recovery from substance use disorders, just as is the case with other chronic conditions like heart disease and diabetes. They impede participation by individuals who may be offending chronically but whose crimes are not escalating in seriousness.

To increase access to these programs and maximize their impact, statutory eligibility should be expanded to include nearly all non-violent offenses, with program acceptance then based on established screening and assessment criteria. Expanding eligibility to non-violent class 4 felony offenses will help avoid quick cycling through corrections facilities, with stays too short to offer rehabilitative services and yet long enough to aggravate criminal thinking and behavior patterns. Additionally, in line with best clinical practice, there should be numerous opportunities for individuals to succeed, rather than disqualifying them from rehabilitative options when they manifest the very conditions that call for treatment.

- 2) Maximize the potential of Medicaid expansion to achieve justice system reform by diverting more people from conviction and incarceration into community-based services, and by supporting successful reentry following incarceration.
  - Maintain investment in health and social services not covered by Medicaid.
  - Ensure access to care, care of sufficient duration, and continuity of care for all individuals under probation and parole supervision.

Without sufficient resources to offer prevention and early intervention options to people at risk for criminal justice involvement with behavioral health needs at a scale anywhere close to what is warranted, prosecutors, judges, sheriffs, and probation and parole officers have been forced to ration and prioritize access to community-based services. This has created the situation we are in — jails and prisons full of people with unmet behavioral health care needs.

The good news is that the expansion of Illinois' Medicaid program offers real and tangible possibilities for change. It is increasing access to medical and behavioral health care services for a population chronically in need of it and historically underserved. It is facilitating growth in community capacity to provide these services. It will help create conditions that are fundamental to the expansion of effective diversion programs and practices by providing the justice system somewhere constructive to divert people, where the very issues that contribute to their justice involvement can be addressed, and where they can embark on sustained recovery. It will provide people returning to their communities after leaving prisons and jails with a pathway to recovery and restored citizenship rather than to recidivism.

These are transformational changes that offer the prospects, for the first time ever, of providing many health care services at a scale to meet the need. However, they alone will not ensure coverage of all medically necessary health care services, including for example, the residential portion of inpatient substance use treatment or methadone maintenance therapy. Nor will they cover recovery support services that have been demonstrated to reduce recidivism, including housing, education, job training, and some early intervention

services. To maximize the potential of Medicaid expansion to enact criminal justice reforms, investments in these services should be maintained, and access to a full continuum of care should be ensured.

In closing, TASC remains dedicated to being a strong steward of State resources and an equally strong advocate for public health and safety, on behalf of our clients and others ensnared in the cycle of drugs and crime, the public systems with which we work, and the people of Illinois. I am glad to answer any questions you may have

**Pamela F. Rodriguez**  
President and CEO | TASC, Inc.  
1500 N. Halsted | Chicago, IL 60642  
(312) 573-8372 | [prodriguez@tasc.org](mailto:prodriguez@tasc.org)

## Statutory Diversion and Alternatives to Incarceration in Illinois

### **Drug School – 55 ILCS 130**

State's Attorney's Offices (SAOs) are authorized to apply to the Illinois Department of Human Services, Division of Alcoholism and Substance Abuse (DASA) for funding to establish or enhance drug school programs in their county (or groups of counties). In designing the drug school, the local SAO defines the eligible populations and has the authority to divert a defendant into the program as an alternative to traditional case processing. The drug school program consists of a mandated set of hours and a defined curriculum designed to present the harmful effects of drug use on the individual, family, and community, including the relationship between drug use and criminal behavior. The drug school also includes education regarding the practical consequences of conviction and continued justice involvement, including the impact on family, society and on one's vocational, educational, financial, and residential options. When an individual successfully completes the program, the charges are dropped, and successful graduates are given information on the sealing and expungement of records.

### **First Offender Probation – 720 ILCS 550/10; 720 ILCS 570/401; 720 ILCS 646/70**

Each of the major sets of drug laws (for cannabis, controlled substances, and methamphetamines) contains provisions for specialized probation available only to individuals that have been convicted of certain lower level drug crimes, but have not been previously convicted of a drug crime. The judge may impose special conditions like drug testing, medical or behavioral treatment, pursuit of vocational, and others. Upon successful completion, the proceedings are dismissed. The conviction is not treated as a conviction for purposes of future proceedings or disqualifications or disabilities imposed by law.

### **Offender Initiative Program – 730 ILCS 5/5-6-3.3**

The Offender Initiative Program allows for the diversion of eligible individuals charged with specified first-time, low-level, non-violent offenses by suspending the court proceedings while the individual participates in the program for at least one year. The judge has discretion to order involvement in addiction or mental health treatment as a condition of participation, along with additional conditions that may include drug testing, education, employment seeking, and others. Upon successful completion of the program, the case is dismissed or the court discharges the proceedings against the individual.

### **Second Chance Probation – 730 ILCS 5/5-6-3.4**

Second Chance Probation allows for the diversion of eligible individuals who have not previously participated in 1410/710 ("First Offender") probation, TASC, or the Offender Initiative Program and have been charged with certain non-violent theft- and drug-related Class 3 and 4 felonies. The judge has discretion to order involvement in addiction or mental health treatment as a condition of participation, along with additional conditions that may include drug testing, education, employment seeking, and others. While a sentence of probation is imposed, the supervision is pre-judgment, meaning that upon successful completion, the court discharges and dismisses the proceedings against the individual.

### **Probation with Designated Program (TASC) Supervision – 20 ILCS 301/40**

Certain individuals with non-violent offenses who demonstrate drug use as a factor in their criminal behavior may be eligible for probation under the supervision of the designated program (TASC). If the defendant, judge, and prosecutor agree, the individual is assessed by TASC to determine the extent of behavioral health need and its relationship to the crime. If found acceptable, the individual is convicted and sentenced to probation, with TASC serving as specialized case manager, facilitating access to community-based treatment and other services alongside traditional probation conditions, which are monitored by a probation officer. TASC regularly updates probation and the court as to the individual's progress and compliance with the treatment plan. Petitions to the court for dismissal of charges may be made within 30 days of acceptance into the program; upon successful program completion, the court may decide to grant a petition.

**Specialty/Problem-Solving Courts – 730 ILCS 166; 730 ILCS 167; 730 ILCS 168**

The Chief Judge of each judicial circuit *must* establish a drug court program in that circuit, and *may* establish mental health and veterans courts. If the prosecutor agrees, and the defendant does not meet certain criteria for ineligibility (e.g., crime of violence, denial of need, prior participation in a similar court, etc.), the court will order a screening and assessment and the court team will develop a treatment regimen alongside other conditions that may include fines, restitution, and other requirements as deemed appropriate. Upon successful completion, the judge may dismiss the original charges or discharge the proceedings.

**Adult Redeploy Illinois – 730 ILCS 190/20**

Adult Redeploy Illinois allocates State funds to local jurisdictions that establish a process to assess offenders and provide a continuum of locally based sanctions and treatment alternatives for those who would be incarcerated in a State facility if those local services and sanctions did not exist. Each participating county or circuit creates a local plan describing how it will protect public safety and reduce the county or circuit's utilization of incarceration in State facilities or local county jails by the creation or expansion of individualized services or programs. Based on the local plan, the county or circuit enters into an agreement with the Adult Redeploy Oversight Board to reduce the number of commitments to State correctional facilities from that county or circuit, excluding those with violent offenses, by 25 percent. In return, the county or circuit receives funds to redeploy for local programming for offenders who would otherwise be incarcerated such as management and supervision, electronic monitoring, and drug testing.



# ADULT REDEPLOY ILLINOIS

## Testimony to the Joint Criminal Justice Reform Committee Tuesday, October 14, 2014

Hello, my name is Mary Ann Dyar and I am the Program Director for Adult Redeploy Illinois. To my right is Lindsey LaPointe, Program Manager. Thank you for having us here today to testify, and special thanks to those members and staff who attended the September 29<sup>th</sup> site visit to the DuPage County Adult Redeploy Illinois program.

Today, I want to tell you about Adult Redeploy Illinois' data-driven, evidence-based, results-oriented approach to criminal justice reform, and recommend that this Joint Committee broaden this approach to tackle the larger issues at the heart of your deliberations. You have my written testimony before you; I will be addressing the highlights in my time allotted.

### Why ARI was formed

Adult Redeploy Illinois (ARI) was created by the Crime Reduction Act of 2009 to expand alternatives to incarceration for the large numbers of non-violent offenders clogging up Illinois' criminal justice system – more than 13,000/year, according to an analysis of Illinois Department of Corrections (IDOC) admissions data. Many of these offenders have substance abuse and mental health issues underlying their criminal behavior. They go into prison for lengths of stay not long enough for meaningful incapacitation or rehabilitation. They often come out worse than they went in, only to return within months or years. A growing body of research shows that non-violent offenders are more effectively and less expensively supervised in the community.

### What ARI does

Adult Redeploy Illinois is based on the successful juvenile model, and is an example of the national best practice "performance incentive funding." Performance incentive funding intends to realign incentives in the criminal justice system to support more cost-effective, "smart on crime" responses. Through a state grant program, Adult Redeploy Illinois incentivizes a reduction in the number of non-violent offenders sent to prison and an investment in evidence-based practices proven by research to reduce recidivism. Local jurisdictions apply for grants to expand community capacity to supervise non-violent offenders more cost-effectively with evidence-based interventions, and in exchange for the funds agree to reduce by 25% the number they send to IDOC from their target population.

Adult Redeploy Illinois is governed by an Oversight Board, which establishes policies and approves all grants. The Oversight Board is co-chaired by the director of the Department of Corrections and the Secretary of the Department of Human Services and includes members representing different stages of the criminal justice system and the community at-large.

### Who ARI sites are

Adult Redeploy Illinois started with funding five pilot sites in January 2011 and now has 18 sites operating 19 diversion programs covering 34 counties across the state. Adult Redeploy Illinois emphasizes local control and design, with local jurisdictions determining their target population and target interventions. Approximately half of the sites use ARI funds to start and expand

problem-solving courts (drug courts, mental health courts, veterans courts). The other sites use funds for intensive probation supervision programs that incorporate treatment services and cognitive behavioral therapy.

While each site is unique (according to the specific conditions of the area and the priorities of local stakeholders), they all share key components that come from the Crime Reduction Act including:

- Validated risk, assets and needs assessment (to determine who safely can be diverted and what are their underlying criminogenic needs).
- Individualized case planning (made possible by lower caseloads, better trained staff and cross-disciplinary teams).
- Evidence-based practices (sites report using over 50 evidence-based practices including cognitive behavioral therapy, trauma-informed therapy, recovery coaching).
- Performance measurement (mandated by the Crime Reduction Act, sites must collect data from “day one” to demonstrate the effectiveness of ARI investments – there are up to 80 data elements on demographics, criminal history and progress in program).
- Community involvement (recently added in order to meet our mission of supporting successful reintegration into the community. Examples include robust community service projects and community restorative boards).

#### What impact ARI has

Since the start of the program, nearly 1,800 non-violent offenders have been diverted from prison by ARI sites, roughly equivalent to 15½ IDOC housing units. The average ARI intervention costs \$4,400, compared to a year in prison costing \$21,500. From January 2011 through June 2014, an estimated \$36.6 million has been saved by not sending these individuals to prison. Currently with 18 sites in full operation, in a given quarter, sites are supervising 1,200 people, less than one-tenth of the ARI-eligible population going into prison. With more counties eager to join the ARI site network, we are poised to reach more of this population given additional resources.

Initially started with federal funds in 2011, Adult Redeploy Illinois received a state appropriation of \$2 million in State Fiscal Year 2013. In SFY14, ARI's state appropriation was increased to \$7 million, which made it possible to nearly double the size of the program and bring on eight new sites. This year's flat appropriation, spread over a larger number of sites operating a full 12 months, led to an across-the-board cut in grant amounts to sites.

With additional funding, we would like to be able to restore cuts to existing sites (which have impacted their ability to implement evidence-based practices with fidelity), and bring on four sites representing five counties that completed planning processes and are ready to implement (Grundy, Kankakee and Will counties, and Monroe and Randolph counties in the 20<sup>th</sup> Judicial Circuit). In addition, there are at least twelve more prospects at varying stages of readiness to come on-board. Of note, Will County ranks second in Illinois counties committing non-violent ARI-eligible offenders to IDOC. Of the top 10 committing counties, Adult Redeploy Illinois has programs or planning grants in all but one.



Adult Redeploy Illinois has a valuable statewide perspective to assess and measure what is working in community corrections across the state, in rural, urban and suburban settings. We consider our sites “laboratories” and often facilitate the sharing of best practices among sites (e.g., Macon County’s Community Restorative Board, DuPage County’s cognitive-based Employment Retention Program, 2<sup>nd</sup> Judicial Circuit’s traveling counselors), such as through an annual All-Sites Summit, as well as contributing information to the broader reform discussion.

#### What the Joint Committee can do

With our data-driven, evidence-based, results-oriented approach to criminal justice reform, we have been “chipping away” at rising corrections costs and prison over-crowding at the post-conviction, pre-incarceration stage. However, we believe that our model and what we have learned can be applied across different intercepts in the criminal justice system to create permanent, positive change.

The unique position of this high-profile, bi-partisan, bi-cameral committee AND the point-in-time where Illinois is not only faced with daunting challenges but also has a number of extremely promising initiatives getting off the ground, makes this the time and you the leaders to propose more comprehensive solutions using an approach we know that works.

#### Recommendation

Our recommendation is for this Joint Committee to define a meaningful goal (or goals) for the state to reduce its reliance on incarceration and come up with a plan to invest in the community corrections infrastructure all along the spectrum of justice involvement (from police to reentry) to meet that goal, leading to permanent change and permanent savings. These steps are:

1. Define the goal –
  - ARI example: The Crime Reduction Act established the goal of a 25% reduction in admissions to IDOC from a clearly defined population by sites.
  - This committee is a well-positioned body to recommend an appropriate and meaningful goal for the state such as:
    - Prison population reduction
    - Cost reduction
    - Recidivism reduction
    - Investment in prevention rather than punishment
    - Realignment of sentencing policies and structures to reflect what evolving public opinion favoring effective sentencing, not harsher sentencing.
2. Assemble stakeholders and analyze data –
  - ARI example: The ARI local planning process involves convening stakeholders from across the criminal justice and behavioral health systems to look at the data to determine how to reach the goal of a reduction in non-violent admissions to IDOC.
  - This committee should authorize the formation of a working group that is across jurisdictions and disciplines to generate recommendations based on an analysis of data; review of research on what works; and budgetary analysis of how to achieve the stated goal(s), what it will cost, and how much time it will take.
    - Budget staff from each caucus and OMB; local entity budgeting experts.



# ADULT REDEPLOY ILLINOIS

**GOAL: To safely divert non-violent offenders from prison to more effective and less expensive community-based supervision and services by providing local funding and technical assistance.**

*Adult Redeploy Illinois sites use grant funds to design and implement local programs that address offenders' risks and needs and leverage their assets (family support, employment) to improve public safety and offender outcomes.*

### Significant positive impact:

**18** sites with **19** diversion programs across **34** counties and **5** planning grant sites

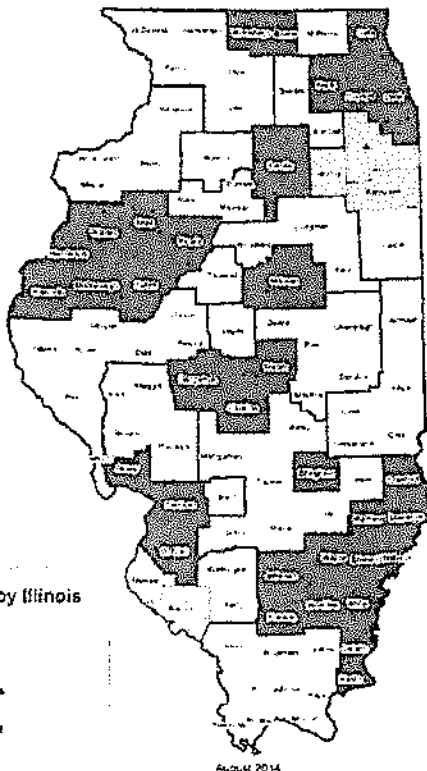
**1,797** total diverted (January 2011-June 2014)

**\$36.6 million** total saved (prison per capita cost less average ARI cost)

**1,206** served last quarter (April-June 2014)

**\$5 million** saved last quarter (April-June 2014)

### Adult Redeploy Illinois Sites



### Key Components

- Assessment of risk, needs and assets
- Evidence-based and promising practices
- Performance measurement and evaluation
- Annual report to Governor and General Assembly

### Local Models

- 9 Problem-solving courts
  - 6 Drug courts
  - 2 Mental health courts (1 with veterans treatment track)
  - 1 other (ACT Court)
- 10 Intensive probation supervision programs with services (1 HOPE probation)

### Results

- Reduced prison over-crowding
- Lower costs to taxpayers
- End to the expensive and vicious cycle of crime and incarceration

### LESS EXPENSIVE

*Cost of a year in prison (FY12): \$21,500/person, Cost of average ARI intervention: \$4,400/person*

### MORE EFFECTIVE

*Evidence-based practices utilized by Adult Redeploy Illinois pilot sites can reduce recidivism up to 20%.*

For more information, visit the Adult Redeploy Illinois web site at: [www.icjia.org/redeploy](http://www.icjia.org/redeploy)

## **STATE AFFAIRS: Getting smarter on prison sentences - The Times: Columnists**

JIM NOWLAN, State Affairs | Posted: Thursday, September 4, 2014 10:21 pm

The U.S. has 5 percent of the world's population and 25 percent of its prison inmates, according to Mary Ann Dyar, executive director of an Illinois prison diversion program.

We need to get smarter on whom we send to prison and for how long.

"I probably sent away 1,000 or more people for drug crimes," recalls former federal judge Mike McCuskey of his 16 years on the U.S. court bench in Central Illinois. In effect, he filled up a federal prison.

I had dinner recently with old friend McCuskey, now retired from the federal bench and back serving as a state circuit court judge in Peoria.

McCuskey is highly critical of the federal "mandatory minimum" sentences that take away the discretion of judges to fit the sentence to the crime.

"The system of mandatory minimum sentences was set up in 1984 to be draconian," says McCuskey. "The theory was that if we punish them severely, they won't do it (deal drugs)."

This has been proved wrong by experience, the judge adds: "If we take a minor drug dealer off the street corner, he is replaced the next day."

Since 1980, federal prison inmate numbers have gone up 700 percent, to 215,000, about half of whom are in prison for drug-related crimes.

"We are filling up prisons with long-term inmates at \$38,000 per year, McCuskey observes.

For 150 years, Illinois had no federal prisons, says McCuskey: "Now we have filled up prisons in South Pekin and Greenville and soon we'll be filling up a new one in Thomson."

"The system is broken," McCuskey says, and the mandatory minimum sentences are largely to blame.

"The federal courts were not invented to give sentences two to three times higher than in state courts."

"For example, if you're convicted of three, even small, drug distributions, you're sentenced to life imprisonment under the mandatory minimum guidelines, and the judge is not allowed to impose a sentence below that."

McCuskey is strongly opposed to legalizing drugs, yet he thinks that putting away minor offenders for long sentences has proved costly to taxpayers and ineffective.

# JUVENILE JUSTICE INITIATIVE

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518 DAVIS, SUITE 211  
EVANSTON, IL 60201  
847.864.1567

WWW.JJUSTICE.ORG

## Juveniles in the Adult Criminal Justice System

**Testimony of the Juvenile Justice Initiative before the Joint Criminal Justice Reform  
Committee**  
October 14, 2014  
Chicago, IL

Thank you to the members of the Joint Criminal Justice Reform Committee for including the topic of juveniles in the adult criminal justice system in your comprehensive consideration of sentencing reforms for Illinois.

My name is Elizabeth Clarke, and I am the President of the Juvenile Justice Initiative of Illinois. The Juvenile Justice Initiative is a nonprofit, statewide advocacy organization focused on reducing reliance on incarceration while shifting limited resources to community-based alternatives, and on reducing the harm by keeping youth in the juvenile system. We are privately funded – we take no government funding. Among the reforms we have advanced are Redeploy Illinois, Raising the Age of Juvenile Court to include seventeen-year-olds, eliminating “automatic” adult trial of juveniles charged with drug offenses, and ensuring incarceration is the least restrictive alternative.

Illinois is the home of the world’s first – the world’s first – juvenile court, and thus is a leader in juvenile justice reforms. Many of these reforms on the juvenile side have been highly successful and have implications for adult sentencing reforms.

Juveniles – youth under the age of 18 – are not all tried in the juvenile court in Illinois. A few youth annually are “automatically” considered adults based on the charge and their age at the time of arrest.

These children who are prosecuted in the adult court are frequently overlooked. They do not figure prominently in government reports on the justice system – juveniles by age, but adults by charge, they generally fall between the cracks and rarely get more than a short mention in any justice system analysis or report. However, the Juvenile Justice Initiative has consistently tracked the children prosecuted in the adult court, and recently released a review of three years of children under the age of 18 who were detained while being “automatically” prosecuted in the adult court in Cook County.

Only one white boy was among the 257 Cook County children charged with crimes requiring an automatic transfer to adult court in a recent three-year study period, and most of those children live in predominantly minority communities in the south and west sides of Chicago.

Racial disparities are not the only problem. More than half the children end up convicted of lesser offenses – offenses that would not have triggered adult trial if charged appropriately at the outset. These poor outcomes and racial disparities have been consistently demonstrated in studies over the 30-year lifetime of these automatic transfer policies.

In 1982, Illinois enacted the automatic transfer law, which removed the ability of a juvenile court judge to consider each case individually and eliminated any consideration of factors including background, degree of participation in the offense, mental and physical health, educational issues, and availability of resources unique to juvenile court for rehabilitation. The “automatic” transfer law provided that juveniles, age 15 and older and charged with certain offenses (murder, armed robbery with a firearm, sex offenses, etc) would be automatically prosecuted in adult criminal court upon the mere filing of the charge. Thus, within hours/days of arrest, juveniles were transformed into adults by the filing of a charge.

The JJI looked into the impact of these automatic transfer provisions. The findings of the JJI research into the 257 automatic transfer cases in Cook County from 2010 through 2012 (children under the age of 18, held in the juvenile detention center but tried in the adult criminal court) included the following:

#### OVERLY BROAD

- The majority of cases “automatically” prosecuted in adult court ended up convicted of a lesser offense – an offense that could not have triggered transfer to the adult criminal court. The three year study revealed that **54% of all convictions were for lesser offenses and another 4% were found not guilty or nolle.**

#### NO COURT REVIEW AND NO TRIAL – NO CONSIDERATION OF YOUTH

- The vast majority (**90%**) of automatic transfer cases result in guilty pleas. Thus, at no point in the system is there any opportunity to have an individual hearing taking into consideration immaturity – the young age of the juvenile, his/her potential for rehabilitation, his/her mental health, educational background, etc.

#### DISCRIMINATORY

- **Automatic transfer disproportionately impacts children of color.** In three years of “automatic” trial of children in adult court in Cook County, all except one were children of color.

These findings are consistent with the findings of over thirty years of “automatic” transfer to adult court. Prior to 1982 when juvenile judges made the decision to transfer on an individual basis reviewing all the relevant factors, the profile of the transferred youth was sixteen or older charged with murder. Upon passage of the automatic transfer law, the number of youth tried in adult court nearly doubled and the profile shifted to those charged

with armed robbery with a firearm. Ten years later, Deborah Nelson in the Chicago Sun-Times reported an overwhelming disproportionate impact on children of color and poor outcomes for public safety from the “automatic” transfer provisions. The addition of drug offenses to the automatic transfer list substantially increased the number of transfers with particularly poor outcomes, convincing this legislature to remove drug offenses from the list of automatic transfers. A follow-up study on the impact of the removal of drug transfers by the Juvenile Justice Initiative demonstrated successful outcomes with no increase in juvenile court prosecutions and no detrimental impact on public safety – this report is posted on our website. The study revealed that the removal of drug offenses from the transfer category caused a two-thirds drop in automatic transfers in Cook County (from 361 in 2003 to 127 in 2005-2006), with no adverse impact on public safety.

The Illinois Supreme Court’s Special Commission on the Administration of Justice reported in December of 1993 that an increasing number of juveniles were transferred to criminal court over the past ten years without a corresponding deterrent effect, and with unintended negative consequences such as an overwhelmingly disproportionate impact upon African-Americans and other minorities. The Commission subsequently recommended in 1995 that the Illinois Legislature consider legislative alternatives to “automatic” transfer, and eliminate mandatory minimum sentences for juveniles convicted and sentenced in adult criminal court.

“Automatic” transfers are not the only means to try a child as an adult. Illinois has what the Chicago Daily Law Bulletin recently noted is a confusing mix of provisions to automatically, mandatorily, or presumptively send a child under 18 to adult court for prosecution. A full list of all the transfer provisions in this state is listed on page 19 of the attached report on Automatic Adult Prosecution of Youth by JJI. The complexity of these laws is staggering. It would be difficult for any lawyer in this state to accurately state all the mechanisms that trigger adult prosecution of a child – it is impossible for any child under the age of 18 to be aware of all the ramifications of a statement made to the police. Yet, children are routinely questioned by law enforcement without an attorney – and then “automatically” prosecuted in adult criminal court based on their statement.

One transfer mechanism stands out. Illinois has long had one of the broadest judicial transfer laws in the nation – the ability for a juvenile court judge to send a case to adult court for any offense involving any child age 13 or older. Any offense – any child, age 13 or older. Under the statute, the juvenile court judge reviews the age and circumstances of the charged offense, along with the history of the youth, including previous criminal conduct, previous history of abuse or neglect, and any mental health, physical or educational history of the minor. The judge then weighs the advantages of treatment within the juvenile system versus the security of the public, and decides – on an individual basis – whether transfer to adult court is appropriate.

This judicial – or discretionary – transfer mechanism is more than adequate to protect the public while ensuring that the most effective disposition is used in each case. Society has a public interest in utilizing adult court prosecution as a last resort – national research by the

Centers for Disease Control establishes that children tried in the adult court are 38% more likely to reoffend than similarly situated youth tried in the juvenile court.

Fundamentally, justice means that decisions are made on an individual basis and that punishment is proportionate to the offending conduct.

**Extended Juvenile Jurisdiction with adult sentence another juvenile court option –**

Transfer to adult court is not the only tool in the juvenile court – Section 405/5-810 sets out an Extended Jurisdiction for certain juveniles – age 13 or older charged with any felony offense – if designated an EJJ following a hearing reviewing all relevant factors, and then found guilty, the juvenile court can impose a juvenile sentence and a suspended adult sentence – upon successful completion of the juvenile sentence, the adult sentence is vacated. If the juvenile sentence is not successfully completed, the adult sentence may be imposed.

The prosecution can file for EJJ, and if denied then can file to transfer the juvenile to adult court – two bites at the apple. These provisions are more than sufficient to ensure that juveniles charged with violent offenses are prosecuted to the full extent of the law – while also ensuring that the most effective disposition is imposed to reduce the potential for future reoffending.

We urge three legislative reforms for children prosecuted in the adult court –

- **Ensure the decision to prosecute a child under the age of 18 in the adult court is made on an individual basis after reviewing all relevant information.** *Eliminate presumptive, mandatory and “automatic” transfer provisions, leaving in place the discretionary transfer provisions that already allow Juvenile Court Judges to make the critical decision whether to try a child under the age of 18 in adult criminal court. Juvenile court judges are familiar with the resources available in juvenile court for rehabilitation, and can best balance the interests in public safety and punishment versus the public’s interest in rehabilitating a young life. . Prosecutors and juvenile judges also have the option of imposing a suspended adult sentence through EJJ provisions.*
- **Provide youth at risk of adult prosecution with counsel during police encounters.** *The Illinois transfer provisions have become so complex that legal counsel is essential to ensure juveniles understand the consequences of statements made to law enforcement.*
- **Eliminate mandatory minimum sentences for children under the age of 18 who are convicted in adult court.** *This follows the recommendations of the Solovy Commission back in 1995 to ensure individualized and proportionate justice for children prosecuted in the adult court.*

There is good reason to use the juvenile court and juvenile treatment options, as these have proven remarkably effective over the past three decades – while adult punishment has proven extremely costly and ineffective.

Consider this –

Back in the late 1970's our adult prison population was around 10,000 .....today the adult prison population has grown to under 50,000. This is an unprecedented growth in prison cells, at great cost to taxpayers and with no impact on deterrence (according to the recent National Academy of Sciences report on the Causes and Consequences of Incarceration).

The juvenile prison population, on the other hand, hovered in the low 1000's (1245 in 1987, according to the IL Blue Book), while today we have decreased our juvenile prison population to 719 (as of 9/30/14, according to IDJJ) while increasing the age of juvenile court to 18 and expanding the array of community based alternatives to incarceration through Redeploy Illinois. [We do not mean to imply that the juvenile prison system is "right-sized" – there are still about 30% of the population confined for low level felony and misdemeanor offenses, and presumably a large percentage are incarcerated for technical probation and parole violations, so we can still do better – but as a state, we have made a good beginning.]

So, what can we learn from the success of the juvenile reforms?

#### **Lessons from Juvenile Success:**

- **Fiscal incentives and reinvestment:** Redeploy Illinois and the Juvenile Detention Alternatives Initiative have both demonstrated success in fiscal reinvestment to shift limited resources from incarceration and pre-trial detention to community based alternatives. The replication of Juvenile Redeploy Illinois on the adult side is evidence that this Legislature is taking that message seriously.

Two other juvenile mechanisms bear consideration for replication in the adult criminal sentencing system.

- **Police diversion authority:** One is the broad ability of the police to divert cases at the stationhouse. Unlike the adult system where police can send a case to court or send an accused offender home, in the juvenile system the police have wide-ranging discretion to informally handle allegations of misconduct within the station-house. Under provisions describing Station Adjustments (405/5-301) police in the juvenile system have wide authority to divert cases by releasing a minor with conditions ranging from community service, restitution, community mediation, teen court, attending school, abiding by certain restrictions, and abiding by curfew. This broad law enforcement diversion authority proved highly successful in diverting the nearly 16,000 seventeen year olds arrested in Illinois annually – raising the age to bring seventeen year old misdemeanants back to juvenile court was accomplished without a burden on the juvenile court – in fact, due to diversion of the low level offenses, both pre-trial detention and post-trial incarceration numbers declined after raising the age. Replicating police diversion authority in the adult criminal justice system – especially for Young Adults age 18-21 where 60% of the arrests are misdemeanors – could have successful outcomes for society in public safety, for taxpayers in lower jail costs, and for individuals in conflict with the law by giving them sanctions along with resources for a second chance.



- **Restorative Justice:** The other is the growing use of mediation and related practices within a restorative justice framework to divert, as well as to adjudicate and sentence persons in conflict with the law. Recent news articles document the use of peer juries in Winnebago County and in St. Clair County, as well as the success of restorative justice practices in Chicago in diversion from school based discipline incidents that were previously sent to juvenile court. This is a world-wide movement away from punishment and towards restoring justice by repairing the harm to the community along with equipping the offender with the skills and resources necessary to become a productive citizen. Northern Ireland adopted Restorative Justice as its juvenile justice model in the early 2000's, as part of the Good Friday agreement following the end of the "troubles" in Ireland – and has nearly eliminated incarceration of juveniles while expanding public safety and public confidence in the juvenile justice system. Community mediation is part of the Illinois Juvenile Court Act (405/5-310) and restorative justice is, along with rehabilitation, the underlying philosophy of juvenile court. Replication of successful juvenile restorative justice practices in adult court would enhance community safety while ensuring offenders receive the skills and services necessary to become law-abiding citizens.
- **Replicate diversion and restorative justice options for Young Adults:** Of particular concern is the Young Adult population, age 18-21. The Juvenile Justice Initiative examined arrests of the Young Adult population in Illinois and found:
  - **Over 60% misdemeanors** - Over sixty percent of all the young adult arrests were for misdemeanor offenses. Less than 3% were Class X and murder arrests.
  - **Criminal offending falls off beginning at age 20** – arrests peaked at age twenty and decreased from that point on.

**This Young Adult population could particularly benefit from replication of successful juvenile police diversion options.**

Addressing the Young Adult Population is a growing trend worldwide.

The United Kingdom has explored replicating juvenile diversion and sentencing options for the Young Adult population, and its conclusions can be found at <http://www.t2a.org.uk>. Their website notes:

The T2A Pathway builds on the learning from three previous , which ran between 2009 and 2013, working with more than 1,000 young adults. They demonstrated innovative approaches for young adults involved with the probation service, reducing offending, breach rates and improving social outcomes.

Germany has successfully utilized juvenile sentences for young adults – especially in cases involving violent offenses – since the 1950's.

With your leave, we will expand on this Young Adult subject with a detailed written report.

Testimony remarks provided to the House Senate Joint Criminal Justice Reform Committee on October 14, 2014

Testifying for the Division of Mental Health

Dr. Anderson Freeman, Deputy Director for Forensic Services

Department of Human Services/Division of Mental Health

### Testimony

(Forensic Overview)

DMH forensic program has provided statutory services for Adults and Juveniles individuals in Unfit to Stand Trial (UST) and Not Guilty by Reason of Insanity (NGRI) legal status throughout the history of the Division of Mental Health. In 1999 DMH also begin providing statutorily mandated services for individuals under the 1997 Sexually Violent Persons Act (SVP). Forensic services include mental health inpatient and outpatient, evaluation and treatment, fitness restoration for USTs, community re-integration for NGRIs, and Specialized Sex Offender Treatment at the Treatment and Detention Facility (TDF) in Rushville, Illinois. In FY14 DMH admitted 661 individuals to inpatient care that was remanded from Illinois circuit courts after their adjudication as UST (596) and NGRI (65). 90% of these adjudications were unfit to stand trial and 30% of those found unfit had misdemeanor cases.

In addition 41 individuals were admitted to the Sexually Violent Person's Inpatient Program after SVP screening in IDOC and probable cause hearings. This program admits an average of 34 individuals a year. Including the SVP program, 70% of the DMH inpatient capacity is forensic. Forensic services also provides community services and monitoring for 117 conditionally releases NGRI consumers and intensive community supervision for 32 conditionally released individuals from the SVP program.

The major challenges for these populations include....

- Maintaining adequate inpatient bed capacity for new forensic UST and NGRI referrals.
- Expanding capacity for the SVP population that has grown to 547 residents at the Treatment and Detention Facility, and ...
- Developing residential resources to facilitate the re-integration of individuals found NGRI into the community. The average length of hospital stay of NGRIs is 4 years predominantly due to a lack of community residential resources, and ...

- Meeting the special needs of female forensic patients who exhibit high levels of aggression and self-injurious behaviors due to past histories of severe trauma and childhood neglect.

To address capacity issues that led to severe jail waiting lists of over 100 remanded individuals, DMH implemented a Plan of Corrections in FY14. The plan expanded forensic bed capacity at two DMH hospitals by 69 beds and provided an outpatient UST treatment resource through the Chicago School of Professional Psychology. In addition the plan included recent legislation successfully passed in SB2801. The legislation assists the DMH forensic service process by .....

- Allowing DMH to use its' full secure bed capacity for forensic referrals without a special court order.
- Limiting the inpatient forensic treatment period for individuals with misdemeanor charges to the time they would have served if convicted.
- Providing legislative language to support criminal courts if they choose to establish procedures to rule on petitions for involuntary medication.

#### (Non-Statutory Justice Related Involvement)

Forensic leadership has been involved in a number of non-statutory initiatives that have impacted the criminal justice system. In 2003 the federally funded Community Reintegration Collaborative initiative helped to provide community services to justice involved consumers in Cook County and the training of 600 Crisis Intervention Team (CIT) police officers in the Chicago Police Department.

Another initiative which has become a part of DMH forensic programming is the Jail Data Link Program that operates in 9 County Jails across Illinois. This program identifies individuals with histories of treatment in DMH that are detained in jail and helps to facilitate linkage to mental health services upon release. In 2014 8,000 individuals were identified as needing linkage to mental health services, but only 1100 were actually linked to initial appointments with community mental health providers.

Forensic services have conducted extensive regional planning meetings for justice and mental health issues in 2007 and 2013. These statewide planning meetings facilitated judiciary and stakeholder collaboration to address forensic and mental and justice issues. A major outcome of these efforts has been the 2012 implementation of the Illinois Center of Excellence for Behavioral Health and Justice. The COE is located at the University of Illinois in Rockford and is the primary agency in Illinois that provides technical assistance to problem solving courts including those involved in the Adult Re-deploy Initiative.

DMH interphases with the IDOC on sharing of mental health information through our Jail Data Link program. An agreement has been signed between DMH and IDOC to share DMH mental health treatment information with IDOC clinical staff on IDOC inmates with histories of DMH treatment.

DMH also admits individuals discharged or paroled from IDOC that meet standards for involuntary civil commitment. Although involuntary civil commitment is available for releases, there is systemized linkage protocol for IDOC parolees and releases that need community mental health care.

Other initiatives that are currently being implemented include...

- Training of staff in evidenced based practices that are relevant to the justice population.
- Training of justice involved consumer on how to access benefits under ACA.
- Working on a joint proposal with Treatment Alternatives for Safe Communities (TASC) to assist downstate county jails with pre-enrolling detainees into Medicaid.
- Working with providers and justice system stakeholders to assure that consumers under the Williams & Colbert Consent decree are reconnected with community services if they become justice involved.

Going forward DMH/DHS Forensic Services Program identifies 5 areas of challenge that this committee should be aware of. We are asking for specific legislative support in the fifth listed area.

1). The expansion of Jail Data Link (JDL) to all county jails with a significant number of detainees with serious mental illness should be considered to help facilitate linkage of these individuals to community mental health services. Working collaboratively with the Illinois Sheriff's Association to identify county jails with significant numbers of detainees with serious Illinois, reviewing existing linkage projects to determine areas of improvement, and identifying mechanisms for funding the case management and other services needed to make linkages successful would be important to increasing the rate at which individuals identified by JDL are linked to services.

2). A statewide medication formulary is needed to assure consistency of access to psychotropic medications for justice involved populations. The goal of the statewide formulary would be to assure that medication formularies in jails and prisons are consistent with the formularies used in DMH hospitals. This provides continuity of treatment across systems and better mental health care for individuals while they are detained or incarcerated. This effort would involve the Office of Community and Program Support (OCAPS).

3). Increasing the availability and access to community residential services that can provide recovery based care for individuals in NGRI and Extended UST status who no longer need hospital level of care is critical. Currently, DMH hospitals provide care to over 400 individuals in NGRI or Extended UST status. Their average length of hospital stay is 4 years. This care at over \$200,000 per patient annually is costly and many of these individuals can be served more appropriately in less restrictive and more cost effective recovery based community residential programs. A residential program that can serve up to 8 individuals can be supported at the same cost of one year of hospital care for 1 DMH inpatient.

4). Expanded treatment and residential services for juvenile females in a forensic status whose mental disorders manifest severe self-injury and aggression is a critical need. The needs of is population should be a priority for mental health and juvenile justice policy making and program leadership.

5). legislative support is needed to help address the diversion of individuals found unfit with misdemeanor charges to inpatient and community mental health care based on a DMH evaluation of risk and service need. As stated in the DMH testimony, over 30% (200 individuals yearly) of forensic referrals for individuals that are unfit for trial have misdemeanor charges. We are asking that the committee consider supporting language in the UST forensic statute that would allow DMH to evaluate misdemeanants for civil outpatient or inpatient services and recommend a disposition to the court. The court would then have an option of dismissing or suspending criminal charges based on diversion to mental health treatment options.

Adult Justice System Components	DIIS/DMH Programs/ Services	Population within System Component	% with Mental Illness	Service Gaps/Needs	Comments
DMH Forensic Services - Unfit to Stand Trial (UST)	Inpatient and Outpatient mental health & fitness evaluation restoration services	363 Inpatient 47 Outpatient	all	-Chronic Waiting list for DMH hospital placements. -High percentage of misdemeanor cases.	Individuals referred to DHS by county court jurisdictions after being determined to be unfit to continue their trial process. 550 referrals annually. Average inpatient length of stay is 4 months. 30% have misdemeanor charges.
DMH Forensic Services - Not Guilty by Reason of Insanity (NGRI)	Inpatient and Outpatient mental health services & Community Re-integration.	364 Inpatient 116 Outpatient	all	Costly extended DMH inpatient stays due to discharge barriers and lack of community residential funding.	Individuals referred to DHS by county court jurisdictions after being determined to be Not-Guilty-by-Reason of Insanity. 50 referrals annually. Average inpatient length of stay is 4 years. 116 on conditional release status in community.
DMH Forensic Services - Sexually Violent Person (SVP)	-Inpatient and Outpatient Sex offender Specific Evaluation & Treatment Services -Intense Community Supervision. - Maximum security inpatient facility.	548 Inpatient 28 Intensive Outpatient	all	Reductions in mental health funding have suspended opening of 96 expansion beds to address overcrowding issue.	-17 million phase I expansion facility does not have funding to operate with DMH budget cuts. -400 special evaluations completed annually. -SVP Medical Director is member of Illinois Sex Offender Management Board that determines standards for evaluation and treatment/certification of practitioners.
IDOC	Involuntary Commitment Admissions to DMH hospitals	48,700	22%	20 + Admissions have an impact on DMH maximum security hospital bed capacity.	Inmates meeting standards for involuntary mental health commitment are admitted to Chester Maximum Security hospital or screened for admission to other DMH hospitals.
IDOC	Jail Data Link Program.	48,700	22%	Individuals identified through Data link will need resources for community linkage upon release from IDOC.	Agreement has been signed between DMH and IDOC to establish IDOC Data Link program that identifies IDOC inmates with DMH treatment histories. Currently Beta testing cross match between prison census and DMH open & closed cases
IDOC (Parole)	No major program initiatives. A limited number of DMH and DASA funded agencies provide services to parolees.	26,000	No Data	Mental Health Service System is inadequate for parolees. Need special MH parole service.	Parole officers with large caseloads are challenged when their parolee has mental illness.
County Jails	Jail Data Link Program	20,000	14 to 16%	Lack of linkage and necessary community services for detainees identified through Jail Data Link.	Jail Data Link: Daily cross match of census in Cook, Will, Peoria, Jefferson, Rock Island, St Clair, Winnebago, Macon, Mclean County Jails with past or open cases with DMH. Participating Jails had 104000 admissions in FY2014 and 14,400 have history of DMH treatment & 8000 are eligible for linkage. Only 100 linked
Adult Probation	Cook County Mental Health Adult Probation	700 probationers in Cook County	All	Monitoring and supervision of probationers with mental illness is a challenge in the absence of robust community services.	DMH funds Cook County Probation Program for probationers with mental illness.
Illinois Criminal Courts	DMH and DASA Funded Providers collaborate with 86 Problem Solving Courts	Estimate 700 Individuals served statewide	100% (behavioral health disorders, MH and SA)	Court monitoring and supervision of probationers with mental illness is a challenge in the absence of robust community services.	Problem Solving Courts include mental health, drug, gender specific, and veterans courts.
Other DMH Initiative					
Technical Assistance	Illinois Center of Excellence for Behavioral Health and Justice. DMH Forensic Deputy is on Board of Directors	Community based Stakeholders.		Limited Staff of two for Statewide focus.	The ICOEBHJ provides technical assistance, consultation, information dissemination to problem solving courts and other entities.

# Automatic Adult Prosecution of Children in Cook County, Illinois. 2010-2012

Over 30 years of poor outcomes from “automatic” adult prosecution of children.

*A Special Report from the Juvenile Justice Initiative.*

April 2014

Juvenile Justice Initiative  
518 Davis Street, Ste. 211  
Evanston, Illinois 60201  
847-864-1567  
[www.jjustice.org](http://www.jjustice.org)

Kanako Ishida, Policy Research Analyst  
Elizabeth Clarke, President  
David Reed, Board Member  
Juvenile Justice Initiative

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The Juvenile Justice Initiative is a non-profit, non-partisan statewide advocacy organization working to transform the juvenile justice system in Illinois. We advocate to reduce reliance on incarceration, to enhance fairness for all youth and to develop a comprehensive continuum of community-based resources throughout the state.

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# Automatic Adult Prosecution of Children in Cook County, IL, 2010-2012

## EXECUTIVE SUMMARY

In 1982, Illinois removed juvenile court approval of the critical decision to try a child under age 17<sup>2</sup> as an adult. Under the "automatic transfer" law, children age 15 or 16 charged with certain felony offenses are "automatically" tried and sentenced in adult court. In other words, the legislature removed the ability of a juvenile court judge to consider each case individually, and eliminated any consideration of factors including background, degree of participation in the offense, mental and physical health, educational issues, and availability of resources unique to juvenile court for rehabilitation. Instead, within hours/days, upon arrest and charge, the child was stuck in adult court. If convicted, a child can receive a lengthy adult sentence or end up with a criminal record that can impact their ability to go to school, get a job and be a productive member of their community.

**More than 30 years' of studies have consistently demonstrated that categorical treatment of children as adults prevents rehabilitation and positive development, fails to protect public safety and yields profound racial, ethnic and geographic disparities.**

This report looks at three years of data on 257 children under the age of 17, who were held in juvenile detention in Cook County but prosecuted and sentenced in adult court from 1/1/2010 - 12/31/2012.

### OVERLY BROAD

- The majority of cases automatically transferred end up convicted for lesser offenses, offenses that could not have triggered transfer - the three-year study revealed **54 percent of all convictions were for lesser offenses.** Another 4 percent were found not guilty or thrown out (nolle prossed).

- Contrary to popular belief that "automatic" transfer is used only on the most serious cases, only 13 percent of automatic transfers were charged as first-degree murder during a recent three-year review. By contrast, when juvenile court judges made the transfer decision in a court hearing, almost half of cases (48%) involved first degree murder.

### NO COURT REVIEW AND NO TRIAL - NO CONSIDERATION OF CHILDREN

- The vast majority of automatic transfer cases result in guilty pleas - the recent three-year review revealed **90 percent of automatic transfer cases were pled guilty.** At no point is there any opportunity to take into consideration immaturity - the young age of the child, his/her potential for rehabilitation, or any aspects of his/her background.

### DISCRIMINATORY

- **Automatic transfer disproportionately affects children of color.** In three years of "automatic" trial of children in adult court, there was only one white child.

### POOR OUTCOMES

- Slow and costly process - eliminating the juvenile court transfer hearing actually slows down the case. The average time for a child awaiting trial as an adult ranged from 377 days up to 572 days. By contrast, half of the children charged in juvenile court spend a month or less in detention.
- Adult sentence not always "tougher" - 18 percent of those children sentenced to adult prison received five years or less - by contrast, a juvenile sentence to prison is up to age 21, so a 15 or 16 year old could spend five to six years in prison.

### CONTRARY TO PUBLIC SAFETY

- National research solidly establishes that children tried in the adult court are more likely to repeat offend, than children similarly situated who are tried in juvenile court. A 2007 survey of existing studies by the U.S. Centers for Disease Control and Prevention concluded that **children who are tried as adults are 34 percent more likely to commit crimes** than children who were kept in the juvenile court system.

## CONTRARY TO RESEARCH

- **Routinely prosecuting youth as adults runs contrary to youth development research.** A strong and growing body of research on adolescent development indicates that youth are especially prone to impulsive and risky behavior, and hampered in their ability to foresee and weigh the consequences of their actions. At the same time, youth are capable of tremendous positive change and most youth mature out of delinquent conduct. Automatic transfers of youth ignore these facts and, in treating teenagers the same as adults, waste opportunities for rehabilitation through the services and supervision of the juvenile system.

## OUTLIER

- Illinois is now one of only 14 states with no ability for a judge to provide individual review, either in juvenile or adult court, of the decision to try a child in adult court. Further, *the U.S. stands alone in the widespread prosecution of juveniles in adult court.* In March of 2014, the United Nations Human Rights Committee urged the U.S. to end adult court prosecution of juveniles – to end juvenile life without parole, separate all juveniles from adults, and end the practice of transferring juveniles to adult courts.

## RECOMMENDATION:

**Illinois should restore authority over whether a child under 18 should be tried in adult criminal court to juvenile court judges.** This will bring Illinois in line with the majority of states, and will ensure better outcomes for children, for victims, for taxpayers, and for public safety.

*"[Transfer] is simply a means of identifying how they are to get into the system and basically who is to make the decision. It's a choice between the charging officer or the juvenile judge. And philosophically, it seems to me that there ought to be some review by the presiding juvenile judge."*

Then Senator Dawn Clark Netsch, Senate Floor debate  
May 26, 1982.

*"[I]t doesn't make sense for us to transfer, indiscriminately, young people to adult court."*  
Then Senator Barack Obama, Senate Floor debate  
Jan. 29, 1998.<sup>3</sup>

*"These are failed policies."*  
Former U.S. Senator Paul Simon.<sup>4</sup>

*"Judges should be the ones to decide whether a child should be transferred to adult court, not a one-size-fits-all law."* Chicago Tribune editorial  
November 21, 2000.

## BACKGROUND ON U.S. TRANSFER LAWS

In the late 18<sup>th</sup> century, children as young as seven who were accused of committing crimes were prosecuted as adults throughout this country, receiving prison sentences and even the death penalty if convicted.<sup>5</sup> During the 19th century, a movement emerged to reform the system dealing with juvenile offenders. In 1899, the first juvenile court was established in Chicago, Illinois; by 1925, all but two states had followed suit, and today the Chicago juvenile court has been replicated across the globe.<sup>6</sup> The purpose of the juvenile court was to treat juveniles differently from adults by providing treatment and guidance—not punishment—to enable juvenile offenders to become fully rehabilitated members of society.<sup>7</sup>

In rare cases, juvenile court judges would waive jurisdiction when they decided children were not amenable to treatment. In such cases, the children were “transferred” to adult criminal court for prosecution. These transfer decisions were made on an individualized basis using a “best interests of the child and public” standard.<sup>8</sup>

By the 1980s and 1990s, public fears about violent juvenile crime, as well as a widespread belief that juvenile offenders were being treated too leniently, led many states to enact laws — in the name of public safety—that dramatically increased the number of children prosecuted as adults.<sup>9</sup> Although juvenile crime rates have since fallen to historic lows, most of the laws passed in the wake of the predictions of a persistent increase in violent juvenile crime remain in effect today.<sup>10</sup> All states allow children to be tried as adults. The mechanisms, however, vary by state and in most states there is more than one process to try and sentence a child in adult court. Many states require automatic prosecution in adult court based on the presence of certain circumstances, such as the age of the juvenile offender, the type of offense, or the offender’s prior criminal record – but most states include some mechanism for individual review. Other states allow judges to exercise their discretion in determining whether to waive juvenile jurisdiction and provide criteria upon which to base these decisions. Some states grant prosecutors discretion in determining whether to file a case in juvenile or adult court.

Regardless of the statutory scheme, the widespread prosecution of juveniles in adult court is a U.S. practice that is specifically prohibited by international law, and rarely followed in other nations.

The U.S. stands alone in the widespread prosecution of juveniles in adult court. In March of 2014, the UN Human Rights Committee urged the U.S. to end adult court prosecution of juveniles - to end juvenile life without parole, separate all juveniles from adults, and end the practice of transferring juveniles to adult courts.<sup>11</sup>

## HISTORY OF ILLINOIS TRANSFER LAWS

Four years after the establishment of the world’s first juvenile court in 1899, Illinois began transferring children to the adult court in limited cases. Prior to 1973, transfers to adult court were initiated by the prosecutor.

*Judges began making the transfer decision* in Illinois in 1973. The legislature amended the juvenile transfer provisions in 1973 in order to comply with the U.S. Supreme Court’s due process requirements in *Kent v. US*, by requiring a hearing in juvenile court, thereby giving discretion to the juvenile court judge. Under the Illinois provisions, the prosecutor initiated the hearing with a petition to transfer the child to adult court. Pursuant to these transfer provisions, any child age 13 and older could be tried in the adult court on any charge, subject to discretion of the juvenile court judge following a full due process hearing (i.e., discretionary transfer). These transfer provisions remain in effect today and are occasionally used throughout the state.

*In 1982, the Legislature created Automatic Transfer.* This legislation was initiated by then Cook County State’s Attorney Richard Daley and followed a series of hearings around the state by the Senate Judiciary Committee. The legislation, Senate Bill 1231, was presented as a Senate Committee Bill, and began with a lower age of 14 and an extensive list of offenses – eventually, it was modified to apply to 15 & 16 year olds charged with murder, rape, deviate sexual assault and armed robbery with a firearm. Included was a provision allowing juvenile court sentencing for those youth convicted of a lesser offense, with the understanding that this provision could be waived as part of a plea deal.

During Senate debate on May 26, 1982, Sen. Dawn Clark Netsch attempted unsuccessfully to amend the bill to require an automatic hearing in juvenile court, rather than automatic adult court prosecution. Senator Netsch clarified that the issue was not whether to try juveniles in adult court, but “...simply a means of identifying how they are to get into the system and basically who is to make the

*It's a choice between the charging officer or the juvenile judge. And philosophically, it seems to me that there ought to be some review by the presiding juvenile judge."*<sup>11</sup>

In the House, Rep. Michael Getty offered an amendment to turn the automatic transfer proposal into rebuttable provisions, based on data showing that one-fourth of the transfers initiated by the prosecutor failed to result in a conviction.<sup>12</sup> He also expressed concern that automatic transfer would increase the number of children tried in the adult court, resulting in greater costs to the county in detention bed days. Rep. Woods Bowman expressed concerns that this change was similar to the philosophical shift to determinate sentencing, and would also drive up state costs in prison beds. Rep. Lee Daniels noted that he expected the prosecutors to use reasonable judgment and cited State's Attorney Daley's concern about crime as reason to pass the bill.

The Chicago Law Enforcement Study Group reviewed juvenile transfer decisions both pre- and post- automatic transfer. Its study of judicial transfer decisions prior to automatic transfer looked at 346 youth judicially transferred to adult criminal court in Cook County between 1974 and 1981.<sup>13</sup> Of the 346 youth the majority were male (only 4 females); and nearly half (48.8%) of the judicially transferred cases were based on murder, with 14.2 percent based on charges of rape/deviate sexual assault, and 22 percent on charges of armed robbery. The study further found that about a quarter of the youth (25.8%) were never convicted in criminal court. This study did not examine the race of the youth.

After passes of automatic transfer, the Chicago Law Enforcement Study Group reported an increase in the number of youth prosecuted in criminal court (more than twice the number prosecuted as adults during the previous two and a half year period).<sup>14</sup> The researchers also reported a difference in the type of offense prosecuted – prior to automatic transfer, murder was the most common offense, but following automatic transfer armed robbery with a firearm became the most frequently transferred offense (55%). Finally, the researchers reported that the automatic transfer provisions had a disproportionate impact on minority youth, and concluded that the increase in armed robbery prosecutions in criminal court contributed to the over-representation of African-Americans in the transfer population. *The authors noted the automatic transfer provisions increased prosecutions and had a disparate impact on*

*control serious offending juveniles; thus, the researchers recommended that a modified version of judicial transfer be the method for determining adult prosecution of juveniles.*

Challenges to the automatic transfer provisions in the Illinois Supreme Court were unsuccessful. In *People v. J.S.*, 103 Ill.2d 395 (1984), the Court rejected the argument that the automatic transfer offenses constituted an arbitrary and irrational classification and held that the violent nature of the offenses selected and their frequency distinguished them from other Class X offenses.

During the mid-1980s, the automatic transfer provisions were substantially expanded. In 1985, the Legislature passed the "Safe School Act", Public Act. 84-1075, automatically transferring youth age 15 and older for drug and weapon violations on or within 1,000 feet of a school.<sup>15</sup> The Illinois Supreme Court upheld this expansion in *People v. M.A.*, 124 Ill. 2d 135 (1988) on the limited basis that since attendance at school was mandatory, the State had a corresponding duty to guarantee students' safety.

Gang-related offenses were the next offense category to be added to automatic transfer, followed by drug and weapon violations within 1,000 feet of public housing. In *People v. R.L.*, 158 Ill.2d 432 (1994), the Illinois Supreme Court upheld the public housing automatic transfer provisions despite evidence documenting a serious disproportionate impact on minority youth. The evidence presented to the *R.L.* Court revealed that within a one year period all 34 transfers in Cook County under this public housing provision were African-American.

Still, the rush to add more offenses continued. In the fall of 1995, Illinois added to the automatic transfer provisions a new category of minors 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.

Studies consistently revealed that the automatic transfer laws had poor outcomes with a profound impact on children of color. **The Illinois Supreme Court's Special Commission on the Administration of Justice (the "Solovy Commission") reported in December of 1993, that an increasing number of juveniles were transferred to criminal court over the past 10 years without a corresponding deterrent effect, and with unintended negative consequences such as an overwhelmingly disproportionate impact upon African-Americans and other minorities.**<sup>16</sup>

**Dissatisfaction with the automatic transfer provisions led the Illinois Supreme Court's Solovy Commission to recommend in 1995 that the Illinois Legislature consider legislative alternatives such as "waiver back" and the elimination of mandatory minimum sentences for juveniles convicted and sentenced in adult criminal court.**

A series of research projects and newspaper reports continued to demonstrate increasing numbers of children of color transferred to the adult court due to the automatic drug transfer laws. For instance, Nelson's (1992) Chicago Sun-Times series, Bogira (1993), Clarke (1996) and Karp (2000) all reported consistent results, with overwhelming disproportionate impact on minority youth, and poor outcomes with little benefit to public safety.<sup>17</sup>

Ultimately, a study by the Juvenile Transfer Advocacy Unit of the Law Office of the Cook County Public Defender, examining the children automatically transferred to adult court in Cook County from 1999 to 2001, helped focus attention on the need to reform the state's transfer laws.<sup>18</sup> The data revealed that out of 393 youth automatically transferred to adult court and detained in Cook County from October 1999-September, 2000, virtually all (99.6%) of the youth subject to automatic

transfers in Cook County were minorities – only one Caucasian was automatically charged as an adult with a drug offense during the two-year period. Two-thirds of the automatic transfers were for nonviolent drug offenses. Moreover, close to two-thirds had not been afforded any juvenile court rehabilitative services prior to the automatic transfer. The study demonstrated that the youth "automatically" tried in adult court on drug offenses were receiving minor sentences (not prison) if sentenced at all – more than 90 percent of the youth convicted of a drug offense received either a sentence of probation or boot camp. All, however, suffered the consequences of a criminal conviction.

This research further demonstrated that this was a Cook County issue. Automatic transfers outside of Cook County were far fewer, despite higher arrest rates outside Cook County. Only two youth outside of Cook County were transferred for drug offenses.

Newspapers reported the Illinois Drug Transfer Law was called the "worst" youth drug law in the nation because of its racial disparities. *Drug Law Biased, study says*, Mike Dorning, Washington Bureau, 4/26/2001.

A Chicago Tribune editorial, *Youth Justice, Separate and Unequal*, urged that the transfer decision be returned to judges.

#### **Chicago Tribune editorial, Youth Justice, Separate and Unequal, 11/21/2000**

*Over the last year, 393 Cook County youths arrested for serious crimes automatically were transferred from juvenile court into adult court.*

*Three were white.*

*It is hard to imagine that this glaring statistic doesn't reveal two separate and unequal systems of juvenile justice – one for whites and one for minorities.*

...

*A decade ago Illinois, like the rest of the country, was reeling from sharp spikes in the frequency and severity of juvenile crime. ... Transfer laws were designed to deal with offenders in their older teens who were violent and chronic. They also were developed at a time the juvenile system lacked the ability to handle the most serious violent crimes. ....*

*But now the Cook County juvenile system, the first and oldest in the country, is better equipped to handle even the most seemingly intractable cases, with youth detention centers, or appropriate penalties, education programs and counseling. ...why....are we giving up on these young people?*

*Reality is that many [youth] respond well to the kind of attention the juvenile system can provide. Some may not completely thrive or reform themselves, but all deserve at least a chance. Once in adult court, their convictions will be public record and their future decidedly more grim. Anyone convicted in adult court will find it nearly impossible to pursue higher education, ...And certainly, one's ability to land a well-paying job will be forever diminished.*

***Judges should be the ones to decide whether a child should be transferred to adult court, not a one-size-fits-all law.***

Based on these studies, in 2005 Illinois agreed to allow children charged with drug offenses to begin cases in juvenile court; in cases where children were on school grounds and sold drugs to someone under age 17, the cases became presumptive transfers. The Legislature also standardized a list of factors for judicial discretion for transfer on discretionary transfer, presumptive transfer, and extended jurisdiction juvenile prosecutions, and expanded automatic transfer for those charged with aggravated battery with a firearm, by deleting the "zone" provision limiting transfer to offenses within 1,000 feet of a school, while prohibiting transfer of those charged under the theory of accountability. The compromise legislation was passed unanimously in both chambers becoming Public Act 94-0574.

The first year after PA 94-0574, a study revealed the number of children automatically transferred in Cook County went down by approximately two-thirds, from 361 in 2003 to 127 in 2005-2006.<sup>19</sup> Moreover, the same study found no adverse effect on public safety.

With Illinois in the lead, states across the U.S. are rethinking these ineffective "get-tough" transfer policies. Illinois was the first state to scale back automatic transfer; it has since been joined by a number of other states. Colorado, Nevada, Mississippi, and Utah are among the states that have begun shifting transfer decisions to the juvenile court.<sup>20</sup>

## POOR OUTCOMES -- NATIONAL RESEARCH CONFIRMS NEGATIVE OUTCOMES FROM TRANSFER

In 2007, the U.S. Centers for Disease Control and Prevention (CDC) reviewed the existing research examining the effects of juvenile transfer on subsequent violent offending. According to this extensive review of the literature on transfer by the CDC, *children prosecuted as adults are more likely to re-offend than their counterparts prosecuted as juveniles for the same type of offense and with similar prior records.*<sup>21</sup> *They also are more likely than their counterparts to commit more serious new offenses, and at a faster rate.*<sup>22</sup> Further, criminal court processing itself, even without any criminal sentences, has been found to increase recidivism.<sup>23</sup>

This national study corresponds to the research results in Illinois, noted in the previous section. In 1988, the Chicago Law Enforcement Study Group concluded that automatic transfer failed to

and recommended a modified version of judicial transfer.<sup>24</sup> The Illinois Supreme Court Special Commission on the Administration of Justice (The Solovy Commission) found that from early 1980s to early 1990s, increasing numbers of juveniles had been transferred to criminal court over the previous decade without a corresponding deterrent effect and with unintended negative consequences, and recommended the legislature consider alternatives.

Research also shows that laws providing for the prosecution of juveniles as adults disproportionately affect children of color in certain geographic areas across the U.S. In Connecticut, for example, from 1997 to 2002, 40 percent of all transfer cases were of African-American children, although African-Americans made up only thirteen percent of the 14- to 17-year-olds in 2002.<sup>25</sup> In Florida, in 2005-2006, while 24 percent of the youth population was African American, they accounted for 57 percent of all the children transferred to adult court. Non-white young people accounted for about seven out of 10 children transferred to the adult system in Florida.<sup>26</sup>

Racial disparities are much more profound in Illinois. African-Americans represent 44 percent of the youth population in Cook County, but from 2000 to 2002, 99 percent of children automatically transferred to adult court in Cook County were African American or Latino.<sup>27</sup> Further, research showed that transfer laws were used primarily in Cook County in Illinois. In 2001, only 14 children were automatically transferred outside of Cook County. The research documents that automatic transfer provisions have been applied disproportionately in cases involving children of color in Cook County.

Automatic transfer to adult court leaves no opportunity to take adolescent brain development into account. According to new scientific research, critical areas of the human brain, particularly those affecting decision-making and judgment, are not developed fully until a person has reached his or her early 20s.<sup>28</sup> This evidence informed the U.S. Supreme Court's decisions in *Roper v. Simmons*, holding unconstitutional the execution of offenders who committed their crimes when they were under the age of 18<sup>29</sup> and *Miller v. Alabama*, requiring an individualized review prior to imposition of juvenile life without parole.<sup>30</sup> In his concurrence in *Graham*, Justice Roberts cautioned that "[o]ur system depends upon sentencing judges applying their reasoned judgment to each case that comes before them."<sup>31</sup>

Children transferred to adult court face both

According to the study conducted by McGowan et al. (2007), children prosecuted as adults are much more likely to commit suicide.<sup>32</sup>

Children incarcerated in adult prisons are five times more likely to be sexually assaulted and twice as likely to be attacked by fellow inmates or beaten by staff.<sup>33</sup>

Children prosecuted and convicted as adults carry life-long consequences. Depending upon the underlying offense and the state in which a child was convicted, a felony conviction could result in the loss of a number of civil rights and privileges. Felony convictions could deprive children of the right to vote and eligibility for federal student financial aid, public housing and federal welfare benefits. Children could also be denied jobs and may have their driver's license automatically suspended or revoked, which further reduce the opportunities for employment and community integration.<sup>34</sup> Also, although juvenile records remain confidential, adult criminal records are public.<sup>35</sup>

The consequences of transfer on the communities of these children can also be significant. Children with diminished education, housing, and employment opportunities may find it more difficult to be productive members of our communities. In the short and long term, it may be more costly in both human and fiscal terms than handling cases appropriately through the juvenile court processes designed to rehabilitate and reduce recidivism.

## CURRENT TRANSFER LAWS IN ILLINOIS

Illinois has one of the nation's broadest arrays of transfer laws.

First, Illinois has judicial transfer, where a juvenile judge reviews a petition by the prosecutor to transfer a child to adult court. The prosecutor can seek transfer for any child age 13 or older charged with any offense. Under judicial transfer provisions, the juvenile court judge conducts an individualized hearing reviewing the background, charges, mental health, education and resources available for rehabilitation in the juvenile court.

Illinois also has three additional types of transfer mechanisms: mandatory, presumptive, and statutory exclusion (automatic).<sup>36</sup> See *Appendix A* for offenses that trigger each kind of transfer in Illinois.

Illinois has one of the most extreme "automatic" prosecutorial transfer mechanisms. Most states require an individualized hearing either in juvenile court or a "reverse waiver" hearing<sup>37</sup> in adult court to try a child as an adult. Illinois,

however, has no "safety valve," no hearing in either juvenile or adult court to review whether trial in adult court is appropriate in an individual case. Only 14 states use such an extreme process to make this critical decision without any safety valves.<sup>38</sup> In Illinois, a child is transformed into an adult through the mere filing of a charge, and the child remains stuck in adult court with no legal mechanism to trigger a hearing to consider his/her background to determine the appropriateness of adult court jurisdiction. If found guilty of a lesser offense, the child has a right to be sentenced as a juvenile unless the state requests a hearing on the issue, but this right can be waived as part of the plea bargain.

Automatic transfer also applies to children as young as 13 years of age if charged with first degree murder committed during the course of either aggravated sexual assault, criminal sexual assault, or aggravated kidnapping [705 ILCS 405/ 5-130(4)(a)]. This research found no example of exclusion under this section in the three-year period.

Finally, children of any age can be automatically transferred to criminal court if they are charged with a violation of bail bond or escape. This transformation from a child to an adult happens swiftly based only on age, and initial charge at the time of arrest and/or initiation of formal prosecution.

First degree murder (15&16)
Aggravated criminal sexual assault (15&16)
Aggravated vehicular hijacking (15&16)
Aggravated battery with a firearm (15&16)
Armed robbery with a firearm (15&16)
Unlawful use of a weapon on school grounds (15&16)
Murder in course of aggravated criminal sexual assault (13 & 14)
Previous Transfer (any)
Violation of bail (any)

In light of the serious ramifications of policies prosecuting children in adult court, it is imperative to monitor the use of transfer in Illinois. This study aims to shine a light on the children automatically excluded from juvenile court and detained in Cook County, Illinois, CY2010-2012.



## METHODOLOGY

There is no official government entity that tracks and makes public information on children tried in adult court in Illinois. Occasionally, the Illinois Criminal Justice Information Authority releases some statistics on this population, but not on a regular basis. There have been studies over the more than 30-year life span of automatic transfer policies, but most have been conducted by non-governmental organizations and limited to Cook County.

This study involved an examination of individual cases of 257 children under the age of 17 who were held in juvenile detention in Cook County, and prosecuted and sentenced in adult felony court in Cook County from January 1, 2010 to December 31, 2012.<sup>39</sup>

Once taken in police custody and placed under an arrest, the age of the child and the charged offense determines whether the child will be processed as a juvenile or automatically transferred to adult court at the point of arrest.

Children prosecuted as adults are eligible for bond. It is possible that some children who were charged with automatic exclusion offenses during this time period (Calendar Year 2010-2012) received and made bond. Children who were released on bond were not included in this report. There is no public data on the number of children tried as adults and released on bond.<sup>40</sup>

Children age 15 and 16 between CY2010 and CY2012 who were charged as adults and did not receive or could not make bond were placed in the Cook County Juvenile Temporary Detention Center (JTDC). These children passed through the JTDC Intake Unit for processing and were labeled as "automatic transfer." The list of the children labeled as "automatic transfer" in the JTDC Digital Solution Inc, the JTDC's in-house resident management information system, from January 1, 2010 to December 31, 2012 was provided by the JTDC. The information provided included zip code, date of birth, race, ethnicity, date of JTDC admission, criminal case number, municipal case number, and IR number (finger print number). The Juvenile Justice Initiative pulled up each individual criminal case number in the Cook County Circuit Court Clerk System to gather additional data.

The Juvenile Justice Initiative reviewed information on each individual case in the Clerk's System including actual charges, previous

of criminal case and disposition date. The Juvenile Justice Initiative used the IR number (i.e., finger print number), which gives a list of previous and new adult court referrals, in order to gather previous adult convictions. Previous juvenile court referrals were subject to juvenile confidentiality restrictions, so the Juvenile Justice Initiative was unable to review this information.

Information on the zip code/address and race/ethnicity is self-reported by the children during the intake process. Zip codes used for the analysis do not necessarily match with the zip codes of the incidents or the children's current residency. When children identify themselves as Hispanic, the Intake Unit codes them as Hispanic and if they identify themselves as Mexican, the Intake Unit codes them as Mexican.

Children could be charged with more than one automatic adult transfer offense (e.g., 1<sup>st</sup> degree murder, aggravated criminal sexual assault and armed robbery with a firearm). When a child was charged with multiple offenses in the same felony class, the first charge in the Clerk's system was selected as a top charge for this report.<sup>41</sup> When a child was charged with offenses in different felony classes, the charge in the more serious offense class was selected for the report. Children admitted to the Cook County Juvenile Temporary Detention Center in CY2010 were counted as a CY2010 case for this report. For instance, a case of a child who was admitted to the JTDC in 12/30/2010 could have started in 1/20/2011 in adult court, but this case would have been counted as a CY2010 case.

Anecdotal evidence indicates that there was only one non automatic transfer petition filed (discretionary), which later was denied, during CY2010-CY2012 in Cook County.<sup>42</sup> Given the lack of public data on this population, this study represents a very modest effort to shed some light on this critical issue of public policy.

## FINDINGS

In order to understand the findings in this study, it is helpful to review the data on transfer prior to, and subsequent to automatic transfer.

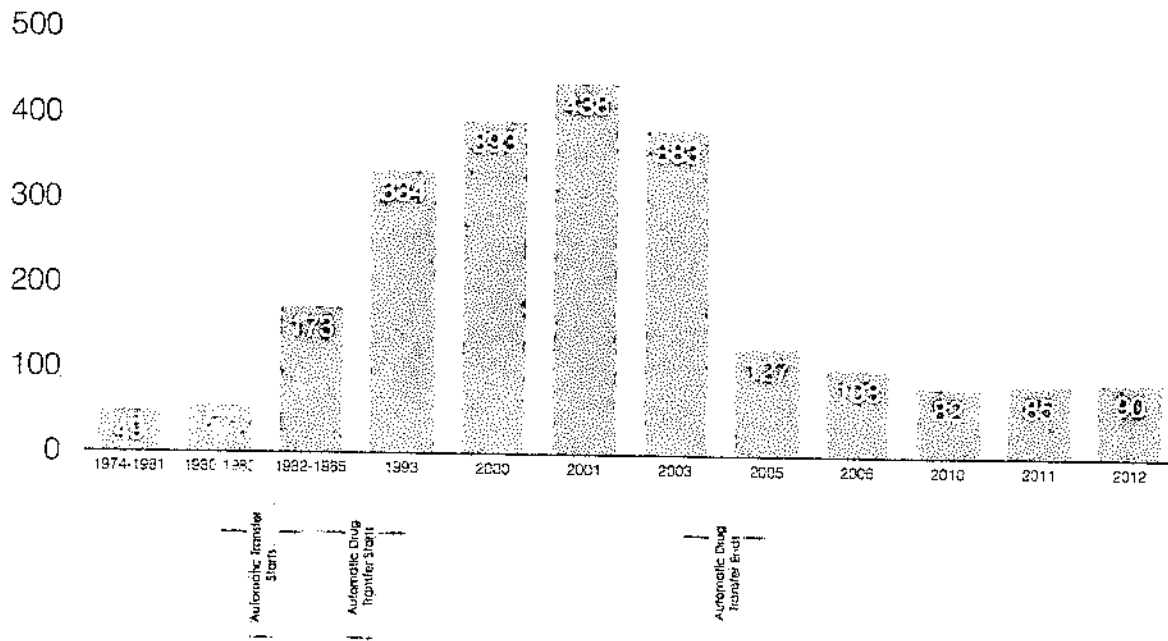
Prior to 1982, juvenile court judges made transfer decisions on an individual basis, reviewing detailed background information on each youth prior to deciding the critical issue of whether to try a child in adult court. On average, 57 children were transferred annually to adult court prior to 1982 with about half for murder (49%) and 69 percent Black



Table 1. Comparison Youth Profile Before and After the Automatic Transfer Provisions

	Judicial Transfer (1975-1981)	Automatic Transfer (2010-2012)
Average Annual # of Transfers in Cook		57
% of Black Children in Transferred Children	68%	83%
% of Transfers for Murder	48%	13%
% of Transfers for Armed Robbery with a Firearm	22%	30%
Decision Maker	Juvenile Court Judge	Prosecutor

Chart 1. Change in the Number of Children Automatically Prosecuted as Adults



prosecuted as adults annually, and 83 percent of them were Black. Only 13 percent of the children automatically transferred in 2010-2012 were prosecuted as adults for murder. See *Table 1* above.

The number of children automatically excluded from juvenile court has decreased compared to previous years.<sup>43</sup> Specifically, the number dropped by two-thirds after the elimination of automatic drug transfers in 2005. This study examined individual cases of 257 children under the age of 17 who were held in juvenile detention in Cook County and automatically prosecuted and sentenced in adult felony court in Cook County from January 1, 2010 to December 31, 2012.

## DEMOGRAPHICS

Sixty two percent of the 257 automatically transferred children were 16 years old, and 36 percent were 15 years old at the point of admission

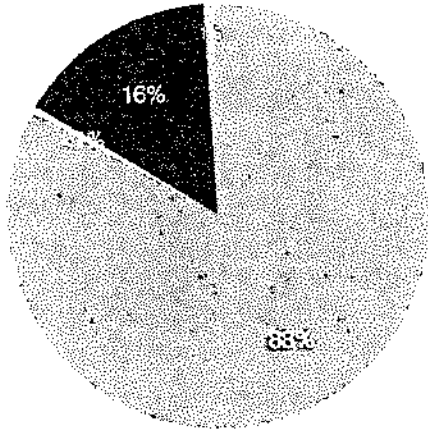
to the Juvenile Temporary Detention center. Two percent of the children were 17 years old at the point of admission to the detention center.<sup>44</sup> There were no children younger than 15 who were automatically excluded from the juvenile jurisdiction during CY2010-CY2012.

As in previous studies, African-American children are overrepresented among children automatically prosecuted as adults.<sup>45</sup> Over the three years (2010-2012), 83 percent of the automatically excluded children were African-American, and there was only one white children of the total of 257 children. See *Chart 2*.

As in the previous study of transfer<sup>46</sup>, automatic adult prosecution of children was primarily used in zip codes in south side and west side of Chicago—it was rarely used in the rest of Cook County (82% Chicago vs. 18% the rest of Cook), and rarely used in the rest of the state.

Chart 2. Children Automatically Prosecuted as Adults by Race, Cook County, 2010-2012

African-American (83%)
  White (<1%)
  Hispanic (16%)
  Other (1%)



Map 1. Zip Code Map of Children Automatically Prosecuted as Adults in Cook County, 2010-2012



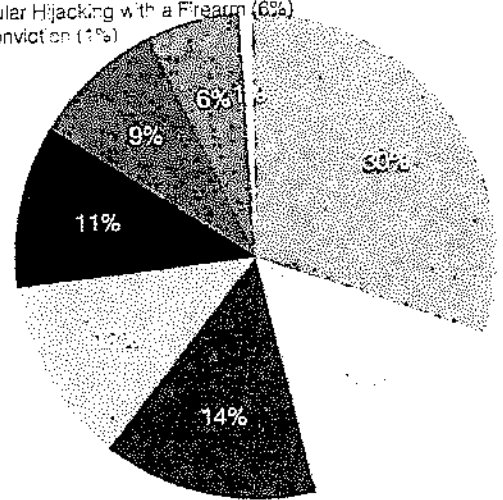
Zip codes were self-reported by the youth. Zip codes may not match with those of arrest locations. Zip code areas where more than 10 youth came from are identified.

## CHARGED OFFENSE

As shown in *Appendix A*, children are automatically prosecuted as adults for seven types of offenses, for a technical violation or for having a past adult conviction. Armed robbery with a firearm was the most common charged offense in Cook County from 2010 – 2012. See *Chart 3*.

Chart 3. Charged Offenses

Armed Robbery with a Firearm (30%)
  Lesser Offense (16%)
  AGG Battery with a Firearm (14%)
  First Degree Murder (13%)
  AGG Criminal Sexual Assault (11%)
  UUW on School Grounds (9%)
  AGG Vehicular Hijacking with a Firearm (6%)
  Previous Conviction (1%)



## CHARGED WITH LESSER OFFENSE BUT REMAINED IN ADULT COURT

Of the 257 children, more than 40 children (16%) were recharged with a lesser offense that should have triggered removal to juvenile court upon arraignment. The statute provides that children recharged with lesser offenses can only be prosecuted in Juvenile Court.<sup>47</sup> However, in this study, all the children recharged with lesser offenses remained in adult court. See *Chart 4*.

If a child has been convicted as an adult in the past, the current transfer laws require that the child be prosecuted as an adult no matter what the charge is for the subsequent incident (“Once an Adult, Always an Adult”). Juvenile Justice Initiative looked at these children’s adult criminal records using the IR# number (finger print number), but none of them had a previous adult conviction.

Chart 4. Children Recharged with a Lesser Offense before a Trial

- Charged with Automatic Transfer Offense (84%)
- Charged with a Lesser Offense (16%)

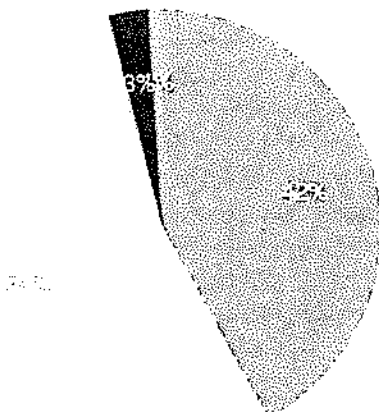


## FINDINGS AND DISPOSITIONS

As of early October 2013, 54 percent of the cases had a finding of guilty (Chart 5). On the average, it took 377 days for a case to reach a finding of guilty from the date of filing the criminal charge.<sup>48</sup> It took much longer – average of 572 days – for a case to reach a finding of not guilty.

Chart 5. Case Status of the Automatically Transferred Cases

- Active (42%)
- Not Guilty (3%)
- Guilty (54%)
- Note Prosequi (1%)

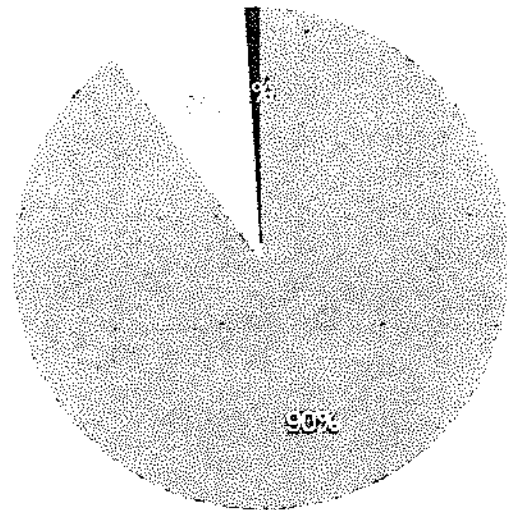


## PLEA

The majority of children prosecuted as adults waived their rights to trial and pled guilty. Indeed, of 138 convicted children, 90 percent waived their rights and pled guilty to either the original offense or a lesser offense. Only 12 convictions resulted from trial. See Chart 6.

Chart 6. Pleas vs. Trial

- Pled Guilty (90%)
- Trial (9%)
- Unknown (1%)



Not all the children pled guilty for the initially charged offense. 38 percent of the convicted children who were charged with an automatic exclusion offense pled guilty for a lesser offense. 54 percent of *all the convictions*, including children who were recharged with a lesser offense before trial or plea, were for a lesser offense. See Chart 7.

## SENTENCING

Of 257 children automatically excluded from juvenile court and prosecuted as an adult from January 1, 2010 to December 31, 2012, 138 children had reached conviction by the time of a Juvenile Justice Initiative's research. More than half of the children<sup>49</sup> were convicted of lesser offenses, but only four of them received a juvenile sentence (in adult court) despite the statutory requirement of juvenile sentencing for a lesser offense after a trial or plea.<sup>50</sup> See Chart 8.

Chart 7. Flow Chart of Convicted Cases

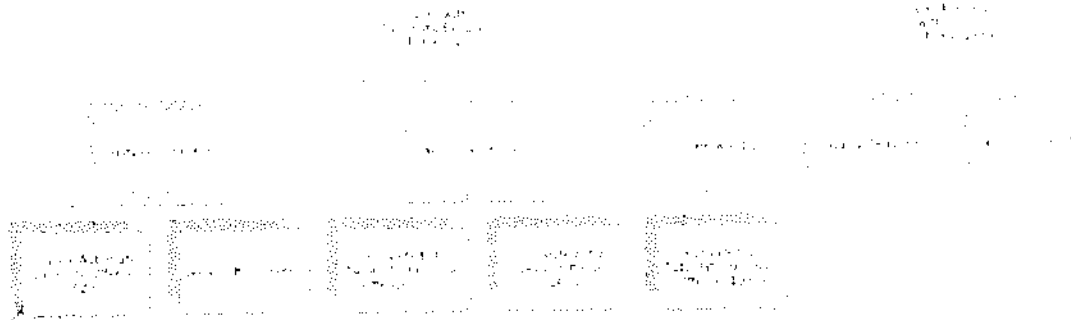


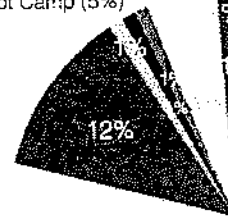
Chart 8. Convictions

- ◆ Convicted of a Lesser Offense (54%)
- ◆ Convicted of an Automatic Transfer Offense (46%)



Chart 9. Sentences of Children Convicted as Adults

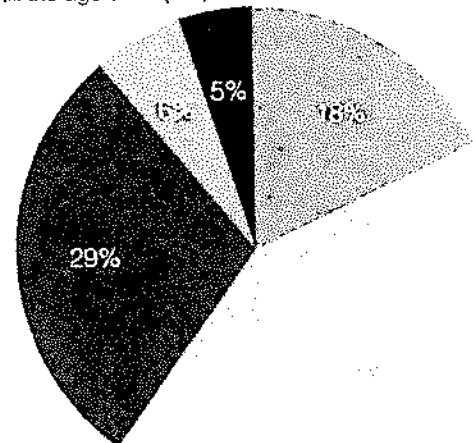
- ◆ Cook County Jail (1%)
- ◆ Adult Probation (12%)
- ◆ Pending (1%)
- ◆ Boot Camp (5%)
- ◆ IDOC (78%)
- ◆ IDJJ (1%)
- ◆ Conditional Discharge (1%)
- ◆ Juvenile Probation (1%)



108 received an adult prison sentence<sup>51</sup>, and 16 received adult probation. Of the 108 adult prison sentences, five percent were sent to the IDJJ to serve there till the age of 21. 42 percent were between 5-9 years, 29 percent were between 10-19 years, and 6 percent were 20 years or longer. See *Chart 9 and 10*.

Chart 10. IDOC Sentences

- ◆ IDOC Less than 5 Years (15%)
- ◆ IDOC 10 to 19 Years (29%)
- ◆ IDJJ till the age of 21 (5%)
- ◆ IDOC 5 to 9 Years (42%)
- ◆ IDOC 20 Years or Longer (6%)



## CONCLUSION AND RECOMMENDATION

The Illinois system of "automatic transfer," which upon a mere charge sends children into adult court for prosecution and sentencing, is a failed policy. The data reveal the automatic statutory exclusion statute selectively and continually denies one class of children in select zip codes the fundamental right to a mere court hearing on the critical issue of whether to be tried in juvenile or adult court.

These three years of data reveal a startling range of systemic failure throughout the "automatic transfer" process, including:

- Profound racial disparities, with only one white child transferred through the automatic process over a three-year-period;
- Systemic failures, with children trapped in adult court upon the initial arrest and charge despite recharges of lesser offenses prior to a trial, or pleas that should trigger juvenile court sentencing;

and

- Profound geographic disparities, with "automatic transfer" provisions utilized nearly exclusively in a handful of zip codes within the City of Chicago.

Illinois is an outlier – one of only 14 states with such extreme transfer laws, without any possibility of individual review on the critical decision of whether to try a child in juvenile or adult court.

And the United States is an outlier – the only nation to so consistently violate international law requiring children to be tried separately from adults. Indeed, these automatic categories violate U.S. law, as the U.S. has clarified in its reservation to the International Covenant on Civil and Political Rights that the U.S. treats juveniles as adults only in "exceptional" circumstances.

It is particularly startling to realize that these profound disparities have been consistent throughout the life of the automatic transfer laws, for over twenty-nine years. Every research project has consistently documented these disparities, as expressed in the conclusion of the 1993 Illinois Supreme Court Special Commission on the Administration of Justice (the Solovy Commission):

- That increasing numbers of juveniles had been transferred to criminal court over the previous decade without a corresponding deterrent effect, and
- With unintended negative consequences, including an overwhelmingly disproportionate impact upon African Americans and other minorities.

**It is time to finally follow the Solovy Commission's recommendations and restore individualized review of children under the age of 18 to determine, on a case by case basis with full due process protections, whether trial in the adult court is the proportionate and last resort.**

*"[I]t doesn't make sense for us to transfer, indiscriminately, young people to adult court." <sup>53</sup>*

Then Senator Barack Obama, January 29, 1998

## ACKNOWLEDGEMENT

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42. Based on conversations with Cook County juvenile public defenders, it is impossible to determine which offense is more serious.
43. There was only one non-automatic transfer petition filed from CY2012 to February 2014 in Cook County- it was a discretionary transfer petition, and it was denied.
44. Data labeled 1985 is the yearly average of transferred cases of children age 15 & 16 from 1982 to 1985. Data labeled 1993 is from 11/9/1992 to 3/1/1994 here. From August 2005 to August 2006, 127 children were automatically excluded from juvenile court and from August 2006 to August 2007, 103 children were automatically excluded. Prior to the elimination of drug transfers in 2005, over 300 children were annually automatically excluded from juvenile court.
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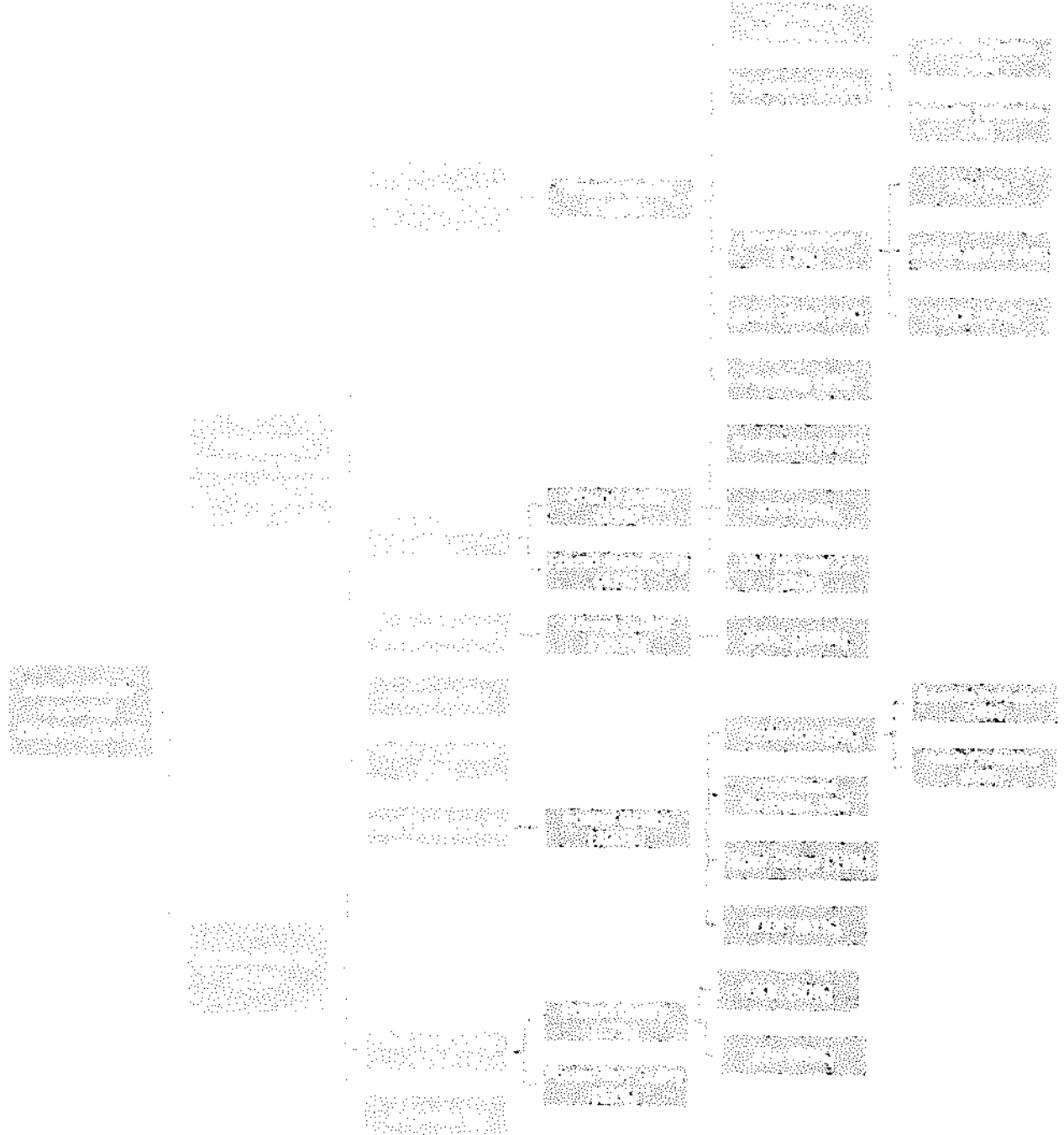
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49. There was about a month between the date a child was detained at the Cook County Juvenile Detention center and a date the child's case started at adult felony court.
50. This includes all the children who were convicted - children who were charged with an automatic exclusion offense, and children who were recharged with a lesser offense at the point of an indictment or information.
51. This number includes only sentences to the Illinois Department of Juvenile Justice (IDJJ) and juvenile probation, but excludes the cases where children were sentenced to the Illinois Department of Corrections (IDOC), but sent to the IDJJ until the age of 21. There was one additional child who was sentenced to the IDOC but sent to the IDJJ among those who were convicted of a lesser offense.
52. Five of them serve in IDJJ till the age of 21.
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 2013 Annual Report



Appendix A. Illinois Transfer Statutes

Statute	Age	Offenses	Type
705 ILCS 405/5-130 (1)(a)	15 - 17	First Degree Murder	Automatic
705 ILCS 405/5-130 (1)(a)	15 - 17	Aggravated criminal sexual assault	Automatic
705 ILCS 405/5-130 (1)(a)	15 - 17	Armed robbery with a firearm	Automatic
705 ILCS 405/5-130 (1)(a)	15 - 17	Aggravated vehicular hijacking	Automatic
705 ILCS 405/5-130 (1)(a)	15 - 17	Aggravated battery with a firearm	Automatic
705 ILCS 405/5-130 (3)(a)	15 - 17	Unlawful use of a weapon on school grounds	Automatic
705 ILCS 405/5-130 (4)(a)	13 & 14	Murder in the course of aggravated criminal sexual assault	Automatic
705 ILCS 405/5-130(5)(a)	Any	Violation of bail bond or escape	Automatic
705 ILCS 405/5-130(6)	Any	Prior adult trial and adult conviction	Automatic
705 ILCS 405/5-805 (1)(a)	15 - 17	Forcible felony with felony conviction and gang activity	Mandatory
705 ILCS 405/5-805 (1)(b)	15 - 17	Felony with prior forcible felony conviction and gang activity	Mandatory
705 ILCS 405/5-805 (1)(c)	15 - 17	Presumptive transfer crime and prior forcible felon	Mandatory
705 ILCS 405/5-805 (1)(d)	15 - 17	Aggravated discharge of a firearm within 1,000 feet of a school	Mandatory
705 ILCS 405/5-805 (2)(a) (i)	15 - 17	Class X felonies other than armed violence	Presumptive
705 ILCS 405/5-805 (2)(a) (ii)	15 - 17	Aggravated discharge of a firearm	Presumptive
705 ILCS 405/5-805 (2)(a) (iii)	15 - 17	Armed violence with a firearm when predicated offense is a Class 1 or 2 felony and gang activity	Presumptive
705 ILCS 405/5-805 (2)(a) (iv)	15 - 17	Armed violence with a firearm when predicated on a drug offense	Presumptive
705 ILCS 405/5-805 (2)(a) (vi)	15 - 17	Armed violence with a machine gun or other weapon in (a)(7) of Section 24-1 of the Criminal Code of 1961	Presumptive
705 ILCS 405/5-805 (2)(a) (vii)	15 - 17	Delivery of a Class X amount of controlled substance on school grounds, on public housing property or any amount within 1,000 feet of a school or public housing when delivery is to a person under age 17	Presumptive
705 ILCS 405/5-805 (3)(a)	13 - 17	Any Offense	Discretionary
705 ILCS 405/5-810	13 - 17	Any Offense	Extended Jurisdiction

Appendix B. Flow Chart of Automatically Transferred Cases, Cook County



## Testimony before the Joint Criminal Justice Reform Committee

Illinois General Assembly

November 7, 2014

Good morning. My name is Teleza Rodgers, and I am a member of FORCE at the Community Renewal Society. FORCE stands for Fighting to Overcome Records and Create Equality. It is led by people with records, their families, and faith allies. We organize to create change and justice for people with records.

I was born and raised on the west side of Chicago in the West Garfield Park area. I am my mother's only child. My childhood was great. I never wanted for anything. But things changed when I was in high school. I witnessed my mother have two nervous breakdowns. I was alone! I went to the streets and became a product of my environment.

Before long I was a young mother with three sons, homeless because my apartment had caught on fire. I was struggling, and I needed help. I was hanging with a rough crowd, and I got arrested for one offense and shortly thereafter, I was arrested again. On my second visit to the court, the judge told me that he ever saw me again, he would put me away for a long time. I said to him, "I have a problem, I have an addiction, and I am scared that I will lose my sons to the system. I need help."

The judge did not offer me drug treatment, but he did allow me to transfer my probation to Georgia. I had family members there who took in my sons and home-schooled them. So I left Chicago and moved to Georgia where I obtained my medical billing and coding certification. I supported my children through working in the health care field in several different positions for a total of six years. I got my life back together.

I returned to Chicago because I felt confident that I could come back home, find work, and take care of my family. I did not receive assistance in Georgia - I was self-sufficient - but in Chicago, the only thing I've been offered is assistance. There have been no employment opportunities for me because of my background. I get interviews, but I don't get jobs. The only job that I've had was the Safe Passage program. I was one of the first hired for those new jobs and one of the first fired. I was let go because of my background.

Members of the Committee, I ask you. "Is a job a right or a privilege?" I have worked hard to provide a good living for myself and my sons, but I cannot do that without employment. When you make your recommendations to the General Assembly, I urge you to include restorative justice and re-entry practices that will make it possible for me to work and support my family.

Thank you.

Teleza Rodgers  
Community Renewal Society  
111 W Jackson St, Ste 820

Testimony before the Joint Criminal Justice Reform Committee

Illinois General Assembly

November 7, 2014

My name is Becky Brasfield and I'm a member of Force at the Community Renewal Society. FORCE stands for fighting to overcome records and create equality. I'm a part of a coalition of criminal justice reform advocates here today who believe that all people deserve opportunities for decent employment, housing, and education.

Thank you for the opportunity to speak with you today. My life story goes from receiving numerous scholarships to attend the University of Chicago Laboratory Schools, a school where the president's children were sent, getting my Bachelor's degree in psychology, a Master's degree in Sociology, publishing in peer reviewed academic journals and having an incredibly bright future ahead of me to being thrown in Cook County Jail for five months, having a class 4 felony conviction on my record and being sentenced to 24 months of mental health probation.

This all happened to me because I have a mental health condition and before I was properly treated, I had an episode of psychosis in 2010 in which I wrote a letter threatening a woman. I was charged with Harassment through Electronic Communication. It was an offense for which I am severely regretful, but I was in the midst of an episode of Schizoaffective Disorder, a combination between Schizophrenia and Bipolar Disorder and suffered from a delusion that the woman I threatened was going to hurt someone else who I felt I had to protect.

Had I been in a healthy and stable state of mind, it never would have happened. Before I became sick, I had no criminal record and had no criminal intent. I have never even been in a fight or raised my voice in an argument. Yet, I found myself behind bars.



**Jeanne Bishop** ([/jeanne-bishop/](#)) [Become a fan](#)  
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 Public defender and human rights activist



# Fixing Illinois' Unconstitutional Mandatory Life Without Parole Sentencing for Juveniles

Posted: 05/10/2013 11:07 am EDT | Updated: 07/16/2013 5:12 am EDT

Last year, federal courts ruled two of Illinois' laws unconstitutional. The Illinois legislature is acting on one, involving gun rights; it is time for lawmakers to act on the other, which provides that juveniles who commit murder can, as a mandatory sentence, be locked up for life without any possibility of parole.

In June 2012, the U.S. Supreme Court in a case called *Miller v. Alabama* struck down mandatory life without parole sentences for juveniles. Illinois has such a law on the books and scores of inmates serving that sentence.

Six months later, a 7th Circuit Court of Appeals panel ruled that Illinois' ban on carrying concealed weapons violated the U.S. Constitution. It ordered the Illinois General Assembly to change the law by June 2013.

It's May now, and the Illinois legislature has already taken up measures to try to fix the concealed carry law. The fix on juvenile life sentences? Still waiting.

This matters to me because in 1990, three of my family members were murdered by a juvenile in Winnetka: my sister Nancy, her husband Richard and their unborn baby. Nancy was three months pregnant with her first child when an intruder shot them to death with a stolen handgun. Before Nancy died, she wrote a message in her own blood beside her husband: a heart shape and the letter "u." Love you. It was an act of strength and courage.

The intruder was one month short of his 17th birthday. He is serving three life without parole sentences for the killings.

I believed in that sentence when he got it. I don't anymore.

The sentence is merciless. It says to people whom we have barely allowed to learn to drive: no matter how sorry you are for your crime, how rehabilitated you are, how amply you demonstrate your ability to safely rejoin society, we will never let you out. We will never even allow you to have a single parole hearing in which you can make the case for your release.

The sentence, when it is mandatory, excludes the voices of victims' families, many of whom were not permitted to make victim impact statements or express their wishes when their loved ones' killers were sentenced. Murder victims' family members are not a monolith: Many support life sentences for juveniles, but others do not. None has moral superiority over the others; all have suffered grievously. No one speaks for all.

The sentence is wasteful, of human lives and scarce public resources. It says to taxpayers, no matter how harmless an individual may be rendered by age 60, 70, 80, he still must be housed in prison till he dies, even if he entered that prison as a teenager.

Perhaps most importantly, though, mandatory juvenile life sentences violate the document which enshrines our most precious rights: the Constitution. That matters to me because I am a lawyer, the daughter and granddaughter and niece of lawyers. I practice law. I teach it, as an adjunct professor at Northwestern.

Our government is one of separation of powers. The job of courts is to declare what is constitutional. The job of the legislature is to write constitutional laws.

Lawmakers can't wait around for courts to fix unconstitutional laws; that violates our deepest principles of federalism. On mandatory juvenile life without parole in Illinois, our legislature must change the law for people who might be subjected to the sentence in the future, but it should also change the law for people who have been subjected to it in the past.

I understand the role of fear in politics. Some lawmakers know the responsible thing to do but shrink from doing it, out of fear. If I vote for this, the argument goes, someone will run against me in the next election and send out a mailer claiming I voted to let murderers out of prison (though this would be untrue; even the most progressive reform proposal made in the General Assembly this session leaves intact the possibility that juveniles could be turned down for release and still serve life sentences).

I've learned from my sister Nancy that life is short, that we cannot waste a minute on something as small as fear. Her bravery at the last teaches me to try to live as courageously as she did.

My hope is that lawmakers will summon that same courage: on juvenile life sentences, take up a reform bill, debate it and enact it now.



Chicago Youth Advocate Program  
1111 East 87<sup>th</sup> Street, Suite 200  
Chicago, Illinois 60619  
773.374.6100

Testimony before the Joint Criminal Justice Reform Committee  
By the Chicago Youth Advocate Programs  
November 7, 2014  
Chicago, Illinois

We thank the members of the Joint Criminal Justice Reform Committee for addressing the issue of Illinois criminal justice and sentencing reform and for hearing our testimony today.

My name is David Williams, and I am the Regional Director of the Chicago Youth Advocate Program. I have worked in adult and juvenile corrections for over 25 years, most recently with the Chicago Youth Advocate Program. Beside me is my colleague, Minette Bauer, Deputy CEO who has nearly 40 years' experience in operating programs that serve as an alternative to incarceration here in Illinois and in other states served by Youth Advocate Programs, Inc.

The Chicago Youth Advocate Program, or YAP as we are known, is a nonprofit agency serving youth and young adults who are wards of the Department of Children and Family Services and are also incarcerated in either juvenile facilities operated by the Department of Juvenile Justice or due to their age and offense when arrested, incarcerated in the adult prisons operated by the Illinois Department of Corrections. YAP also provides services to older teens aged 15 to 21 attending the Chicago Public High Schools on the South side of the City.

While our name may imply a specialty in youth services, the clients we serve are engaged in or impacted by the adult correctional system. Our CPS students are at greater risk of arrest and incarceration in adult correctional facilities because fifteen year olds are subject to automatic transfer to the adult court if arrested for felony offenses. We know from testimony and research provided by the Juvenile Justice Initiative (JJI) that the majority of adolescents tried in the adult court are found guilty of lesser offenses that would not have led to their automatic transfer to the adult court – JJI data shows 55% were convicted of lesser offenses while an additional 4% were found not guilty in their study conducted on 257 Cook County youth who were automatically transferred and prosecuted in adult court.

When transferred to the adult criminal justice system, these youth are subject to adult supervision in the community without access to programs that offer treatment commensurate with their age, maturity and needs. If sentenced to serve time in adult state prisons, they are at greater risk of assault and sexual abuse by more sophisticated inmates.

We are hopeful that the Committee members will make use of the vast array of recent research that shows young people and young adults are amenable to treatment and experience less recidivism when supervised and supported in their own homes and communities. Those who are able to graduate from high school or obtain a GED have a far better chance of seeking higher education, finding sustainable employment and obtaining upward financial mobility. They become tax payers not tax dependents. JJI reports that “over 60% of the young adult arrests...of those 18 to 21 years of age.... were for misdemeanor offenses. Less than 3% were for Class X and murder offenses.”

The recent research showing the developmental phases of the brain indicates that individuals do not mature until about the age of 23 years. Our ability to fully comprehend consequences is not fully developed until adulthood and adds to the number of poorly informed decisions made by many of those incarcerated today. Illinois universities produce much of the research that would help our policy makers make better use of limited dollars.

We also need to change policies that deny young adults with criminal records access to financial assistance afforded to students who seek higher education. We need to change policies that deny public housing to those with criminal records. Some young people are unable to return to their families who live in public housing due to their offense histories as adults and in some cases, as juveniles. We know a criminal history record is likely to cause almost permanent unemployment for many. There are many policies today that enable the mass incarceration of young men and women of color and it is widely understood that these policies have negative consequences felt more in the African American and Latino communities nationally.

Policy makers who wish to reform our systems need options that do not jeopardize community safety and help the youthful offender find a productive life. There are many programs operating in Illinois that can effectively serve the nonviolent, youthful offender and reduce the need to incarcerate many of the 49,000 inmates currently housed in our overcrowded state prisons. We need to rethink the incarceration of those who commit nonviolent crimes and technical violations. IDOC projects that 31% of those released will return for new offenses or technical violations in its October 2014 Quarterly Report.

We need a continuum of care that funds a range of programs that offer varying levels of intervention based upon the needs of offenders including severity of criminal records, educational levels, mental health issues, neighborhood influences and employment histories. Getting the right level of care to the right population based upon need and is a wise investment of dollars. To offer services that cost little but do not meet their needs leads to recidivism. This is just as wasteful as assigning offenders to more intensive programs when less intensive services will meet their needs.

Illinois has an array of programs that provide varying levels of intervention and could be more strategically utilized to meet the needs of offenders – as alternatives to incarceration or aftercare services upon release. Redeploy Illinois, restorative justice programs, electronic monitoring, police diversion programs and supervised work programs are available in Illinois and can help reduce the rate of incarceration, save tax payers dollars and reduce recidivism. Illinois has universities whose criminal justice research is respected nationally, an advocacy community to support reforms, and a skilled and talented work force to expand its array of community based services to adult and juvenile offenders.

Our YAP program is only one example of an intensive intervention program that has helped juvenile and young adult offenders find productive pathways to rehabilitation. We are designed to serve offenders who require intensive supervision; need assistance with education and employment; and should be linked to community resources – often mental health or substance abuse services. Our clients and those incarcerated have higher rates of learning disabilities and mental health issues than the general public. Many suffer from trauma as a result of violence in their communities and have experienced greater incidence of child abuse as children.

To compensate for these often unresolved issues, each offender is assigned a community advocate who provides up to 30 hours per week in face to face intervention with his or her client and family. Those hours are spent in activities designed to promote positive decision making and guide actions that help the offender avoid the situations that led to his or her criminal behavior and/or incarceration. Paid advocates are recruited from the neighborhoods of the offenders they serve, depositing funds into the poorest communities with the highest rates of unemployment. Advocates provide credible role models who understand and have experienced similar challenges in neighborhoods that experience the highest rates of crime. Our advocates know how to navigate safely and guide their assigned clients to healthy life choices.

YAP also provides subsidized employment for its clients via our Supported Work Program. We have a network of 45 employers in Chicago who routinely provide high risk students and youthful offenders an opportunity to work, learn basic employment skills and experience different career clusters to help guide future career choices and greater opportunity for economic mobility.

Nationally, we have recently launched a Safely Home Campaign which is linked to numerous advocacy groups that seek safe, cost effective prison reform for juvenile and adult offenders.

We would like to step back for a moment and reflect upon what life looks like for many of our youth and their families living on the south side of Chicago. They grow up surrounded by violence; have lost friends and family members to shootings in high crime neighborhoods. They suffer from post-traumatic stress. They are black or brown. Even law abiding citizens living in these communities are subject to Stop-and-Frisk policies implemented by the police. It is feared that police now shoot to kill rather than practice crisis intervention.



It is difficult to safely get to school and while at school difficult to focus on subject matter as one has to worry about getting home at the end of the day. Adding to the trauma is the number of students whose parents are incarcerated downstate making visitation almost impossible.

Parents who are working are often working two part time jobs that equal about 50 hours per week, some only paid minimum wage. Food runs short at the end of each month and many suffer from revolving evictions – moving from one place to the next. Some are squatters and others are homeless. Winter is coming and utilities will be an issue, broken windows a problem and there will be nights that families go without heat.

Despite these challenges, our clients and their families are resilient and with help find optimism and willingness to try again. Our outcomes prove this point. Although the population referred to us from 2009 through 2012 by the Chicago Public Schools was twenty times more likely to shoot or be shot within two years, 87% of our seniors in high school graduated. Forty-one percent of those students enrolled in colleges and another nine percent enrolled in vocational programs. Fifty percent of these students sought higher education and aspirations of economic independence. Only nine percent of our students were incarcerated even though they came from the neighborhoods on the south side with a strong gang presence and highest rates of violent crime.

Over the summer YAP employed over 70 students and young adults in Supported Work programs again proving that our inner city youth are willing and able to work if the opportunities are offered to them. We have the potential of increasing our work force and numbers that contribute to our tax payer base by employment programs for nonviolent offenders and in doing so, reduce the numbers of offenders who drain the public coffers.

The departments of corrections and juvenile justice have taken steps to reform their systems... most notably the closure of Tamms and two juvenile facilities (Joliet and Murphysboro) that enable these departments to redirect funds. We appreciate their efforts as well as the work the Joint Criminal Justice Reform Committee is undertaking to improve our systems working to ensure a just and equitable system for the citizens of Illinois.



## Written Testimony of Victor Dickson President and CEO, Safer Foundation

House-Senate Joint Criminal Justice Reform  
Committee  
November 7, 2014

Rep. Zalewski, Sen. Noland, and the Members of the Committee:

I am Victor Dickson, President of the Safer Foundation. Thank you for the opportunity to speak today.

Safer Foundation commends the Committee for holding these hearings and exploring the reform of our criminal justice system. The gun violence taking place in the City of Chicago continues to make headlines. It's a problem that people on all sides of the political spectrum agree we must address. But history has proven that *tough* on crime solutions simply don't work, and have the unintended consequence of overcrowding prisons.

In 2012, Illinois' crime rate decreased by 14%, yet the incarceration rate increased by 8%.<sup>i</sup> These figures indicate that crime rates are not driving Illinois' excessive prison population.

Thirty five other states have either stabilized or decreased their prison populations, which in some cases corresponded to reduced violence and lower crime rates. Unlike these states, Illinois has one of the nation's stubbornly high incarceration rates. In a new report, "Fewer Prisoners, Less Crime: A Tale of Three States," examining New York, New Jersey, and California, the Sentencing Project found that during the periods the incarceration rates fell, these states saw greater declines in crime rates than the nation overall. "Between 1999-2012, New York and New Jersey's violent crime rate fell by 31% and 30%, respectively, while the national rate decreased by 26%. Between 2006 and 2012, California's violent crime rate dropped 21% which exceeded the national decline of 19%."<sup>ii</sup>

This is the perfect time for us to determine how Illinois can achieve a **net decrease** in our prison population over the next several years. As many have said in previous hearings, we need to consider reducing penalties for possessing small amounts of marijuana and other low level, non-violent offenses. But that's not going to be enough to



unburden a strained system that is no longer sustainable in Illinois. This committee has the opportunity to recommend policies and legislation that will drive real change. When this committee has concluded the work, any policy or legislation that does not reduce our prison population, which in turn reduces crime & violence - will be a loss, not a victory.

Safer Foundation has been concerned with the human toll and impact of tough on crime policies and laws in the state for decades. People who commit crimes should be punished, but the problem is the punishment has become permanent. Even after serving their time, returning citizens face almost insurmountable barriers to re-entry. People re-entering our communities often have significant educational and employment deficits, as well as mental health and substance abuse issues. And without the means to address those issues, most will end up back in prison.

Each year approximately 30,000 or more people are released from Illinois prisons<sup>iii</sup> and about 71,000 cycle in and out of Cook County jail.<sup>iv</sup> A significant percentage of these individuals will be negatively impacted by their record—especially in finding employment—no matter how long ago or the nature their offense. This impacts not just them, but their families, their communities, the city, county and state. This is why Safer is a staunch advocate for policies and legislation to reduce barriers to employment for people with records. Our request to our elected officials is simple: Ensure that returning citizens have the opportunity to get a job!

The negative economic impact of incarceration to individuals and their families is staggering. In the report, "Collateral Costs," the Pew Center found that serving time reduces hourly wages for men 11%, annual employment by 9 weeks and annual earnings by 40%.<sup>v</sup> Average family income over the years a father is incarcerated is 22% lower than before his incarceration.<sup>vi</sup> Even a year after a father's release, family income remains 15% lower than it was the year before his incarceration.<sup>vii</sup>

The evidence is mounting across the country that improving employment outcomes for persons with criminal records offers the best chance for a successful re-entry and reducing recidivism. In July, at this Committee's hearing, the Illinois Sentencing and Policy Advisory Council gave you the Illinois "Results First" Cost Benefit Analysis which identified Employment Training & Job Assistance in the community as having the best benefit-to-cost ratio of any effort to reduce reconvictions. While we understand that SPAC is working hard to collect more precise information – this research points to the value of community-based employment, and the priority we should place on employment-related services, to improve outcomes.

Safer's recent recidivism study, conducted by Loyola University, revealed that the three-year recidivism rate for Safer Foundation clients who achieved a 30-day employment



retention was 17.5%, sixty-three percent lower than the statewide rate for those released from prison during the same time period. A person who does not recidivate has not violated conditions of their release and most importantly has not committed a new crime.<sup>viii</sup>

Any serious discussion about reducing crime & violence in Illinois must acknowledge and address the enormous issue of reentry. 3.8 million of Illinois' 12.8 million residents have criminal records that become barriers to employment. Ensuring that this group, almost 1/3<sup>rd</sup> of our population, can secure jobs keeps them off the street and makes them less likely to commit crimes.

For these reasons, we urge the Committee to speed action to implement a community-based strategy that gets to the root of violence and crime in highly impacted communities - a strategy centered on providing jobs. That means re-directing resources to community-based programs that provide educational initiatives, employment training and supportive services. These community-based programs should become part of the state's pre & post release efforts to facilitate reentry *and* court level diversion efforts to reduce reconvictions. Illinois *can* reduce reliance on incarceration – and budget more funding to community based programs. This investment will be recouped quickly as our incarceration rate & incarceration costs decrease.

While some community-based programs already exist in Illinois, there are simply not enough. Funding is needed to expand services and the number of service sites, especially in communities heavily impacted by mass incarceration and reentry.

The State of Illinois should consider creating an **Employment Diversion Pilot Program**, using proven assessment models, service plans, and evidence-based programs. An Employment Diversion Program should be a pretrial sentencing alternative for persons with certain non-violent offenses, especially those driven by their poverty and financial need. Based upon the Results First Analysis this will be a cost efficient way of reducing recidivism, decreasing court costs, incarceration and police costs, as well as improving public safety.

The State of Illinois should also consider expanding the use of **Community Corrections Centers** or work release centers, as a step down approach prior to release from prison. Safer Foundation currently operates two of the state's 4 community-based correction centers, called Adult Transition Centers (ATCs). Adult Transition Centers are vital in providing incarcerated individuals the rehabilitative programming needed to restructure their lives, including employment. Our ATC's operate at approximately 60% of the daily per person rate of the prisons. Yet, ATCs in Illinois represent less than 2% of IDOC bed space with 958 beds (580 of those beds are operated by Safer).<sup>ix</sup>



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<sup>i</sup> The Pew Center on States, "States Cut Both Crime and Imprisonment,"(December 19, 2013), available at <http://www.pewstates.org/research/data-visualizations/states-cut-both-crime-and-imprisonment-85899528171>.

<sup>ii</sup> The Sentencing Project, "Fewer Prisoners, Less Crime: A Tale of Three States," (July 23, 2014), available at [http://sentencingproject.org/doc/publications/inc\\_Fewer\\_Prisoners\\_Less\\_Crime.pdf](http://sentencingproject.org/doc/publications/inc_Fewer_Prisoners_Less_Crime.pdf).

<sup>iii</sup> John Howard Association of Illinois, "Reforming Illinois' Prison System from the Inside-Out."

<sup>iv</sup> David E. Olson, Loyola University, "Population Dynamics and the Characteristics of Inmates in the Cook County Jail" [http://www.ecommons.luc.edu/cgi/viewcontent.cgi?article=1000&content=criminaljustice\\_facpubs](http://www.ecommons.luc.edu/cgi/viewcontent.cgi?article=1000&content=criminaljustice_facpubs).

<sup>v</sup> Dr. Bruce Western, et al., "Collateral Costs: Incarceration's Effect on Economic Mobility," The Pew Charitable Trusts (2010), available at

[http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2010/CollateralCosts1.pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/CollateralCosts1.pdf.pdf).

<sup>vi</sup> Ibid.

<sup>vii</sup> Ibid.

<sup>viii</sup> Recidivism percent (47.0%) based on the IDOC FY2011 recidivism percent for inmates released in FY2008 from IDOC and re-incarcerated within three years of release.

<sup>ix</sup> John Howard Association of Illinois, "2014 Monitoring Visit to Crossroads Adult Transitional Center," available at

<http://thejha.org/sites/default/files/Crossroads%20Adult%20Transitional%20Center%20Report%202014%20%284%29.pdf>.





**Bluhm Legal Clinic**  
Northwestern Law

Children and Family Justice Center

Julie Biehl, *Director*  
Alison Flaum, *Legal Director*

ATTORNEYS AND CLINICAL FACULTY

Emmanuel Andre  
Jordan Blumenthal  
Carolyn Frazier  
Stephanie Kollmann  
Shobha Mahadev  
Scott Main  
Uzoamaka Emeka Nzelibe

CLINICAL SOCIAL WORKER  
Marjorie Moss

November 14, 2014

Joint Criminal Justice Reform Committee  
Illinois 98<sup>th</sup> General Assembly  
c/o Ashley Jenkins and Kalyn Hill

Dear Sen. Noland, Rep. Zalewski, and Committee Members,

Thank you again for the opportunity to present oral testimony at your November 7<sup>th</sup> hearing. Attached is a written summary of my remarks.

Please let me reaffirm my commitment to offering the resources of the Children and Family Justice Center for any research or technical assistance that you may need.

Sincerely,

Julie Biehl  
Director

*2013 MACEI  
Award Winner*



Children and Family Justice Center

Julie Biehl, *Director*  
Alison Flaum, *Legal Director*

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CLINICAL SOCIAL WORKER  
Marjorie Moss

To: Joint Criminal Justice Reform Committee  
From: Julie Biehl, Director  
Re: Trial and Sentencing of Youth as Adults  
Date: November 14, 2014

The General Assembly's recognition that the State of Illinois stands at a crossroads concerning its response to crime is encouraging. I commend the co-chairs and each member of this committee for your careful attention to the important issue of meaningful criminal justice reform.

Legislators, judges, practitioners, and policy advisors all can agree with each other -- and with Illinois voters -- about four fundamental principles:

- Criminal laws must protect the public;
- Justice requires clear, fair process;
- Young people are not adults; and
- Now is the moment for criminal sentencing reform

Thank you for the opportunity to present to you the importance of applying these shared principles to youth who come into conflict with the law, and I am happy to discuss our research with you in any way you deem beneficial to your efforts, now or in the future.

**I. Discretionary Transfer Enhances Public Safety**

In the 1980s, Illinois started automatically excluding youth from juvenile court on the basis of their criminal charge due to the popular assumption that adult sentences would better protect public safety.<sup>1</sup> Nearly three decades later, we now know that the assumption was incorrect. Although crime committed by young people is at a 30-year low, research shows that the national trend of youth crime reduction is not tied to increased transfers of youth to adult court.<sup>2</sup> Research to date "suggests that transfer laws, as currently indicated, probably have little general deterrent effect on would-be juvenile offenders."<sup>3</sup> Accordingly, states with very low rates of transfer of youth to adult court for violent offenses -- even murder -- have benefited from similar or higher reductions in violent crime than states that frequently try youth as adults.<sup>4</sup>

2013 MACEI  
Award Winner

Extensive research has also demonstrated that removing young people from the juvenile justice system and sending them to adult criminal court impedes public safety and is frequently harmful. A Center for Disease Control task force reviewed all available government-funded or published studies and found that **placing youth in the adult criminal court system increases the likelihood that they will recidivate and commit future crimes by 34%.**<sup>5</sup> Likewise, a report published by the U.S. Department of Justice examining outcomes for several thousand youth across studies found that adult transfer had a similar negative effect on public safety, concluding that “to best achieve reductions in recidivism, the overall number of juvenile offenders transferred to the criminal justice system should be minimized.”<sup>6</sup>

Several contributing factors help to account for the increased likelihood of youth to commit future crimes. First, it is detrimental to the rehabilitation of juveniles to surround them with adult criminals who will no doubt become their mentors and reinforce the “criminal” identity.<sup>7</sup> Additionally, placing juveniles in the adult system disrupts opportunities for successful rehabilitation.<sup>8</sup> Finally, youth charged as adults are often detained in adult facilities, where they are particularly vulnerable to abuse and isolation.<sup>9</sup>

Since our shared goal is increased public safety, our laws must enable youth to be tried in the court that is most likely to protect the public. Sometimes this will mean keeping young people in juvenile court, a decision that can and must be made by a neutral judge.

## **II. The Juvenile Transfer Process Must Be Transparent**

Because trying youth in adult court is so significant to the individual, community and victim, the decision to transfer a youth must be made by a neutral party in open court based on specified criteria. Currently, under our excluded juvenile jurisdiction laws, children are transferred automatically to adult court without ever setting foot in front of a judge.<sup>10</sup> Once in adult court, the case can never be returned to juvenile court. This practice provides **no opportunity for advocacy from a lawyer, no opportunity for a victim or the public to be heard, and most importantly, no opportunity for a neutral judge to weigh the evidence or the particular circumstances of the case.**

This practice leaves Illinois in a small minority of states with a class of juvenile cases in which no judge can ever weigh whether transfer to adult court is appropriate. Our system falls short of the Supreme Court’s standard regarding the treatment of young people – *Roper v. Simmons*, *Graham v. Florida*, *J.D.B. v. North Carolina*, and *Miller v. Alabama* – requiring that youthfulness must always be taken into account in the treatment of a court-involved minor.<sup>11</sup> Most recently, the *Miller* Court outlined its expectations by stating, “just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered.”<sup>12</sup> The current system in Illinois fails to take these factors into consideration by automatically transferring youth to criminal court with no chance for review of whether the transfer is appropriate in a given case.

Illinois’ current discretionary transfer statute meets Supreme Court expectations and sets forth a clear process for evaluating youth for transfer to adult court.<sup>13</sup> Discretionary transfer law allows youth cases to begin in juvenile court. Whenever a prosecutor deems it appropriate, a full hearing is held to determine whether to transfer the youth to adult court.

In issuing the decision to transfer, the judge must evaluate whether it is in the best



interest of the public to proceed in criminal court. The judge is to weigh a comprehensive list of factors, including the age of the minor, the history of the minor, the specific circumstances of the offense, whether the youth is more amendable to treatment in the juvenile justice system, and the needs of the community in promoting public safety.<sup>14</sup>

The judge must give the greatest weight to the seriousness of the offense and the minor's prior record of delinquency. After carefully considering this information and conducting this analysis in an open hearing, the judge would then make a reasoned determination as to which venue – juvenile court or adult criminal court – is best suited to handle the case.<sup>15</sup>

### **III. Sentencing Policy Must Reflect the Fact that Youth are not Adults.**

Research has proven and the United States Supreme Court has recognized a simple fact that parents know: youth are categorically different than adults.<sup>16</sup> We know our young people live in the moment, not considering future consequences.

Young people are more likely to act impulsively and in groups, but they are also more likely to change for the better.<sup>17</sup> Even most youth who have committed felony-level offenses cease criminal activity as they become young adults.<sup>18</sup>

Even though we know that young people are not mini-adults, and even though the Supreme Court has told us that “criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed,”<sup>19</sup> Illinois’ procedures for excluding youth from juvenile court and sentencing them as adults ignore this principle.

Judges are forced to give a 13-year-old being tried as an adult the same mandatory minimum sentence that a 35-year-old would receive. There is no question that a 13 year old and a 35 year old bear absolutely no resemblance to each other, and they have completely different rehabilitative potential. The judge cannot sentence him to a single day less due to any mitigating circumstances, such as pressure applied by adult co-defendants, or his degree of participation in a crime, history of abuse, or cognitive difficulties. So, while the Supreme Court says that criminal procedure laws that ignore youthfulness are flawed, in Illinois criminal courts apply the exact same standards and sentences to adults and minors.

Throughout the course of these reform hearings, you have heard a great deal of testimony about how sentences that ignore risk, prevent access to rehabilitative programming, and keep people in prison after they are rehabilitated remove fairness from our justice system; destroy the effectiveness of our corrections system; waste our taxpayer dollars; and jeopardize the safety and economy of our communities.

**While risk- and rehabilitation-blind sentencing policies are expensive and ineffective for adults, they are doubly bad for young people.**

Adult sentencing policies uniformly exclude youth -- even first-time offenders -- from the kind of accountability that would allow them to successfully abandon their bad acts, increasing public safety. We are issuing permanent felony convictions and long, rehabilitation-obstructing sentences to a considerable proportion of teenaged offenders who would otherwise mature out of their behavior. This wastes massive amounts of taxpayer dollars. It also devastates our future workforce and will certainly have a ripple effect across our entire state's economy and tax base for decades to come.

Worse, processing minors through the adult system and issuing long sentences without ever once assessing each youth as an individual sends the clear signal that, as far as the justice system is concerned, some young people have no future potential to preserve, that their lives are uniformly without value, and that the level of actual culpability or harm is irrelevant. Messages of injustice destroy hope among younger siblings and peers, tear apart families and communities, and suppress motivation for positive change.

We all want our justice system to impose accountability for wrongdoing in the context of reflecting larger values about respecting the lives and resources of others. Unsurprisingly, when the lives and potential of young people are indiscriminately wasted by our system, it is more difficult for them to internalize respect for these important values.

Youth are not adults; criminal courts need the authority to recognize this fact. It is critical that we do not force courts to apply adult prison terms to young people wholesale, removing eligibility for effective programs. Judges must be able to issue individualized sentences to young people that allow for rehabilitation and safe supervision in the environment most likely to achieve public safety goals.

#### **IV. The Time to Reform Our Juvenile Transfer Law Is Now.**

Over the past two years, the public discourse about criminal and juvenile justice issues has proven that the citizens of Illinois want a change. In a widely-accepted report contemplating age and juvenile jurisdiction, our state juvenile policy advisory group officially recommended “[e]valuating the transfer statutes under which youth are transferred into adult court for consistency with public safety, youth rehabilitation, and fairness. . . . [T]he 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.”<sup>20</sup>

More than fifty highly esteemed organizations comprised of corrections officers and religious leaders, juvenile court judges and Illinois Supreme Court justices have all called on the legislature to enact juvenile transfer reform legislation without delay.<sup>21</sup> Just last month, the Pope stated that “states must abstain from the criminal [punishment] of children. . . [who] must instead benefit from all the privileges that the state is capable of offering, regarding policies of inclusion as much as practices directed at developing in them respect for life and for the rights of others.”<sup>22</sup>

Indeed, in a nearly unprecedented move, just three weeks ago the Illinois Supreme Court unanimously called on the General Assembly to repeal the automatic transfer of juveniles to adult criminal court. The case, *State v. Patterson*, involved a 15 year old boy who was automatically transferred to adult criminal court pursuant to our automatic transfer statute. Expressing grave concerns over the indiscriminate assignment of groups of young people to adult criminal court, the Court spoke directly to the General Assembly, stating:

We [] share the concern expressed in both the [United States] Supreme Court’s recent case law and the dissent in this case over the absence of any judicial discretion in Illinois’s automatic transfer provision. While modern research has recognized the effect that the unique qualities and characteristics of youth may have on juveniles’ judgment and actions [citing *Roper v. Simmons*, 543 U.S. 551 (2005)], the automatic transfer provision does not. Indeed, the mandatory nature of that statute denies this reality. **Accordingly we strongly urge the General Assembly to review the automatic transfer provision based on the current scientific and sociological evidence**

**indicating a need for the exercise of judicial discretion in determining the appropriate setting for the proceedings in these juvenile cases.<sup>23</sup>**

Our laws must impose punishment and accountability in a way that is developmentally informed so as to best protect public safety. A one-size-fits-all model is not the answer; it demonstrably does not work. The highest courts in this State and in our nation have said so repeatedly, state and national organizations have echoed those sentiments, and citizens in Illinois and nationwide agree. The time to act is now.

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<sup>1</sup> Jason Szanyi, *Innovation Brief: Reforming Automatic Transfer Laws: A Success Story*, MODELS FOR CHANGE, December 2012, at 1.

<sup>2</sup> Jeffrey A. Butts, *Transfer of Juveniles to Criminal Court is Not Correlated with Falling Youth Violence*, March 16, 2012, [http://johnjayresearch.org/wp-content/uploads/2012/03/databit2012\\_05.pdf](http://johnjayresearch.org/wp-content/uploads/2012/03/databit2012_05.pdf).

<sup>3</sup> Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (Juvenile Justice Bulletin), June 2010, at 6, <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>.

<sup>4</sup> *Id.*

<sup>5</sup> *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to Adult Justice System*, CENTER FOR DISEASE CONTROL, November 30, 2007.

<sup>6</sup> REDDING, *supra* note 3 at 8.

<sup>7</sup> Edward P. Mulvey and Carol A. Schubert, *Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (Juvenile Justice Bulletin), December 2012, at 5, <http://www.ojjdp.gov/pubs/232932.pdf>.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> Minors in adult facilities are significantly more likely to be sexually abused, attacked with a weapon by fellow inmates, and beaten by staff; isolation practices intended to prevent such incidents can cause physical and mental health to significantly deteriorate, including elevated suicide rates, *See* ILLINOIS JUVENILE JUSTICE COMMISSION, *Raising the Age of Juvenile Jurisdiction in Illinois*, February 2013, at 25.

<sup>10</sup> 705 ILCS 405/5-130. *See also* 705 ILCS 405/5-805(1) (barring judicial consideration of amenability to juvenile court in mandatory transfer hearings).

<sup>11</sup> *See e.g.*, *Miller v. Alabama*, 132 S. Ct. 2455 (2012); *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>12</sup> *Miller*, 132 S. Ct. at 2466.

<sup>13</sup> 705 ILCS 405/5-805(3).

<sup>14</sup> Weighing the adequacy of punishment or services is an explicit requirement of Illinois discretionary transfer hearings. 705 ILCS 405/5-805(3)(b)(v)(c). In assessing the sufficiency of juvenile court proceedings in extremely serious cases, it is important to note that the extended juvenile jurisdiction provision of the Juvenile Court Act allows a juvenile court to issue, in addition to a juvenile sentence, a suspended adult criminal sentences that may be imposed upon violation of conditions of the juvenile sentence (resulting in incapacitation beyond the age of 21). 705 ILCS 405/5-810.

<sup>15</sup> In some states, similar hearings can occur in criminal court after the transfer decision, in a process sometimes known as “reverse waiver.” While an improvement over automatic exclusion from juvenile court with no hope for judicial review, holding such hearings in criminal court wastes youth-specific training and expertise developed in juvenile court among juvenile judges, prosecutors, defenders, and clinical and probation assessment professionals.

<sup>16</sup> “Because juveniles have diminished culpability and greater prospects for reform, we explained, they are less deserving of the most severe punishments. [We] relied on three significant gaps between juveniles and adults. First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child’s character is not as well formed as

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an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity. Our decisions rested not only on common sense — on what "any parent knows" — but on science and social science as well." *Miller*, 132 S.Ct. at 2464 (internal citations omitted).

<sup>17</sup> ILLINOIS JUVENILE JUSTICE COMMISSION, *supra* note 9 at 17-21.

<sup>18</sup> EDWARD P. MULVEY, U.S. DEP'T OF JUSTICE, *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders* (2011), <https://ncjrs.gov/pdffiles1/ojdp/230971.pdf>.

<sup>19</sup> *Graham v. Florida*, 130 S. Ct. 2011, 2031 (2010).

<sup>20</sup> ILLINOIS JUVENILE JUSTICE COMMISSION, *supra* note 9 at 9.

<sup>21</sup> JUVENILE JUSTICE INITIATIVE, *HB 4538 Fact Sheet* (2014).

<sup>22</sup> Address of Pope Francis to the Delegates of the International Association of Penal Law, October 23, 2014, [http://w2.vatican.va/content/francesco/en/speeches/2014/october/documents/papa-francesco\\_20141023\\_associazione-internazionale-diritto-penale.html](http://w2.vatican.va/content/francesco/en/speeches/2014/october/documents/papa-francesco_20141023_associazione-internazionale-diritto-penale.html).

<sup>23</sup> *State v. Patterson*, 2014 IL 115102, ¶111 (Oct. 17, 2014) (emphasis added).



## SAFER FOUNDATION HIGHLIGHTS

Safer Foundation – headquartered in Chicago, Illinois – is one of the nation’s largest not-for-profit providers of services designed exclusively for people with criminal records. For more than 40 years, the Safer Foundation has reduced recidivism by supporting, through a full spectrum of services, the efforts of people with criminal records to become employed, law-abiding members of the community. Last year, Safer helped more than 4,200 men and women with criminal records secure employment.

Safer promises employers a well-trained, readily available, drug-free workforce. Our partnership with employers has a triple bottom line. Firstly, it meets business needs and grows employment. Secondly, it advances our clients in leading productive lives. And, thirdly, it creates safer communities. Safer’s Workforce Strategies Division supports employers throughout the Chicago metropolitan area to fill position openings with Safer’s participants. Safer has a database of over 450 employers who hire adults with criminal records.

### CLIENTS

The typical client served by Safer tends to reflect the demographic of a significant number of people leaving prison. Our average client is male, around the age of 30, single, with at least one child, and no post-secondary education; typically they have multiple convictions. Like our clients, the average person on parole has also previously been incarcerated and continues to face significant barriers to safe and successful reentry. They are looking for a second chance; they want to make livable wages that will enable them to support their families.

### PROGRAMS

Safer Foundation’s evidence-based programs are geared toward addressing barriers that impede employment and providing services that support our clients’ abilities to successfully acclimate into society. Employment and employment-related services are the cornerstones of Safer’s service delivery system, including job preparedness, placement (*transitional and long-term employment*), and retention services. In 2006, Safer implemented a redesigned Employment Retention Services model. The redesign was intended to improve the job readiness level of participants and broaden the number as well as quality of job opportunities, thus increasing job

placement and retention as well as reducing recidivism and increasing public safety. To enhance the prospect of securing employment and to increase the marketability of participants, Safer offers GED and Adult Basic Education programs, and facilitates access to vocational training and higher education. Safer has pioneered innovative educational programs designed specifically for youth and adults with criminal records based on their educational needs, learning styles, and past educational experiences. Safer also offers case management including supportive services, problem solving assistance, and prevention education as well as other ancillary services. Safer's 10-unit Focus Apartments provide housing to homeless individuals with criminal records who also have substance abuse issues, chronic illness, and/or other disabilities.

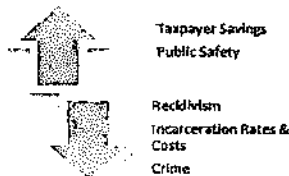
## REDUCING RECIDIVISM

Safer's recent recidivism study conducted by Loyola University revealed that the recidivism rate for Safer Foundation clients who received Safer's employment services and achieved employment was **24.3%**. The three-year recidivism rate for Safer Foundation clients who achieved **30-day** employment retention

was **17.5%**, a **63% lower recidivism rate** than the statewide recidivism rate of those released from prison during the same time period.<sup>1</sup> Among those who went on to achieve **360-day retention**, only **15.7%** recidivated in a three-year period after achieving the 360-day retention.

*"Reducing recidivism in communities across the state will not only create safer streets, but will also expand opportunity and improve the lives of all New Yorkers."*

New York Governor Andrew Cuomo



By keeping people from returning to prison, Safer Foundation provides considerable relief to the state's economy, saving taxpayers millions of dollars. When our clients find employment, they no longer become a drain on the economy, and instead, become valuable contributors. With more than **10,000** job starts in the last 4 years, Safer Foundation saved the state more than **\$300 million** by keeping people out of state prisons, and helping them to become productive, law-abiding citizens, positively contributing to their families, and their communities.

### *A Safer Foundation Success Story Ruth Hamilton*

Ruth Hamilton came to Safer Foundation in 2010 looking for assistance with employment. After several weeks in job readiness training and the job retention class, she was chosen to participate in a Veterans Program that Safer, TEC Services, and Best Buy were offering.

Ruth was enthusiastic about the opportunity. She was the only female in the program but the entire group of Safer participants worked well together. After completing the training and the work experience with Best Buy, she decided she wanted to learn more and continue her career development. She pursued a career with TEC services.

Ruth, now employee at TEC Services, says that her whole life has changed. She is achieving goals that she never thought were possible. Besides learning great work ethics and personal development, she is Master Certified in Microsoft Office and co-leads a Computer Technology Center. She also has cleared up some past debt and is currently working to secure her own

## INVESTING IN THE FUTURE OF ILLINOIS: COMMUNITY CORRECTION CENTERS

**Community Correction Centers** are vital in providing incarcerated individuals with the opportunity to restructure and stabilize their lives with employment, providing them with a second chance at life.

Safer is the only non-profit agency to operate two secured residential Adult Transitional Centers (*ATCs*) on behalf of the Illinois Department of Corrections. Prior to their release from custody, the Crossroads and North Lawndale Adult Transition Centers offer men who have non-violent offenses, with less than two years remaining on their sentences, the opportunity to gradually transition to the community.

Currently, Adult Transitional Centers (*ATCs*) in Illinois represent less than 2% of IDOC bedspace with 958 beds (580 beds for men operated by Safer).<sup>ii</sup>

Safer's minimum security residential facilities have 580 beds, and are typically almost at their maximum operational capacity.<sup>iii</sup> About 750 men are served each year in this program with the average stay being about 12 months.

Safer has been operating the Crossroads Adult Transition Center since 1983, and the North Lawndale Adult Transition Center since 2000. Both of these facilities are accredited by the American Correctional Association and both have been awarded 100% ratings in Mandatory and Non-Mandatory Standards. The ATC residents are strictly supervised and are required to participate in positive, structured activities.

While IDOC funding covers operational costs, Safer obtains grant funding for necessary capital improvements and special programming. To assist with the transition, residents are provided with a range of services including case management, cognitive behavioral therapies, mental health services, substance abuse treatment, and family support services. The philosophy of Safer's ATCs is to provide an appropriate balance of client services and secured close

### The Crossroads Adult Transition Center - Outcomes of Success

- Since 2000, served 7,377 inmates with 1,475 receiving substance abuse treatment, 832 obtaining GEDs, and 5,532 (about 75%) obtaining job starts.
- Recidivism rate is 31.4% for the last three years, compared to IDOC rate of app. 47%
- Houses up to 380 men are housed in the facility at a little more than half the cost of the state per day rate of app. \$38,000.
- In FY14, 82% of those who have been there 30 days or more are eligible to seek employment, and are employed, with a job retention rate of 63%.
- In 2012, Crossroads residents alone had an annual economic impact of \$2.4 million, including paying \$165,000 in taxes, in addition to paying child support and preparing to return to their families and communities in other ways.

supervision. This balance provides individuals with a criminal record the support needed to readjust to social and cultural values and the demands of daily life in a community setting while assuring community safety.

The Safer Foundation also affords ATC residents the opportunity to receive **demand skill training** resulting in Industry Recognized Credentials and employment with a substantial living wage. These opportunities impact the lives of their families and the communities that they will return to upon release.

With a grant from the Chicago Community Trust, Safer partners with Manufacturing Renaissance, the National Institute for Metalworking Skills (NIMS), Manufacturing Works, and the City Colleges of Chicago, to provide people with criminal records training in **Computer Numerical Control (CNC)** machining. The training combines online instruction with hands-on opportunities. Students earn nationally recognized, fully portable credentials. Participants in the program are also provided with comprehensive wrap-around services. Job placement is provided through networks of manufacturing companies and provides participants with long-term retention in careers with a living wage.

Safer has seen great outcomes with the CNC training and placement. The first Year One cohort graduated in mid-September of 2013. Seventeen (17) students enrolled in the program and fifteen (15) completed the coursework with each graduate obtaining at least two NIMS credentials. Thirteen (13) graduates have secured employment in the manufacturing industry with eleven (11) graduates have remained employed for six months. The average salary is \$13.45 per hour with benefits including health, disability and life insurance, paid vacation and holidays, and pension plan. The two (2) graduates from the first cohort that are not employed in the industry are expected to be employed soon. One is currently working full-time in another industry. The second graduate will be paroled to the far north suburbs and employment opportunities in that area are being explored. The second Year One cohort began classes on October 17, 2013. Over 100 residents from the Crossroads and North Lawndale Adult Transition Centers were interviewed and tested for the program. Eighteen (18) participants were selected. Four are already working and three started a job on July 1<sup>st</sup>. There will be a third and fourth class as well.

Safer has also received the **Training to Work 1 and 2 – Adult Reentry** grants from the **Department of Labor**. With the first \$1 million grant received in July 2013, Safer has been providing training in CNC, food service sanitation, welding, forklift truck, and Microsoft digital literacy. For the Training to Work 2 grant, Safer will be providing the same training, with the added fields of culinary arts and commercial driver's license (CDL).

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<sup>1</sup>Recidivism percent (47.0%) based on the IDOC FY2011 recidivism percent for inmates released in FY2008 from IDOC and re-incarcerated within three years of release.

<sup>2</sup> John Howard Association of Illinois. *2014 Monitoring Visit to Crossroads Adult Transitional Center*, available at <http://hbjha.org/sites/default/files/Crossroads%20Adult%20Transitional%20Center%20Report%202014%20%284%29.pdf>.

<sup>3</sup> For North Lawndale (200), in FY 11& 12, the Actual vs. Capacity Population was 144,306/146,000 (99% filled). For Crossroads (380 beds), in FY11&12, the Actual vs. Capacity Population was 238,673/277,400 (86% filled).





# Improving Public Safety, Reducing Incarceration Rates & Costs By Lowering Recidivism in Illinois

White Paper

August 2014

## OVERVIEW

The United States has the highest rate of incarceration in the world at 716 inmates per 100,000 people.<sup>i</sup> According to the Bureau of Justice statistics, nearly 68% of released prisoners return to prison within three years.<sup>ii</sup> After five years, 76.6% of prisoners are back in prison.<sup>iii</sup> If the goal is to rehabilitate, we are failing. This epidemic of incarceration is costing taxpayers nationwide \$80 billion a year taking away money from schools and critical infrastructure projects. Those funds represent a police officer's, or a firefighter's, or a teacher's income. Mass incarceration also contributes to the destruction of families. Far too many kids are losing their parents resulting in extensive social and economic consequences. From a public safety perspective, law enforcement spends too much time and effort policing people who will recidivate without the proper assistance.

While thirty-one states have decreased their prison populations, Illinois has one of the nation's highest and uncharacteristically *growing* imprisonment rates, costing taxpayers hundreds of millions a year.<sup>iv</sup> Illinois's crime rate decreased by 14% in 2012, yet the incarceration rate increased by 8% making Illinois 3<sup>rd</sup> among the states with the largest incarceration rate increases.<sup>v</sup> This trend indicates that crime rates are not driving Illinois's *growing* prison population.

*"This is not about being soft on crime.  
This is about being smart on crime."*

John Whitmire, Texas State Senator

*"We're building prisons to keep up with  
the growing population NOT to grow the  
economy."*

Tom Corbett, Pennsylvania Governor

In some states, falling crime rates are not the main drivers in simultaneous *reduced* incarceration rates. Rather, reductions in incarceration are contributing to lower crime rates.<sup>vi</sup> In a new report - "Fewer Prisoners, Less Crime: A Tale of Three States" - examining states that reduced their prison populations by 26% between 1999 and 2012, the Sentencing Project found that "during their periods of decarceration, violent crime rates fell at a *greater rate* in these three states than they did nationwide."<sup>vii</sup> The report also indicated that "the declining prison populations . . . were not simply the result of falling crime rates; rather, prisons were downsized **through a mix of policy and practice** changes designed to reduce admissions to prison and lengths of stay."<sup>viii</sup>

States nationwide are beginning to recognize that policies and programs that reduce recidivism lead to lesser incarcerations rates and costs, ultimately resulting in lower crime rates.

These programs are good for public safety, make fiscal sense, and strengthen communities of returning citizens thereby helping the economy.

Improving employment outcomes for persons with criminal records is one of the most successful methods of improving the reentry of returning citizens to their communities and reducing recidivism. A July 2014 Illinois Results First Cost Benefit Analysis, produced by the Illinois Sentencing Policy Advisory Council (SPAC), identified **Employment Training & Job Assistance** in the Community as having the best benefit to cost ratio of any effort to reduce reconvictions.<sup>ix</sup>

In some areas, like our juvenile justice system, Illinois has emerged as a national leader in criminal justice reform initiatives. Officials and leaders in Illinois can continue to reverse the mass incarceration cycle and get a better return on their public safety investment by refocusing adult corrections spending – taking the emphasis off of incarceration – and directing it to community-based employment programs and community corrections.

Access to jobs for people with criminal records isn't just about giving a second chance to those individuals; it's also an important investment in Illinois's future that will save the state hundreds of millions of dollars.

## **PRISON GROWTH WILL COST ILLINOIS TAXPAYERS MILLIONS**

Corrections spending from Illinois's general fund between 1995 and 2005 rose by **70 percent**, from \$705 million to \$1.2 billion.<sup>x</sup> During that period, the state's prison population increased by **18 percent** to 44,919.<sup>xi</sup>

In FY10, the Illinois Department of Corrections had an estimated \$1.2 billion in prison costs.<sup>xii</sup> The state had an extra \$566.1 million in prison-related costs outside the budget.<sup>xiii</sup> Including the additional costs, the total state cost was \$1.7 billion, for an average annual cost of \$38,268 per inmate, and a total per taxpayer cost of \$1,743.20.<sup>xiv</sup> These calculations were based upon the 2010 average daily population of 45,551.<sup>xv</sup>

In April 2014, the total population of inmates reached a high of 49,091.<sup>xvi</sup> Illinois is projected to increase the number of inmates to 50,065 by March 2015.<sup>xvii</sup> Given the estimated cost of each prisoner in FY10, we can anticipate that incarcerating more people each year will cost Illinois taxpayers hundreds of millions more.

## **BUILDING STRONG AND SAFE COMMUNITIES: WHY WE NEED ALTERNATIVES TO INCARCERATION**

**High recidivism rates** mean more **crime**, more **victims**, more **pressure** on communities and families, as well as **higher** incarceration rates and costs for the State of Illinois and Illinois taxpayers.

- Budget constraints limit the ability of persons inside of correctional facilities to access desperately needed reentry services. This continues the generational cycles of incarceration that exist in communities across the state of Illinois. Upon release, many individuals are not



prepared to deal with the environmental, social, and familial demands placed upon them, and as a result, will cycle back into the penal system.

- Martin Guervara Urbina (2012) argues that “the most crucial gap to the establishment of social control remains to be bridged: from prison to community. Otherwise, with limited resources, a chaotic environment, and a hostile community, released inmates are likely to return to prison.” (p.292)<sup>xviii</sup> “Chicago Communities and Prison Reentry” (2005) described the community context to which male prisoners returned to Chicago’s 77 communities. They found that over half of released prisoners returned to seven communities with similar economic and demographic characteristics such as below average high school graduation rates, above average poverty rates and crime rates, etc.<sup>xix</sup> However, a closer look suggests former prisoners face a variety of other obstacles, including social isolation and disenfranchisement, housing challenges, deindustrialization, and lack of social service infrastructure.<sup>xx</sup> Many also struggle with substance abuse, homelessness, and family issues.
- According to the Urban Institute, most individuals released from prison held some type of job prior to incarceration and want legal, stable employment upon release. However, most former prisoners experience difficulty finding a job after release.<sup>xxi</sup> The researchers found that two months after being released only 31 percent of inmates were employed.<sup>xxii</sup> Even eight months after release, fewer than half were currently employed.<sup>xxiii</sup> In fact, only about half of formerly incarcerated men and women find employment within a year of being released from prison or jail.<sup>xxiv</sup>
- Facing these multiple barriers, along with the shortage of resources and lack of family support, leads many people to frustration, increases their chance of committing another crime, and returning to prison.<sup>xxv</sup> **Without positive intervention, almost half (47%) of the inmates released from IDOC prisons will be back to prison within three years after violating their parole or committing new crimes.**<sup>xxvi</sup> As mentioned previously, over half of prisoners are released to seven communities which have much higher recidivism rates than the statewide average. In 2012, 31,460 prisoners were released from Illinois prisons<sup>xxvii</sup> meaning that we can estimate that by 2015, at least 14,000 will return to prison. This is an escalating cycle of repeat offending and incarceration with costs that are no longer sustainable in Illinois.
- Many communities in Illinois are significantly impacted by the cycle of incarceration and reentry. These communities, overwhelmed from high poverty, crime, and violence rates, and lack of funding, are struggling to provide basic social services. The cost of high recidivism to families is staggering. Many of those in the cycle of incarceration have children who may likely become at high risk for involvement in the juvenile justice system if their parent(s) are in the system. Further, community residents are victimized by formerly incarcerated individuals who are committing more crimes.

**Employment is the gateway for those in the cycle of incarceration to a road back to becoming and remaining law-abiding and contributing members in our communities.**



## RECOMMENDATIONS

*“Safe, secure, orderly prisons – those are bedrock. But we can truly deliver on our commitment to the safety of our citizens by also assuming leadership in implementing principles and practices that reduce post-release recidivism.”*

A.T. Wall, Director  
Rhode Island Department of Corrections

**RECOMMENDATION 1:** Illinois should lay the foundation for reducing incarceration rates and costs by directing resources to community-based programs that reduce recidivism by providing employment training, supportive services, and educational programming to diversion candidates and returning citizens. *These community-based programs should be deployed as a diversion opportunity to prevent reconvictions and as pre/post release reentry programs.*

**Community-based employment and reentry programs** give diverted & returning citizens the opportunity to receive education and develop skills leading to jobs, assistance in securing a job, as well as support to overcome drug addiction, and mental help problems that threaten jobs and increase recidivism.

These programs help improve public safety by ensuring that diverted & returning citizens are less inclined to commit crime and remain in their communities with support systems and families, while receiving services and gaining employment. Their time is being spent productively in a structured work environment making it less likely that they will engage in riskier behaviors, or engage with people who do. If they are working, the costs to Illinois’s taxpayers for re-incarceration decreases, while the contributions to the tax base for vital community services increase. They are also more likely to be able to provide for their families and develop pro-social relationships strengthening their support systems, resulting in stronger positive relationships and better mental health.

### *Safer Model*

Recognizing the crucial role that employment plays in the adjustment of formerly incarcerated persons, the Safer Foundation (Safer) assists clients to seek and maintain gainful employment. Safer Foundation – headquartered in Chicago, Illinois – is one of the nation’s largest not-for-profit providers of services designed exclusively for people with criminal records.

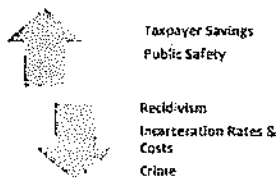
- Safer provided services to 4,200 men and women with criminal records that started jobs last year.
- Workforce Strategies Division supports employers throughout the Chicago metropolitan area to fill position openings with Safer’s participants. While a larger number of employers hire Safer clients each year, Safer has a strong relationship with over 450 employers who hire from Safer.



- ❑ Employment and employment-related services are the cornerstones of Safer's service delivery system, including job preparedness, placement (*transitional and long-term employment*), and retention services.
- ❑ In 2006, Safer implemented a redesigned Employment Retention Services model. The redesign was created to improve the job readiness level of participants and broaden the number as well as quality of job opportunities, thus increasing job placement and retention as well as reducing recidivism and increasing public safety.

***Recidivism Reductions and Outcomes of Success***

Research points to the value of employment, and employment-related services, to improve outcomes. Safer's last recidivism study conducted by Loyola University revealed that the recidivism rate for Safer Foundation clients who received Safer's employment services and achieved employment was 24.3%. The three-year recidivism rate for Safer Foundation clients who achieved **30-day** employment retention was 17.5%, a **63% lower recidivism rate** than the statewide recidivism rate of those released from prison during the same time period.<sup>xxviii</sup> Among those who went on to achieve **360-day retention**, only 15.7% recidivated in a three-year period after achieving the 360-day retention.



By keeping people from returning to prison, Safer Foundation provides considerable relief to the state's economy, saving taxpayers millions of dollars. When our clients find employment, they no longer become a drain on the economy, and instead, become valuable contributors. With more than 10,000 job starts in the last 4 years, Safer Foundation saved the state more than \$300 million by keeping people out of state prisons, and helping them to become productive, law-abiding citizens, positively contributing to their families, and their communities.



**RECOMMENDATION 2:** Illinois should reduce reliance on institutional corrections -- incarceration in jails or prisons -- and budget more funding to community based Adult Transitional Centers.

**Community Correction Centers** are vital in providing incarcerated individuals with the opportunity to restructure and stabilize their lives with employment, providing them with a second chance at life. Currently, Adult Transitional Centers (ATCs) in Illinois **represent less than 2% of IDOC bedspace with 958 beds (580 beds for men operated by Safer).**<sup>xxix</sup>

### *The Crossroads Adult Transition Center Outcomes of Success*

Safer is the only non-profit agency to operate two secured residential Adult Transitional Centers (ATCs) on behalf of the Illinois Department of Corrections. Prior to their release from custody, the Crossroads and North Lawndale Adult Transition Centers offer men who have non-violent offenses, with less than two years remaining on their sentences, the opportunity to gradually transition to the community.

Safer's minimum security residential facilities have 580 beds, and are typically almost at their maximum operational capacity. About 750 men are served each year in this program with the average stay being about 12 months. For more details on programming, see *Safer Highlights*.

- Since 2000, served 7,377 inmates with 1,475 receiving substance abuse treatment, 832 obtaining GEDs, and 5,532 (about 75%) obtaining job starts.
- Recidivism rate is 31.4% for the last three years, compared to IDOC rate of app. 47%
- Houses up to 380 men are housed in the facility at a little more than half the cost of the state per day rate of app. \$38,000.
- In FY14, 82% of those who have been there 30 days or more are eligible to seek employment, and are employed, with a job retention rate of 63%.
- In 2012, Crossroads residents alone had an annual economic impact of \$2.4 million, including paying \$165,000 in taxes, in addition to paying child support and preparing to return to their families and communities in other ways.



## CONCLUSION

As states and localities are examining cost-saving measures and eliminating inefficient and costly programs, they should consider transferring funds from incarceration to community-based employment programs for diversion candidates and returning citizens. In addition, using community corrections for less serious crimes can be an effective approach in keeping Illinois's communities safe and saving money.

If we do not shift our resources to alternatives to incarceration there are real risks: unsuccessful transition from prison & reconviction (*the revolving door syndrome*); communities and human services providers being forced to bear the burden of managing unemployed persons with records; staggering incarceration costs; and, reduced public safety. However, if Illinois considers, and implements these recommendations, critical diversion & reentry services will be provided, strengthening families and communities, and providing employers with a qualified workforce; all while significantly improving tax-payers' return on Illinois's investment of corrections dollars.



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## Endnotes

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- <sup>i</sup> International Centre for Prison Studies, "Highest to Lowest – Prison Population Total," [http://www.huffingtonpost.com/2013/08/13/incarceration-rate-per-capita\\_n\\_3745291.html](http://www.huffingtonpost.com/2013/08/13/incarceration-rate-per-capita_n_3745291.html).
- <sup>ii</sup> Cooper, Alexia et al., "Recidivism of Prisoners Released in 30 states in 2005: Patterns from 2005 to 2010," *Bureau of Justice Statistics* (April 2014), NCJ 244205, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986>.
- <sup>iii</sup> Ibid.
- <sup>iv</sup> The Pew Charitable Trusts, "States Cut Both Crime and Imprisonment," December 19, 2013, available at <http://www.pewstates.org/research/data-visualizations/states-cut-both-crime-and-imprisonment-85899528171>.
- <sup>v</sup> Ibid.
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- <sup>viii</sup> Ibid.
- <sup>ix</sup> Kathryn Saltmarsh, "Illinois Results First Cost-Benefit Analysis," *Illinois Sentencing Policy Advisory Council* (July 15, 2014).
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- <sup>xii</sup> Ibid.
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- <sup>xvii</sup> Ibid.
- <sup>xviii</sup> Urbina, M. G. (2012) "Life after Prison: Ethnic, Racial, and Gender Realities" in Martin G. Urbina (Ed) *Hispanics in the U.S. Criminal Justice System: The New American Demography*, pp. 291 – 314; Springfield: C.C.Thomas.
- <sup>xix</sup> Visher, C. & Farrell, J., "Chicago Communities and Prison Reentry, (2005) Washington, DC: Urban Institute.
- <sup>xx</sup> Ibid.
- <sup>xxi</sup> Visher, Christy, et al., "Employment after Prison: A Longitudinal Study of Releases in Three States," at Pg. 1. Urban Institute Justice Policy Center. October 2008, available at [http://www.urban.org/UploadedPDF/411778\\_employment\\_after\\_prison.pdf](http://www.urban.org/UploadedPDF/411778_employment_after_prison.pdf).
- <sup>xxii</sup> Ibid.
- <sup>xxiii</sup> Ibid.
- <sup>xxiv</sup> Ibid.
- <sup>xxv</sup> Urbina, M. G. (2012) "Life after Prison: Ethnic, Racial, and Gender Realities" in Martin G. Urbina (Ed) *Hispanics in the U.S. Criminal Justice System: The New American Demography*, pp. 291 – 314; Springfield: C.C.Thomas.
- <sup>xxvi</sup> Recidivism percent (47.0%) based on the IDOC FY2011 recidivism percent for inmates released in FY2008 from IDOC and re-incarcerated within three years of release.
- <sup>xxvii</sup> Illinois Department of Corrections, "Fiscal Year 2012 Annual Report," available at <http://www2.illinois.gov/idoc/reportsandstatistics/documents/fy2012%20annual%20report.pdf>.





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<sup>xxviii</sup> Recidivism percent (47.0%) based on the IDOC FY2011 recidivism percent for inmates released in FY2008 from

IDOC and re-incarcerated within three years of release.

<sup>xxix</sup> John Howard Association of Illinois, "2014 Monitoring Visit to Crossroads Adult Transitional Center," available at

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**Safer Foundation**  
575 W. Jackson Blvd.  
Chicago, IL 60661-5701

(312) 922-2200  
Fax: (312) 922-0839  
[www.saferfoundation.org](http://www.saferfoundation.org)





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445 North Sheridan | Chicago, Illinois 60640  
Phone: 773.769.1411 | Fax: 773.769.2224  
[www.uplchicago.org](http://www.uplchicago.org)

## **Testimony Before the Joint Committee on Criminal Justice Reform**

November 10, 2014

Mr. Chairman and Members of the Joint Committee, thank you for this opportunity to address this body this morning.

My name is Alan Mills. I am the Executive Director of the Uptown People's Law Center, where I have worked, either as a volunteer or as a staff attorney since 1979. I also teach a course of prisoner rights at Northwestern University's School of Law and a similar course at DePaul University's College of Law.

The Law Center is a small not-for-profit legal clinic located in the Uptown neighborhood on Chicago's Northside. We represent disabled people who have been wrongfully denied social security or other public benefits; we represent tenants being wrongfully evicted from their homes. We also represent prisoners in the Illinois prison system whose constitutional rights have been violated. It is from this work that we have gained an intimate knowledge of Illinois' prison system, and the changes to that system over the last 35 years.

Earlier this Fall, the Department of Justice's Bureau of Justice Statistics released its annual survey of prisons. These are official population figures collected by the federal government, applying uniform methods of counting both prisoners and capacity across all fifty states. As of December 31, 2013, Illinois' prisons were operating at 172.6% of design capacity.<sup>1</sup>

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<sup>1</sup> Note that this is a very different number than the numbers you were provided on the first day of hearings by the Department. That is because the Department has a special definition of "capacity." In Illinois, "capacity" does not refer to the design capacity—which is the standard used by the federal government and most states. Instead, the Department of Corrections has defined "capacity" to include anywhere they have a bed. So if there is one empty bed on the floor of the infirmary, we are under capacity. That definition is buried in a footnote to a footnote on the Department's website. Each prison on the website reports that it is under capacity, with a footnote: "As of 5/31/2013. Reflects bed space capacity analysis as outlined

(<http://www.bjs.gov/content/pub/pdf/p13.pdf> [Appendix Table 1]). Alabama is the only system more crowded than ours. California, which for decades was the basket case of prison systems, after a decade plus of class action litigation, was ordered by the Supreme Court to reduce its prison population—and it has done so, and is now operating at 142% of capacity.

Illinois' prison population has increased by about ten percent over the last 7 years. During that time, Illinois has not built a single new prison; has not built a single new building in an existing prison; and has not built a single new wing on any existing building. We have not increased the number of guards; we have not increased the number of civilian employees. Rather, while the prison system has grown, the Department of Corrections budget has **decreased** by over 10% in the last few years. As a result, our prison officials are asked to do the impossible: care for many more prisoners, with far fewer resources, and no additional space.

What does this mean? It means that every prison in Illinois is overcrowded. It means that virtually every prison cell in those prisons is now illegal—and I do not mean that it violates some amorphous “international human rights” standard or even that it violates the constitution (although I submit that many of them do). I mean that they violate the statutes passed by you, the Illinois legislature. In 1984, this Legislature passed P.A. 83-942, now codified as 730 ILCS 5/3-7-3 of the Unified Code of Corrections. Subsection (b) provides:

All new, remodeled and newly designated institutions or facilities shall provide at least 50 square feet of cell, room or dormitory floor space.

Note that the statute only applies to new or remodeled facilities, and there were at the time many cells which were grand-fathered in. For example, many of the segregation cells at Menard only measure 4 ½ X 10 feet. However, virtually every cell in the state has now been remodeled. Many have had the open bars which were used in virtually every cell in 1984 replaced with closed front solid steel doors. This dramatically reduces the amount of fresh air in these cells, and makes them feel claustrophobic. But Illinois did not stop there. The Department has also **doubled up virtually every cell** in the state to accommodate the thousands of new prisoners it must house. This means that the segregation cells at Menard which used to provide

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in the July 1, 2013 Quarterly Report to the Legislature.” If you go to that Quarterly Report

([http://www2.illinois.gov/idoc/reportsandstatistics/Documents/IDOC\\_Quarterly%20Report\\_Jul\\_%202013.pdf](http://www2.illinois.gov/idoc/reportsandstatistics/Documents/IDOC_Quarterly%20Report_Jul_%202013.pdf)) Footnote 1 to Table 4 in that report reads: “

Operational Capacity/Bedspace is the maximum number of inmates a facility can hold.” Under this definition, as long as there is a bed, it is part of the “capacity.” That is the definition used when the Department presented its report to you, concluding that the prisons were “crowded, but not overcrowded.”

45 square feet per person—slightly below the statutory minimum of 50 square feet—now only provide 45 square feet for **two people**, or less than half the statutory minimum. This remodeling was a direct violation of this legislature’s mandate.

Vienna Correctional Center took an old condemned warehouse (known as “Building 19”), no longer in use because the windows were broken and the roof leaked, and converted it into “dormitories.” There are now 400 men living in this warehouse. 200 of them live on the second floor, where there are no showers, and these 200 men have to share four (when they all work) toilets. To shower, guards must escort them to the third floor, where another 200 men live, all sharing a dozen showers. The roof still leaks; the windows still need to be replaced. There is mold growing in the bathrooms; and raw sewage drips through the corroded pipes serving the third floor, directly into the bathrooms on the second floor.<sup>2</sup>

At Vandalia Correctional Center, men are living in basements, never designed for human habitation. Worse, these basements flood—raw sewage comes up through the floor drains after a hard rain. Men keep plastic baggies in their beds to put on in the morning, to avoid wading through sewage.

Logan Correctional Center—Illinois’ main prison for women—had as many as 300 women living in the gym last year.

At the Reception Center at Stateville, they could not use their infirmary for in-patients, because people were sleeping on the floor earlier this year.

At Pinckneyville Correctional Center, the Department built some cells specifically designed to be compliant with the Americans with Disabilities Act for people in wheelchairs. But those cells too have been doubled, and there is no longer room for wheelchairs.

System-wide, Illinois has abandoned all thought of preparing prisoners for reentry. At the maximum security prisons, there are no vocational classes, and even GED and Adult Basic Education (literacy) classes are few and far between. The last figures I saw were that for the 3,000 men at Stateville, there was one teacher; only 30 people got their GED. College classes have virtually disappeared—of all Illinois prisons, only one (Danville) still offers college classes. While minimum and medium security prisons do offer some classes, including some vocational training, there are long waiting lists. In the end, we are releasing thousands of people from our prisons every year, who cannot read—and we have done **nothing** to help them learn. This is a tragedy.

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<sup>2</sup> Conditions at Vienna are the subject of a class action case pending in the United States District Court for the Southern District of Illinois, known as *Boyd v. Godinez*, No. 3:12CV704, the Honorable J. Phil Gilbert, judge presiding. The parties are currently engaged in settlement discussions.

We lock up far too many people in segregation. Several years ago, the Department contracted with the Vera Institute, a nationally recognized think tank on criminal justice to evaluate our use of segregation. Vera concluded that we lock up too many people in segregation, for too long, with no evidence that it does anything to improve their behavior. The Department has never released the results of the Vera study, but a copy is available on the web (<http://www.courthousenews.com/2013/03/13/55690.htm>). The newspaper which reported the study headlined its article, "Scathing Study on Solitary Buried by Politics."

Illinois now has approximately 8,000 people who are locked in their cells 22-24 hours a day virtually every day. And many of them have done nothing wrong—because even general population prisoners at prisons like Menard and Stateville spend 22 hours a day sitting in their cells, doing nothing more productive than staring at a television screen. This is shameful.

Illinois is 50th among all 50 states in the amount of money it spends per prisoner delivering medical care. And that number has *decreased* over the last seven years, while the cost of medical care (as you know from the ever increasing Medicaid budget) has gone up significantly during this same period. California—which the Supreme Court ordered to release thousands of prisoners because it provided such poor care, spends about 7 times what Illinois spends per prisoner. And California's system is *still* unconstitutional.<sup>3</sup>

What does this mean? It means that people die unnecessarily in prison—of heart disease, of cancer, diseases which could be treated if caught early enough. But the number of prisoners who die each year is small. What is not small is the number of prisoners *released* each year whose health has been severely compromised. Diabetes out of control; inadequately controlled asthma; and on and on. Many of these people are so badly damaged that they are permanently disabled—we at the Law Center know how damaged they are, because we successfully represent them in Social Security disability cases.

Mental health care is, if anything, worse. The default in the Department is "medicate and isolate." We have hundreds of seriously mentally ill people sitting in segregation units—some so mentally ill that they are involuntarily injected with Haldol (an anti-psychotic), yet are still disciplined when they act out. I have interviewed men and

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<sup>3</sup> The failure to provide minimal medical care to prisoners throughout the state is the subject of a class action lawsuit pending in the United States District Court for the Northern District of Illinois, known as *Lippert v. Godinez*, No. 10-CV-4603, the Honorable Amy St. Eve, judge presiding. The judge appointed a neutral team of experts to prepare a report on the entire system, which the parties anticipate will form the basis for a settlement.

women who have segregation terms of 10, 20, and even 30 years still to do, despite being seriously mentally ill. What good does a 30 year segregation term do? As one psychiatrist put it, that is like telling your five year old he is grounded until he is 35. It is absolutely meaningless. All it does is ensure that their mental health will never improve.

Some prisoners are so mentally ill that they should be hospitalized. But Illinois **has no** hospital beds for its seriously mentally ill prisoners. What we have are hundreds of crisis cells. Crisis cells have a purpose: people who are rapidly decompensating benefit from being isolated to give mental health staff an opportunity to determine what is going on. Do they need to adjust their medicine, did they suffer some crisis, bad news from home? But crisis cells are just that—for crises. They should be located in the prison health care unit, where medical staff can closely observe the patient. Standard practice is a maximum stay of five days, with 10 days as the outside limit. But in Illinois we have no where to put these people, so some people have been in crisis cells for months on end. And those cells are **not** located in the health care units. Up until a few months ago, many were in the segregation units—now many are in general population cellhouses.<sup>4</sup>

In sum, we are concerned that the Committee not limit itself to ideas which fiddle at the edges of the system. You have heard testimony about several very good innovative programs which serve a few dozen or sometimes a few hundred people. And those are great programs. But they need to be scaled up dramatically, and quickly. Because what does it mean that Illinois' prisons are operating at 172% of capacity? It means that we could release 1/3 of all prisoners in Illinois tomorrow, and the system would **still** be overcrowded. It means that we could build 10 new prisons the size of Pinckneyville and the system would still be almost at 100% of capacity.

As this Committee does its work, we urge you to deal with the system as it actually exists today, and to recognize the crisis we are facing. Illinois must fundamentally rethink the way it operates its prisons.

Thank you again for the opportunity to address the Committee.

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<sup>4</sup> Illinois' failure to provide adequate mental health treatment to prisoners with serious mental illnesses statewide is the subject of a class action lawsuit, pending in the United States District Court for the Central District of Illinois, known as *Rasha v. Godinez*, No. 1:07-CV-1298, the Honorable Michael Mihm, judge presiding. The case is in settlement discussions.