
What Should Happen to 17-Year Olds in the Justice System: Adult ← ? → Juvenile?



WISCONSIN COUNCIL ON

**children
& families**

Raising Voices to Make Every Kid Count



1980's: Changes in Juvenile Crime



- Increases in violent crime, including juvenile crime, in the US and Wisconsin
- Rising fears of a “generation of super-predators”
- “Sensational” cases that affected public perceptions as well as legislator action(s)

Changes & Concerns in Wisconsin

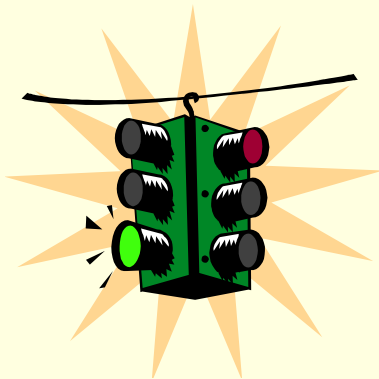
- Juveniles committing more “adult-like” crimes
- Perceptions of inability of existing Children’s Code to respond to “tough” cases
- Age of adult jurisdiction in neighboring states (e.g. Illinois) was lower than Wisconsin
- Removing 17-year olds from juvenile court would free up Youth Aids funds to focus on early intervention with younger offenders



Legislation's Path to Passage



- Legislation was drafted in the early 1990's reflecting the recommendations of the study committee, but "split" control of the legislature delayed passage until
- 1995 –Changes were approved & signed – most provisions took effect July 1, 2006; the lower age of jurisdiction took effect January 1, 1996



Passage of the “new” Law

- Chapter 48 – The Children’s Code

- Continued jurisdiction over abused, neglected, abandoned, etc. **children**
- Continued protections related to best interests and due process requirements



- Chapter 938 – The Juvenile Code

- Jurisdiction over Delinquent **juveniles** and
- Jurisdiction over JIPS cases (**juveniles** in need of protection or services) – habitually truant, habitually runaway, “uncontrollable”

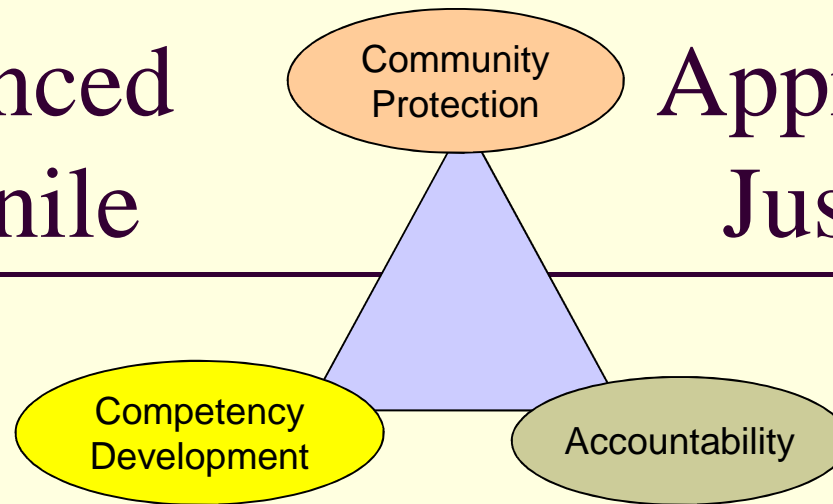
Some of the Changes that came with Chapter 938



- Lower age of juvenile jurisdiction to 16 (17 year olds go to adult court, do not pass go, and do not collect \$200)
- Adoption of a Balanced Approach as the purpose of the code
- Change concept of disposition from “least restrictive” to “most effective”
- Substitute term “juvenile” for “child”
- Reduce waiver age for any delinquent offense to age 15; some to 14
- Set very serious cases as “direct file” to adult court w. provision for reverse waiver
- Create rules for “once waived, always waived”
- Eliminate the right to a jury trial
- Modifying some confidentiality restrictions related to juvenile records

A Balanced to Juvenile

Approach Justice



■ Equally important goals

- Accountability – youth understanding the impact of their behavior(s) and taking steps to repair the harm or restore the community
- Community Protection – promoting both short and long-term safety strategies
- Competency Development – youth learn skills that make them more successful and responsible members of the community

■ Equally important customers

- Victims – an increase in attending to the needs of victims
- Community – crime impacts more than just direct victims, so attend to strategies that engage the community and address their needs
- Offenders – focus on short and long-term strategies that meet the goals

What Goes Around Comes Around - Time for a Change?

■ What has led to discussions of a change?

Includes:



- Reductions in serious juvenile crime (*although some would suggest this is a reason to keep things the way they are*)
- Increasing research relate to effective (and ineffective) interventions [“Nothing Works” has been replaced by “What Works”]
- New brain development research
- Research comparing recidivism between adult and juvenile systems
- Supreme Court decision in death penalty for juveniles (*Roper v. Simmons*)

Legislative Audit Report

08-3



- **Analyzed**
 - Arrest data
 - Case processing & sentences re: 17-year olds
 - Prison/Probation placements
 - Recidivism rates
 - Potential costs for State and local jurisdictions
 - Sampled selected jails
 - Sampled program services & availability
- **Key findings included:**
 - Approx. 28-29,000 17-year olds arrested/yr
 - Of filed cases, in 2/3 of the cases the most serious offense was a misdemeanor
 - Much greater likelihood of probation than prison or jail sentence
 - <50% of 17-year olds completed probation successfully
 - 17-year olds released from prison had a higher reincarceration rate than either juveniles or adults
 - High rates of DMC
 - Cost for change between \$53.3-82.4 million

Wisconsin is not alone – what have other states done?

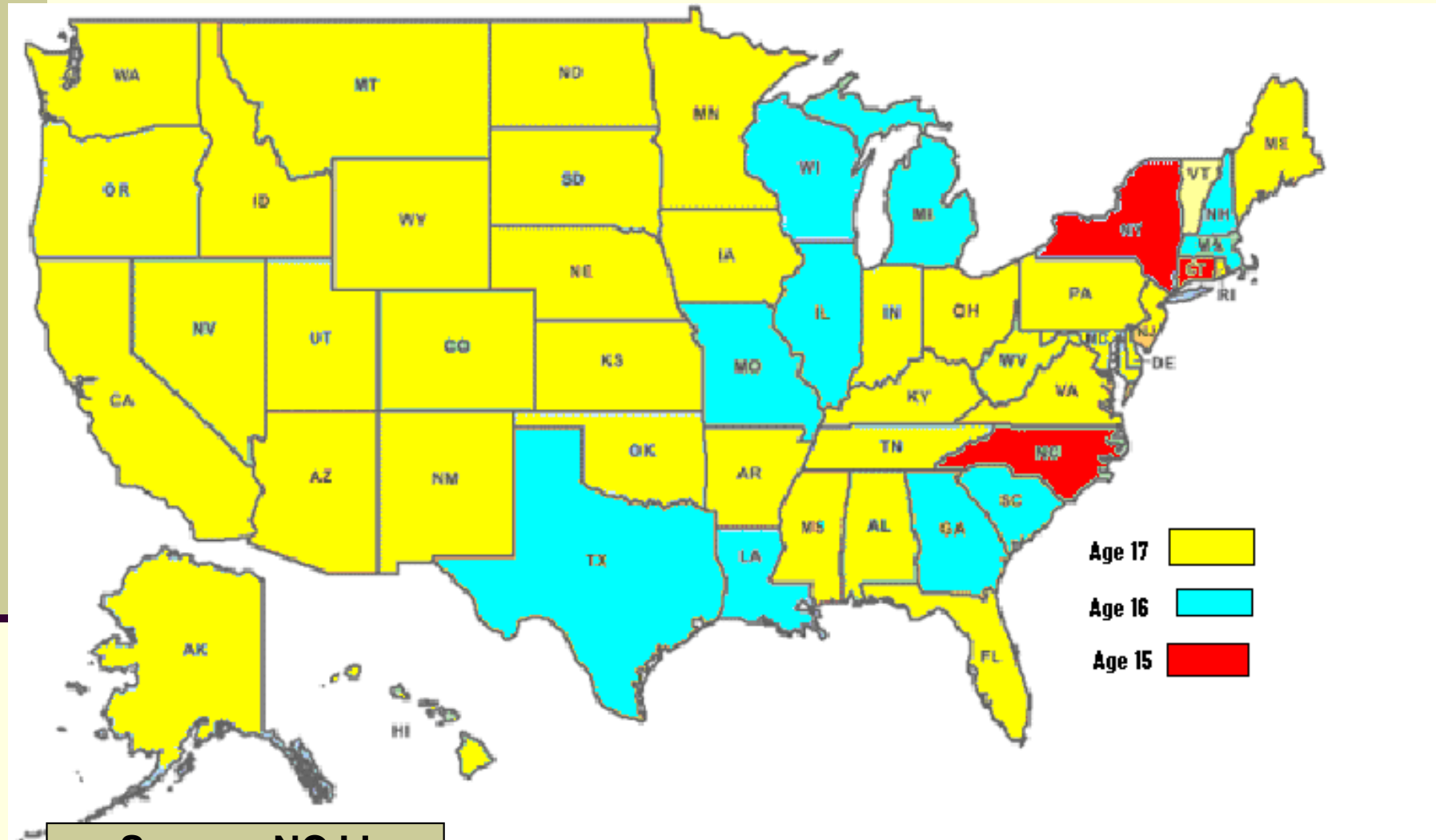
- Between 1992 and 1995 40 states passed laws that made it easier to try juveniles as adults
- Many states gave prosecutors discretion of how to file charges
- Wisconsin was the only state to move a whole age cohort of youth to adult court
- Over 35 states adopted a balanced approach to their purpose section

General Methods to “Classify” Juvenile Offenders re: Filing



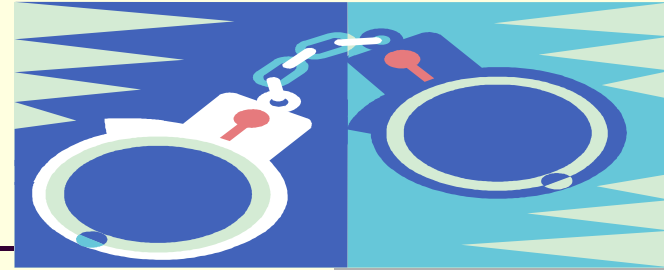
- **Exclusion** – exclude an entire group/class of youth from juvenile jurisdiction (e.g. in Wisconsin, “exclude” anyone over the age of 16 from juv. court)
- **Judicial Waiver** – the court decides whether to waive or not waive to adult court
- **Direct File** – identify specific offenses or classes of offenses that are “automatically” filed in adult court
- **Prosecutorial Waiver** – the prosecutor decides whether to file certain offenses in adult ct.

Highest Age of Juvenile Jurisdiction



Source: NCJJ

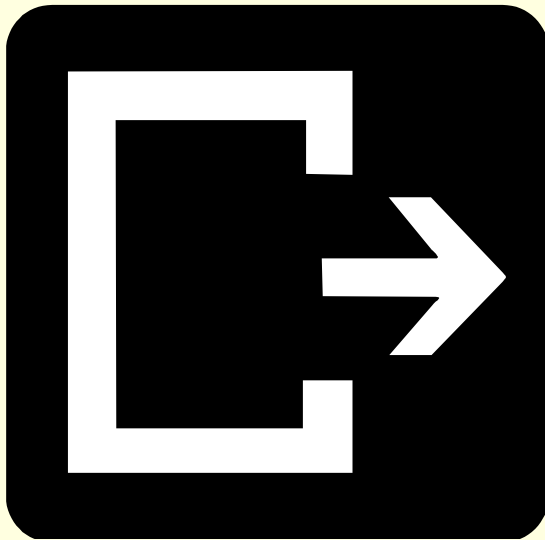
Arrests?



- In 2007, 17-year olds accounted for:
 - 21% of all Index Crime juvenile arrests
 - 25% of all juvenile arrests
 - 36+% of all Drug-related juvenile arrests
 - 30 ½ % of all Status juvenile arrests
 - Nearly 28,000 arrests/year overall (between 27,000 & 28,000/year for 2005-2007)
- Wisconsin has one of the highest juvenile arrest rates in the nation

Source: Wis. OJA

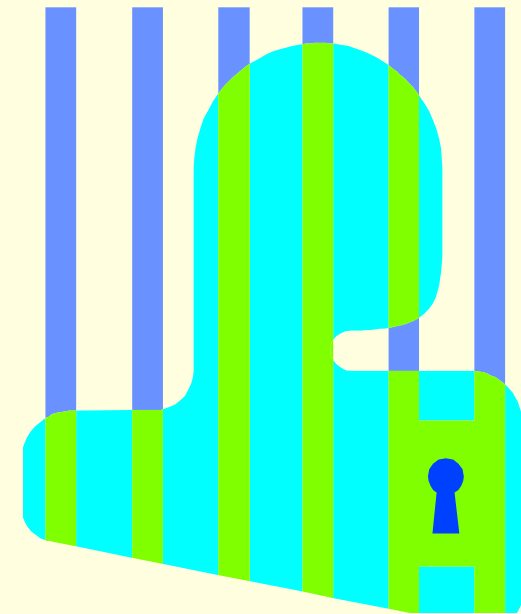
Prosecution & Deferral?



- There is no statewide data available regarding “diversion” from filing, but available data suggests:
 - Only about 2% of all criminal cases filed were on 17-year olds
 - Approximately 6,557 petitions were filed in 2006 on 17-year olds (recall there were over 27,000 arrests of 17-year olds)

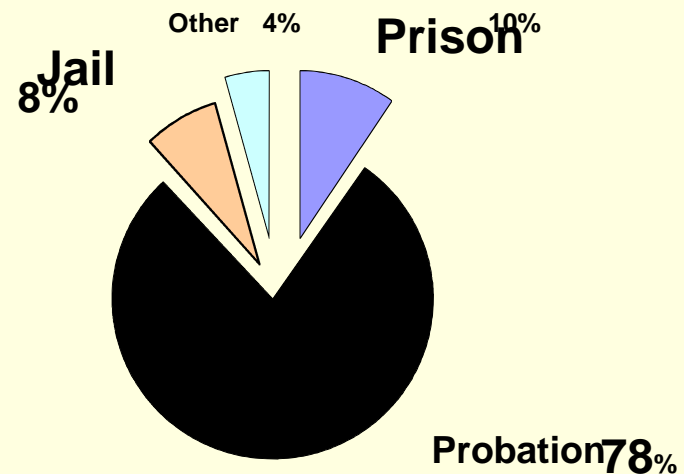
Jail

- There is no statewide jail data system, but the LAB Report notes that based on available data and selected samples:
 - 17-year olds accounted for less than 5% of all jail bookings overall
 - Only approx. 5% of 17-year olds booked into jail were serving sentences
 - Nearly 2/3 were booked for “holds” before trial and remainder were for non-criminal violations (e.g. traffic)
 - Nearly 80% of 17-year olds in jail spent < one week
 - Over 1/3 of 17-year olds booked were minority youth



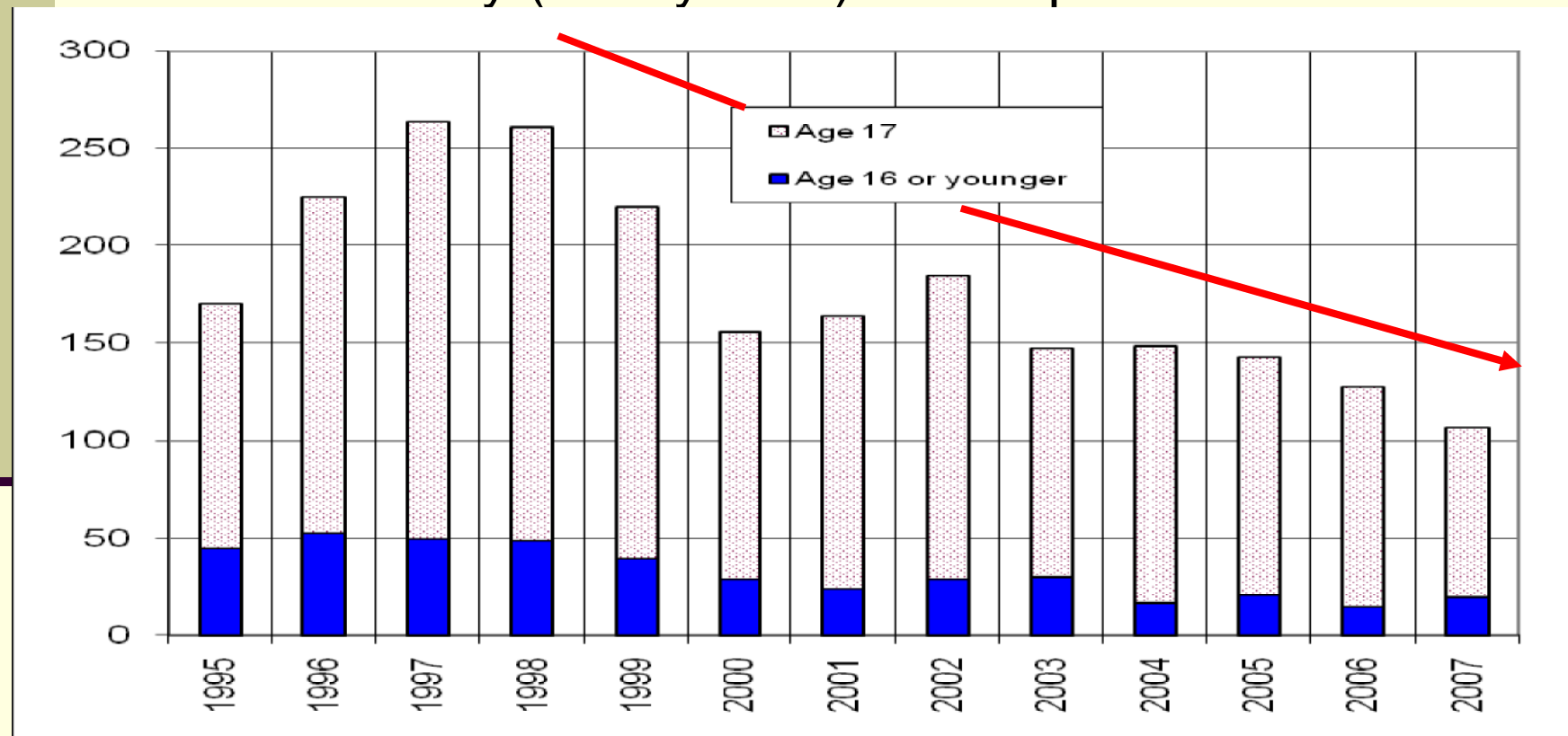
Sentencing?

- The LAB Report did track sentencing in felony cases and found:
 - Nearly 80% of sentences were for probation
 - Fewer than 10% were sentenced to prison
 - About 8% received a jail sentence
 - Other sentences accounted for about 2% of cases



Prison Placements?

- Admissions of youth under age 18 has declined substantially (nearly 60%) from a peak in 1997



Source: DOC

3.31.10

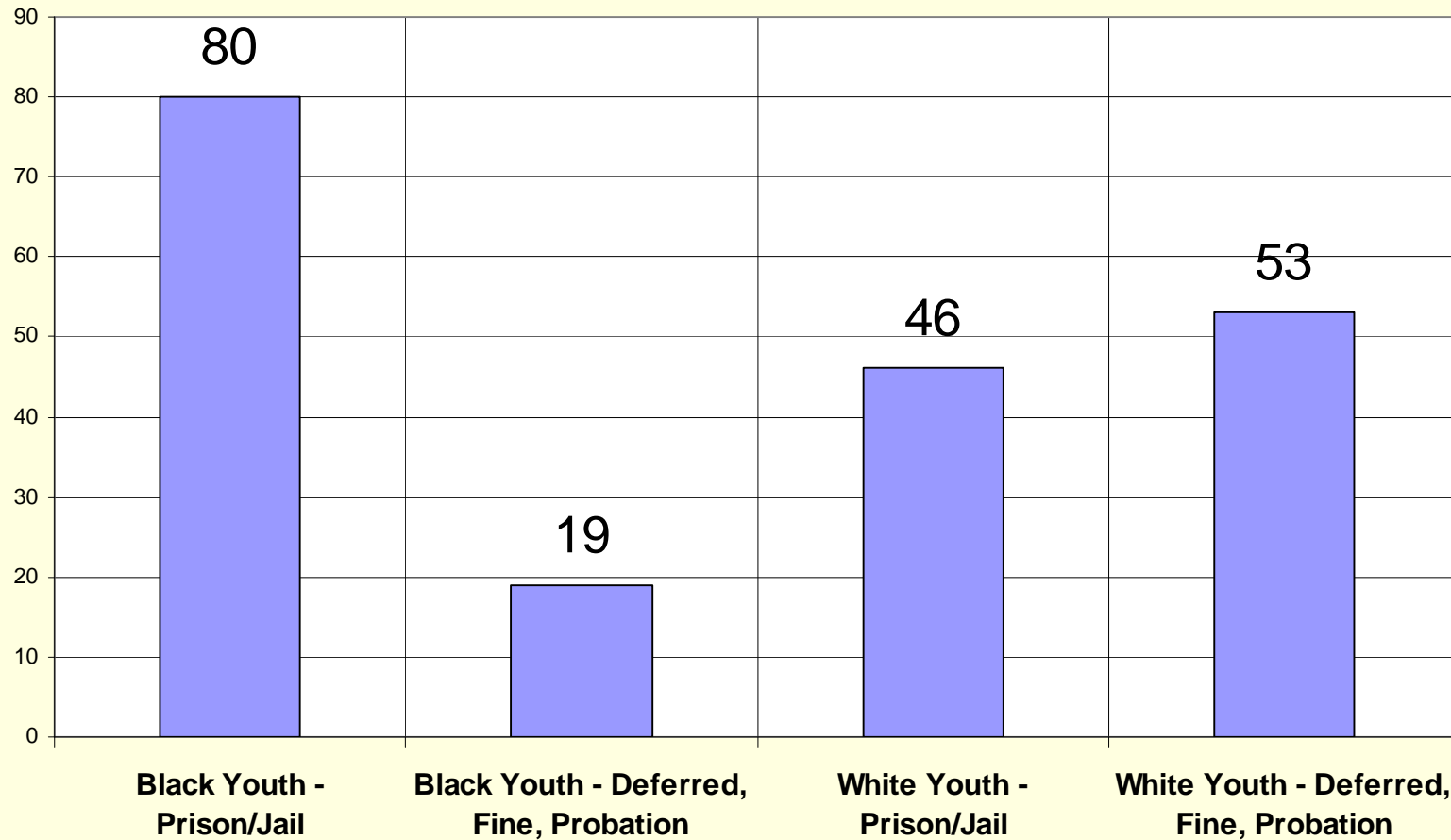
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WCCF “Risking Their Futures”

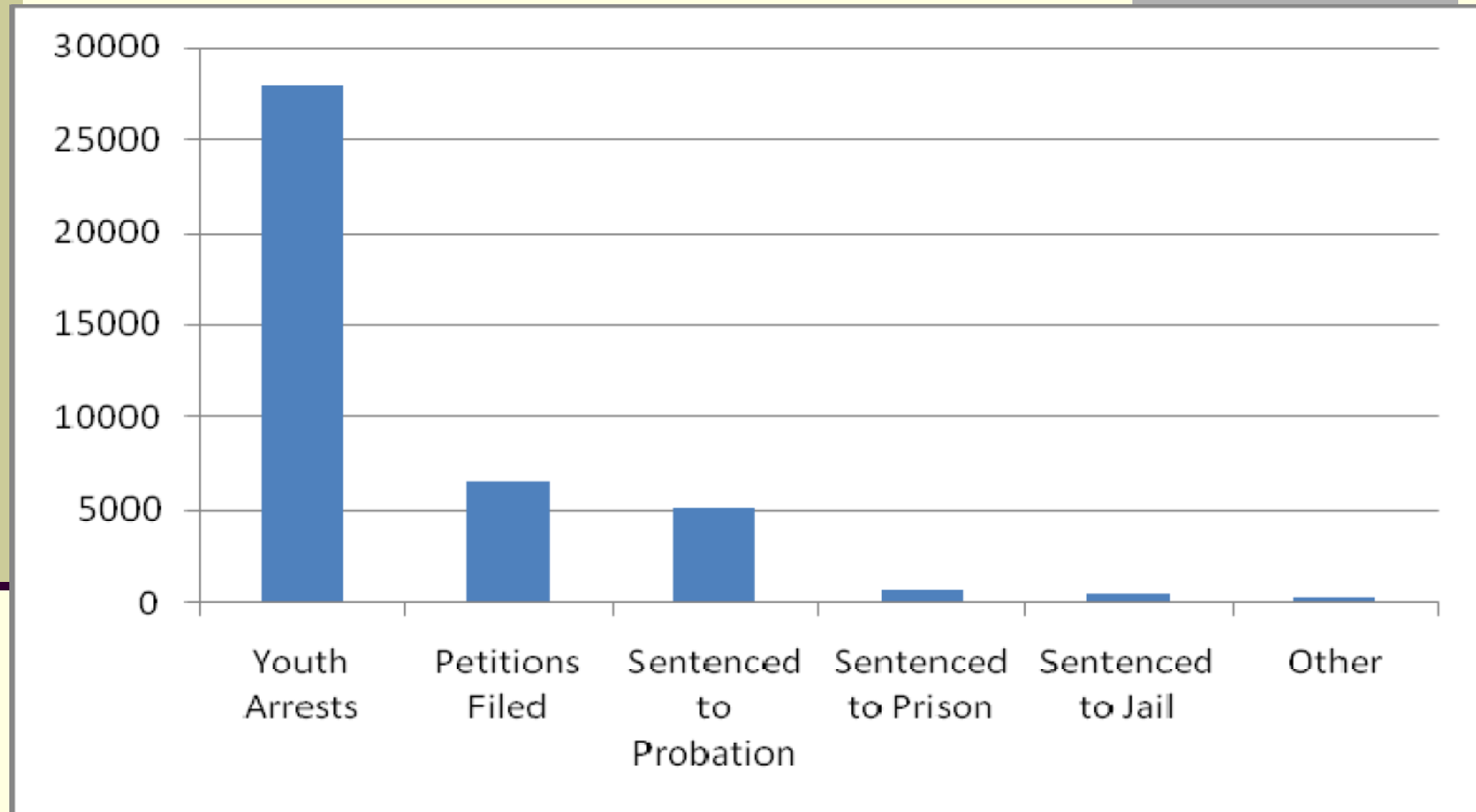
- The Wisconsin Council on Children and Families recently completed a study that sampled nearly 1,000 17-year olds convicted beginning in 2001. Conclusions include:
 - **Nearly 70% of the 981 youth were convicted of a new crime within the follow up period that ran through August 2007**
 - **The most common sentence for a 17-year old offender was some period of jail confinement**
 - **Once a case is filed, some form of formal consequence (probation, jail, prison) is almost always imposed**
 - **78% of convictions were for misdemeanors**
 - **There are significant DMC concerns**
 - **There is a high recidivism rate for 17-year olds processed in the adult system.**
 - **Note: Sample, excludes cases that were expunged, dismissed, or otherwise withdrawn; does not account for multiple/concurrent petition cases**

WCCF: Disparate Outcomes

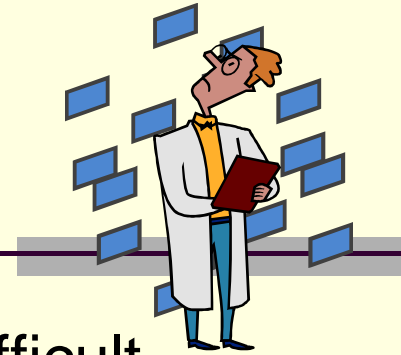
% Receiving Sentence by Type/Race



Relative Frequency of Events for 17-year olds in the Adult System (based on LAB data)



Adult v. Juvenile Ct. Effectiveness: Challenges to Researchers

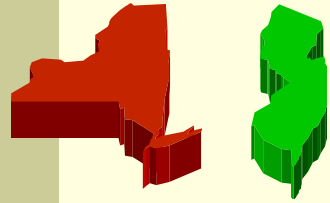


- Research in any kind of corrections is difficult because it's hard (if not impossible) to set up "control" and "study" groups
- Differing measures and definitions between juvenile and adult systems (e.g. recidivism may mean one thing in the adult system and a different thing in the juvenile system)
- Differing data systems between adult and juvenile systems are common
- Accessing juvenile records can be difficult
- Responsibility for one system may be state (e.g. state corrections), another local (e.g. juvenile detention, local jails, county-based probation, etc.)

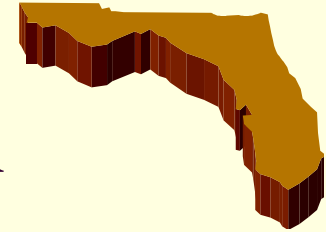
But, there are ways.....!

Data: LAB Report

- Found that offense rates for 17-year olds were similar to those of 16, 18, & 19-year olds, suggesting that 17-year olds are not making their “law abiding” choices any differently because they are subject to the adult court
- 17-year olds released from prison were much more likely to reoffend and be reincarcerated than either youth released from a JCI or other adults released from prison, suggesting that imprisonment is at best not a deterrent to future crime and at worst makes it more likely they will reoffend



Examples of National Research



- Comparing New York and New Jersey
 - Differing age of adult jurisdiction but matched cases “across the river”
 - Matched cases by prior offenses, age, sex, race, and other available demographic data
 - Compared recidivism between systems and found higher rates of reoffending for New York youth processed in the adult system
- Study did not specifically assess programmatic differences between the systems
- Florida – two large-scale studies matching and comparing outcomes for youth processed in the adult system v. the juvenile system
 - Great degree of prosecutor discretion as to whether to file in adult or juvenile
 - Found no consistent pattern for that decision based on age, prior offense(s) so an assumption was made that cases could be “matched” based on what route was selected by the prosecutor
 - Found higher and more significant reoffending for youth processed in the adult system

National Center for Disease Control -1

- Created a Task Force on Community Preventive Services to study whether or not processing youthful offenders was effective in reducing subsequent crime.
- Reviewed literature and included only valid studies (limited number)
- Findings included:
 - Transferring juveniles to the adult system is counterproductive as a strategy for deterring subsequent violence.
 - Youth who commit less serious offenses who are transferred to the adult system do even worse
 - Insufficient evidence that transferring youth to the adult system prevents other youth crime.

National Center for Disease Control - 2



- Also:
 - Strengthened transfer (waiver or other direct file) policies may be harmful for those juveniles who experience transfer (i.e. subject to injury, higher suicide rates, etc.)
 - There is a lack information to compare the relative costs and benefits of transfer – waiver policies/practices

OJJDP Publication

- “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?” August 2008
 - Literature review of a variety of research (including that referenced by CDC), as well as other research related to youth decision-making and impact(s) of transfer laws/policies

<http://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>

- Among other things, concluded that:

“Although the limited extent research falls far short of providing definitive conclusions, the bulk of the empirical evidence suggests that transfer laws, as currently implemented, probably have little general deterrent effect on would-be juvenile offenders.”

What Else do we Know (or think we know) about the impact of adult incarceration for youth?

- MacArthur Foundation – studied youthful offender's in four states to get their perceptions re: treatment w.in an adult institution. Youth felt:
 - More in danger
 - Less access to rehabilitative services
 - Treated less fairly
- Concluded that these perceptions were more pronounced the larger the facility and the greater the variation in age w. in the program



Racial Disparities are a Concern

- The Governor's Commission on Reducing Racial Disparities recommended that jurisdiction of [17-year olds should be returned to juvenile courts](#) and that current waiver provisions should be maintained.

Why?:

- Brain development research which supports arguments that youth are more amenable to intervention and change than adults
- Concerns about “tracking” minority youth into the correctional system
- The juvenile system has more developmentally appropriate services
- Increasing evidence about effective interventions

Other Groups Weigh in on Impact(s) and Effectiveness of Adult Jurisdiction

- Natl. Council on Crime and Delinquency:
 - Youth receive harsher sentences in the adult system
 - Youth receive limited rehabilitative programming while in the adult system
 - Youth's records "follow them" when convicted as an adult
 - Youth are at increased risk of victimization in adult jails and prisons
 - DMC impact is substantial
 - Since 1995 there has actually been a decrease in youth < 18 in state prisons
- Campaign for Youth Justice (an advocacy organization) cites concerns about the "lasting" effects of adult convictions, including:
 - Impact on voting rights (note, in Wi. Voting is not affected by misdemeanor convictions, and felons "off paper" can vote)
 - Risk of losing access to higher education loans as a result of drug convictions
 - Loss of driver's license for some convictions – impacting ability to work
 - Housing discrimination

What does the Public Think About This Issue?

- Remember, the public was concerned about:
 - Rising serious juvenile crime
 - Safety
 - Lack of effectiveness of the juvenile system
 - Media images
 - Gangs
- Those concerns likely remain among some or many citizens... but
- The MacArthur Foundation also found that the public:
 - Recognizes the potential for young people to change
 - Supports redirecting government funds from incarceration to counseling, job training, etc. for youthful offenders
 - View the provision of treatment and services as being more effective than incarceration
 - Favors keeping non-violent juveniles in smaller, more local facilities
 - Believes that youth of color are treated unfairly

What do you think now?

What We Know Now that We Did Not Know in the Early 90's

- Increasing research in areas such as:
 - Risk/Protective Factors that contribute to delinquency
 - Resiliency
 - Evidence-based practices and programs
 - Meta-Analysis of correctional programs
 - Developmental Assets
 - How delinquent youth think and act
- The “what works” research tells us that we are more likely to be effective if we focus on:
 - Addressing criminogenic needs (those needs shown to be related to delinquent behavior)
 - Programs that match the characteristics of the offender
 - Programs that strategically teach new behaviors and new ways of thinking
 - Maximizing the impact of pro-social peers and adult relationships for youth



Some Things to Think About in Looking at Cost, Savings, & Benefits

- Savings does **not** equal “extra money” – that is, there may be reductions and/or other benefits from returning youth to the juvenile system due to lower recidivism, but that does not mean there will be money to reallocate now or in the future
- The adult and juvenile systems are funded very differently – e.g. Youth Aids, county-operated juv. services vs. adult probation
- Levels of service are markedly different between systems
- How to attach a \$ figure to non-financial benefits (e.g. increased sense of safety, fewer victims, potential earnings for re-directed offenders, impact on child welfare and other systems, etc.)
- How to project other reductions (e.g. substance abuse treatment and services, economic support, remedial education, etc.) that could theoretically accrue if offenders were more effectively re-directed and re-engaged in the community.

Information on Costs & Savings?

- **LAB Estimate of Costs:**
 - **Between \$53.5- 82.4 million to provide services for youth returned to the juvenile system**
- **Approximate costs (2006), include:**
 - **\$50/day in jail**
 - **\$150/day in juvenile detention**
 - **\$75-80/day in prison**
 - **\$260+/day in juvenile correctional facility**
 - **\$6/day adult probation**
 - **\$32/day for state aftercare for juveniles – county costs vary**
- **What does that mean?**
 - **Transferring the relatively small number of youth in the adult system back to juvenile will save very little in the adult system because:**
 - **Lower costs already for the adult system**
 - **Base costs in the adult system (e.g. personnel, facilities, etc.) will not be reduced by removing juveniles**
 - **Savings in the adult system would accrue only if already overcrowded jails and prison facilities/units were actually reduced (w. small number of <18-year old inmates, this is unlikely)**



Considering a Cost-Benefit Analysis?

“Show me the money”!!!

■ Is Cost-Benefit Analysis Possible?

- There are cost-benefit analyses of certain type of programs (e.g. Washington State Institute – Steven Aos)
- Note: this does not compare adult v. juvenile programs, rather analyzes programs in comparison with other costs and benefits
- There are few models that rely on juvenile system data, but....

■ The Juv. Justice Delinquency Prevention Act (as proposed in 2008) suggests a finding that:

- *“Each child prevented from engaging in repeat criminal offenses can save the community \$1.7 to \$3.4 million*
- An analysis by Mark Cohen places “..the monetary value of deflecting an individual ‘high risk’ youth from a lifetime of crime to be between \$3.4 and \$5.8 million..”

Estimated costs (WCHSA PAC)

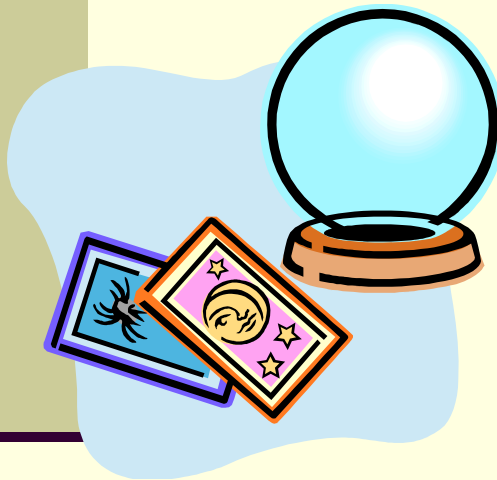
- Costs include:
 - Intake
 - Community Services
 - Placements
 - Correctional costs
- Approx. \$76 million to return all 17 year olds and fund services



Calculating Cost Savings – An Example

■ Savings:

- Savings in adult system by removing them from prisons, jails, probation, etc. (not much?)
- Savings by reducing the “flow” of youth into eventual adult crime by reducing recidivism through the juvenile system – reducing need for “growth” in adult correctional services
- Reduced costs for court, prosecutor, law enforcement, treatment services, etc. by reducing recidivism
- Savings for citizens due to increased safety



Compared to Cost Estimates?

AB732

- Introduced January 2010
- Key elements
 - Returns 17 yr-old misdemeanor cases **July 1, 2010** – followed a year later by felony cases
 - Does not impact waiver or original adult court jurisdiction statutes
 - Includes a \$14 community and youth aids surcharge/traffic ticket (generates \$12-15 m)
 - Provides for ability for DJC to modify rates thru passive review process
- As of today.....

Other Considerations and Related Activities



Other potential arenas for change and/or discussion of how best to positively impact issues w. youthful offenders examples include:

- Federal JJDP A – proposal includes ensuring that <18-year olds are not held pre-sentence in adult facilities (with some exceptions)
- Justice Reinvestment Initiative – WI designated to work with Pew Charitable Trusts related to new strategies to increase community-based and proven programs with offenders
- Community Corrections Act
- Leg. Council High Risk Offender Study
- Racial Disparities Oversight Commission
- Assess, Inform, and Measure (AIM) Pilot Project

What You Can Do

- Go to

http://wccf.org/justice_statement_agreement.php

and sign on to the WCCF Statement of Agreement:

We believe that seventeen-years-olds should be returned to the original jurisdiction of the juvenile justice system while maintaining current waiver and transfer provisions for violent crimes.

We recognize the need for sufficient state financial resources to counties to ensure that appropriate services are available.

- Contact your State Representative and Senator
- For more information, contact Jim Moeser @ jmoeser@wccf.org

Additional Resources

- Annie E. Casey Foundation. 2003. *Juvenile Justice At a Crossroads*. In *Advocasey*. Spring, v. 5, Number 1.
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