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**To:** Joint Legislative Audit Committee

**From:** Wendy Henderson, Policy Analyst

**Re:** Audit of the Effects of Criminal Court  
Jurisdiction on 17-Year-Olds

**Date:** April 10, 2008

Thank you for the opportunity to comment on this important audit. The Wisconsin Council on Children and Families, a 126-year-old child advocacy organization, works to ensure that all children grow up in a just and nurturing home and community. One of our priorities is that all kids under the age of 18 receive developmentally appropriate treatment in the justice system. The outcomes for 17-year-olds outlined in this audit highlight the lack of availability of services and the poor results for this group.

The three points we will address today are the programmatic deficits in the adult criminal justice system as it relates to treating minors, the negative effect on community safety of trying all 17-year-olds as adults, and the fiscal components of the policy change addressed in the audit.

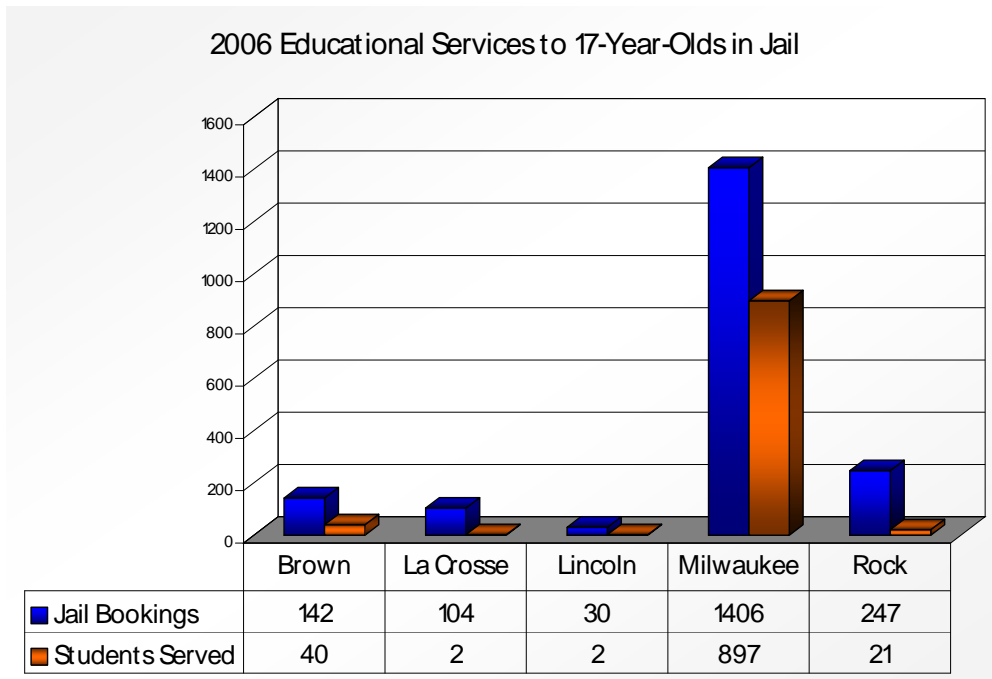
### *PROGRAMMATIC DEFICITS IN THE ADULT SYSTEM*

The audit highlights a consistent difference between the juvenile and adult systems in their ability to address treatment and rehabilitation needs of young offenders. Of significant concern is the ineligibility of 17-year-olds for programming simply due to their young age. According to the audit,

Criminal justice system officials in some counties reported that 17-year-olds often do not meet the eligibility criteria for alternative justice programs. For example, programs may require participants to be at least 18 years old ... Some judges may be reluctant to sentence 17-year-olds to drug court because they are unlikely to be sufficiently mature to participate. (Audit, p. 34)

Educational services are guaranteed to all 17-year-olds by the Wisconsin Constitution. As shown in Chart One below, few 17-year-olds in the county jails received educational services in 2006. In the five counties studied by the Audit Bureau, the percent of students provided no educational services ranged from 98 percent in La Crosse to 36 percent in Milwaukee.

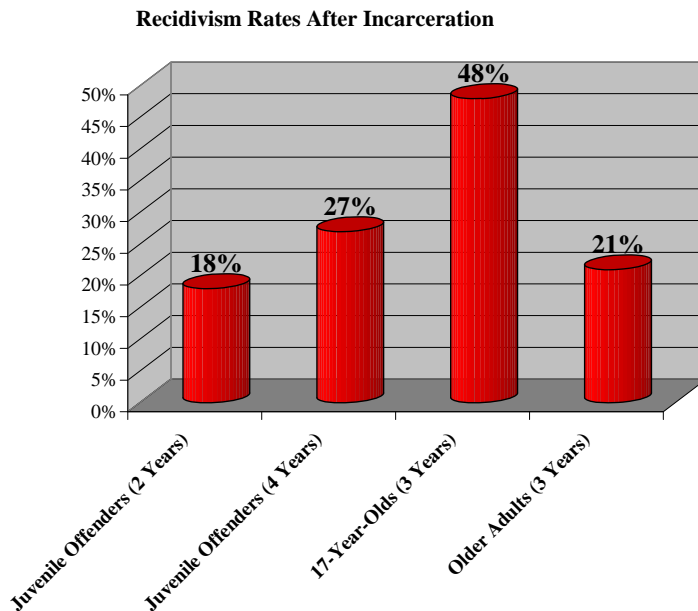
Chart One



This is a missed opportunity – at risk youth who are incarcerated are a captive audience; provision of education should be prompt to ensure the best possible outcomes for these kids. Detention centers are better equipped than jails to provide educational services.

***NEGATIVE EFFECTS ON COMMUNITY SAFETY***

Chart Two



The audit outlines the recidivism and revocation rates for 17-year-olds in the adult criminal justice system. 17-year-olds who are sentenced to adult prisons have a very high likelihood of returning to prison. Chart Two appears in the audit report. It demonstrates that

the reincarceration rate for 17-year-olds nearly doubles that for any other age group.<sup>1</sup> The practice of incarcerating 17-year-olds as adults produces negative effects for community safety, as this group has the highest recidivism rate of any group measured and each new crime detracts from public safety. The Audit Bureau's findings are consistent with the recent study released by the U.S. Center for Disease Control and Prevention which found that transferring youth into the adult criminal justice system significantly increases crime and has a negative effect on public safety.<sup>2</sup>

### *FISCAL COMPONENT*

The Audit Bureau concludes that returning 17-year-olds to the juvenile court system could cost Wisconsin anywhere from \$53.5 million to \$82.4 million. This is the first comprehensive estimate of the overall cost of the policy and a welcome opening of the dialogue. A further analysis of the Audit Bureau's work documents in obtaining those cost estimates reveals three areas in which the Audit Bureau's costs may be overestimated. Taken together, these calculation changes would result in millions less in estimated expenditures.

#### *1. Number of 17-Year-Olds Returning as a Proportion of the New Juvenile System*

The higher end of the Audit Bureau's cost estimate relies upon the assessment that the juvenile system will experience an increase in caseload of 43.7 percent, which will result in an equal (43.7%) increase of the overall cost of the system. If this 43.7 percent is overestimated, the upper range of the fiscal estimate would be high. Upon further analysis, we believe the Audit Bureau's alternate methodology, based on arrest numbers rather than prosecutions, yields a more accurate picture of the percentage of 17-year-olds in the new juvenile system.

Statutory differences in how deferred prosecutions are treated in the juvenile and adult system render direct comparisons of prosecution rates misleading. In the adult system, a case *must be filed* prior to a deferred prosecution agreement. (WI Stat. 971.39). In the juvenile system, deferred prosecution happens procedurally *before a case is filed*. (WI Stat. 938.245). This procedural difference seems to skew the percentage of 17-year-old prosecutions, and leads to the need for an alternative method of assessing the volume of 17-year-olds who may return to the juvenile system.

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<sup>1</sup> This is the most restrictive way of measuring recidivism, only counting those recidivists with a new crime which results in a new incarceration sentence. A broader view of recidivism, for example measuring those 17-year-olds who have been convicted of a new crime, would yield a higher percentage still of recidivists. WCCF will release a new study of recidivism in the upcoming months which will show a much higher percent of 17-year-old recidivists, using a more comprehensive view.

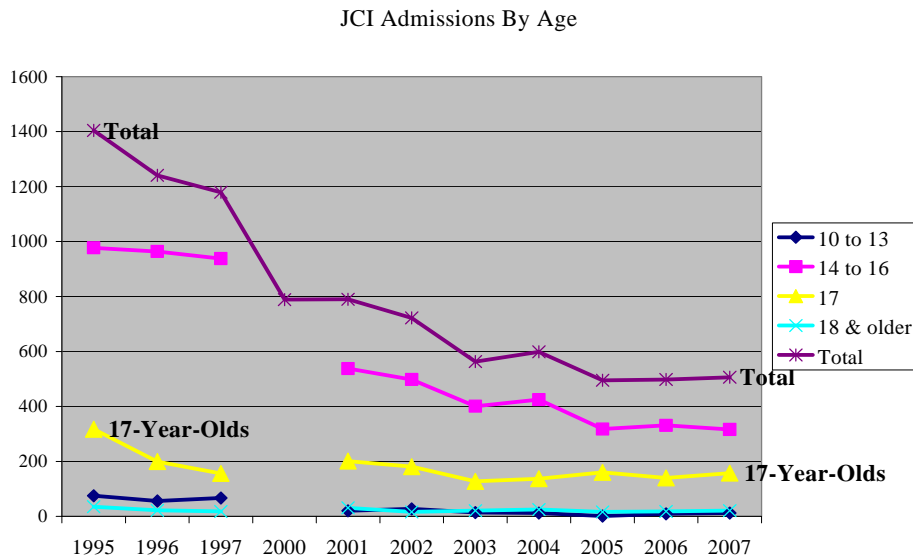
<sup>2</sup> Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services, Morbidity and Mortality Weekly Report. Vol. 56, November 2007.

There is no statutory difference in the treatment of 16- and 17-year-olds at the point of arrest. Arrest numbers for 16- and 17-year-olds are almost identical. A direct comparison at the stage of arrest is a more reliable way to calculate how many 17-year-olds will return to the juvenile system. The Audit Bureau explored an alternate estimating method utilizing arrest numbers rather than prosecution numbers. In their alternate estimate, 17-year-olds had an arrest rate 1.02 times that of 16-year-olds. Utilizing this figure, 17-year-olds would represent a 30.6 percent increase in the juvenile delinquency caseload rather than 43.7 percent. Given the differences in case processing and counties' own assessments of how this may impact them, the 30.6 percent increase appears far more reasonable. The larger figure would yield a considerably higher percentage of 17-year-olds in the juvenile system than was ever the case before 17-year-olds were shifted to the adult system.

## 2. *Numbers of 17-Year-Olds to Return to Juvenile Corrections*

The most costly single intervention for a youth is a juvenile correctional placement. Therefore, estimating the number of 17-year-olds who would end up in juvenile correctional placements is a significant portion of the overall estimate of the policy cost. The Audit Bureau estimates 323 additional JCI placements, which accounted for nearly half of their lower end estimate, or \$24.6 million. By looking at previous trend data in combination with the Department of Corrections own cost estimates, it appears to us that the 323 number is too high, and costs associated with additional juvenile correctional placements are overestimated.<sup>3</sup> As Chart Three demonstrates, the numbers of juvenile correctional placements have declined significantly over the past decade.<sup>4</sup>

**Chart Three**



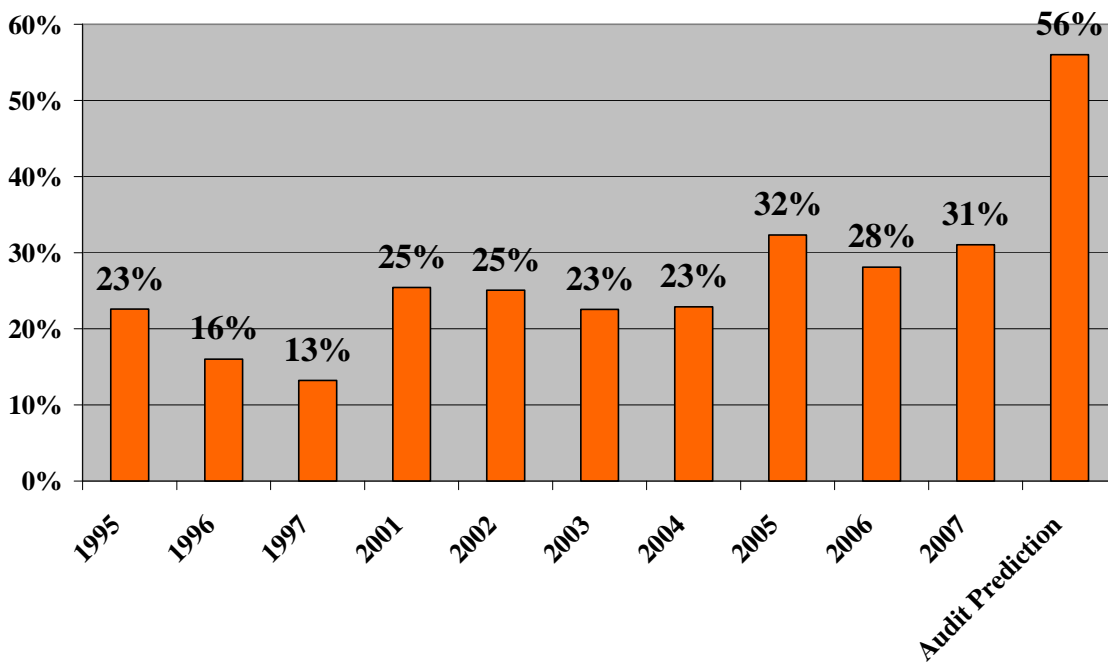
<sup>3</sup> The DOC cost estimate for 2007 SB 401 was released after the release of the audit report.

<sup>4</sup> Missing for the years 1998, 1999 and 2000, are not available due to a data system switch at Department of Corrections.

In 2006 the entire juvenile correctional institutions admission number was 498. The audit’s projection of 323 additional 17-year-old placements would represent a 64 percent increase in the overall population of juvenile corrections. 17-year-olds have never made up more than 32 percent of the correctional population, but the audit’s projection would have them at 56 percent, as shown in Chart Four.

Chart Four

**Admissions to JCIs: Percentage of 17-Year-Olds**



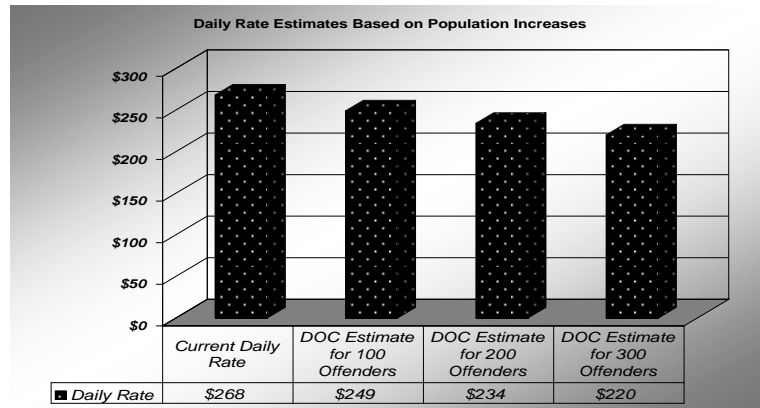
**3. *Cost to Department of Corrections and Counties Related to Increased Population***

The Audit Bureau projected a 43.7 percent increase in the overall cost of juvenile correctional institutions, related to their estimate of a 43.7 percent increase in overall juvenile caseload. This increase made up \$24.6 million dollars of their overall cost estimate, or roughly half of the lower end estimate. The report did not factor in that the cost per child for corrections would decrease if there was an influx of 17-year-olds to the juvenile correctional facilities because the fixed costs of running those institutions would be spread over more juveniles. Unlike the overcrowded adult prison system, the juvenile correctional facilities are running under capacity. As of the April 4, 2008 DOC Institutional Population count, the juvenile correctional facilities were roughly 21 percent vacant; these vacancies are largely responsible for recent daily rate increases.

In 2007 there were 107 17-year-old offenders admitted to adult prison. Under current law, adult court jurisdiction is required for some offenses, and permitted for any offense of any juvenile 15 years of age and older (if approved by a judge). Some of the 17-year-old offenders, if the law were to change, would remain in adult court due to either the nature of their offense, or due to a discretionary decision to waive them into adult court. Still, some would return to the juvenile court. It is instructive to analyze the DOC's cost estimates for various numbers of increased 17-year-olds in their juvenile institutions.

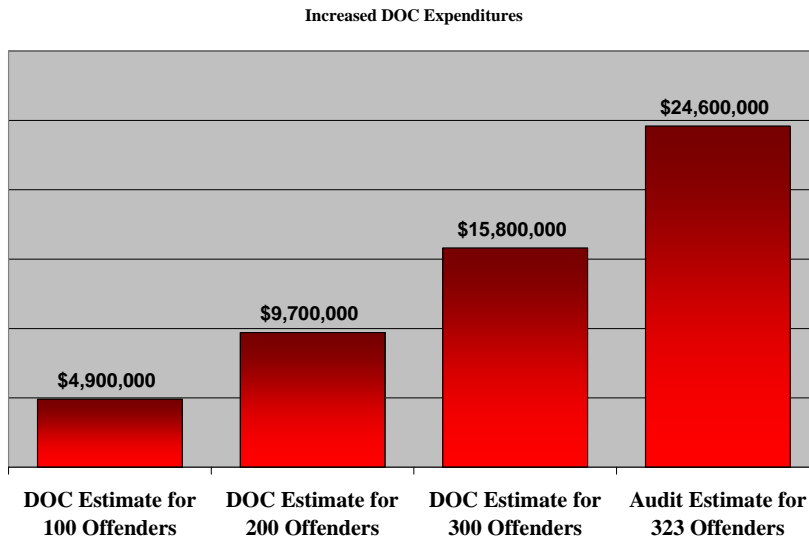
**Chart Five**

In their fiscal estimate of 2007 SB 401, the Department of Corrections estimated the annual cost, both in daily rate and in additional cost, should 17-year-old offenders return to the juvenile system. See Charts Five and Six. Chart Five shows that daily rates for juvenile



corrections would decrease by between seven and 18 percent depending upon how great of an increase in their juvenile population were to occur as a result of this policy. The larger the increase in the corrections population, the larger the decrease in the daily rate. Chart Six combines data from DOC's fiscal estimate for 2007 SB 401 with audit report projections to make a comparison of expected cost increases. It shows that the Audit Bureau estimate could be from \$8.8 to \$19.7 million greater than the DOC's expected cost increases.

**Chart Six**



From this chart, it appears that a \$24.6 million increase in juvenile correctional costs, as projected by the Audit Bureau is high, thanks in part to the fact that the daily rate would progressively go down depending on how many 17-year-olds

were processed through the juvenile correctional facilities.

### **Cost Savings**

Finally, the overall cost estimates put forward in the audit mention but do not account for cost savings that would be realized in the adult correctional system. Although the audit indicates that \$10 million could be saved through a combination of less overtime costs and fewer contracted beds, that conservative estimate of savings is not subtracted to get a net cost estimate. As shown in Chart Six, DOC's estimate of cost increases in the juvenile correctional facilities is between \$8.8 and \$19.7 million less than the audit estimate. Therefore, the net effect on the DOC budget may be nearly \$30 million less than estimated. Other cost savings may be realized through economies in providing services to 17-year-olds in the juvenile system, which is better designed to provide services for youth.

There is no doubt that returning 17-year-olds to the juvenile system will result in a greater up-front expenditure because there are more services provided. The majority of these expenditures will be at the county, rather than the state level. We share counties' concern that they need to have the requisite resources to provide treatment to 17-year-olds in their system, which is why it is so critical to determine what the overall cost of this policy will be. However, our preliminary analysis shows that by taking into account cost savings and DOC cost estimates of increased costs in comparison with the audit estimate, the overall cost will not reach \$80 million, and could be significantly less than \$50 million.

### **Conclusion**

This audit brings to light the alarming failure of the adult justice system to provide 17-year-olds with needed services. Educational services are largely absent from many county jails, and recidivism rates are worse for 17-year-olds than any other group of juveniles or adults studied. There will be costs to returning 17-year-olds to the juvenile system, although we believe the number of youth returned to the juvenile system and the average cost per child will be well below the report's estimate, thus driving down the overall cost of the policy. In any event, those costs will be offset by the increases in community safety, reductions in recidivism and long-term savings from decreased prison populations, which are all likely results of a change in policy.