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Details: Public Hearing: Audit Report 08-3: A Review: 17-Year-Old Offenders in the Adult Criminal Justice System, Department of Corrections

(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2007-08

(session year)

## Joint

(Assembly, Senate or Joint)

## Committee on Audit...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

## Record of Committee Proceedings

### Joint Legislative Audit Committee

#### Audit Report 08-3,

17-Year-Old Offenders in the Adult Criminal Justice System, Department of Corrections.

April 10, 2008

#### **PUBLIC HEARING HELD**

Present: (10) Senators Sullivan, Lassa, Miller, A. Lasee and Cowles; Representatives Jeskewitz, Rhoades, Kerkman, Cullen and Parisi.

Absent: (0) None.

#### Appearances For

- Tamara Grigsby, Milwaukee — Representative, Wisconsin State Assembly
- Matt Egerer, Milwaukee — For Representative Fred Kessler, Wisconsin State Assembly

#### Appearances Against

- None.

#### Appearances for Information Only

- Janice Mueller, Madison — State Auditor, Legislative Audit Bureau
- Kate Wade, Madison — Legislative Audit Bureau
- Scott Walker, Milwaukee — County Executive, Milwaukee County
- Eric Meaux, Milwaukee — Director, Delinquency and Court Services, Milwaukee County
- Lena Taylor, Milwaukee — Senator, Wisconsin State Senate
- Amy Smith, Madison — Deputy Secretary, Office of the Secretary, Department of Corrections
- Silvia Jackson, Madison — Assistant Administrator, Division of Juvenile Corrections, Department of Corrections
- Tony Streveler, Madison — Policy Initiatives Advisor, Office of the Secretary, Department of Corrections
- Mary Joas, New Berlin — State Professional Education Information Council #1
- Lucy Rowley, Coloma — Governor's Juvenile Justice Commission

- Sarah Diedrick Kasdorf, Madison — Wisconsin Counties Association
- Wendy Henderson, Madison — Wisconsin Council on Children and Families
- Jon Peacock, Madison — Wisconsin Council on Children and Families
- Pete Christianson, Madison — Entertainment Software Association

Registrations For


- None.

Registrations Against

- None.

Registrations for Information Only

- None.

  
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Nicole Hudzinski  
Committee Clerk



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# 17-Year-Old Offenders in the Adult Criminal Justice System

Legislative Audit Bureau  
April 2008

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## Criminal Justice System

- ◆ 1995 Wisconsin Act 27 placed 17-year-old offenders under criminal court jurisdiction
- ◆ Law enforcement officials, prosecutors, and judges all have important roles
- ◆ Wisconsin's Department of Corrections supervises 17-year-old offenders in prison and on probation

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## Arrests of 17-Year-Olds (2001-2005)

County of Arrest	Number	Percentage of Total
Milwaukee	31,075	21.0%
Dane	11,327	7.7
Waukesha	7,210	4.9
Rock	6,532	4.4
Brown	6,036	4.1
Outagamie	5,732	3.9
La Crosse	5,121	3.5
Kenosha	4,945	3.3
Winnebago	4,496	3.0
Washington	4,117	2.8
All Other Counties	61,541	41.5
<b>Total</b>	<b>148,132</b>	<b>100.0%</b>

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## Arrests of 17-Year-Olds (2001-2005)

Offense Category	Number	Percentage of Total
Crimes Against Persons	7,482	5.0%
Drug Crimes	9,741	6.6
Other Crimes	43,923	29.6
Property Crimes	24,973	16.9
Public Order Crimes	22,483	15.2
Status Crimes	37,156	25.1
Traffic Crimes	2,374	1.6
<b>Total</b>	<b>148,132</b>	<b>100.0%</b>

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## Arrest Rates by Age (2005)

Age	Arrests	Age Group Population	Arrest Rate per 1,000 in Age Group
15	22,367	81,487	274.5
16	26,719	79,677	335.3
17	27,138	81,575	332.7
18	27,550	82,969	332.1
19	26,617	81,453	326.8
20	24,708	83,588	295.6
21 and Older	235,869	4,010,469	58.8
<b>Total</b>	<b>390,968</b>	<b>4,501,218</b>	<b>86.9</b>

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## Cases Filed Against 17-Year-Olds (2002-2006)

Offense Category	Cases Filed	
	Number	Percentage of Total
Crimes Against Persons	4,821	14.8%
Drug Crimes	5,515	16.9
Other Crimes	3,681	11.3
Property Crimes	9,737	29.8
Public Order Crimes	5,620	17.2
Traffic Crimes	3,264	10.0
<b>Total</b>	<b>32,638</b>	<b>100.0%</b>

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## Disposition of Cases Filed as Felonies (2003 – 2007)

Sentence	17		18-20		21 and Older	
	Number	Percentage of Total	Number	Percentage of Total	Number	Percentage of Total
Prison	311	9.7%	2,086	12.8%	12,927	20.8%
Probation	2,512	78.4	11,358	69.4	33,724	54.4
Jail	242	7.6	2,157	13.2	11,646	18.8
Other	138	4.3	756	4.6	3,720	6.0
Total	3,203	100.0%	16,357	100.0%	62,017	100.0%

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## Sentences for 17-Year-Old Offenders

- ◆ There were higher incarceration rates in Milwaukee and Racine counties
- ◆ There were higher incarceration rates for African-American and Hispanic/Latino offenders
- ◆ Types of crimes varied by race/ethnicity
- ◆ Availability of alternative justice programs varied across the state

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## 17-Year-Old Offenders in Five County Jails

- ◆ Most of these offenders were jailed for less than one week 60+%
- ◆ Public order crimes were the most common reason for booking these offenders into jail
- ◆ The delivery of educational services varied among the counties 3.5 - 12.5 hrs/wk
- ◆ Rehabilitative programs available to these offenders was minimal

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## 17-Year-Old Offenders Entering the Adult Correctional System (2002-2006)

Offense Category	Prison		Probation	
	Number	Percentage of Total	Number	Percentage of Total
Crimes Against Persons	426	72.8 %	5,791	54.5 %
Drug Crimes	95	16.2	1,884	17.7
Other Crimes	5	0.9	429	4.0
Property Crimes	59	10.1	2,518	23.7
Traffic Crimes	0	0.0	10	0.1
<b>Total</b>	<b>585</b>	<b>100.0 %</b>	<b>10,632</b>	<b>100.0 %</b>

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## Programming Participation in Prison

*(17-Year-Old Offenders)*

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- ◆ 494 of 585 offenders participated in some type of programming
- ◆ 429 participated in at least one educational program
- ◆ In a detailed review of 37 inmate files:
  - 17 of 31 offenders without a high school diploma or equivalency earned one while incarcerated
  - 20 of 37 offenders were identified as having moderate or serious alcohol or drug problems

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## Programming Needs of Offenders

Placed on Probation

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- ◆ 79.6 percent had not completed 12<sup>th</sup> grade
- ◆ 13.8 percent were found to be in need of treatment because of frequent alcohol abuse
- ◆ 21.3 percent were found to be in need of treatment because of frequent abuse of drugs
- ◆ No statewide data were available on the receipt of services by these offenders

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## Probation Outcomes for 17-Year-Old Offenders (2002-2006 Placements)

Probation Outcome	Number	Percentage of Total
Successfully Completed	3,750	47.4%
Revoked, Not Sent to Prison	3,072	38.8
Revoked, Sent to Prison	668	8.4
Court Ordered Release	300	3.8
Unknown	86	1.1
Death	40	0.5
<b>Total</b>	<b>7,916</b>	<b>100.0 %</b>

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## Recidivism Rates After Incarceration

Age Group	2002		
	Releases in 2002	Subsequent Incarceration	Percentage of 2002 Releases
Juvenile Offenders (2 Years)	757	138	18.2%
Juvenile Offenders (4 Years)	757	201	26.6
17-Year-Old Offenders (3 Years)	106	51	48.1
Adult Offenders (3 Years)	695	148	21.3

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## Recidivism Rates Following Probation Placements

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	2002			2003		
	Placements in 2002	Subsequent Adult Correction Sentences	Percentage of 2002 Placements	Placements in 2003	Subsequent Adult Correction Sentences	Percentage of 2003 Placements
17-Year-Old Offenders	2,230	823	36.9 %	2,169	757	34.9 %
Adult Offenders	15,933	3,037	19.1	15,127	2,861	18.9

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## Estimated County Spending for Juvenile Corrections (2005)

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Funding Source	Amount	Percentage of Total
Youth Aids	\$ 88,850,800	43.7%
County Revenue	70,135,500	34.5
Other Revenue	44,403,100	21.8
<b>Total</b>	<b>\$203,389,400</b>	<b>100.0%</b>

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## Issues for Legislative Consideration

- ◆ Retain adult criminal court jurisdiction over 17-year-olds
- ◆ Change the age of adult court jurisdiction to 18 years-of-age
- ◆ Make incremental change to adult court jurisdiction
- ◆ Delay any change to adult court jurisdiction to allow for planning at the state and local levels

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Didn't  
testify

# JON ERPENBACH

S T A T E   S E N A T O R

**TO: Members of the Legislative Audit Committee**

**FR: Senator Jon Erpenbach**

**RE: Legislative Audit Bureau Report: 17-Year-Old Offenders in the Adult Criminal Justice System**

Thank you for including this audit among the recommendations from the Committee – I hope you found the audit report as informative as I did. You don't have to be a brain surgeon to know that kids who are 17 years old are not yet adults. They make impulsive decisions in a group, lament about what to wear, how many zits they have, what they want to do after high school, and how to escape their parents reach. These children who are becoming young adults have their whole lives ahead of them, but all they can see is the moment. We have the chance to give 17 year olds who make a mistake a second chance and the path they need for that second chance – we can raise the age of adult court jurisdiction in Wisconsin.

I am thankful to the Legislative Audit Bureau for this very complete audit and I hope that we as Legislators take what has been presented in this audit and translate that knowledge into changing the way we treat non-violent 17-year-olds in our justice system.

Each year in Wisconsin, about **30,000** 17-year-olds are arrested. **95%** of those are for minor offenses. In the mid 1990's, under a national discussion predicting super-predator teens, non-violent 17 year olds got caught up in the emotion of the debate and some states, like Wisconsin, made all of their crimes adult offenses. In reality, 17 year old kids, just like 16 year old kids and 15 year olds kids make stupid mistakes often in the company of other kids making stupid mistakes. Status offenses, curfew violations, underage drinking, shoplifting, vandalism, drug possession, local ordinance violations are the most common. Again, only 5% were crimes against persons (which are often violent).

All of these offenses are still violations of the law and kids should have consequences for their actions. However, those consequences should not include jail time and a permanent offense on their CCAP record. Kids who make mistakes should be a part of restorative justice programs and they should get the programs that will help make them functioning adults with opportunities.

By changing the age of jurisdiction in Wisconsin, we can hold these non-violent young people accountable in juvenile court, and give prosecutors the discretion to move the more serious cases to adult court. A report by the United States Centers for Disease Control and Prevention found that trying youth in adult court increases future crimes by 34%. Additionally, the Legislative Audit Report before you today shows that 17-year-olds released from prison had a higher recidivism rate than either juveniles or adults – 48%. All that these kids are learning when they are doing time is how to be better criminals.

Erpenbach page 2

The Legislative Audit Bureau report also shows us that what we are doing now is simply not working. When looking at revocations of probation, the report found that less than one half of 17-year-old offenders who were placed on probation from 2002-2006 successfully completed probation. This number is alarming to me as I think about kids knowing they are in trouble, knowing that they will go into the system again for this violation, outside the watchful eye of the system.

There will be a lot of talk about how this will cost the Counties money. There is no denying that changing the way we treat 17-year-olds will cost money. I don't agree it will cost as much as the LAB report says, but I am sure it will be close. My bill from last session had a well publicized way to at least partially fund the costs, and as we move ahead and hopefully consider changing the law and returning 17-year-olds we will have no choice but to deal with expected costs. Because I feel so strongly about this issue, I would argue that the cost is worth it for our kids. There is always a price tag on lower crime in our communities and successful achievements for our children and our neighbor's children.

To give perspective on what we are willing to pay to keep our communities safe remember that we paid \$44 million just to build Super Max so we would have a place to lock up criminals that have no chance of coming back into society. We paid \$51 million just to build Red Granite for criminals who pay no taxes, cost the state in expenses every day, and who will likely never successfully work a day in their lives. Another \$69 million just to build a Milwaukee Secured Corrections facility and a whopping \$87 million just to buy Stanley – again to house criminals that don't pay taxes, will never offer significant contributions to Wisconsin, and will likely never live successfully on the outside. Shouldn't we consider spending on kids who we know have a future, we know can have something to offer Wisconsin, and who will be a part of the future of Wisconsin for many, many years regardless of whether or not we change the law?







WISCONSIN COUNCIL ON

**children  
& families**

Raising Voices to Make Every Kid Count

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Madison, WI 53703

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✉ 608-284-0583

**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*

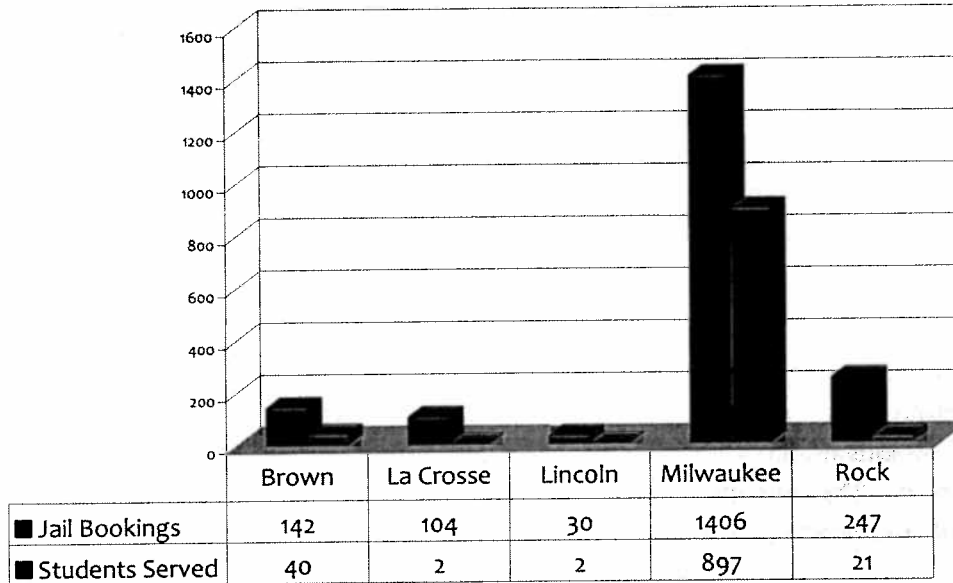
The audit highlights a consistent difference between the juvenile and adult systems in their ability to address treatment and rehabilitation needs of young offenders. Of significant concern is the ineligibility of 17-year-olds for programming simply due to their young age. According to the audit,

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**

2006 Educational Services to 17-Year-Olds in Jail

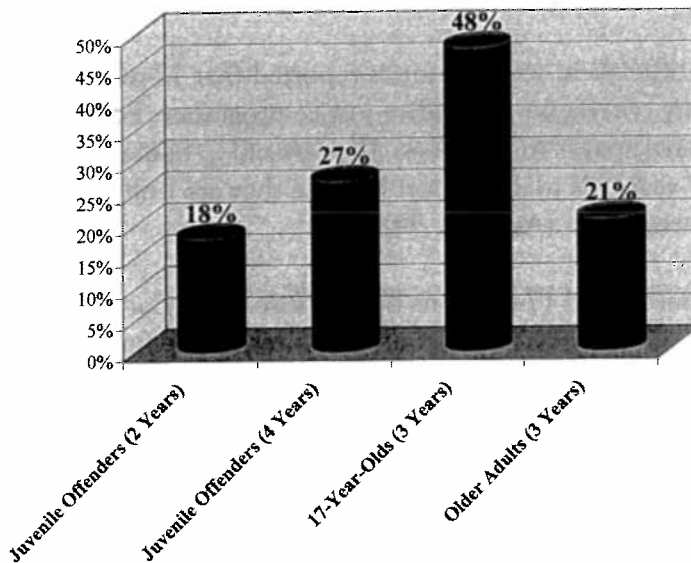


This is a missed opportunity – at risk youth who are incarcerated are a captive audience; provision of education should be prompt to ensure the best possible outcomes for these kids. Detention centers are better equipped than jails to provide educational services.

***NEGATIVE EFFECTS ON COMMUNITY SAFETY***

**Chart Two**

Recidivism Rates After Incarceration



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.

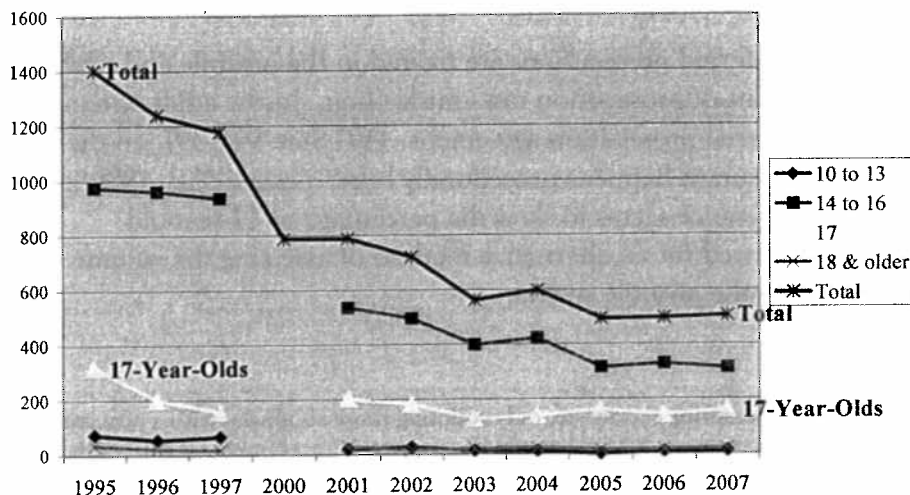
There is no statutory difference in the treatment of 16- and 17-year-olds at the point of arrest. Arrest numbers for 16- and 17-year-olds are almost identical. A direct comparison at the stage of arrest is a more reliable way to calculate how many 17-year-olds will return to the juvenile system. The 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**

JCI Admissions By Age



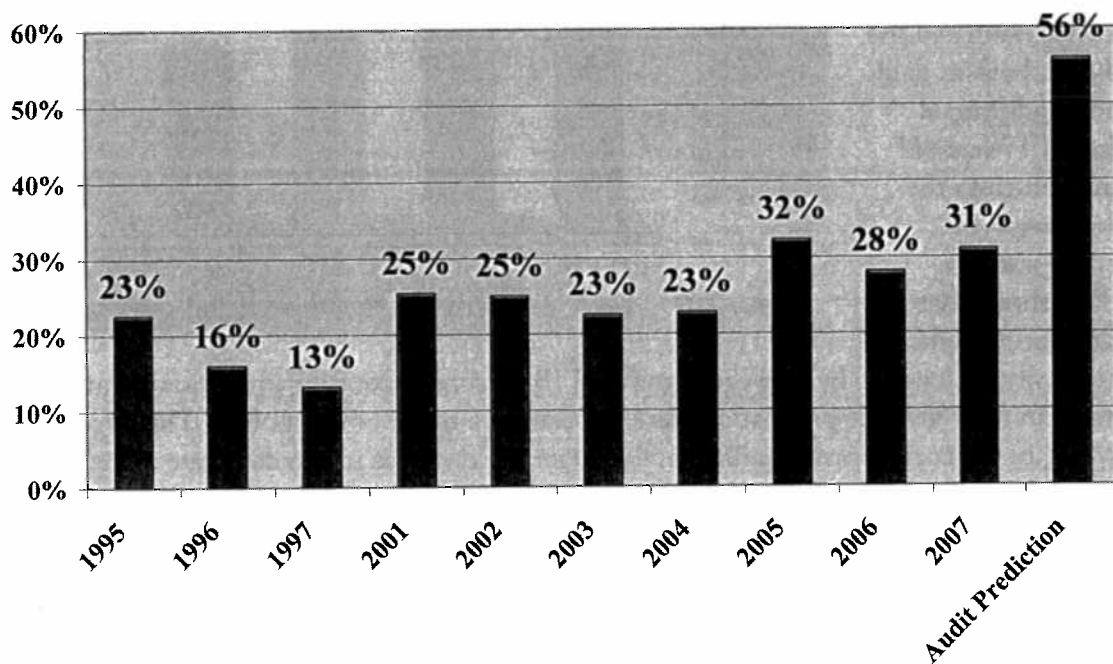
<sup>3</sup> The DOC cost estimate for 2007 SB 401 was released after the release of the audit report.

<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**



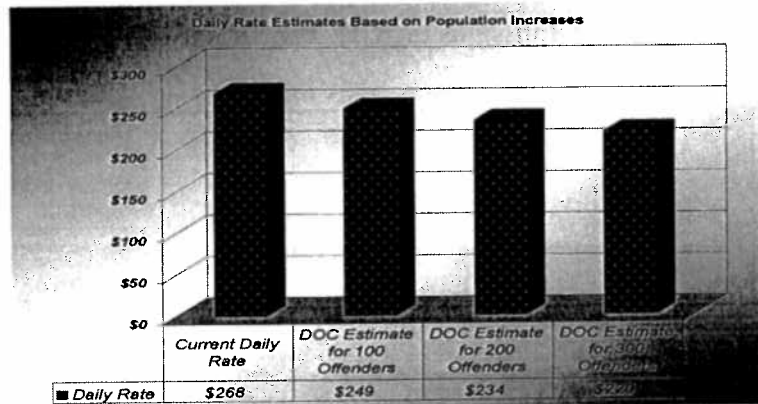
**3. Cost to Department of Corrections and Counties Related to Increased Population**

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.

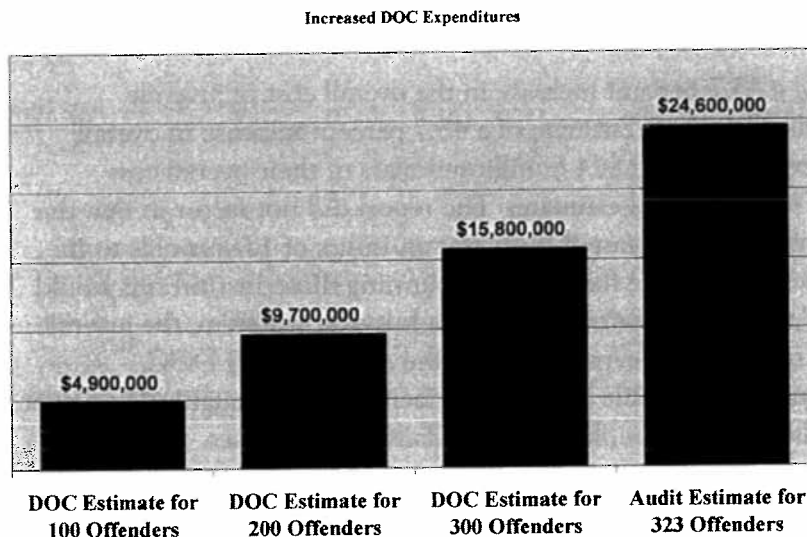
**Chart Five**

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.

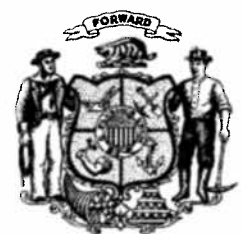
### Conclusion

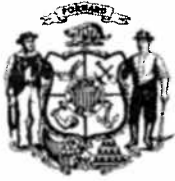
This audit brings to light the alarming failure of the adult justice system to provide 17-year-olds with needed services. Educational services are largely absent from many county jails, and recidivism rates are worse for 17-year-olds than any other group of juveniles or adults studied. There will be 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.





# WISCONSIN STATE LEGISLATURE





STATE REPRESENTATIVE  
**FREDERICK P. KESSLER**

WISCONSIN STATE ASSEMBLY

12TH DISTRICT

April 10, 2008

Joint Legislative Audit Committee

17-Year-Old Offenders in the Adult Criminal Justice System

Representative Fred Kessler

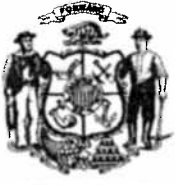
Chairman Sullivan, Chairwoman Jeskewitz, and members of the Joint Legislative Audit Committee; thank you for holding a public hearing on this important study of 17-year-old offenders in the adult criminal justice system.

This audit by the Legislative Audit Bureau is the latest in a line of reports and studies that lends undeniable support to returning 17-year-olds to the jurisdiction of the juvenile court system. The report shows that treating 17-year-olds as adults in the criminal justice system has clearly proven to be poor public policy.

Based on the LAB audit, an average of the 2002 recidivism statistics for juveniles at both two-years and four-years after they have been released from a juvenile institution represents a recidivism rate of approximately 22.4%. The recidivism rate for 17-year-olds three-years after they have been released from an adult institution is more than double, at 48.1%.

Also in 2002, 68% of 17-year-olds released from prison and 64% of those released from probation were re-arrested within three years. Of those re-arrested, 44% of those released from prison were convicted, as were 56% of those released from probation. These figures are substantially higher than their adult counterparts.

In addition to this study, a national report by the Centers for Disease Control in 2007 concluded that individuals under 18 who are processed in the adult criminal justice system have a 33.7% higher recidivism rate than their peers in the juvenile system. These studies show that charging 17-year-olds in the adult court system increases the likelihood that they will become repeat offenders.



STATE REPRESENTATIVE  
**FREDERICK P. KESSLER**

WISCONSIN STATE ASSEMBLY

12TH DISTRICT

17-year-olds should be returned to the juvenile justice system, which was created and specifically tailored to meet the needs of juvenile offenders. The juvenile system offers the treatment and educational programming that are crucial to turning these young lives around. Unlike those in the juvenile system, 17-year-olds in the adult system are often unable to access these important programs that are the lynchpin to reform.

It is also important to note that after a 17-year-old who has been tried as an adult has completed their sentence, their adult conviction will continue to be a barrier to employment in the future. This further compounds the difficult task of getting on the right track, and it is another reason why 17-year-olds should be processed in the juvenile system.

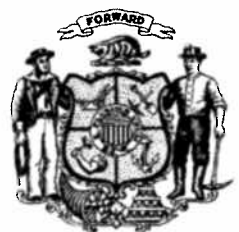
Returning 17-year-olds to the juvenile system is an investment in the future. Every young person that is educated and successfully rehabilitated in the juvenile system is another person that can go on to lead a normal life as a taxpaying member of the community. An effective juvenile justice system can avoid the increased costs of incarcerating these individuals as adult offenders later on.

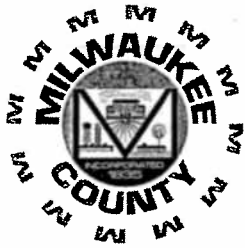
The age of criminal jurisdiction was lowered as an attempt to "get tough" on crime. However, after analyzing the evidence, it would appear that the time has come to be smart about crime. The outcome of this policy has been that we have seen more young people incarcerated, but there is little evidence that crime has actually been prevented. It is time for a practical juvenile justice policy that works.

Thank you and please join with me in supporting legislation that would return 17-year-olds to the jurisdiction of the juvenile justice system.



# WISCONSIN STATE LEGISLATURE





# Milwaukee County

COREY HOZE • Director

**Date:** April 10, 2008

**To:** Joint Committee on Audit Co-Chairs  
Representative Suzanne Jeskewitz and Senator Jim Sullivan

**From:** Milwaukee County Director of Delinquency and Court Services Eric Meaux

**Re:** Testimony on February 2008 Legislative Audit Bureau Report  
17-Year-Old Offenders in the Adult Criminal Justice System

As County Executive Scott Walker noted, Milwaukee County has prepared a detailed estimate of the additional costs that would be required of us if the State changed the original juvenile court jurisdiction age from 16-17. As the Director of the juvenile services in Milwaukee, I understand the importance of developmentally appropriate services for our youth regardless of their legal status. However, in my responsibilities I must also consider the effect that significant changes would have on all of the youth we currently serve and balance that against any proposed change. While I cannot reverse legislation of the past, I do I have an obligation, I believe, to protect the advances we have made over the past 10 years relative to the youth we presently serve. Therefore, I believe it is imperative that this committee understand the overall impact as it proceeds with due diligence to find a solution. The solution may need to go beyond the four corners of recently proposed legislation. This conservative estimate is based on maintaining at least our current levels of programming and services. Please note that these initial projections do not address potential cost impacts to the other juvenile court operations such as the Court operations and the District Attorney's Office.

## Milwaukee County Cost Estimate

Our utilization of resources and personnel is primarily driven by police referrals to the juvenile court. Essentially, the more police referrals (when youth are arrested for violations of the criminal code), the greater the expenditures in detention, intake, and programming costs. The Milwaukee Police Department (MPD) was able to provide Milwaukee County with 17-year-old arrest activity data commensurate with our referral activity serving youth below age 17. Using this MPD data, the Delinquency and Court Services Division estimates an influx of 1,399 police referrals if the jurisdiction age was changed from 16 to 17. This number represents a 23% increase above our 2006 levels. The Audit report would suggest that this estimate is very conservative, in that the yearly average of 17-year-olds arrested was much higher even after adjusting for status crimes and traffic crimes. Our conservative projection of 1,399 referrals, used to determine our cost estimate, was arrived at prior to the publication of the Audit report. We have compared our respective findings, relative to potential costs, and find that we have likely been conservative in our estimates.

### 1. State Department of Corrections: Division of Juvenile Corrections (DJC)

- Milwaukee County projects that an additional 57-106 youth would be committed to State juvenile correctional institutions, at an annual cost to the County of **\$5.5 - \$10.4 million**. This projection assumes that the State daily rate for correctional charges to counties remains constant. This as you know has not been the case. I would note that the Audit report informs us that an average of 76 seventeen-year olds from Milwaukee are sent to prison each year. Bear in mind that this statistic likely reflects the reality that 17-year-olds are considered first offenders within the criminal system and as a result the majority of the 17-year-olds received a community placement. As reported by various District Attorney Offices in the report, the age and point of entry into either system will have an impact on the possible charges and or disposition.

- Currently, youth can remain in DJC custody until age 18. Our current average age of release from DJC is 17.5 years. Current considerations to return this age group back to the juvenile system would have allowed for DJC custody until age 19. Using an optimistic new average age of release of 18.1 years, we estimate that this change would increase expenditures for Milwaukee County by an additional **\$8.1 million**.

### 2. Secure Detention

- Returning 17-year-olds is estimated to utilize all bed capacity in the county-operated detention facility. This will require full staffing and affect the Department's ability to impose sanctions on a timely basis for non-compliant youth currently under our community supervision. The net on-going cost is estimate is **\$1.3 million**. However, this number is conservative because it does not forecast increases for future personnel costs or purchased service contracts, such as medical and mental health care that will likely need to be expanded if our goal is to maintain the same level of services. In addition, Milwaukee County will likely encounter a return to past years when our facility was routinely overcrowded comprising safety and programming while youth were forced to sleep on floors due to a lack of bed space. Our facility already has a 120-bed capacity.

### 3. Mandatory Intake Functions and Community Programming

- In order for our local juvenile justice system to continue current operations and existing programming capacity, beyond the State correctional and detention services already mentioned, costs are estimated to increase **\$8.5 million**. This includes adjustments to current operations that will maintain supervision staffing ratios and access to current juvenile focused programming and services. Again, this estimate is conservative because it does not forecast personnel cost increases and is based on the conservative 1,399 projected referrals previously established.

I am available to answer any questions the Co-Chairs and Committee members may have. If interested, I would be happy to go over the attached sheet detailing the community-based programming Milwaukee County delivers.

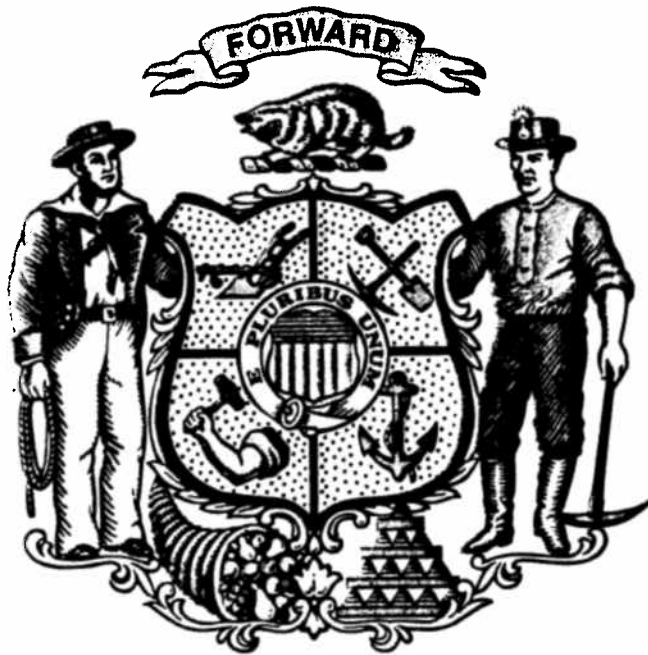
**BASIC SHEET ON PROGRAMS**  
**Delinquency and Court Services Division**  
**Milwaukee County Department of Health & Human Services**

County managed community-based programming. These are programs serve youth as a diversion from entry into the juvenile justice system, as an alternative to detention while court is pending, or as community-based service following disposition in addition to court-ordered supervision. Probation and Detention are excluded.

<b>Program</b>	<b>Description</b>	<b>Budgeted</b>	<b>Budgeted Served</b>
In-Home Monitoring Programs	An intensive in-home program for alleged delinquent youth who have not committed a serious offense but are at risk for placement in detention or shelter care without additional support services and are pending future court appearances. The services are aimed at reducing recidivism and ensuring court appearances.	\$1,380,737	1,300
Temporary Shelter Care	State licensed facilities providing short-term supervised residential programming for youth who may not be returned home pursuant to a court order. Youth are delinquent, pre-delinquent and or juveniles in need of protection or services.	\$2,296,289	1,200
Sex Offender Treatment	The Adolescent Sex Offender Treatment Program serves the needs of delinquent youth whose treatment needs can be met in a structured, community-based setting. The program provides various treatment modalities and service options including group, individual, and family counseling by licensed staff.	\$134,912	103
Day Treatment	A non-residential, education program for delinquent youth. This is a partnership between Milwaukee County, community-based agencies, and the Milwaukee Public Schools. Program includes educational services, licensed counseling and support services. Includes services for expelled youth.	\$1,282,920	260
Probation Services Network	A County operated network of community-based agencies certified to provide a variety of clinical and support services on a fee-for-service basis to delinquent youth currently on court ordered supervision, including gender specific program options and services provided to youth serving detention sanctions	\$789,944	600
Serious Chronic Offender Program	This program provides intensive supervision, structure and support in community-based settings, typically the parental home. Many of the delinquent youth have been found to be	\$544,575	80

	appropriate for a correctional placement however they been allowed to remain in the community contingent upon compliance with supervision and programming.		
Firearm Offender Supervision Program	This program provides intensive supervision, structure and support in a community-based setting, typically the parental home. The program for youth found delinquent of possessing a firearm and includes programming tailored for this target population.	\$881,840	146
Group Home and Foster Care Placement	State licensed homes providing community-based alternative living arrangements for delinquent youth who cannot return home in the immediate future pursuant to a court order. Many of the delinquent youth are experiencing problems within their families, schools, and or in the community.	\$1,626,778	101
Wraparound Milwaukee Program	Wraparound Milwaukee serves families and their delinquent youth presenting serious emotional or mental health needs as identified by the juvenile justice system. Youth are at immediate risk of placement in a residential treatment center, juvenile correctional facility or psychiatric hospital. The program was designed to reduce the use of institutional-based care such as residential care centers and inpatient psychiatric hospitals while providing more services in the community and in the child's home.	\$8,032,174	600
Focus Program	A multi-phase program utilizing collaborative efforts of a state licensed residential Type II facility, county probation supervision, and mental health services provided by Wraparound Milwaukee for youth who cannot be returned home in the immediate future pursuant to a court order. Participating delinquent youth have been found to be appropriate for a state correctional placement however they have been allowed to remain in the community contingent upon compliance with supervision and community programming.	\$1,768,416	100
First Time Juvenile Offender Program Services	A diversion program targeting youth referred to the juvenile justice system for a first offense. A structured program that utilizes the tracking services of community-based agencies in conjunction with services matched to meet the needs of youth being served.	\$630,000	680
Prevention Services	The Delinquency Division funds prevention services for two community-based programs. Safe Alternatives for Youth supports positive community alternatives for youth and Milwaukee Sports Authority supports community-wide infrastructure for youth sports	\$350,000	
<b>TOTAL</b>		<b>\$19,718,385</b>	<b>5,170</b>
<b>BUDGETED YOUTH AIDS</b>		<b>\$12,396,077</b>	
<b>PERCENTAGE</b>		<b>63%</b>	





**TESTIMONY OF THE GOVERNOR'S JUVENILE JUSTICE COMMISSION  
TO THE JOINT AUDIT COMMITTEE**

**April 10, 2008**

**RE: AUDIT 08-3**

**17-YEAR OLD OFFENDERS  
IN THE ADULT CRIMINAL JUSTICE SYSTEM**

Good morning. My name is Lucy Rowley. I am a member of the Governor's Juvenile Justice Commission and I am testifying today on behalf of Deirdre Garton, the Chair of the Commission regarding the recently completed Legislative Audit related to 17-Year Old Offenders in the Criminal Justice System. First, on behalf of the Commission I would like to thank you, the Committee members and the staff of the Legislative Audit Bureau, for studying this important public policy issue. As you may recall, the Governor's Juvenile Justice Commission was one of the groups that submitted a letter in support of studying this issue, so it is appropriate that we commend you for doing so.

I know that this topic will generate more discussions regarding the audit and the underlying public policy in the weeks and months ahead, but let me make a number of summary points or observations that have been a part of the Commission's discussion to date.

In regard to the specifics of the audit:

- We appreciate the challenges faced by the Audit Bureau in gathering relevant crime, cost, and impact data. We commend them for the general manner in which they gathered, sorted, and summarized their information into a logical and usable format.
- We know that fiscal concerns will be a significant component of future discussions and we accept the general approach of the Bureau in projecting potential costs but note that a projected range of \$53.5 to \$82.4 million needs further study and analysis. Regardless of a final cost projection it is important to affirm that if 17-year olds are returned to the jurisdiction of the juvenile system, adequate resources need to be allocated so that existing services for youth under 17 are not disrupted.
- It is not readily apparent if the Bureau included potential savings to the overall justice system that could result from the decrease in recidivism rates of offenders dealt with in the juvenile system compared to the adult system. More study would need to be done to evaluate those costs to determine what would realistically be saved. The basic concept is that to the extent

the recidivism rate is lower for youth assigned to juvenile services than the adult system, there will be some savings from those youth not re-offending.

- While the Audit Bureau's review of cases and comparing recidivism rates between the juvenile and adult systems was difficult, we believe that the general findings of the Audit Bureau are consistent with related national and other state research, including research by the MacArthur Foundation in New York and New Jersey and a substantial study in Florida, these studies suggest that juveniles placed in the adult system are likely to re-offend more seriously than juveniles dealt with in the juvenile system. This is a critical point in understanding that for those who believed placing all 17-year olds in the adult system would somehow lead to enhanced community safety, evidence suggests otherwise. The studies also affirm that the vast majority of 17-year old offenders are minor offenders. A very small percentage is involved in serious and/or violent crimes, a result which appears to be supported by the Bureau's study. This was true in 1995 when the legislation to move 17-year old offenders to the adult system was passed and remains true through today.
- These studies also affirm that if there is a need for services for a 17-year old youth to address mental health, behavioral, family, or other basic needs issues that they are much more likely to receive that assistance in the juvenile system than in the adult system. The adult system screens out, appropriately so, a considerable number of youth at least some of whom may need services which they would receive in the juvenile system. For those youth that are formally processed in the adult system, educational supports, mental health services, behavioral programming, and AODA services are lacking.
- The audit report does not address some of the impact questions that have been raised related to those 17-year olds that have been swept into the adult system for mid-level offenses such as the resulting impact on their record related to future employment, academic enrollment, and other future choices. While the report cites opinions of some district attorneys that the adult system can appropriately serve 17-year olds it does not appear that there was any attempt made to speak to 17-year old regarding these issues. In addition suggestions that procedures such as expungement are a "remedy" for these impacts may not reflect the reality to a young adult who now is 23 or 24.
- The audit report also does not address or provide any information about the view of victims related to the underlying policy issues. While successful juvenile restitution programs

abound in the state, it is unclear to what extent victims receive compensation through the adult system and/or what they view as effective in dealing with the youth who have harmed them in some way. For example research was done in Minnesota that looks at the priorities victims place on consequences to youthful offenders. This information could be useful for future discussions for future discussion and perhaps replication in Wisconsin.

- A related issue of concern to the Commission is that the audit report did not address the impact of bringing children as young as 10 or 11 from the child welfare system into the juvenile delinquency system. Although that was admittedly not part of the charge to the Bureau, it is an issue of concern to Counties and is relevant to the prevention of future offenses as well as the overall cost benefits of this proposed legislation.

As it relates to the underlying policy issues, let me briefly preview some of the factors and discussion points that the Commission will be reviewing in the months ahead:

- Wisconsin is one of many states that are considering "reversing" practices established in the 1990's that sent more youth to adult court. Based on recent studies related to recidivism, it is increasingly evident that those policy decisions have not produced the desired result(s). While much of the advocacy for the currently proposed legislative changes comes from youth advocates, it is important to note that support from a community safety point of view is widespread.
- Recent polls of public opinion on the national level reflect a common sense approach that decisions related to how best to prosecute 17-year olds is a decision best left up to judges rather than through sweeping, "catch all" legislation. For example in a 2007 Zogby poll, nearly 70% of respondents strongly agreed with the statement that decisions on whether to prosecute older teens in adult or juvenile court should be made on a case-by-case basis. Statutes that provide for judicial waiver of the most serious offenders to adult court, utilizing reasonable and balanced criteria to make that decision, can provide adequate protection for the community, particularly combined with other creative options such as extended jurisdiction in some cases.
- Over the past 10 years there has been a substantial increase in research related to what is effective in working with youthful offenders. This research, generally characterized as "what works" or as "evidence based" reflects an increased focus by juvenile justice

practitioners on the specific criminogenic needs of offenders and the strategies that have been designed to address those needs. There have also been strategic investments at the federal level through Juvenile Accountability grants that increasingly focus on creative and effective county delinquency early intervention programs. Examples of successful program approaches, even with some of the most serious offenders, are evident here in Wisconsin at the Mendota Juvenile Treatment Center, Southern Oaks Girls School, the Milwaukee Gun Violence Reduction Project, Wraparound Milwaukee and Children Come First programs, Coordinated Service Teams Adolescent Trauma Treatment programs, the Going Home Project through the Division of Juvenile Corrections, the Barron County Restorative Justice Project, and many more.

- The Commission on Reducing Racial Disparities, as well as the data in the Audit Report, noted the disparities in rates of incarceration for minority 17-year olds. Continuing to send high rates of minority 17-year olds into the adult system when the juvenile system can work to lower re-offense rates perpetuates a closely associated risk factor:  
imprisonment of one or more parents

As juvenile arrest and offense rates were declining before the policy change was enacted in 1995 it is clearly difficult to tie this decline to that change as some would suggest. Therefore the Commission encourages a more comprehensive examination of the state and local data than a "after this, therefore because of that" approach. For example, relatively recent and on-going research about brain development supports the notion that some of the critical decision-making functions we expect of adults simply have not yet fully developed in 17-year olds. While the "nurture", that is environment, parenting, poverty, and many other factors contribute to delinquent behavior, it is increasingly clear that "nature" in the form of brain development plays a significant role in how youth view, interpret, and act on situations they face. It is increasingly evident that assumptions that 17-year olds are essentially "adults" are simply not supported by adolescent developmental or more recent brain development research.

While understanding that there are more issues and components to be discussed and debated, the Commission affirms that the underlying purposes of Chapter 938 provide an important context to evaluate the information contained in the audit report and consider the following:

- That the main goals of the justice system ought to be about promoting long-term community safety, enhancing the competencies and skills of youthful offenders, and having youth be accountable for their actions by understanding the impact of their actions on others and taking active steps to repair the harm they have caused,
- That victims and the community are equally important customers of the justice system, so it is important to consider their input and the impact of policy decisions on them as well as on youthful offenders.
- That review of the impact on the juveniles themselves based on the data they can provide will add relevant and perhaps significant information to the discourse.
- That it is the search for the **most effective** means of reaching the goals of the justice system that should drive the discussion; a discussion about what we know, what we have learned, and what we can do rather than about what we “fear”.

In closing, again the Commission would like to thank the Audit Bureau and the Joint Audit Committee for your interest in this issue and we look forward to partnering with you and others in the months ahead to achieve the best outcomes for all our citizens.

Thank you.