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

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

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

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

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

I. Discretionary Transfer Enhances Public Safety

In the 1980s, Illinois started automatically excluding youth from juvenile court on the basis of their criminal charge due to the popular assumption that adult sentences would better protect public safety.\(^1\) Nearly three decades later, we now know that the assumption was incorrect. Although crime committed by young people is at a 30-year low, research shows that the national trend of youth crime reduction is not tied to increased transfers of youth to adult court.\(^2\) Research to date “suggests that transfer laws, as currently indicated, probably have little general deterrent effect on would-be juvenile offenders.”\(^3\) Accordingly, states with very low rates of transfer of youth to adult court for violent offenses – even murder – have benefited from similar or higher reductions in violent crime than states that frequently try youth as adults.\(^4\)
Extensive research has also demonstrated that removing young people from the juvenile justice system and sending them to adult criminal court impedes public safety and is frequently harmful. A Centers for Disease Control task force reviewed all available government-funded or published studies and found that **placing youth in the adult criminal court system increases the likelihood that they will recidivate and commit future crimes by 34%**. Likewise, a report published by the U.S. Department of Justice examining outcomes for several thousand youth across studies found that adult transfer had a similar negative effect on public safety, concluding that “to best achieve reductions in recidivism, the overall number of juvenile offenders transferred to the criminal justice system should be minimized.”

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

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

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

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

This practice leaves Illinois in a small minority of states with a class of juvenile cases in which no judge can ever weigh whether transfer to adult court is appropriate. Our system falls short of the Supreme Court’s standard regarding the treatment of young people – *Roper v. Simmons*, *Graham v. Florida*, *J.D.B. v. North Carolina*, and *Miller v. Alabama* – requiring that youthfulness must always be taken into account in the treatment of a court-involved minor. Excluded jurisdiction laws in Illinois fail to take these factors into consideration by automatically transferring youth to criminal court with no chance for review of whether the transfer is appropriate in a given case.

In contrast to excluded jurisdiction and automatic transfer, another law – Illinois’ current discretionary transfer statute – meets Supreme Court expectations and sets forth a clear process
for evaluating youth for transfer to adult court. Discretionary transfer law allows youth cases to begin in juvenile court. Whenever a prosecutor deems it appropriate, a full hearing is held to determine whether to transfer the youth to adult court. At the hearing, both sides present evidence about the youth and the crime.

In issuing the decision to transfer a youth to the adult system, the judge evaluates whether it is in the best interest of the public to proceed in criminal court. The judge is to weigh a comprehensive list of factors, including the age of the minor, the history of the minor, the specific circumstances of the offense, whether the youth is more amendable to treatment in the juvenile justice system, and the needs of the community in promoting public safety.

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

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

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

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

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

Judges are forced to give a 13-year-old being tried as an adult the same mandatory minimum sentence that a 35-year-old would receive. There is no question that a 13-year-old and a 35-year-old bear absolutely no resemblance to each other and have completely different rehabilitative potential. Yet a judge cannot sentence the preadolescent offender to a single day less than the minimum applied to fully mature adults, even if there are mitigating circumstances in addition to age, such as pressure applied by adult co-defendants or the teen’s degree of participation in a crime, history of abuse, or cognitive difficulties. So, while the Supreme Court says that criminal procedure laws that ignore youthfulness are flawed, Illinois laws in fact force criminal courts to apply the exact same standards and sentences to adults and minors.

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

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

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

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

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

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

Over the past two years, the public discourse about criminal and juvenile justice issues has proven that the citizens of Illinois want a change. In a widely-accepted report contemplating age and juvenile jurisdiction, our state juvenile policy advisory group officially recommended “[e]valuating the transfer statutes under which youth are transferred into adult court for consistency with public safety, youth rehabilitation, and fairness. . . .[T]he effects of sending minors to the adult system, particularly higher recidivism rates, indicate that Illinois should ensure that its transfer laws are adequately tailored to reduce violence.”

More than fifty highly esteemed organizations comprised of corrections officers and religious leaders, as well as juvenile court judges and Illinois Supreme Court justices have all called on the legislature to enact juvenile transfer reform legislation without delay. Just last month (October 23, 2014), the Pope stated that “states must abstain from the criminal [punishment] of children. . . [who] must instead benefit from all the privileges that the state is capable of offering, regarding policies of inclusion as much as practices directed at developing in them respect for life and for the rights of others.”

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Indeed, in a nearly unprecedented move, just three weeks ago (October 17, 2014) the Illinois Supreme Court unanimously called on the General Assembly to repeal the automatic transfer of juveniles to adult criminal court. The case, State v. Patterson, involved a 15-year-old boy who was automatically transferred to adult criminal court pursuant to our automatic transfer statute. Expressing grave concerns over the indiscriminate assignment of groups of young people to adult criminal court, the Court spoke directly to the General Assembly, stating:

We [...] share the concern expressed in both the [United States] Supreme Court’s recent case law and the dissent in this case over the absence of any judicial discretion in Illinois’s automatic transfer provision. While modern research has recognized the effect that the unique qualities and characteristics of youth may have on juveniles’ judgment and actions [citing Roper v. Simmons, 543 U.S. 551 (2005)], the automatic transfer provision does not. Indeed, the mandatory nature of that statute denies this reality. Accordingly we strongly urge the General Assembly to review the automatic transfer provision based on the current scientific and sociological evidence indicating a need for the exercise of judicial discretion in determining the appropriate setting for the proceedings in these juvenile cases.23

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

4 Id.
5 Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to Adult Justice System, CENTER FOR DISEASE CONTROL, November 30, 2007.
6 REDDING, supra note 3 at 8.
8 Id. at 1.
9 Minors in adult facilities are significantly more likely to be sexually abused, attacked with a weapon by fellow inmates, and beaten by staff; isolation practices intended to prevent such incidents can cause physical and mental health to significantly deteriorate, including elevated suicide rates, See ILLINOIS JUVENILE JUSTICE COMMISSION, Raising the Age of Juvenile Jurisdiction in Illinois, February 2013, at 25.
10 705 ILCS 405/5-130. See also 705 ILCS 405/5-805(1) (barring judicial consideration of amenability to juvenile court in mandatory transfer hearings).
Weighing the adequacy of punishment or services is an explicit requirement of Illinois discretionary transfer hearings. 705 ILCS 405/5-805(3)(b)(v)(c). In assessing the sufficiency of juvenile court proceedings in extremely serious cases, it is important to note that the extended juvenile jurisdiction provision of the Juvenile Court Act allows a juvenile court to issue, in addition to a juvenile sentence, a suspended adult criminal sentences that may be imposed upon violation of conditions of the juvenile sentence (resulting in incapacitation beyond the age of 21). 705 ILCS 405/5-810.

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

“Because juveniles have diminished culpability and greater prospects for reform, we explained, they are less deserving of the most severe punishments. [W]e relied on three significant gaps between juveniles and adults. First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. Second, children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child’s character is not as well formed as an adult’s; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity. Our decisions rested not only on common sense — on what "any parent knows" — but on science and social science as well.” Miller, 132 S.Ct. at 2464 (internal citations omitted).


