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☛ **10/03/2013 Public Hearing**

(FORM UPDATED: 08/11/2010)

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

**2013-14**

[session year]

**Assembly**

[Assembly, Senate, or joint]

**Committee on ...  
Corrections  
(AC-Co)**

**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 ... **HR ... 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**

\* Contents organized for archiving by: Mike Barman (LRB) (December/2014)

## Assembly

### Record of Committee Proceedings

#### **Committee on Corrections**

##### **Assembly Bill 387**

Relating to: the age at which a person who is alleged to have violated a criminal law, a civil law, or a municipal ordinance and who is not alleged to have committed certain violent offences or has not previously been convicted of a crime or adjudicated delinquent is subject to juvenile court jurisdiction.

By Representatives Bies, Kessler, Johnson, Ballweg, Barnes, Berceau, Bernard Schaber, Bernier, Billings, Brooks, Clark, Doyle, Genrich, Goyke, Hebl, Jacque, Kahl, Kestell, Kolste, Krug, Loudenbeck, Milroy, Ohnstad, A. Ott, Pasch, Petryk, Pope, Pridemore, Ringhand, Ripp, Sargent, Shankland, Sinicki, Spiros, C. Taylor, Thiesfeldt, Tittl, Vruwink, Wright and Young; cosponsored by Senators Petrowski, L. Taylor, T. Cullen, Erpenbach, Hansen, Harris, Lassa, Lehman, Miller, Moulton, Olsen, Risser, Shilling and Vinehout.

September 23, 02013 Referred to Committee on Corrections

October 03, 2013 **Public Hearing Held**

Present: (9) Representative Bies; Representatives Schraa, Brooks, Krug, Thiesfeldt, Kleefisch, Doyle, Pasch and Zamarripa.  
Absent: (0) None.  
Excused: (0) None.

##### Appearances For

- LaTonya Johnson - State Representative
- Patrick Fiedler - WI State Bar of Wisconsin
- Vicky Gunderson
- Derek Cohen - Texas Public Policy Foundation
- Evan Goyke - State Representative - 18th Assembly District
- Jim Moeser - Wisconsin Council on Children and Families
- Sabrina Gentile - Wisconsin Council on Children and Families
- Lance Horozewski
- Linda Hall - Wisconsin Association of Family and Children's Agencies
- Adam Plotkin - State Public Defender
- Robin Dorman - State Public Defender

- Jesse Russell - National Council on Crime and Delinquency
- Barbara Sella - WI Catholic Conference
- Phyllis Greenberger - Disability Rights of WI
- Marc Herstand - National Association of Social Workers
- Peter Bakken - Wisconsin Council of Churches
- Calilph Muab'El - MOSES
- Joseph Ellarnger - MICAH/Project Return
- Rodney Evans - MICAH/Project Return
- Fauri Bilgere

#### Appearances Against

- Scott Shackelford - Brown County Human Services
- Jason Witt - LaCrosse County Human Services
- Sarah Diedrick-Kasdorf - Wisconsin Counties Association
- Diane Cable - Wisconsin Counties Human Services Association

#### Appearances for Information Only

- None.

#### Registrations For

- Tony Gibart - End Domestic Abuse Wisconsin
- Eric Jensen - WI Pshychiatric Association
- Liz Buchen - Lutheran Social Services
- Jerry Petrowski - State Senator
- Fred Kessler - State Representative
- Mickey Beil - Dane County
- Andrea Kaminski - League of Women Voters of Wisconsin
- Carol Rubin - Moses/Wisdom
- David Liners - WISDOM
- Lisa Maroney - UW Health and American Family Children's Hospital
- Jennifer Kammerud - WI Department of Public Instruction
- Nicholl Leonhard - NASW
- Rev. John Mix - Chaplian Dane County Jail
- Andrew Splander

#### Registrations Against

- J.B. Van Hollen - Attorney General - WI Department of Justice
- Mark Wadium - Outagamie Board of Supervisors

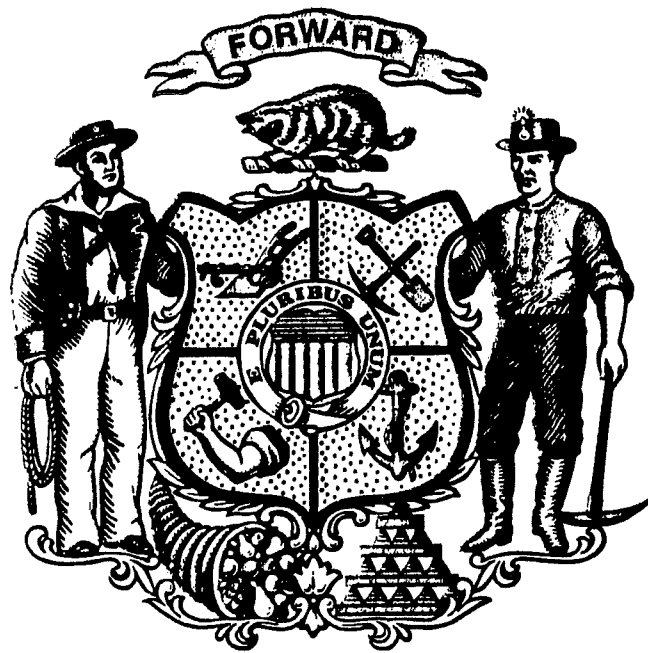
- David Kaminski - Rusk County Sherriff's office/ Badger Sheriff Association

Registrations for Information Only

- None.

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Cory Bruce  
Committee Clerk



## Vote Record Committee on Corrections

Date: 10/31/13

Moved by: Pasch

Seconded by: Doyle

AB 387 SB \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:  
 Passage     Adoption     Confirmation     Concurrence     Indefinite Postponement  
 Introduction     Rejection     Tabling     Nonconcurrency

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Representative Garey Bies, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Michael Schraa, Vice Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Edward Brooks</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Scott Krug</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Jeremy Thiesfeldt</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Joel Kleefisch</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Steve Doyle</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Sandy Pasch</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative JoCasta Zamarripa</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>9</u>	_____	_____	<u>0</u>

Motion Carried       Motion Failed





## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director*  
*Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE GAREY BIES

FROM: Katie Bender-Olson, Staff Attorney

RE: Summary of LRB-1065/2, Relating to Treatment as an Adult for Criminal Prosecution

DATE: July 24, 2013

The following memorandum summarizes LRB-1065/2 ("the bill draft"), relating to the age at which a person is subject to criminal prosecution in adult court. The bill draft raises from 17 to 18 the age at which an offender is subject to prosecution and sentencing as an adult. The bill draft provides that a 17-year old offender is not subject to the jurisdiction of an adult criminal court, unless the offender has a prior record or commits certain "violent crimes." The memorandum also outlines the "violent crimes" which automatically subject a 17-year old offender to the jurisdiction of an adult criminal court.

### CURRENT LAW

Wisconsin law generally subjects juvenile offenders and adult offenders to different procedures and punishments for violating state criminal laws. Juvenile offenders are typically subject to the Juvenile Justice Code (ch. 938, Stats.), while adult offenders are subject to the Criminal Code (chs. 939 to 951, Stats.). Juvenile offenders found to have violated a law or ordinance are "adjudicated" by a court, rather than being found guilty and convicted. A court that adjudicates a juvenile offender imposes a "disposition," rather than a criminal sentence. The dispositions which a court may impose on a juvenile offender differ somewhat from the criminal sanctions that a court may impose on an adult. Potential dispositions for juvenile offenders include consequences such as restrictions on driving privileges, victim-offender mediation, or placement in a juvenile correctional facility, but do not include placement in an adult prison.

Under current law, an offender who is 17 years old is an "adult" and not a "juvenile." This means that a 17-year old offender is generally subject to prosecution in adult criminal court, rather than juvenile court, and faces adult criminal penalties. [s. 938.02 (1), Stats.] A 17-



year old offender is typically treated as an "adult" in the criminal justice system and may be placed in a state prison.<sup>1</sup>

Juveniles (those 16 and younger) are generally subject to adjudication in juvenile court, but may be prosecuted in adult criminal court under certain circumstances. A juvenile may be prosecuted in adult criminal court if: (a) the adult court has "original jurisdiction" over the case; or (b) the case is "waived" from juvenile court into adult court. An adult court has "original jurisdiction" over a juvenile case if the juvenile commits particular offenses or has certain prior convictions or adjudications. For example, an adult court has original jurisdiction over any juvenile offender who is charged with first-degree intentional homicide after his or her 10th birthday. [s. 938.183 (1) (am), Stats.] In addition, a juvenile case may be "waived" into adult criminal court if the juvenile is charged with certain violent offenses, drug offenses, or gang-related offenses after age 14, or if the juvenile is charged with any crime after age 15. For example, a court may waive a 14-year old offender into adult court if the juvenile is charged with first-degree sexual assault. [s. 938.18 (1) (a) and (b), Stats.]

#### SUMMARY OF LRB-1065/2

LRB-1065/2 changes the manner in which 17-year old offenders are treated for purposes of criminal prosecution. The bill draft treats most (but not all) 17-year old offenders as "juveniles," rather than treating 17-year old offenders as "adults."

LRB-1065/2 provides that a 17-year old offender who violates a criminal law is subject to the Juvenile Justice Code and not to the adult Criminal Code, except under certain circumstances. Similarly, the bill provides that a 17-year old who violates a civil law or municipal ordinance is subject to the jurisdiction of a court acting under the Juvenile Justice Code, rather than being subject to the jurisdiction of a circuit court or municipal court system, except under certain circumstances.

LRB-1065/2 generally treats 17-year old offenders as juveniles; however, the bill draft continues to treat certain 17-year old offenders as adults. Under the bill draft, a 17-year old offender who has a prior record or who is charged with specified violent crimes is treated as an adult and faces prosecution and penalties in the adult criminal justice system.

LRB-1065/2 provides that the following 17-year old offenders are treated as "adults" for purposes of the adult criminal justice system:

- **17-Year Old With a Previous Adult Court Conviction.** A 17-year old offender who has previously been convicted of a crime.
- **17-Year Old With a Previous Juvenile Court Adjudication.** A 17-year old offender who has previously been adjudicated delinquent.

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<sup>1</sup> Juvenile offenders who are prosecuted in adult criminal court may be placed in a state prison after reaching age 17, but cannot be placed in the correctional institution authorized in s. 301.16 (1n), Stats. (the Wisconsin Secure Program Facility, commonly referred to as the "Supermax Prison"). [s. 938.183 (3), Stats.]

- **17-Year Old Who Commits a Violent Crime.** A 17-year old offender who is alleged to have committed a violent crime specified in s. 939.632 (1) (e) 1., or 2., Stats. The list of qualifying crimes is provided in the following section.
- **17-Year Old Who Commits Intimidation of a Witness.** A 17-year old offender who commits a misdemeanor under s. 940.42, Stats., *Intimidation of witnesses*, if the underlying crime is a felony.
- **17-Year Old Who Commits Certain Dangerous Weapons Offenses.** A 17-year old offender who violates s. 941.20 (1) (b), (bm), (c), or (d), Stats., *Endangering safety by use of dangerous weapon*, or who violates 941.24, Stats., *Possession of a switchblade knife*.

Seventeen-year old offenders who meet these criteria will continue to be prosecuted in adult criminal court and will continue to be subject to adult criminal penalties.

#### **"VIOLENT CRIMES" UNDER LRB-1065/2**

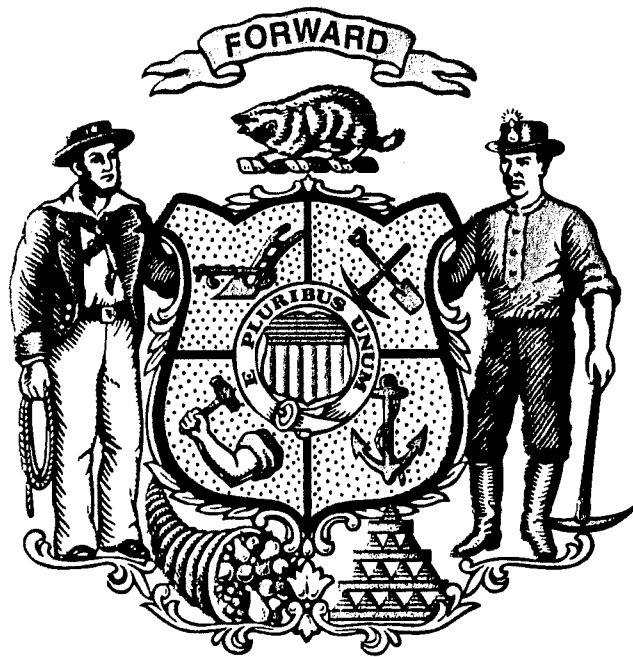
As discussed above, one category of 17-year old offenders that LRB-1065/2 treats as "adults" and subjects to adult criminal procedures and penalties is 17-year old offenders who are charged with a "violent crime" specified in s. 939.632 (1) (e) 1., or 2., Stats. These qualifying "violent crimes" are the following:

- s. 940.01, Stats., first-degree intentional homicide.
- s. 940.02, Stats., first-degree reckless homicide.
- s. 940.03, Stats., felony murder.
- s. 940.05, Stats., second-degree intentional homicide.
- s. 940.09 (1c), Stats., homicide by intoxicated use of vehicle or firearm (death of an unborn child by operation or handling of a vehicle while under the influence of an intoxicant).
- s. 940.19 (2), (4), or (5), Stats., battery; substantial battery; aggravated battery.
- s. 940.21, Stats., mayhem.
- s. 940.225 (1), (2), or (3), Stats., sexual assault (first degree, second degree, third degree)
- s. 940.235, Stats., strangulation and suffocation.
- s. 940.305, Stats., taking hostages.
- s. 940.31, Stats., kidnapping.
- s. 941.20, Stats., endangering safety by use of a dangerous weapon (felony crimes)

- s. 941.21, Stats., disarming a peace officer.
- s. 943.02, Stats., arson of buildings; damage of property by explosives.
- s. 943.06, Stats., Molotov cocktails.
- ⇒ s. ~~943.10 (2), Stats., burglary (armed with dangerous weapon and certain other circumstances).~~
- s. 943.23 (1g), Stats., carjacking.
- s. 943.32 (2), Stats., armed robbery.
- ⇒ s. 948.02 (1) or (2), Stats., sexual assault of a child (first degree, second degree)
- s. 948.025, Stats., engaging in repeated acts of sexual assault of the same child.
- s. 948.03 (2) (a) or (c), Stats., physical abuse of a child (intentional causation of bodily harm).
- s. 948.05, Stats., sexual exploitation of a child.
- s. 948.051, Stats., trafficking of a child.
- s. 948.055, Stats., causing a child to view or listen to sexual activity.
- s. 948.07, Stats., child enticement.
- s. 948.08, Stats., soliciting a child for prostitution.
- s. 948.085, Stats., sexual assault of a child placed in substitute care.
- s. 948.30 (2), Stats., abduction of another's child (by force or threat of imminent force).
- s. 948.302 (2), Stats., human trafficking (for purposes of a commercial sex act).
- s. 939.30, Stats, solicitation (to commit a Class A felony).
- s. 939.31, Stats., conspiracy (to commit a Class A felony).
- s. 939.32, Stats., attempt (to commit a Class A felony).

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

KBO:ksm





## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director*  
*Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE GAREY BIES

FROM: Katie Bender-Olson, Staff Attorney

RE: Criminal Court Jurisdiction Over 17 Year-Olds

DATE: September 10, 2013

This memorandum responds to your inquiry regarding "reverse waiver," which is the transfer of jurisdiction over a juvenile offender from an adult criminal court ("adult court") to a juvenile court. Specifically, you asked whether a 17 year-old may be "reverse waived" to juvenile court under current law. The answer is "no."

Juvenile offenders who violate state criminal laws generally have their cases addressed by juvenile courts. However, a 17 year-old offender is considered an "adult" for purposes of criminal prosecution and an adult court is the only court with jurisdiction over that offender. [s. 938.032 (1), Stats.]

Reverse waiver is available to juveniles 16 years of age or younger who are under the original jurisdiction of an adult court. Under current law, an adult criminal court has "original jurisdiction" over a juvenile when the juvenile meets certain criteria. Very generally, an adult court has original jurisdiction over the following juveniles: (1) juveniles who commit battery in a correctional or detention facility or to a probation agent and have a prior adjudication; (2) juveniles 10 years of age or older who commit certain homicide offenses; and (3) juveniles with a prior adult conviction or pending adult case.<sup>1</sup>

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<sup>1</sup> Specifically, an adult court has original jurisdiction over a juvenile who was previously adjudicated delinquent and is alleged to have committed certain battery or assault while placed in a juvenile correctional facility, a juvenile detention facility, or a secured residential care center prison or who was previously adjudicated delinquent and is alleged to have committed battery to a probation and parole agent or aftercare agent. [s. 938.183 (1) (a), Stats.] Additionally, an adult court has original jurisdiction over a juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless homicide or second-degree intentional homicide on or after the juvenile's 10<sup>th</sup> birthday. [s. 938.183 (1) (am), Stats.] Finally, an adult court has original jurisdiction over a juvenile who is alleged to have committed a crime and who has been previously convicted in adult court or has a case pending in adult court. [s. 938.183 (1) (b) and (c), Stats.]

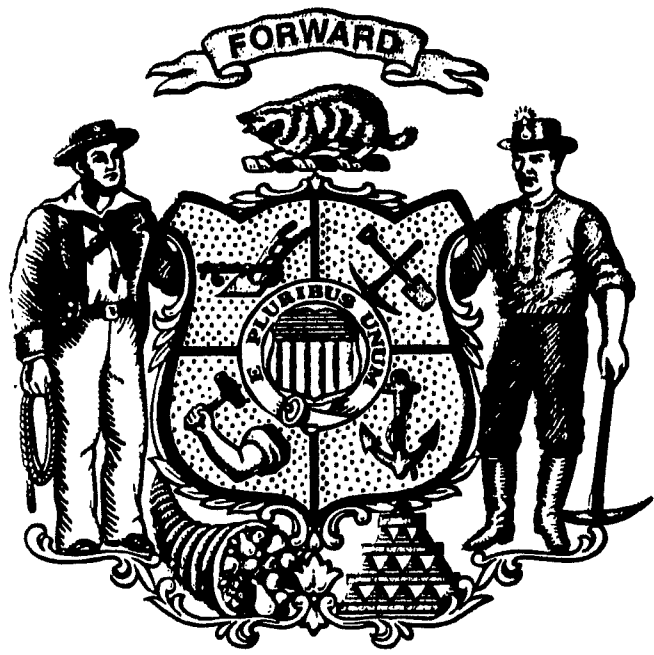
An adult court has original jurisdiction over a juvenile's case under any of the circumstances described above; however, a case may be transferred to juvenile court in certain limited circumstances. A juvenile's case that begins in adult criminal court but is later transferred to juvenile court is said to be "reverse waived."

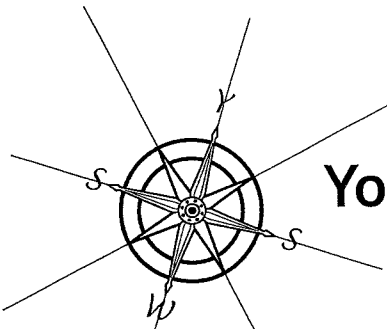
A court may only grant a reverse waiver if the juvenile proves all of the following: (1) that the juvenile could not receive adequate treatment in the criminal justice system; (2) that transferring the juvenile would not depreciate the seriousness of the offense; and (3) that it is not necessary to keep the case in adult court in order to deter juveniles from committing the violation of which the juvenile is accused. [s. 970.032 (2), Stats.]

The statutory provisions allowing for reverse waiver apply only to a "juvenile." [ss. 970.032 (1) and 971.31 (13) (a), Stats.] Therefore, as discussed above, an adult court does not have authority to transfer a 17 year-old to juvenile court.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

KBO:jal





# Youth Services of Southern Wisconsin, Inc.

*Guiding Youth Toward a Better Future*

September 26, 2013

Representative Garey Bies, Chair  
Assembly Committee on Corrections  
Room 216 North  
State Capitol  
PO Box 8952  
Madison, WI 53708

Dear Representative Bies:

I am writing in strong support of AB387/SB308 which proposes to raise the age of adult court jurisdiction to eighteen (18) for first-time, non-violent youthful offenders.

Youth Services of Southern Wisconsin (Youth Services) is a major provider of services to court-involved youth in Dane County and southern Wisconsin. We provide several services for youth including restitution/community service programming, youth employment, intensive supervision for adjudicated youth, youth peer courts, and services for homeless and runaway youth. The agency serves approximately 1,500 youth and their families each year.

We frequently work with 17 year olds in our youth employment programs who face the challenge of having an arrest or conviction record for a minor offense as they seek their first job. This places unnecessary barriers to employment on these youth and increases the difficulties they face in getting their life on the right track.

We also work with 17 year old girls who have been victims of sex-trafficking but end up being charged with prostitution as adults which both "blames the victim" and eliminates their ability to get needed services in the juvenile system.

Youth Services is proud of our 35 years of success in holding juvenile offenders accountable for their offenses through restitution, community service, and intensive supervision programming. Over 90% of youth referred for these services successfully complete their court-ordered obligations. Since 1978, youth involved in these services have performed an average of 6,971 hours of community service each year and have paid an average of \$43,514 per year in restitution to victims of their offenses.



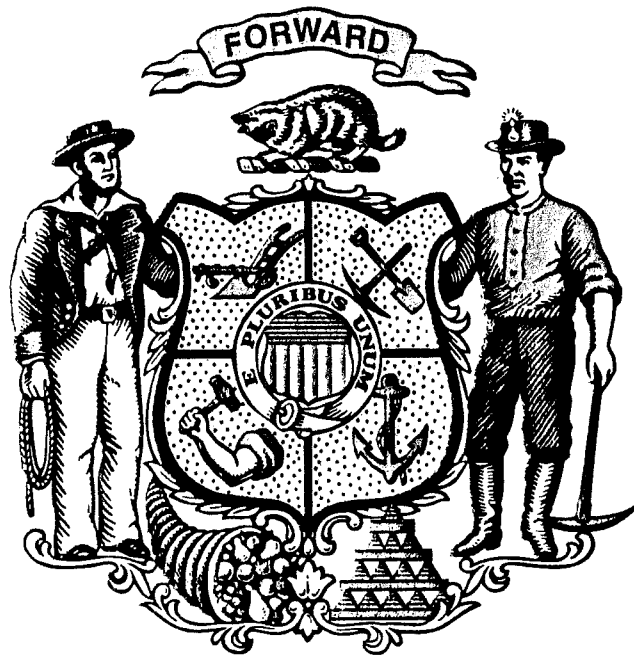
Like most people, we believe that youth are capable of changing, and we have seen positive changes in thousands of youth we have worked with over the years. We know that youth make mistakes, and we agree that they need to be held accountable for their mistakes. However, it makes no sense to continue to saddle 17 year old first-time, non-violent offenders with a life-long criminal record.

We applaud your common-sense approach to this issue and hope that your colleagues in the Legislature will support AB387/SB308. Please feel free to share this letter with others as you see fit.

Sincerely,

A handwritten signature in cursive script that reads "Casey S. Behrend". The signature is written in black ink and is positioned above the printed name and title.

Casey S. Behrend  
Executive Director





MICAH CUSH RIC SOPHIA JOSHUA ESTHER JONAH AMOS NAOMI RUTH MOSES  
Milwaukee Kenosha Racine Waukesha Green Bay Fox Valley Eau Claire La Crosse Wausau Manitowoc Madison

*The Gamaliel Foundation in Wisconsin*

Phone: 414-831-2071 Email: [wisdomwi@sbcglobal.net](mailto:wisdomwi@sbcglobal.net)  
Address: 3195 S. Superior St. Suite 310, Milwaukee, WI 53207

October, 2013

## STATEMENT OF WISDOM IN SUPPORT OF CHANGING THE AGE OF PROSECUTION OF JUVENILES AS ADULTS

WISDOM is the Wisconsin affiliate of the Gamaliel Foundation, an interfaith organization comprised of more than one hundred and fifty congregations, of nineteen different faith traditions, and thousands of individuals.

We strongly support in principle legislation to change the age at which offenders are treated as adults in our criminal justice system from 17 years of age to 18 years old. We believe such a change, if properly designed, supported and implemented, would be a cost effective and humane way to improve public safety in our communities. *We believe that both Assembly Bill 387 and Senate Bill 308 are positive first steps toward accomplishing this important reform.*

Several reasons inform our position.

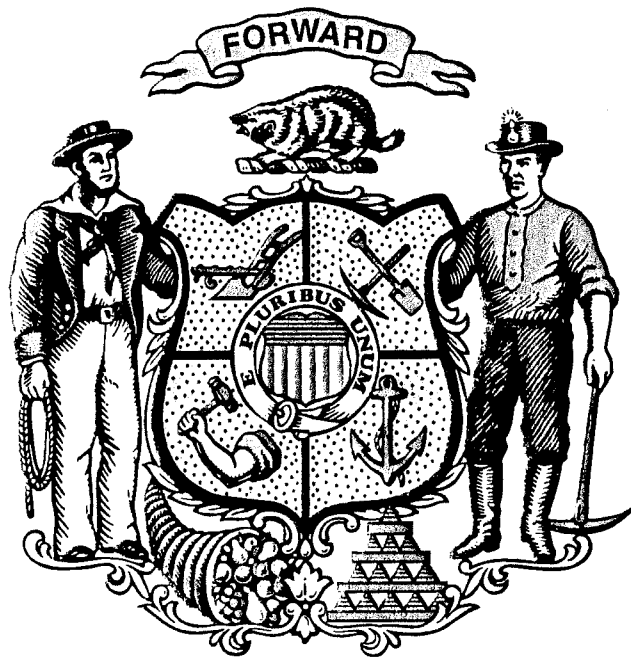
### **Children are Different and Should be Treated Differently Than Adults**

The most important resource of any community – local, state or national – is its children. They are the heart of our families and the future of our communities. How we treat our children will profoundly affect our future and defines us as a community.

Children are different than adults. A growing body of evidence on adolescent brain development tells us that the teen years are a time of extraordinary vulnerabilities and opportunities for our children. While this can include a willingness to engage in high risk, non-empathetic and destructive behaviors without appreciation of immediate or long term consequences, it is also a time where positive opportunities can help young people mature, better regulate their emotions, and develop long-term goals, values, and priorities that can guide them through adulthood.

This being so, treating young persons as adult criminals is misguided for at least three reasons.

- First, mixing young offenders with older hardened offenders at a time when they are particularly vulnerable to peer influence can increase the risk they will embrace antisocial values and behaviors after their release. Similarly, sending young people to state institutions can weaken or destroy the offenders' positive ties to family and community. There is reason to believe the "tough on crime" mantra that led to treating all 17 year olds as adults has made our communities less rather than more safe.
- Second, the changes that occur with all young people during adolescence makes clear that the facts upon which sentencing decisions are based – predictions about future risk and retribution – will inevitably change. For this reason, a system that is flexible and responsive to changing circumstances best fits the juvenile offender. The rigidity and length of adult Truth in Sentencing punishments is rarely, if ever, appropriate for children.
- Third, we must take advantage of the potential for positive change that lies within all of our children. What we do with young people who offend will profoundly affect their future place in our communities. It is as much in our interest as theirs that we create a system that does not squander these opportunities.



Mary T. Harpster  
4485 S. Hillview Ct.  
New Berlin, WI 53146

October 1, 2013

Rep. Garey Bies, Chair  
Room 216 North  
State Capitol  
P.O. Box 8952  
Madison, WI 53708

RE: Assembly Bill 387

Dear Representative Bies,

I am writing this letter to you as a parent who "lost" her child to the adult jail system. At a time when my 17 year old child needed positive influences in his life, he received the message from the justice system that he was a threat to society and was put into the adult criminal system.

I wish I could be there on Thursday, October 3<sup>rd</sup> to read my letter to you in person unfortunately; I am out of town on business.

Please take a moment to read and share my son Ben's story with your associates. I am a real parent, who has been to "hell and back" with my son. I know the horrors of the adult criminal system. I know that it doesn't work and results in repeat offenders. I strongly support your efforts on behalf of this bill and will be there "in spirit" to support you.

Regards,

*Mary T. Harpster*

Note: please copy to the other Assembly members as per the attached.

## Ben's story

My son was a typical high school student. He played football from sixth to tenth grade. He was on the wrestling team for two years. He is gifted and talented, taking his first ACT test as a freshman, with an overall score of 19. All in all, he was an average teenage boy who had the propensity to make stupid choices, just like other teenagers, especially when surrounded by other teenage boys.

Then at sixteen, Ben lost his Dad in a tragic plane crash. Shortly after this, Ben began having trouble at school and his behavior changed. We found a psychotherapist to work with him to try to help him deal with his grief and guilt; however, by then Ben was on a path of self-destruction.

Ben's first arrest was in 2007, less than five months after his Dad died and about a month after his 17<sup>th</sup> birthday. He and a 16 year-old classmate smoked marijuana, went snowboarding and foolishly decided to see what they could steal from unlocked cars.

Ben was charged with seven, Class A misdemeanor's for theft and was found guilty on three of the counts. His friend was put on probation and has no adult record. Both of these young men committed the same crime, however, because one was 16 and one was 17, they were treated completely differently. Ben ended up being sentenced to 90 days in an adult Huber facility during the summer of his junior year in high school. His 16 year old friend was given probation and no adult record. Unfortunately, there was never any consideration that Ben should be placed in juvenile facility where he could get his emotional, mental and drug use needs addressed, because he was 17 and therefore an "adult". Frankly, the topic of a juvenile facility was never even discussed by the district attorney, or the judge who sentenced him.

While in Huber, Ben got into trouble and was sentenced to 2 weeks in "the hole". Ben was working for us at the time and was allowed to call to let me know he wouldn't be at work. He was in a state of panic and fear when he called, unsure of what it meant or what they were about to do to him.

On the outside, is it not known that the jails have their own internal justice system, so regardless of what a judge may assign an inmate, the jail can do what they choose to after an internal hearing. This hearing typically consists of a guard or two and the charged inmate. The "hole" means solitary confinement, so no phone calls or visits, only a hard concrete cell with a mattress at night and one hour spent out of the cell per day. I spoke to a deputy after this happened to try to determine what Ben had done to deserve this. He wouldn't give me any details other than that I would not be allowed to see or talk to Ben until his two weeks were up. I was point blank told that it didn't matter that I was legally responsible for him, or that he was a teenager, he was in the jail and therefore I, as his parent had no rights. As a parent, still legally responsible for my 17 year old, I was not allowed to call and find out how he was doing or get any updates. I asked them to have someone from their Mental Health staff visit Ben to make sure he was of right mind and not suicidal, etc. They told me they would have someone see him, but they never did. Fortunately, Ben had a wonderful probation officer, who at my request visited him a few times to make sure he was okay and would call to reassure me. Even she was shocked at what had happened to him. She never thought he should have gotten anything more than probation in the first place, given his age and charges, so solitary confinement was ludicrous.

As a mature adult, I am not sure I could have managed two weeks of complete solitude while dealing with the grief of losing my Dad and the hardships of being in jail, yet a teenager was expected to suffer this.

While in Huber that summer Ben became a different person. He was introduced to Heroin and other hard drugs. He spent three months around hardened adult criminals. He was afraid most of the time, fearing what might happen to him, if he was asked to do something for another inmate and didn't. His attitude became "nobody cares about me, so why should I care". He came out of jail no longer a child and even more self destructive than he was before. What was communicated to him by the justice system was that he was a lost cause and he believed that there was no hope for him, or a normal life.

While in Huber, Ben wasn't offered mental health counseling, or counseling of any sort. For that matter he wasn't even given the anti-depressant medication that he had been prescribed by his doctor. The jail had the medication, but it was up to them whether they administered it. Unfortunately, If Ben was sleeping or, at work during the time when medication was being dispensed, then he didn't get his med's.

After that summer, Ben got into additional trouble with the law and in 2008 was charged with felony theft and put in jail once again. This led to him spending the second half of his senior year in high school in jail. There is no doubt that in my mind that recidivism increases in young men who have been previously incarcerated and Ben is a clear example. Fortunately, Ben did successfully finish his high school education in jail and because of the kind principal at his high school was a man of great character who believed that everyone deserves a "second chance" and granted him a diploma, instead of a GED

We, as a family, worked hard to research alternative facilities that might help Ben. Eventually, his attorney convinced the judge to allow Ben to participate in Teen Challenge in lieu of jail. This would not have happened had we left the decision in the hands of the traditional justice system, which seems to have given up on devising alternative solutions, or offering juveniles a place where they can get the services they need. The only solution the system seems to use is to throw them into jail and forget about them, which is costing all of us tens of thousands of dollars per inmate, per year, with no end in sight. As a society we are not rehabilitating these young men, helping them to obtain viable skills or giving them hope for a future, they are only being punished and then released to go out and commit more crimes, as Ben has demonstrated.

I am not at all suggesting that Ben didn't commit crimes, nor, am I suggesting he shouldn't have been punished. However, I am suggesting that his age, mental condition and maturity should have been taken into consideration while sentencing him. It is clear that there was no thought to anything other than throwing him into the adult system so that he could be considered "no longer a threat to society".

Perhaps there is an illusion that by putting these young men in to the adult criminal justice system, that they will "learn their lesson the hard way" and be scared straight and stay out of trouble. Unfortunately, this illusion is only temporary. Realistically, what we get are bored young men without any purpose, structure or discipline who are getting the best criminal and drug use training available.

In closing, our system isn't working. We can't keep doing things the same way and expecting different results. If we bury our heads in the sand and believe "all is well", we will just continue to have youth being trained by the other criminals, being exposed to rape and violence that they shouldn't be and being denied the services that might actually help them. Much like the wisdom of Ben's High School Principal, I truly wish that Ben had been given a "second chance" by the legal system.



Please disseminate a copy to members of the committee, names and addresses as follows:

Assembly Committee on Corrections

Rep. Garey Bies, Chair  
Room 216 North  
State Capitol  
P.O. Box 8952  
Madison, WI 53708

Rep. Michael Schraa  
Room 22 West  
State Capitol  
P.O. Box 8953  
Madison, WI 53708

Rep. Edward Brooks  
Room 20 North  
State Capitol  
P.O. Box 8952  
Madison, WI 53708

Rep. Scott Krug  
Room 208 North  
State Capitol  
P.O. Box 8952  
Madison, WI 53708

Rep. Joel Kleefisch  
Room 307 North  
State Capitol

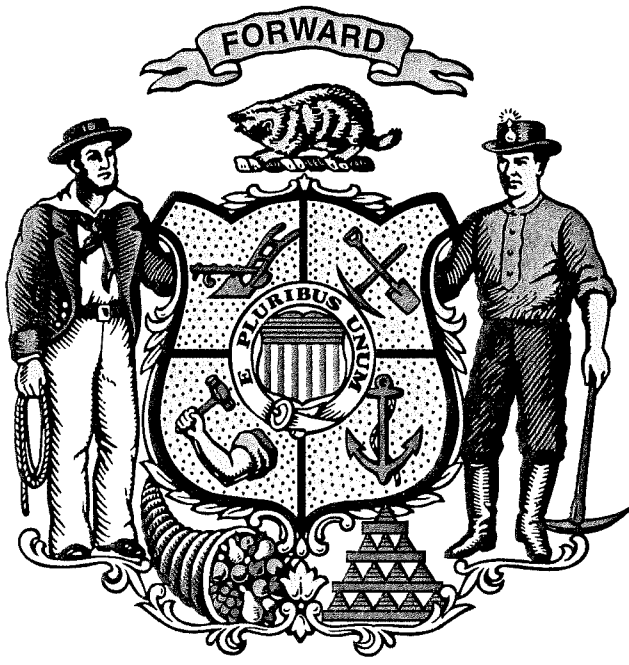
P.O. Box 8952  
Madison, WI 53708

Rep. Jeremy Thiesfeldt  
Room 16 West  
State Capitol  
P.O. Box 8953  
Madison, WI 53708

Rep. Steven Doyle  
Room 124 North  
State Capitol  
P.O. Box 8952  
Madison, WI 53708

Rep. Sandy Pasch  
Room 119 North  
State Capitol  
PO Box 8953  
Madison, WI 53708

Rep. Jocasta Zamarripa  
Room 320 West  
State Capitol  
P.O. Box 8953  
Madison, WI 53708



**Statements and Issues that could arise (from AG or Sheriffs/others)**

**Statement from Sheriff's:** It will cost us more because we will have to transport kids to other counties for juvenile detention since we don't have a juvenile facility in our county.

**Question:** Do you know how many 17year olds you held in your jail last year and/or any idea on how many of those would be held in juvenile detention?

**Discussion:** (1) the standards for holding in jail and juvenile are much different, such that this bill narrows considerably the range and number of 17 year olds who would be held in juvenile detention (standard for juvenile is substantial risk of physical harm to another, and violent offenses are excluded; or running away so as to be unavailable for court, and the youth in this bill will not have a history of missing court, as they are first-time delinquents); (2) There could be a small % of 17year olds who may meet secure detention criteria, but for some counties who deal with perhaps only 50-100 juveniles a year, that may be 10 17-year-olds and maybe one will meet the criteria – do they have some numbers to suggest otherwise; and (3) are you not going to incur some costs related to complying with the Prison Rape Elimination Act that will offset these costs? (see PREA information below).

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**PREA Information:** The Prison Rape Elimination Act (PREA) was authorized by congress around 10 years ago but regulations to implement it were just put in place this summer. PREA requires, for reasons related to health and safety, that: (1) any youth under 18 held in an adult facility be "sight and sound separated" from adult inmates and that any incidental contact when they may come in contact with adults (e.g. passing in a hallway) be directly supervised by staff; (2) higher staff to youth ratios be provided so the number of youth supervised per jail staff is much lower than for adults.

**Statement:** We (meaning a county jail) don't have to or plan to comply with PREA

**Response/Discussion:** Any adult facility holding youth under the age of 18 is subject to PREA but note: (1) the only sanction for non-compliance is a sanction on the state, not the county unless the county contracts for placements from DOC – the state would lose 5% of federal justice funds, including any adult or juvenile justice fund; (2) DOC has made plans to fully comply with PREA for the prison system; and (3) any adult facility not complying will be subject to unquestioned liability should something happen to/harm come to a youth under 18 in their facility.

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**Statement:** 17 year olds can be waived back to juvenile court.

**Response:** No, that is incorrect. See Legislative Council memo in relation to initial statements wondering why judges do not waive 17 year olds back to juvenile more often.

10.2.13

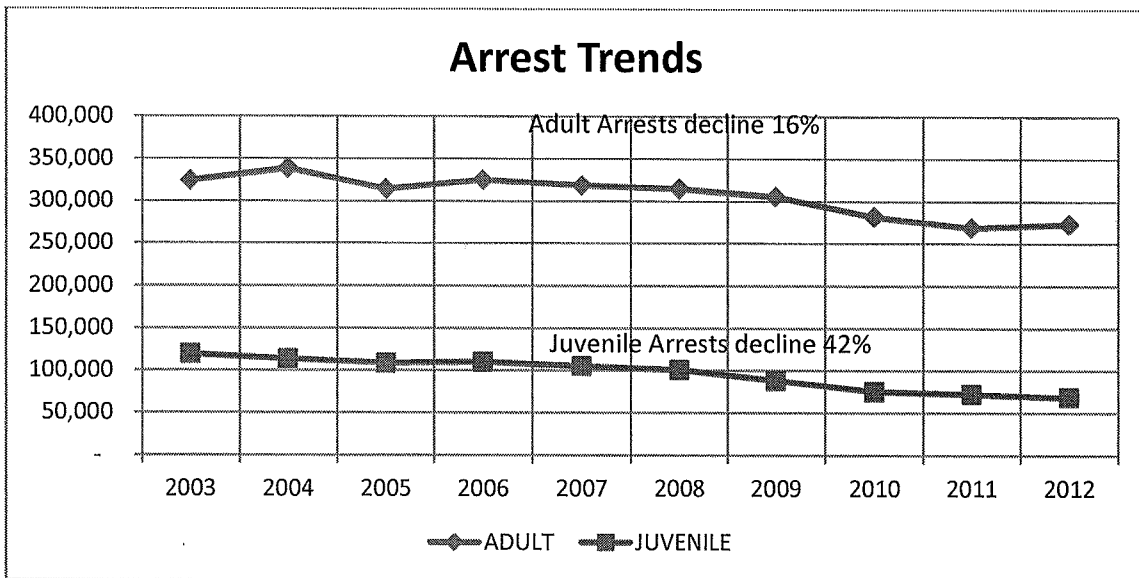
10-03-2013  
Hearing  
AB 251  
&  
AB 387

**Statement:** It's working, and prosecutors have discretion on how to proceed with 17 year olds. Not all 17 year olds end up with adult records; and counties are increasing their use of deferred agreements, specialty courts, and expungement of records of youthful offenders.

**Question:** Are these options and programs offered in all counties? Do you have any data on how many court filings end up being expunged? Is there any data that supports that the adult system assessed for and/or provides the services to meet the needs of 17 year olds that can get them back on track?

**Discussion:** No, these programs are not universal. Yes, prosecutors have discretion but (1) often exercise it without any assessment of the youth prior to doing so; (2) often charges are filed and subsequently dismissed, but that may or may not be expunged; (3) even if the court filing is expunged, there will be an arrest that is considered an adult arrest; (4) there are clearly limited resources and services available in the adult system for 17 year olds when compared to the juvenile system; and (5) under this proposal, prosecutors still have the discretion to file a waiver petition to the court and argue for adult court if needed.

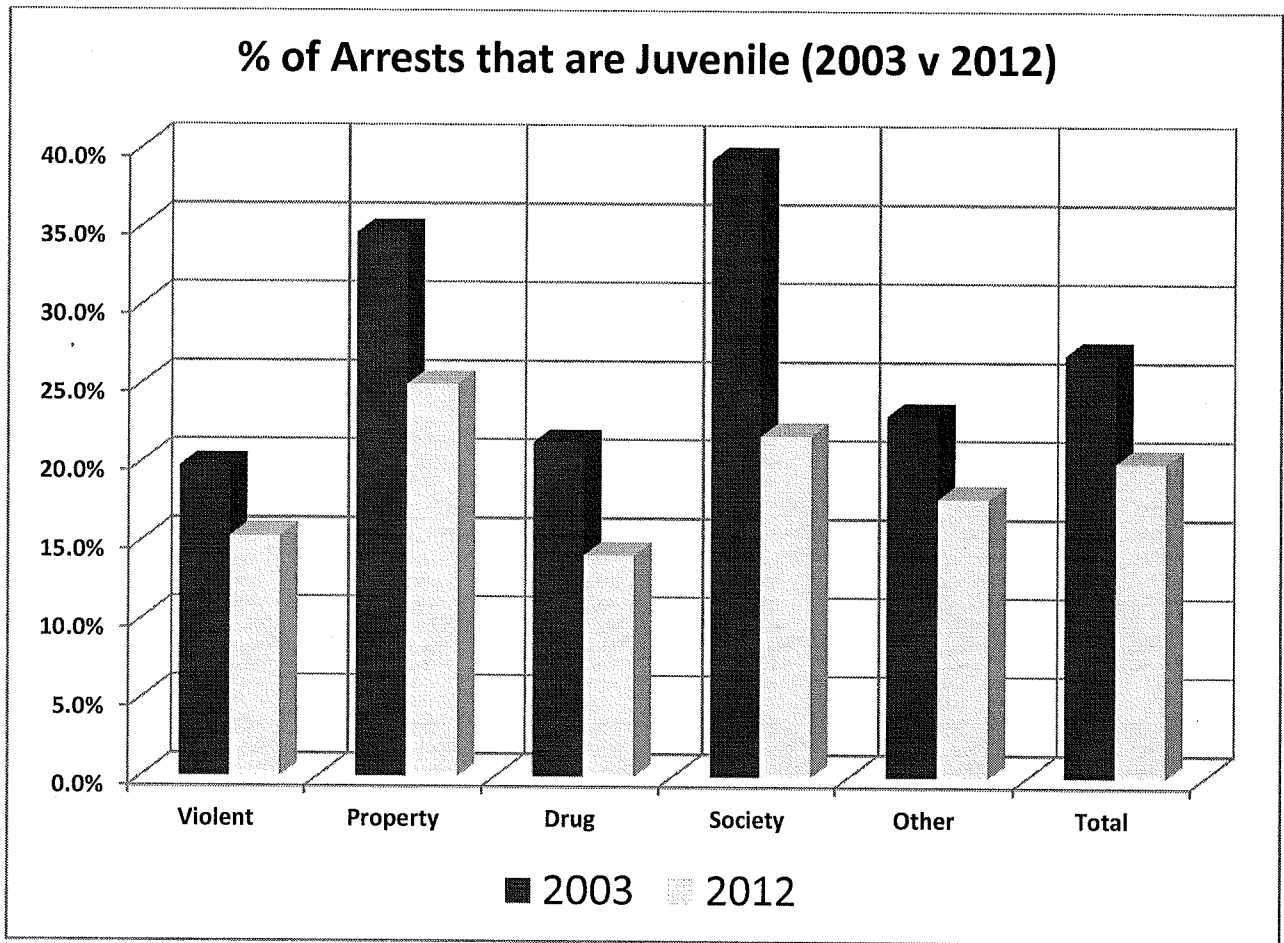
- If the adult system was working so well, why did the leg. audit in 2008 show that the highest rates of recidivism were for 17-year olds?
- If the adult system is working so well, why did approximately 50% of 17 year olds on probation fail to complete probation without an incident/revocation/new offense?
- If the adult system is working so well, why are adult arrests not declining at anywhere near the rate that juvenile arrests have fallen?



**Statement:** Juveniles are committing more and more/higher proportions of offenses.

**Question:** Is there data to support that?

**Answer:** NO. In all categories of offenses, the percentage of juveniles arrested out of overall arrests statewide (e.g. in 2002 around 19% of arrests for violent offenses were juveniles, in 2012 that portion was just under 15%) has declined since 2003. While there have been a few “ups and downs” in a couple of these categories over the decade, the general trend is down and you can see that 2012 is markedly lower.



**Statement:** Juvenile arrests are increasing.

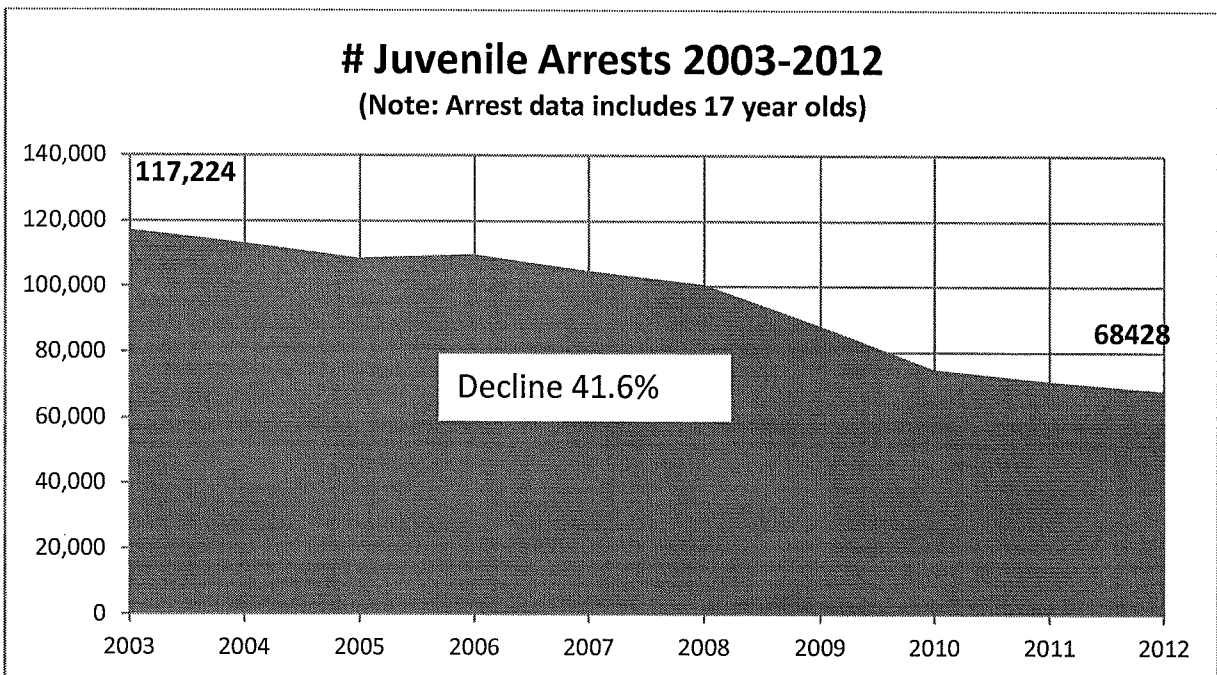
**Question:** Is there any data to support that?

**Answer:** Not according to arrest reports filed with the state. In fact, juvenile arrests have declined around 41.6% over the past decade. This is statewide data, and there are some counties in which the trend is not exactly the same as this, but overall the decline over the last decade is consistent.

**Statement:** This must mean it's working – that putting 17 year olds in adult court is working?

**Question:** do you have any data to suggest that the reason juvenile arrests have gone down is related to the law that put 17 year olds in adult court?

**Answer:** That's complicated, but (1) arrests of all youth under 18 has declined over time and has continued to decline significantly well past the year in which the age was changed (not shown in this chart, but the relative % of arrests of 17 year olds that are included in this data has remained relatively constant over time, roughly 20-25% of all juvenile arrests varying somewhat on type of offense) – so, the decline cannot be explained by changes in arrests of 17 year olds; and (2) juvenile arrests actually peaked in 1994, two years before the change went into effect. There is no research/evidence to support that lowering the age is what has caused this decline; and (3) other states in which 17 year olds remained in juvenile court have seen similar declines.



Note: the relative % of juveniles in the general population has declined by around 15-17% during this period, accounting for some of the decline in numbers but nowhere near enough to account for a 41+% decline.