



# JERRY PETROWSKI

WISCONSIN STATE SENATOR

## Testimony on AB 387/ SB 308: Second Chance Bill October 31, 2013

Mr. Chairman and committee members,

Thank you for the opportunity to testify on Senate Bill 308, which would return 17-year-old non-violent, first-time offenders to the juvenile justice system. The purpose of this bill is to give young adults a second chance to be productive members of society. I believe the bill before you today does just that.

There is now overwhelming research showing what interventions are effective in reducing the likelihood of youth reoffending. More than half of Wisconsin Counties have already been trained in implementing more cost-effective, evidence-based programming for youthful offenders which provide better assessments of youth referred for more strategic interventions for the youth and the family.

It is important to remember that this bill does not change the placement of 17-year-olds who are repeat offenders or those that have been charged with a violent crime. The 17 year-old that has repeatedly committed theft or uses a deadly weapon in an assault will still remain in the adult system.

Nearly 98% of juvenile arrests in Wisconsin are for non-violent crimes; however, they are subject to the penalties of the adult system. When a 17-year-old is arrested and booked into jail they are likely still in high school and must miss class. We know that youth with adult criminal records are less likely to graduate from high school; they have difficulty finding future employment, and face barriers to higher education and military service.

Many 17-year-olds make mistakes and do not realize the far-reaching consequences of their actions. Getting a good education, a job and housing can become nearly impossible when they have an adult criminal record. These young adults shouldn't be sitting in our jails and missing school. They deserve a second chance to become responsible adults.

One of the main purposes of both the adult and juvenile justice system is to rehabilitate those who enter those systems. Research has shown that rehabilitation which is properly prescribed to an individual or group of individuals is much more likely to reduce re-

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### 29TH SENATE DISTRICT

offense rates, thereby making our society safer and decreasing the number of potential victims.

Some, including myself, have concerns regarding the cost to implement these programs. Not only is the cost an issue for the counties, but also for the young men and women in the juvenile system. This is why myself, Representative Bies, and all groups involved are making it a priority to find funding. Although difficult to calculate, this bill has the potential to save costs for the state by preventing youths from reoffending and ending up in the adult system.

The documented lower re-offense rate of juveniles means more active and productive members of society. This means a healthier population and economy, not to mention the cost savings at a state level in the adult system. Furthermore, the separation of these youthful offenders from the more violent population in the adult system protects the vulnerable from being subjected to child abuse by adult inmates.

SB 308 is a bipartisan bill with 54 legislators from both houses and both parties signing on.

Thank you for the opportunity to testify on Senate Bill 308 and I would be happy to answer any questions.



## STATE BAR OF WISCONSIN

*Leaders in the Law. Advocates for Justice.*

**Date:** October 31, 2013

**To:** Honorable Members, Senate Committee on Transportation, Public Safety, and Veterans Affairs

**From:** Attorney Patrick J. Fiedler, President  
State Bar of Wisconsin

**Re:** Support for Senate Bill 308 (Second Chance Bill – Juvenile Court Jurisdiction)

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The State Bar of Wisconsin strongly supports Senate Bill 308, which would return first-time, nonviolent 17-year-old offenders to juvenile court jurisdiction.

This legislation is an important opportunity for the legislature to reverse portions of current law – enacted in 1996 – which requires that any 17-year-old who is alleged to have committed a crime be treated as an adult. At this time, all 17-year-olds are considered adults for the purposes of criminal prosecution with no ability to be waived into juvenile court.

The 1996 changes occurred at a time when the trend was to be “tough on crime.” Since then, we’ve learned that it makes more sense to be “smart on crime” rather than “tough on crime.” The latter approach allows us to educate our young people, especially the ones who make a one-time mistake, instead of pouring our resources into incarcerating these individuals for an extended period of time.

Being smart on crime is a nonpartisan issue. National organizations from both sides of the aisle are advocating for smarter approaches to skyrocketing criminal justice costs. Two such organizations are *Right on Crime*, a project of the Texas Public Policy Foundation, which is backed by Newt Gingrich and Grover Norquist and the *Models for Change Initiative* of the MacArthur Foundation created by John D. and Catherine T. MacArthur. Both groups advocate for a smarter, more rational evidenced-based strategy for dealing with public safety and criminal justice spending. They say that over-reliance on incarceration is not a cost-effective approach to public safety.

This especially rings true when you look at the number of 17-year-olds who are committing crimes. Only 2 percent of 17-year-olds commit a violent offense, which means that 98 percent of 17-year-olds are committing a nonviolent offense. During my time as a judge, I witnessed many young people come through my courtroom for relatively minor offenses, such as shoplifting. These young individuals should be held accountable for their actions, but in a manner that does not hurt their chances at a successful future. Research has shown that youth with adult criminal records are less likely to graduate from high school, will have greater difficulty finding employment, and may suffer from other collateral consequences such as restrictions on voting rights, access to higher education, joining the military, or living in public housing.

An excerpt from a recent report titled “Mandatory Sentencing 17 year-olds in Adult Court – Is There a Better Alternative for Wisconsin’s Youth and Taxpayers?”, by the MacIver Institute and the Texas Public Policy Foundation concluded the following:

The worry that returning the upper age boundary of the juvenile court’s jurisdiction to 17 will deprive the government of the ability to appropriately punish serious juvenile offenders is also misplaced. The State of Wisconsin’s criminal code already permits the transfer of serious juvenile offenders to the adult criminal justice system.

Research from around the country shows that the vast majority of 17 year-old offenders, those who committed a low-level crime and are of little risk to reoffend, belong under the jurisdiction of the juvenile justice system. The juvenile justice system is better-equipped to dispose of the nuanced cases that juveniles often present. The experience of other states has shown that returning 17 year-old, first-time, non-serious offenders to the purview of the juvenile court allows both the adult and juvenile courts to process the cases they are best equipped to handle.

A study conducted by the Wisconsin Legislative Audit Bureau found that only about 50 percent of youth placed on adult probation successfully complete their time and that youth placed in an adult prison reoffend after release at higher rates than either youth placed in a juvenile institution or older adults. The study also found that juveniles in the adult system reoffended at twice the rate as adults.

When I was a judge, I continued to feel frustrated by our system because I knew that most of the 17-year-olds who came through my courtroom would have gotten much better services and a much better chance at success had they been in the juvenile system – where I believe they belong.

In *Roper v. Simmons*, a 2005 U.S. Supreme Court decision and *Graham v. Florida*, a 2010 decision, the court warns against treating juveniles in the same manner as adults because of the significant scientific research about the developmental immaturity and diminished responsibility of juveniles. And recent polling shows that the general public is four times as likely to believe that youth are capable of changing over not changing. The public also believes that rehabilitation is the best and most effective means of treating a 17-year-old first-time offender.

Senate Bill 308 is a step in the right direction because it keeps intact important elements of the law while making smart changes to improve the criminal justice system. Support for this legislation is prudent because:

- It focuses on first-time, nonviolent offenders
- It includes a list of 30 violent crimes that will remain as adult charges
- A 17-year-old with previous delinquency adjudication will be prosecuted in adult court
- Court standards and options for waiver into adult court will remain the same

It is important to note that the rights of victims are still recognized and protected. The Juvenile Code places equal importance on victims' rights, as does the adult system. Law enforcement, human service staff, prosecutors and judges are required to provide the same services that all victims are entitled to in the adult system. The juvenile system is more likely to provide services that require a youth to make restitution and/or community service; offers victims the opportunity to participate in victim-offender dialogue if they choose to do so; and requires youth to participate in treatment services that reduce the likelihood of reoffending.

Ultimately, we are making the wiser decision, which is to give these young people a second chance. All young people, whether part of the criminal justice system or not, are part of Wisconsin's future, and we need to invest in our future.

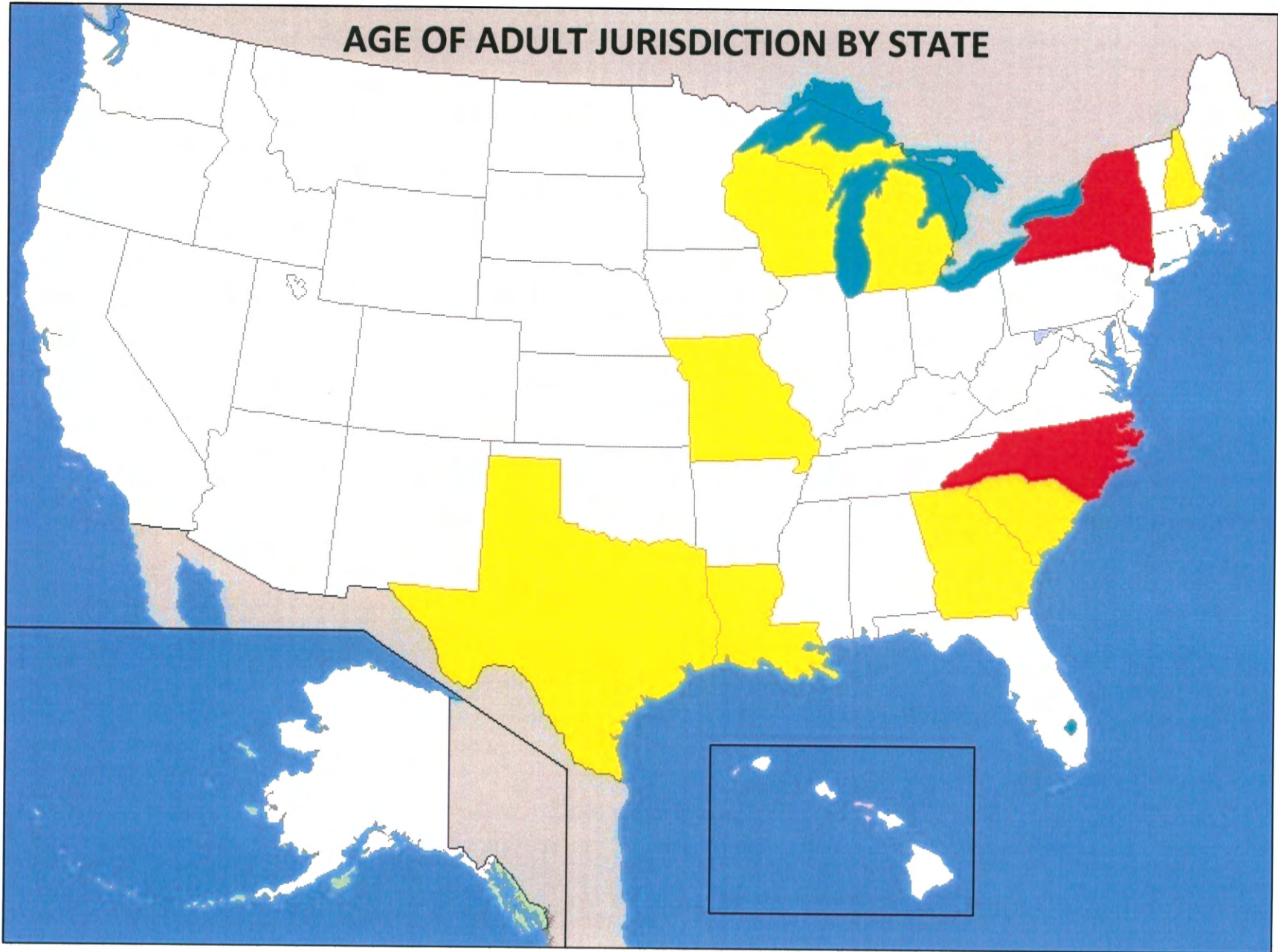
As a father and member of the legal community, I believe that this legislation will make our communities safer. This bill couples the results of contemporary research with real experience to offer the smartest, most efficient and effective solutions possible. Passing this legislation would mean that Wisconsin has pledged to be "smart on crime" and equip its young people with the tools they need to succeed. Currently, Wisconsin is one of ten states that treat all 17-year-olds as adults; this is one time Wisconsin should not be in the top ten.

It's time for Wisconsin to look forward and truly give nonviolent 17-year-olds a second chance.

The State Bar of Wisconsin asks for your support of this legislation.

*Patrick J. Fiedler is the 58th President of the State Bar of Wisconsin. He served as a Dane County Circuit Judge from 1993 to 2011 and was Secretary of the Wisconsin Department of Corrections from 1991 to 1993. He also served as U.S. Attorney for the Western District and as a Waukesha County Assistant District Attorney. Fiedler is a partner at Axley Brynson LLP.*

# AGE OF ADULT JURISDICTION BY STATE



☐ = Adult court begins at 18

☐ = Adult court begins at 17

☐ = Adult court begins at 16



**reports**

Mandatory Sentencing 17 year-olds in Adult Court  
*Is There a Better Alternative for Wisconsin's Youth and  
Taxpayers?*

October 23, 2013



**Maclver Institute**  
The Free Market Voice for Wisconsin



Texas Public Policy  
FOUNDATION

## Introduction

In the United States, there is a wide consensus that children differ from adults. The very fact that each of the 50 states and Washington, D.C. have institutions designed to render judgment on cases and administer justice outside of the adult criminal court speaks to this critical distinction. Not-yet-complete cognitive development, social immaturity, and proclivity for risky behavior are elements that lead a substantial percentage of youth to behavior that, while non-serious, may run afoul of the law.<sup>i</sup> Additionally, juveniles are also seen as being more amenable to rehabilitation.<sup>ii</sup>

The delineation of the adult and juvenile justice systems, while ever-present, is not consistent. The jurisdictional boundaries of the juvenile court, in terms of the age of the accused, varies from state to state. Currently, 37 states and the District of Columbia hold the upper boundary of the juvenile court's jurisdiction at 17 years of age, 11 (including Wisconsin) at 16, and 2 at 15.

In 1995, Wisconsin passed the Biennial Budget Act (1995 Act 27) and the Juvenile Justice Act (1995 Act 77). Among other provisions, these acts in tandem lowered the general jurisdiction of the juvenile court from 17 to 16, thereby mandating that 17 year-old offenders, once under the authority of the juvenile court, now be adjudicated in the adult criminal court.<sup>iii</sup>

In recent years, several states with the jurisdiction of the adult court beginning below 18 years of age have reassessed the mandatory remanding of 17 year-olds to the adult court. In 2009, the Illinois legislature brought forth a proposal that would allow misdemeanants 17 years-old and younger to be processed through the juvenile court.<sup>iv</sup> During the general session, fervent debate was over whether the proposal would lead to a marked decline in public safety and a spike in juvenile crime. An evaluation of immediate outcomes was conducted, finding that crime continued to decline after the law took effect.<sup>v</sup>

The Illinois experience echoes the finding of the related academic literature. A lengthy and every-growing body of research offers support for processing youth through the juvenile court. In short, this research has found that: 1) policies restricting the jurisdiction of the juvenile court with the aims of general deterrence (to discourage others from offending)

and/or general deterrence (to discourage the offender from reoffending) oftentimes fail to achieve the desired effect, 2) juveniles tend to have poor rehabilitation-related outcomes when processed through the adult criminal court, and 3) facilities designed for and primarily occupied by adult offenders are often dangerous, ineffective options for juveniles.

## **The Adult Criminal Court and the Rationale of Deterrence**

The twofold logic behind the adult court having jurisdiction over 17 year-old juvenile offenders is understandable. The juvenile court, it is believed, is focused solely on rehabilitation and not on punishment of the offender, thereby granting leniency to someone who, but for a matter of days, would be under the jurisdiction of the punitive criminal court. With the pains of punishment not inflicted, the individual will likely reoffend. Further, others will see how this case was disposed of and in turn not be dissuaded from their own criminal behavior. Deterrence, both general and specific, would be ameliorated by allowing offenders 17 years of age to be processed in the juvenile justice system. However, the intended effect has not been substantiated in the academic literature.

New York, for example, enacted legislation with this rationale in mind. In 1978, following a string of violent crimes made highly-visible by media coverage, the state passed the New York Juvenile Offender Law, part of the Crime Package Bill<sup>vi</sup>. This legislation limited access to the juvenile court for offenders of the ages 13 through 15 accused of certain crimes and expanded the availability of transfers to the adult court.<sup>vii</sup>

This legislation did not beget the drop in crime expected. A 1988 study by Simon Singer and David McDowall using an interrupted time series analysis containing 56 months of data before and 76 months after the enactment of the law. Focusing specifically on cohort-specific arrest rates of homicides, assaults, robberies, rapes, and arsons, the authors concluded that the arrest rates for most of these offenses remained constant or increased over the time period of the study.<sup>viii</sup> The only statistically significant decline observed was in the arrest rate for rapes, although a corresponding decline was observed in the control series.<sup>ix</sup> This specific decline, then, was considered attributable more to a nationwide trend than to the law itself.<sup>x</sup>



This absence of effect has been observed in other jurisdictions that sought to restrict access to the juvenile court. In 1981, Idaho attempted to address the growing concern over juvenile crime by enacting a mandatory transfer statute. Using methodology similar to the analysis, Eric Jensen and Linda Metsger found that no drop in crime that was attributable to that statute and, notably, that the enactment of the law preceded an 18 percent increase in arrest rates for violent index crime offenses.<sup>xi</sup> This increase is contrary to the significant decreases in Montana and Wyoming, the study's comparison series.<sup>xii</sup>

In 1994, the State of Georgia sought to restrict access to the juvenile court for those accused of serious crimes such as aggravated assault, robbery, sexual offenses, and murder. The law required that any individual between the ages of 13 and 17 be subject to the jurisdiction of the adult criminal court. A quasi-experimental cohort design study on juvenile arrest rates pre- and post-passing of Georgia's Senate Bill 440 have shown no significant change in the years following the enactment.<sup>xiii</sup>

These findings echo the academic literature on deterrence – that increasing punitivity in the hopes of deterring crime are rarely fruitful. The philosophy of deterrence posits a rational calculus on part of the offender; a decision in which potential gains and losses are carefully weighed before the would-be criminal arrives at the most logically-defensible choice. This understanding of decision-making poorly reflects human cognitive processes, much less that of juveniles. The adolescent brain is in an intermediate stage of development, and the behavioral choices of the typical teenager is marked with impulsivity and risk tolerance. Further, juveniles have a dearth of practical “life experience” and are not fully aware of the long-term consequences such behavior may create. This bounded rationality, both in terms of information availability and cognitive processes, renders deterrence-oriented delinquency prevention strategies likely to fail.<sup>xiv</sup>

## **The Rehabilitative Value of the Adult Criminal Justice System for Juveniles**

One of, if not the, most salient purposes of the both the adult and juvenile justice systems is that of rehabilitation. Offenders who are punished in a rote fashion without addressing the underlying cause of their criminality are likely to again fall under the purview of the adult or juvenile court as a recidivist. Rehabilitation, in general, offers better future outcomes for

the offender and likewise the public through increased safety. However, it is imperative that the offender is placed within the correct rehabilitation program – one that is suited to their risks and needs. Research on the modality and delivery of correctional rehabilitation-oriented programs have shown that properly-ascribed rehabilitation is likely to reduce recidivism amongst the treatment group while assigning offenders to programs irrespective of their criminogenic risks or needs is likely to produce no discernable gains in, if not increase, recidivism.

This phenomenon is seen prominently in the juvenile corrections literature. A study of over 2,000 delinquent youth in New York and New Jersey addressed the variation in outcomes between the adult and juvenile court, specifically regarding youth arrested for armed robbery, aggravated assault, and burglary. In law and in practice, juveniles arrested in New York are tried before the adult court, and in New Jersey nearly all adolescent offenders of the aforementioned laws are tried before a juvenile court.<sup>xv</sup> The results were staggering: the youths tried before an adult court were 85 percent more likely to be rearrested for violent crimes and 44 percent more likely to be rearrested for felony property crimes in comparison to those tried before a juvenile court.<sup>xvi</sup> Further, those tried as adults were 26 percent more likely to be re-incarcerated within the follow-up period.<sup>xvii</sup>

A 2002 study of Florida juvenile offenders found similar results. Taking a sample of 900 youth arrested between 1993 and 1995, researchers created 475 pairs matched by demographic characteristics and elements of the crime. In each pair, one of the juveniles had been transferred to the adult criminal court while the other was adjudicated in the juvenile court. In nearly 29 percent of the matched pair, only the youth transferred to the adult criminal court reoffended, compared to the 14.7 percent of pairs in which only the offender tried before the juvenile court reoffended.<sup>xviii</sup> Amongst the pairs in which both juveniles reoffended, the youth transferred to the adult criminal court were likely to have committed a more serious felony than the youth processed in the juvenile court. <sup>xix</sup>Further, those youth processed as adults were 15 percent more likely to reoffend in adulthood.<sup>xx</sup> In Minnesota, an outcome study of the waiver process has shown that youths who were tried as adults were 16 percent more likely to be recidivate than those tried in the juvenile court system.<sup>xxi</sup>

In a 2010 summary report, the Office of Juvenile Justice and Delinquency Prevention found a striking consensus that, even when considering different methods for determining

recidivism, transfer mechanisms, and statutory contexts, all evaluated studies have found that on the whole juveniles adjudicated in adult criminal courts experience worse outcomes than do those processed in the juvenile court.<sup>xxii</sup> The Task Force on Community Preventive Services, a nonfederal, independent public health best practices organization, conducted a systematic review of seven seminal studies. In the analysis of median change in rates of re-arrest, the group concluded that juveniles adjudicated in the adult criminal court were, in general, at a near 34 percent greater likelihood to be arrested for a subsequent crime than were the youth whose cases were handled in the juvenile system.<sup>xxiii</sup> As such, it can be reasonably concluded that handling juveniles in the adult criminal court is detrimental to the rehabilitative purpose of the criminal justice system.

This divergence has been observed in Wisconsin as well. A 2008 analysis of juveniles and adults released in 2002 found that 48.1 percent of 17 year-olds subject to the adult criminal court were re-incarcerated within a three-year follow-up window, compared to 21.3 percent of adults and 18.2 percent and 26.6 percent of juveniles (in the two- and four-year follow-up windows, respectively).<sup>xxiv</sup>

### **Safety within the Adult Correctional System**

Although state and federal law mandates that juveniles held within the adult correctional system are not housed with incarcerated adults, it permits juveniles to be housed in an adult correctional facility. These facilities are rarely equipped with juvenile-oriented rehabilitation or education programs. This paucity of opportunity for development often comes with collateral consequences of releasing the youth poorly prepared to secure meaningful employment upon release while the youth's underlying criminality remains unaddressed. Secure confinement is also likely to lead to the potential for victimization and self-harm.

In spite of juvenile being school-aged, adult facilities rarely provide adequate education. Roughly 40 percent of jails provide no educational programming, and only 7 percent provide vocational programming.<sup>xxv</sup> 44 percent of all prisons in the United States offer no vocational programming.<sup>xxvi</sup>

Victimization is an ever-present threat – it is estimated that juveniles who are held in adult facilities have a 50 percent higher likelihood of being assaulted by an inmate using a weapon.<sup>xxvii</sup> Official reports also estimate that juveniles, while comprising less than one percent of jail inmates, represented 21 percent of sexual victimizations.<sup>xxviii</sup> Also facing incarcerated juveniles is the risk of self-inflicted harm. One study found youths 36 times more likely to commit suicide in an adult jail than in a juvenile facility.<sup>xxix</sup>

The absence of appropriate rehabilitation, educational, and vocational programming presents further problems for minors incarcerated in the adult corrections system. An offender processed through the juvenile court may be subject to the following out-of-home sanctions:

- Relative’s home
- Non-relative’s home
- Licensed foster home
- Licensed treatment foster home
- Licensed group home
- Licensed residential care center
- Juvenile detention facility or juvenile section of a county jail if facility is authorized by county board resolution
- County supervised residential care center
- Juvenile correctional facility or secured-care center or group home<sup>xxx</sup>

These potential sanctions offer the youth the ability to continue their education in their designated school or within the facility to which they are assigned. However, 17 year-olds processed through the adult criminal court, outside of those receiving probation, will not be able to continue their education, thus making stifling their reentry.

Further complicating matters is the finding that juveniles who are adjudicated in an adult criminal court are likely to receive longer sentences than those adjudicated in a juvenile court. A 2004 study suggests that youth handled in the adult court system are subject to a “juvenile penalty;” that is, the very fact that their case has been transferred into the adult criminal court suggests that the youth is more blameworthy and deserving of punishment. As such, the authors estimate that juveniles received markedly longer (from 7 to 43 percent) sentences than young adults accused of similar crimes, net of all legal variables.

Juveniles are remanded to secure, adult-oriented confinement are in turn subject to the deleterious effects of imprisonment.<sup>xxxii</sup>

## **The Potential Benefits of Raising the Age of the Juvenile Court's Jurisdiction**

In terms of per-offender cost of keeping offenders in a juvenile facility versus an adult correctional facility or under juvenile probation versus adult probation, the former is ostensibly more expensive.<sup>xxxii</sup> Smaller caseloads, lower staff-to-inmate ratios, wrap-around juvenile programming, adult offenders having to pay for a portion of their supervision or confinement, and the general difference in economies of scale create this disparity. However, existing research suggests that the savings a state can experience through the proper classification and treatment of juvenile offenders may outstrip initial costs of providing such programs.

Connecticut, for example, experienced a savings of nearly \$12 million following the states raising the juvenile court's age of jurisdiction from 15 to 17. Funding was appropriated anticipating a 40 percent growth in juvenile caseloads as 16 and 17 year-old offenders, though the overall caseload only grew by 22 percent.<sup>xxxiii</sup> Following the Illinois reforms, the state was able to close three juvenile detention facilities due to low occupancy.<sup>xxxiv</sup>

Further, there is the increasing potential liability pursuant to changes in standards to the Prison Rape Elimination Act, or PREA. Since its inception, PREA has mandated that juvenile offenders [under federal law, those 17 years of age and younger] in adult facilities be separated from adult offenders, recent addendums hold that compliance cannot be gained by subjecting juvenile detainees to conditions of solitary confinement (i.e., 23 hours of seclusion punctuated by 1 hour of recreation). The new standards also specify that juveniles must be provided with programming. It is likely that costs of compliance with these measures will increase the expense of housing those 17 years-old and below in adult facilities<sup>xxxv</sup>. Failure to comply can result in a 5 percent penalty being applied to the payment of federal grant money, to say nothing of potential civil litigation.<sup>xxxvi</sup>

## Conclusion

Adolescence is a critical stage of an individual's development in terms of brain development, social connections, and opportunities for future growth. Considering that low-level juvenile delinquency is fairly common among youth, subjecting otherwise-low-risk juvenile offenders to the negative environment of the adult correctional system is likely not only detrimental for the youth, but also runs the risk of encouraging future offending.

The motivation behind the 1995 reforms was understandable. Legislators sought to deter would-be juvenile delinquents by subjecting those on the periphery of the juvenile court's jurisdiction (those 17 years of age, who ostensibly should "know better") to the more-punitive adult court system. This deterrence rationale seems to have missed the mark, however, as the juvenile crime rates for both violent and property crimes, after a minor uptick, have resumed pre-existing declines.

The worry that returning the upper age boundary of the juvenile court's jurisdiction to 17 will deprive the government of the ability to appropriately punish serious juvenile offenders is also misplaced. The State of Wisconsin's criminal code already permits the transfer of serious juvenile offenders to the adult criminal justice system. Under Wisconsin Statute 938.12<sup>xxxvii</sup>, a court may upon consideration of the juvenile's previous record, age at the time of the crime, or heinousness of the crime at hand grant a waiver of a juvenile to the adult criminal court.

Research from around the country shows that the vast majority of 17 year-old offenders, those who committed a low-level crime and are of little risk to reoffend, belong under the jurisdiction of the juvenile justice system. The juvenile justice system is better-equipped to dispose of the nuanced cases that juveniles often present. The experience of other states has shown that returning 17 year-old, first-time, non-serious offenders to the purview of the juvenile court allows both the adult and juvenile courts to process the cases they are best equipped to handle.

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- <sup>i</sup> Terrie Moffitt, "The New Look of Behavioral Genetics in Developmental Psychopathology: Gene-Environment Interplay in Antisocial Behaviors," *Psychological Bulletin*, Vol. 131:4, (2005).
- <sup>ii</sup> Francis Cullen, Brenda Vose, & Cheryl Lero Jonson, "Public Support for Early Intervention: Is Child Saving a "Habit of the Heart"?, *Victims and Offenders*, Vol. 2:2, (2007).
- <sup>iii</sup> Wisconsin Legislative Council, "Informational Memorandum 96-14", (1996). Available at: [http://libcd.law.wisc.edu/~wilc/im/im96\\_14.pdf](http://libcd.law.wisc.edu/~wilc/im/im96_14.pdf)
- <sup>iv</sup> Illinois Juvenile Justice Commission, "Raising the Age of Juvenile Court Jurisdiction," (2011). Available at: <http://ijjc.illinois.gov/sites/www.ijjc-illinois.gov/files/assets/IJJC%20-%20Raising%20the%20Age%20Report.pdf>
- <sup>v</sup> Ibid.
- <sup>vi</sup> John Woods, "New York's Juvenile Offender Law: An Overview and Analysis," *Fordham Urban Law Journal*, Vol. 9:1 (1980).
- <sup>vii</sup> Ibid.
- <sup>viii</sup> Simon Singer and David McDowall, "Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law," *Law & Society Review*, Vol. 22:3 (1988).
- <sup>ix</sup> Ibid.
- <sup>x</sup> Ibid.
- <sup>xi</sup> Eric Jensen and Linda Metsger, "A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime," *Crime & Delinquency*, Vol. 40:1 (1994).
- <sup>xii</sup> Ibid.
- <sup>xiii</sup> Edwin Riskler et al, "Evaluating the Georgia Legislative Waiver's Effectiveness in Deterring Juvenile Crime," *Research on Social Work Practice*, Vol. 8:6 (1998).
- <sup>xiv</sup> BJ Casey, Rebecca M. Jones, & Todd A. Hare, "The Adolescent Brain," *Annals of the New York Academy of Science*, Vol. 1124, (2008).
- <sup>xv</sup> "The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Adult Criminal Court," MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, Temple University, Department of Psychology.
- <sup>xvi</sup> Ibid.
- <sup>xvii</sup> Ibid.
- <sup>xviii</sup> Lon Lanza-Kaduce et al, "Juvenile Transfer to Criminal Court Study: Final Report," *Research Report for the Florida Department of Juvenile Justice*, (2002).
- <sup>xix</sup> Ibid.
- <sup>xx</sup> Ibid.
- <sup>xxi</sup> Marcy Podkopacz and Barry Feld, "The End of the Line: An Empirical Study of Judicial Waiver," *Journal of Criminal Law & Criminology*, Vol. 86:2 (1996).
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- <sup>xxiv</sup> Legislative Audit Bureau, "17 Year-Old Offenders in the Adult Criminal justice System," (2008).
- <sup>xxv</sup> Caroline Harlow, "Education and Correctional Populations," *Bureau of Justice Statistics Special Report* (Jan. 2003), pg. 4.
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- <sup>xxvii</sup> Martin Forst, Jeffrey Fagan, & T. Scott Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of Treatment-Custody Dichotomy," *Juvenile and Family Court*, Vol. 401:1, (1989), p.10.
- <sup>xxviii</sup> Allen Beck et al, "Sexual Violence Reported by Correctional Authorities, 2005," *Bureau of Justice Statistics Special Report* (July 2006), pg. 6; Paige Harrison et al, "Prison and Jail Inmates at Midyear 2005," *Bureau of Justice Statistics Bulletin* (May 2006), pg. 8.

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<sup>xxix</sup> Vincent Schiraldi and Jason Zeidenberg, "The Risks Juveniles Face When They Are Incarcerated With Adults," Justice Policy Institute (1997), pg. 5.

<sup>xxx</sup> Juvenile.pdf, app A

<sup>xxxi</sup> Megan C. Kurlychek & Brian D. Johnson, "The Juvenile Penalty: A Comparison of Juvenile and Young Adult Sentencing Outcomes in Criminal Courts," *Criminology*, Vol. 42:2, (2006).

<sup>xxxii</sup> Cari J. Taylor, "Administator's Memo to Counties: Daily Rates and Billing Policy for State Juvenile Correctional Services," (2013). Available at:

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<sup>xxxiii</sup> "Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Have Improved Public Safety and Outcomes For Youth," Justice Policy Institute, (2013).

<sup>xxxiv</sup> *Supra* note 4.

<sup>xxxv</sup> National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37,106 (June 20, 2012) (to be codified at 28 C.F.R. pt. 115).

<sup>xxxvi</sup> *Ibid.*

<sup>xxxvii</sup> Wisc. Stat. 913.12(2)





**Testimony of Representative Garey Bies**  
**Senate Committee on Transportation, Public Safety, and Veterans and**  
**Military Affairs**  
**Senate Bill 308 – Raising the Age to 18**

Chairman Petrowski, committee members. Thank you for the opportunity to submit testimony on Senate Bill 308, which would return first-time, non-violent 17 year-olds to the juvenile justice system.

This bill has been introduced over several prior sessions by one of our co-authors Rep. Fred Kessler. At the beginning of this session, the two of us sat down together to find a compromise that we could both live with to accomplish our main objective – giving young adults a second chance to be productive members of our society. I believe the bill before you today does just that.

Since the mid-1990's our country and state, governed by the slogan, "Tough on Crime". Building more jails and prisons and locking away bad people was the answer for dealing with rising crime numbers. If we only knew then, what we know! We'd have better recidivism rates, safer communities, and we wouldn't be spending so excessively on corrections. Over the last 20 plus years, the amount spent on prisons has grown by 620%. It's time for Wisconsin to change its slogan, and be "Smart on Crime".

There is now overwhelming research showing what interventions are effective in reducing the likelihood of youth reoffending. More than half of Wisconsin Counties have already been trained in implementing more cost-effective, evidence-based programming for youthful offenders, providing better assessments of youth referred for more strategic interventions for the youth and the family. The United States Supreme Court has also recognized and relied upon research of adolescent development in its rulings declaring youth are fundamentally different from adults and must be treated differently under the law.

When talking with people about this bill I am often asked "What about the kid who keeps stealing, or what about the kid who runs around waving a gun in their hand"? My simple answer is: those aren't the kids we're talking about in this bill. Any 17 year-old who has a prior record or who is charged with a violent crime would remain in the adult system. (Please see attached Legislative Council Memo which details the list of crimes that would automatically subject a 17 year-old offender to the jurisdiction of adult criminal court).

Ninety-Eight percent of juvenile arrests in Wisconsin are for non-violent crimes, yet they're treated the same as adults who commit much more heinous acts. When a 17 year old is

*First for Wisconsin!*

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arrested and booked into jail, they are likely still in high school and must miss school. And, this does happen for cases in which there is no danger to the public; and typically educational programming in jail for youth who remain there is pretty limited. We know that youth with adult criminal records are less likely to graduate from high school; they have difficulty finding future employment; and face barriers to higher education and military service.

I don't believe that a 17 year old who commits a non-violent crime is capable of understanding how the rest of their life can be impacted by one wrong decision. These young adults shouldn't be sitting in our jails and missing school. They deserve a second chance to change the trajectory of their lives and become responsible adults.

I'd like to thank the many groups and individuals that have worked tirelessly on this bill. With their help SB 308 is truly a bipartisan bill with 54 legislators from both houses and both parties signing on to the initial draft of the bill. Many of them are here today and will provide their own testimony and personal story.

Once again thank you for the opportunity to testify on Senate Bill 308 and I will be happy to answer any questions you may have.



STATE REPRESENTATIVE  
**FREDERICK P. KESSLER**

WISCONSIN STATE ASSEMBLY

12TH DISTRICT

October 31, 2013

Senator Jerry Petrowski  
Chairman, Senate Committee on Transportation, Public Safety, and Veterans and Military Affairs  
Wisconsin State Capitol, Rm. 123 South  
Madison, WI 53707

Dear Chairman Petrowski,

I have been an Assembly co-sponsor of this legislation for many years. This bill is very important to the people in my district, the 12<sup>th</sup> Assembly district, and I urge passage of SB 308 for the following reasons.

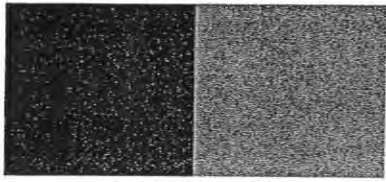
Recent census data compiled by UW-Milwaukee in April of this year showed that Wisconsin has the highest black male incarceration rate in the United States.

Milwaukee's incarceration rate is at epidemic levels for African American males - over half of African American men in their 30s and half of men in their early 40s have been incarcerated in state correctional facilities. SB 308 can start to reverse this trend by giving more young people a second chance and keeping them out of jail.

Returning 17 year olds to the juvenile justice system would allow us to work with our youth throughout their most formative years to ensure that a childhood mistake doesn't turn into a lifelong strike against them. Because the juvenile justice system's focus is on rehabilitation and education, the recidivism rate for 17 year olds placed in the juvenile system is much lower than that of 17 year olds placed in the adult system. 48% of 17 year olds placed in adult prisons reoffend within three years. Only 18% of juvenile offenders reoffend within two years, and 27% reoffend within four years.

New research shows that at 17 years old, teenagers' brains are still very much developing in crucial ways. For example, the front cortex of the brain, used for impulse control and good judgment, does not fully

develop into the primary “decision-making” area of the brain until a person reaches their late 20’s. In light of this research, returning 17 year olds to the juvenile justice system is the right thing to do. Thank you.



**Report 08-3  
February 2008**

A Review

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

*Department of Corrections*

STATE OF WISCONSIN



Legislative Audit Bureau ■

Table 37

**Recidivism Rates After Incarceration  
2002 and 2003 Releases**

Age Group <sup>1</sup>	2002			2003		
	Releases in 2002	Subsequent Incarceration	Percentage of 2002 Releases	Releases in 2003	Subsequent Incarceration	Percentage of 2003 Releases
Juvenile Offenders (2 Years)	757	138	18.2%	672	93	13.8%
Juvenile Offenders (4 Years)	757	201	26.6	672	n/a	n/a
17-Year-Old Offenders (3 Years) <sup>2</sup>	106	51	48.1	83	32	38.6
Adult Offenders (3 Years) <sup>2</sup>	695	148	21.3	812	130	16.0

<sup>1</sup> Based on age at time of initial offense. For juvenile offenders, all initial releases are from juvenile institutions and subsequent incarcerations may be in juvenile institutions or prison. For 17-year-old and adult offenders, all releases and subsequent incarcerations are prison.

<sup>2</sup> Offenders with no prior prison or probation placements.

**Recidivism of Offenders on Probation**

**36.9 percent of 17-year-old offenders placed on probation in 2002 were convicted of new offenses within 3 years.**

For offenders on probation, DOC defines recidivism as a new offense that is committed within three years of placement on probation and results in an additional correctional placement, including probation or prison. As shown in Table 38, 36.9 percent of 17-year-old offenders placed on probation in 2002, and 34.9 percent of 17-year-old offenders placed on probation in 2003, were convicted of new offenses that resulted in additional correctional placements within three years. DOC does not distinguish between new probation placements and new prison sentences for offenders initially placed on probation.



# Wisconsin State Public Defender

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**Kelli S. Thompson**  
State Public Defender

**Michael Tobin**  
Deputy State  
Public Defender

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October 31, 2013

Senator Jerry Petrowski  
Chairman, Senate Committee on Public Safety  
P.O. Box 7882  
Madison, WI 53707

Chairman Petrowski and committee members,

Thank you for holding this hearing on Senate Bill 308, raising the age of juvenile court jurisdiction for first-time, non-violent offenders. The State Public Defender (SPD) has long been a supporter of this concept as a more effective response to misconduct by 17-year-olds.

As stated in our fiscal estimate, the average cost to provide representation in a juvenile delinquency case is about \$60 lower than in an equivalent adult misdemeanor proceeding. Last year, the SPD provided representation for over 2700 17-year-olds charged with a crime punishable as a misdemeanor. Any savings, however, would be unlikely to occur in this biennium given the delayed effective date in the bill of January 1, 2015.

This bill draft clearly defines the types of offenses that are excluded from juvenile jurisdiction. The list is included in the Legislative Council memorandum prepared by Katie Bender-Olson dated July 24, 2013. The bill also specifically cites Wis. Stats. s. 939.632(1)(e)1 and 2, which include a list of excluded offenses. This structure allows for flexibility in the future to change the definition of what qualifies as an excluded crime.

One significant benefit of this bill is a reduction in long-term recidivism rates of 17-year-olds by providing the appropriate treatment in the juvenile justice system as opposed to the adult criminal justice system. Providing a second chance to a 17-year-old benefits both the individual child and the broader community, and allows a community to better allocate resources in the justice system.

Fundamental differences in the services available in the juvenile system and the adult system demonstrate why most 17-year-olds are better handled in the juvenile justice system. Because the juvenile system is focused on holding children accountable for their actions while providing opportunities for rehabilitation, a 17-year-old who finds himself in trouble for the first time in his life will receive appropriate services to help him avoid future missteps. That young person will have the opportunity to finish high school, get a job, and become a productive member of society. In the adult system, that young person will have to attempt to meet these same goals with less support and fewer services while encumbered with a criminal conviction.

Children who are placed in a Juvenile Correctional Institution (JCI) are required to continue their education. Children in the juvenile system receive appropriate mental health, drug and alcohol, and therapeutic services. Children sentenced to jail do not receive age appropriate services. Specifically, 17-year-olds are not even eligible to participate in the highly successful Treatment Alternatives and Diversion programs. It is easy to see why the juvenile system, which is designed to support young people, produces better outcomes for young people and the community. Some young people commit

crimes that require adult court intervention, but those are not the young people this bill is designed to protect. This bill allows for those young people who have never been in trouble to be held accountable and provide them with the tools they need to lead a successful life.

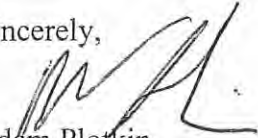
Another key factor to consider is research regarding adolescent development. Automatic adult court jurisdiction at age 17 presumes that children make decisions the same way as adults; in fact, they do not. Brain researchers have demonstrated that the parts of our brains that allow us to accurately weigh risk and make thoughtful, rational decisions are not fully developed until age 25. As a result, young people are less likely than adults to pause and fully consider the potential consequences of their actions. These differences do not mean that young people cannot make good decisions or tell right from wrong, but it is for these reasons that the U.S. Supreme Court has repeatedly noted in the last few years that children are categorically less culpable than adults. The fact that a person's brain is not fully developed until age 25 does not justify delinquent behavior on the part of children. Rather, it suggests that the prospect or potential for punishment of a 17-year-old is unlikely to deter impulsive behavior.

As a young person's brain continues to develop into adulthood, that young person will most likely "grow out of" the thinking that got them into trouble. We know that the vast majority of young people who commit a crime will not commit a second one--especially if that young person receives support in the juvenile system. In fact, youth who are handled as juveniles have a lower recidivism rate than youth who are handled as adults. Giving children a second chance allows them to make a mistake, be held accountable, receive evidence based interventions, and mature into successful adults.

Finally, the federal Prison Rape Elimination Act (PREA) requires that youthful populations (defined as under 18 years old) be physically separated from adult prison populations. PREA also requires that correctional facilities, including county jails, make best efforts to avoid placing 17-year-olds in isolation in order to comply with the rules. The fact that Wisconsin currently treats 17-year-olds as adults does not relieve county jails and correctional facilities from the requirement that they comply with this rule. Failure to comply with the rule can lead to civil liabilities and loss of federal correctional funding. The first federal fiscal year for potential non-compliance penalties began a few weeks ago, on October 1, 2013. While this bill would not eliminate that problem entirely, it will mitigate its impact by reducing the number of 17-year-olds in county jails pending trial or sentenced to a term of confinement in an adult institution.

Thank you again, Chairman Petrowski, for having this hearing today and for authoring this important legislation. The SPD looks forward to supporting its progress through the legislative process.

Sincerely,



Adam Plotkin  
Legislative Liaison  
Office of the State Public Defender





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children  
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Raising Voices to Make Every Kid Count

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## TESTIMONY OF JIM MOESER, WCCF RE:SB 308

Good morning. Thank you Chairperson Petrowski for scheduling this hearing and for your leadership on SB 308. My name is Jim Moeser and I am currently the Deputy Director of the Wisconsin Council on Children and Families. I have been in that position for almost five years, but prior to that spent 34 years working on juvenile justice issues at the local, state, and national level. My experience includes serving as the Juvenile Court Administrator for Dane County, the Administrator for the Division of Juvenile Corrections, as a member of the Federal Advisory Committee on Juvenile Justice, and as a juvenile justice consultant and trainer in Wisconsin and around the country.

As you know, the Wisconsin Council on Children and Families has been an active voice over the past several legislative sessions for the return of 17 year olds to the juvenile system for reasons which I will speak to shortly. But, first I want to say a few words about how this particular proposal came about and why it is now time to pass this legislation.

As you have heard already, this bill is a compromise from prior proposals in two major ways: (1) by leaving a set of violent offenses committed by 17 year olds under adult court jurisdiction, and (2) by providing that 17 year olds who have a previous delinquency adjudication will remain in adult court. This proposal does not alter current provisions that permit a prosecutor to petition the court to waive any youth, age 15 and over, to adult court for any violation. These limitations represent a significant departure from prior proposals by substantially limiting the fiscal risk to counties compared to prior proposals. In fact, I estimate that this proposal reduces the overall fiscal impact to the system to \$8-10 million, at most, which is 10-15% of what prior proposals have been estimated to cost. Like others, we are concerned that returning some 17 year olds to the juvenile system does not endanger the capacity of counties to serve other youth, but take note that this amount is equal to only 1% of the overall Department of Corrections budget and will ultimately reduce court costs, correctional costs, and costs to victims of crime.

Let me list six reasons why I believe that the juvenile system is better suited to work with 17 year olds and why it is in the best interest of the state, both for these youth and our economic future, to give them a second chance.

**FIRST, THE VAST MAJORITY OF THE APPROXIMATELY 15,000 17 YEAR OLDS ARRESTED ARE ARRESTED FOR RELATIVELY MINOR, AND CERTAINLY NON-VIOLENT, CRIMES.** Many of these arrests are for offenses that result in citations or tickets that are handled in adult municipal courts and do not result in an adult criminal conviction. But, the arrest itself gets listed as an adult arrest, and in fact commits your 17 year old son or daughter, even if ticketed for an offense such as disorderly conduct, underage drinking, or retail theft to being included in the public CCAP record, depending on where you live, that is accessible to everyone (employers, landlords, higher education institutions, etc.). For youth who are referred to the District Attorney's Office where decisions are made about filing criminal charges, that same 17 year old can very well end up with an adult record on CCAP that limits their opportunities for employment, housing, and in some cases financial aid to attend post-secondary education programs.

**SECOND, WE HAVE LEARNED A LOT OVER THE LAST 12-15 YEARS ABOUT BOTH ADOLESCENT AND BRAIN DEVELOPMENT** – in many ways scientific evidence reinforcing what we, as parents have probably asked ourselves on more than one occasion – “how can such a smart kid do something so stupid”? We have learned that the “executive function” of the brain, that function that operates when in a relatively calm state to weigh choices and make decisions, does not fully develop until the early 20's. This is not an issue about whether or

not 17 year olds know right from wrong – they do and need to be held accountable for their actions – but it is about how we respond and whether or not we give them a second chance to get back on track. There is really nothing to be gained by treating non-violent, first-time 17 year old offenders as adults in this one area of their lives.

**THIRD, THE JUVENILE SYSTEM IS FOCUSED ON BEING EFFECTIVE, IS CONSISTENT WITH THE BEST RESEARCH ABOUT WHAT WORKS WITH YOUTHFUL OFFENDERS, AND IS CONSISTENT WITH WHAT MOST PEOPLE BELIEVE - THAT THESE YOUTHFUL OFFENDERS SHOULD BE HELD ACCOUNTABLE BUT ALSO CAN CHANGE.** In addition to ensuring individualized assessment of youthful offenders and promoting victims' rights, the current Juvenile Code has a clearly articulated purpose that is based on a Balanced Approach to juvenile justice focused on three equally important goals:

- Promoting community protection by providing short-term and long-term strategies and interventions that ultimately lead to a youth choosing to make law-abiding decisions.
- Holding youth accountable for their behaviors, which includes having them understand the impact of their behavior on others and taking responsibility to repair/restore the harm when possible.
- Developing the competency of youth, helping them learn the skills needed to become contributing members of our community.

Statutes specifically provide that the court utilize the most effective disposition that meets these three goals. These goals make sense to the public, provide guidance for case planning, and provide guidance to the court in making critical decisions about youth on a case-by-case basis.

There is no comparable, clear purpose expressed in Wisconsin Criminal Codes. The adult system is based on a theory of crime control that finding the right punishment will deter persons from offending in the first place (general deterrence) or from reoffending (specific deterrence), and there is little evidence that this approach is applicable to youth.

So, returning non-violent, first-time 17 year olds, despite what some may portray, is not returning them to a system that is soft on crime. Rather it is returning them to a system that is focused on being effective.

**FOURTH, EXISTING RESEARCH SHOWS THAT THE JUVENILE SYSTEM IS MORE COST-EFFECTIVE IN DEALING WITH THE VAST MAJORITY OF YOUTHFUL OFFENDERS,** including that:

- There is no substantive research that supports the notion that having youth in the adult system deters them from criminal activity.
- In fact adult court jurisdiction increases the likelihood of disrupted pro-socialization and poor rehabilitation of youth. The Center for Disease Control review of research indicates that youth processed in the adult system are 34% more likely to reoffend than similar youth processed in the juvenile system.
- A short-sighted sense of savings by keeping 17 year olds in the adult system are ultimately outweighed by the costs associated with higher rates of recidivism and increased victimization.
- Youth who end up confined in the adult system (whether short or long term) are at much greater risk of harm (self-harm or abuse) than other adult inmates, and more importantly are exposed to higher levels of criminal thinking that tends to reinforce their own anti-social thinking.

- Youth in adult facilities do not receive adequate educational support that will help them keep up in school, let alone accelerate their learning.
- Significant percentages of older teens in the adult justice system have undiagnosed and/or untreated mental health, AODA, and trauma issues that are poorly assessed and addressed in the adult system.
- Youth who enter the adult system are less likely to graduate from high school, less likely to go on to post-secondary education, and ultimately less likely to earn more and contribute more to the economic stability of our state.

**FIFTH, THE JUVENILE SYSTEM PROVIDES INDIVIDUALIZED ASSESSMENT AND TREATMENT TO MEET THE NEEDS OF THE YOUTH.** For example the juvenile system provides:

- Individualized assessment at intake by trained social workers who can determine risk and needs of the youth and family referred
- A variety of mental health, AODA, sex offender, supervision, monitoring, and placement services that are designed to address the individual needs of the youth/family. Under the current system, in some cases 17 year olds in the adult system are not eligible to even access the much more limited services of the adult system due to not being considered an adult for any other purpose.
- Lower caseloads for social workers providing supervision for youthful offenders.
- Access to wraparound programs and services for youth who have needs that cross mental health and juvenile justice systems.
- Greater likelihood that the educational plan of youthful offenders will not be disrupted by periods of short-term confinement that are more common in the adult system (e.g. initial jail placement, probation revocations).

This is less common in the adult system, except for specialized programs like Treatment Alternatives and Diversion (TAD) and some specialized courts (e.g. drug courts, mental health courts).

**SIXTH, THE CURRENT JUVENILE CODE PROVIDES BOTH OPPORTUNITIES AND REQUIREMENTS FOR GREATER PARENTAL RESPONSIBILITY THAN THE ADULT SYSTEM.**

While there are many who would like to see improvements in this area, none of these expectations are part of the adult system. For example, the current juvenile code includes:

- Custody statutes that presume children arrested should be returned to their parents for supervision unless they are a danger to others or likely to run away and miss court
- Requirements that parents may be ordered to participate in certain programs of treatment with their child.
- Requirements that parents contribute to the cost of the attorney that provides legal counsel to their child and to the cost of supervision, treatment, and placement services.
- Statutes that hold parents potentially liable for restitution costs that are ordered by the court and not paid by their child.

This proposal is not perfect. Certainly some of our partners would want this bill to go further and bring all 17 year olds back to juvenile court, and others will suggest that some of the practical issues created by this compromise create some implementation concerns. But, we know that the cost of bringing all 17 year olds back would be much more expensive, and that this should not be about what is “easy” to implement.

We believe this is the right time to ensure that first-time, non-violent 17 year olds get a second chance.

**For those who suggest that what we are doing now is working, I would ask some simple questions:**

If the current system is working, why is it necessary to arrest and book a 17 year old in jail only to have the prosecutor exercise discretion to dismiss the case later?

If the current system is working, why has there been a 42% decline in juvenile arrests and only a 16% decline in adult arrests over the last ten years?

If the current system is working, why is it that our prisons are still full and our juvenile detention centers around the state, with the exception of one, averaged less than 50% of capacity in 2012? And the number of youth housed in juvenile correctional institutions is about two-thirds lower than it was a decade ago?

If the current system is working for youthful offenders, why has it been necessary for the federal government to pass, with bi-partisan support, the Prison Rape Elimination Act to prevent physical and sexual abuse of youth under 18 held in adult facilities around the country, including Wisconsin??

If the current system is working, why is it that the only studies done on this issue come to the same conclusion, that processing most youth in the juvenile system results in lower recidivism rates than similar youth processed in the adult system?

If the current system is working, why is that in a 2008 Legislative Council study on 17 year olds admitted to our state prison system found that those youth reoffended faster and more frequently than either 16-year olds released from juvenile corrections or adult offenders released from prison? And, that 50% of the 17 year olds on adult probation failed to successfully complete that probation?

If the current system is working, why is it that it is so difficult to get the funds needed to truly expand programs like TAD, mental health courts, mental health services for youthful offenders, and many other investments that have proven to be cost-effective?

And, if the scope of this proposal is too narrow or too complicated to implement, then why not support what the research clearly shows, that investing in redirecting youth is more cost-effective and more likely to reduce crime than incarceration and its unproven deterrent effect on many youthful offenders?

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

October 25, 2013

Senator Jerry Petrowski, Chair  
Room 123 South  
State Capitol  
P.O. Box 7882  
Madison, WI 53707

RE: Assembly Bill 387/Senate Bill 308

Dear Senator Petrowski,

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 31<sup>st</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 Senate 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:

Senate Committee on Transportation, Public Safety, Veterans and Military Affairs

Senator Jerry Petrowski

Senator Joe Leibham

Senator Robert Cowles

Senator Tim Carpenter

Senator Dave Hansen

Thank you.



Testimony of Victoria (Vicky) L. Gunderson

**Parent Advocate for Juvenile Justice Reform**

**Wisconsin State Senate Committee on Transportation, Public Safety and Veterans and Military Affairs**

**Public Hearing**

**SB308**

**October 31, 2013**

My name is Vicky Gunderson of Onalaska WI. I want to first thank you for the opportunity to speak with you today in regard to Senate Bill 308. I support the 2<sup>nd</sup> chance for 17 yr olds in the State of Wisconsin with SB308, however I must confess I personally feel this is a beginning and not the end to the discussion of a 17 yr old person being defined as an adult in the criminal justice system.

I testified at an Assembly Hearing on April 1, 2010 and again 3 years later on October 3<sup>rd</sup>, 2013 and we are still talking about the definition of a 17 yr old. To me, as a parent, my 17 yr old was still a juvenile. My 17 yr old is still 17 because you see; he should have been 25 yrs old as of June 9, 2013, however in our families minds Kirk, our son and brother to Jay, will remain 17 forever. As our son Kirk Harrison Gunderson, took his life while incarcerated as a 17 yr old in a county jail cell by securing a sheet over a smoke detector and hanging.

I could go through statistics and more statistics, however you already know what I didn't know (8) years ago, in 2005. That:

- All 17 yr olds in the state of Wisconsin are considered an adult in the criminal justice system.
  - An estimated 250,000 youth are prosecuted in the adult criminal justice system every year, and nearly 10,000 youth are locked in adult jails or prisons on any given day.
  - The consequences of an adult criminal conviction for youth are serious, negative, life-long, and severely impair youth chances at future success.
  - Youth prosecuted in adult criminal court are placed in adult jails pre-trial, before they are even convicted.
  - Youth in adult jails and prisons are subject to greater risks of violence and sexual assault than any other population.
  - Youth in adult jails and prisons are subject to greater risks of emotional and mental health problems, including greater risk of suicide.
- 
- In 2010 when I sat here there were 12 states that considered 17 yr olds (and even considered 16 yr olds) as adults in the criminal justice system. Today as I sit here, we remain one of 10 states. Illinois and Massachusetts have realized a 17 yr old is not by Webster dictionary definition "a fully grown and developed person".
  - Illinois raised the age for misdemeanors in 2010, only to discover that it did NOT overwhelm the juvenile justice system and it CREATED procedural uncertainty and inconsistent outcomes. In July 2013, Illinois took it a step further and raised the age for ALL youth. Youth being defined as a 17 yr old person, another Webster dictionary definition "youth is the time of life when someone is young: the time when a young person has not yet become an adult".

- Massachusetts Senate in July, 2013 unanimously voted in favor of legislation to raise the age of juvenile court jurisdiction, no longer automatically trying and sentencing 17 yr olds accused of crimes as adults. Their bill still allows for Judges to impose adult sentences for 17 yr olds convicted of more serious crimes.
  - Kirk was a target
    - Physical abuse – we visited and he had a black eye that he said he could not tell us about, because he would be labeled a snitch. Later we found out someone had ridiculed him for the “family support” he was receiving with cards and letters from Mom, family and friends, visits from family and friends, and he fought to defend his family.
    - Sexual abuse – he was approached and told “I am going to have you” and then the person exposed himself to Kirk. Kirk reacted by calling home and asking his Dad how to handle as he was scared.
    - Prescription Medications – Kirk was advised he should take Prozac, however before he was to receive this medication, his Dad and I were contacted for our opinion, and then I was asked to purchase through our prescription program because he is still a child on our medical insurance policy. I purchased, and delivered to the jail for him.
    - Emotional – that goes without saying, Kirk ended his life.

Unfortunately I am unable to be at the hearing today to share the wisdom of a 17 yr old that is not able to speak on his own behalf today. To share with you what a 17 yr old taught his parents and many others about what it is like to be incarcerated at 17 with the adult population. I will share through this written testimony Kirk’s voice. This is one experience while he was incarcerated that he had written in his journal..

An entry:

Friday, November 4, 2005:

“This is an adult’s jail, yet at 17 I’m stuck here. I was messing around with another person around 19 years of age. We were both just being immature as many teenagers are. Shortly after midnight rolled around and we had to lock ourselves down in our cells for the night. My cellie then proceeded to ridicule me on how immature I was and that I needed to grow up. That didn’t affect me much until he called me a little bitch, and poked my forehead. I leaped up from my bed and told him not to do it again. Then he pushed me and we started fighting. I kept my hands ready and face well covered. He never got a solid hit. I actually only got in three decent punches, the third one slicing open his cheekbone about two inches. Blood poured all over the floor and walls. We stopped fighting then. I don’t believe I solved anything tonight. I try and avoid a fight at all cost. Really, what’s the point? I feel bad for hitting him, but what choice did I have? I’m locked in a cell no bigger than a walk-in closet with a guy half a decade older than me and he’s trying to kick my ass for being immature. It was no more than self defense. I even apologized after it was finished. I feel bad right now but honestly I didn’t know what else to do.”

PREA – the Prison Rape Elimination Act, as of September 2013 states that Governors must begin auditing detention and correctional facilities to ensure compliance with PREA or risk losing a percentage of federal funding allocated for justice programs in their state.

- If Wisconsin complies they will need to “protect” the youth in adult facilities, some jails and prisons keep youth in solitary isolation for upwards of 23 hours a day to provide this protection. That is not the answer, to isolate a person.
- Suicide rates – a youth is 19 times more likely to commit suicide in jail than their counterparts in the general population and 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility. Our son is now one of the statistics for adult jail suicides.

You need to understand that our son committed a violent crime, so SB308 would not have impacted him, however knowing what I know today, and have learned through this nightmare we live, I cannot sit back and not advocate for our youth. I am not asking nor implying that our youth should not be held accountable, but where is our accountability to our youth? To assist those that we can provide an opportunity to succeed, instead of telling them through our actions that they have made a mistake that they will have as a shadow for their rest of their lives.

Kirk had two wishes 1) for a physical hug from his family and 2) to sleep one night in his own bed. Neither of these happened for Kirk, but you can make a difference for other 17 yr olds so that they do not have to “wish” for the simple pleasures we take for granted.


I ask each of you, no I am actually begging you to not allow another three years to pass without passing legislation to raise the age in the state of Wisconsin.

Sincerely,

Victoria (Vicky) L. Gunderson  
616 Victoria Ln.  
Onalaska WI 54650  
608.385.7600

## MEMORANDUM

TO: Honorable Members of the Senate Committee on Transportation, Public Safety, and Veterans and Military Affairs

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate 

DATE: October 31, 2013

SUBJECT: Opposition to Senate Bill 308

The Wisconsin Counties Association (WCA) opposes Senate Bill 308, which raises from 17 to 18 the age at which a person who is alleged to have violated a criminal law is subject to the procedures specified in the Criminal Procedure Code and, on conviction, to sentencing under the Criminal Code, if the person is not alleged to have committed certain violent offenses and has not previously been convicted of a crime or adjudicated delinquent. WCA opposes this bill because the costs associated with this bill are too great for counties to absorb within current resources.

### County Services

To understand the county position on this legislation, it is important to understand the county role in the juvenile justice system.

Chapter 938 of the Wisconsin Statutes (Juvenile Justice Code) requires county boards to “authorize the county department or the court, or both, to provide intake services under s. 938.067 and the staff needed to provide dispositional services under s. 938.069...”

Sec. 938.067 Wis. Stats. lists the powers and duties of intake workers. These duties include:

- Providing intake services 24 hours a day, 7 days a week.
- Interviewing, if possible, any juvenile who is taken into physical custody and not released and, if appropriate, other available concerned parties.
- Determining whether the juvenile shall be held in physical custody.
- Determining where a juvenile shall be held, if not released.
- Providing any necessary crisis counseling.
- Receiving referral information, conducting intake inquiries, requesting that a petition be filed and entering into deferred prosecution agreements.
- Providing information and notices to and conferring with victims.

- Making referrals of cases to other agencies if their assistance is needed or desirable.
- Making interim recommendations to the court concerning juveniles awaiting final disposition.
- Taking juveniles into custody.
- Performing any other functions ordered by the court.

The statutes then go on to list the powers and duties of disposition staff:

- Supervise and assist a juvenile under a deferred prosecution agreement, a consent decree or an order of the court.
- Offer individual and family counseling.
- Make an affirmative effort, and investigate and develop resources, to obtain necessary or desired services for the juvenile and the juvenile's family.
- Prepare reports for the court recommending a plan of rehabilitation, treatment and care.
- Provide aftercare services for a juvenile released from a juvenile correctional facility or a secured residential care center for children and youth.
- Take juveniles into custody.
- Perform any other court-ordered functions.

Also under current law, counties are financially responsible for the costs of juvenile delinquency-related services, including out-of-home placements (foster care, residential care centers, juvenile corrections), as well as community-based services for juveniles and their families.

#### Funding for Juvenile Justice Services

The youth aids program was implemented statewide in 1981 and provides each county with an annual allocation of state and federal funds from which a county may pay for juvenile delinquency-related services. In 2010, counties reported spending over \$217.6 million on juvenile justice services. Of that amount, \$100.6 million was funded by youth aids and \$116.9 million came from other county funding sources, primarily property tax revenue. Since that time, state youth aids funding to counties was cut by 10 percent, or approximately \$10 million annually.

#### Costs of Serving 17-Year-Old Offenders

Some proponents of the bill have argued that counties can absorb the costs associated with serving 17-year-old offenders since both the number and rate of juvenile arrests have declined over the past 10 years. That may be true if: (1) the costs of providing services remained stagnant over the past 10 years; (2) youth aids funding to counties

increased on an annual basis to reflect the increased service costs. Instead, youth aids was cut by 10 percent in the 2011-13 state biennial budget and, as an example of increasing service costs, the rates charged to counties for placements in the state's juvenile correctional institutions will have increased by over 64% from FY 04 to FY 15.

In addition, some counties have cut their juvenile justice staffs due to a decreased number of juveniles in the system and decreased state aid, while other counties have diverted funding to other human services programs, such as child welfare, as counties have not seen increases in community aids funding since the mid-90s.

Counties have also heard from proponents that service costs for 17-year-old offenders in the adult system are low and therefore, the cost to counties will not be significant. Additionally, we have also been told that since the bill addresses only first-time, non-violent offenders, service costs will be low as well. We cannot assume, however, that all 17-year-old first time offenders are committing low-level crimes. It is also misleading to compare services provided in the adult system to services provided in the juvenile system. As discussed earlier, state statutes list a significant number of duties for county intake and dispositional staffs. Under state law, counties are not only required to provide services to juveniles in the system, but are also required to obtain services for a juvenile's family as well. All of this comes with a cost.

#### Cost of Bill / Estimates

One of the primary reasons cited for bringing 17-year-olds back to the juvenile justice system is to provide them with treatment and services they do not receive in the adult system, and that takes resources that Wisconsin's counties simply do not have available to them. Although a fiscal estimate on this bill is difficult to come by, counties understand the methodology utilized by the Wisconsin Council on Children and Families (WCCF) and agree \$10 million is a good starting point for discussions on costs. Unless and until supporters of this legislation are willing to have a serious discussion with counties about the fiscal implications of the bill and subsequently allocate the funding needed to support the desired services for 17-year-old offenders, counties will continue to oppose this legislation. If the true purpose of the legislation is to provide treatment and services to 17-year-old offenders, then it only makes sense to provide the funding needed to offer such treatment and services. Failure to do so puts all juvenile offenders at risk.

Attached please find our proposed amendment for funding the costs associated with bringing first-time, non-violent 17-year-old offenders back to the juvenile justice system.

Thank you for considering our comments.

## **AB 387 / SB 308 Amendment Proposed by the Wisconsin Counties Association and Wisconsin County Human Services Association**

- Change effective date of bill from January 1, 2015 to July 1, 2015.
- Create new sum sufficient state appropriation for the purpose of reimbursing counties for the costs associated with providing services to first-time, non-violent 17-year-old offenders.
- Counties to submit costs to the Department of Corrections for reimbursement of **all** expenses related to intake and disposition, including out of home placement and secure detention costs.

### Notes:

Changing the effective date provides the state an opportunity to allocate funding in the 2015-17 state biennial budget for this purpose.

As all county costs must be covered for counties to support this legislative change, a sum sufficient appropriation is necessary.

The fiscal effect of this bill is unknown at this time; however, some have estimated the costs to be between \$8 million and \$10 million. The reason for recommending a reimbursement methodology versus placing the funding in youth aids is three-fold:

- A submission of actual costs of serving first-time, non-violent juvenile offenders will assist us in developing fiscal estimates down the road should the legislature wish to expand juvenile court jurisdiction to all 17-year-old offenders.
- If the cost estimates are exaggerated, then the state is only paying counties for the actual costs associated with this legislation.
- The funding will be directed to the counties that are incurring the expense of serving 17-year-old offenders.

## Change of Age for Mandatory Referral to Adult Court

### Issue:

A decade of research clarifies that trying youth in adult court has a detrimental impact on community safety as well as on many 17-year-olds. In addition, we know now an adolescent's brain development is not completed until they are into their 20's. Particularly, their prefrontal cortex is not done developing, which plays a role in thoughtful decision-making and the regulation of cognitive, emotional, and behavioral functioning. Current state law excludes all 17-year-olds from the juvenile court and the services available through that venue. Even if prosecutors and judges wanted to include a 17-year-old in an appropriate juvenile service or program, they would be unable to do so. Therefore, one way to improve community safety and better serve youth in Wisconsin is to return 17-year-olds to the juvenile system, where they would receive more appropriate and effective services than they do in the adult criminal justice system.

Researchers have studied how best to promote public safety **and** meet the needs of 17-year-olds, both nationally and in Wisconsin. They have found that:

1. Trying youth as adults is counterproductive as a means to protect the community and as a means to effectively use tax dollars.
2. In a Florida-based study, juveniles transferred to adult court had 34 percent more repeat offenses than juveniles retained in juvenile court.
3. In a Wisconsin-based study, 17-year-olds dealt with in the adult system had a 70 percent recidivism rate. The highest recidivism rate, 80 percent, was among those 17-year-olds sent to jail for part of their sentence.

Effectively reducing the likelihood of re-offending behavior by 17-year-olds reduces victimization, and the trauma and costs associated with it, and increases the benefits to the community resulting from having those youth productively engaged in school and in the workforce. Prior research has shown that for every youth redirected, there is a net benefit of \$2.4 - \$5.7 million to the economy.

People with adult criminal records are significantly more likely to be unemployed than those without criminal records. In this economy, we need to ensure that adolescent mistakes do not become permanent workforce barriers.

The vast majority of 17-year-olds arrested are accused of minor crimes. Ninety-eight percent of the juvenile arrests in Wisconsin in 2012 were for a small number of non-violent crimes, such as liquor law violations, drug possession, disorderly conduct, theft, truancy, and curfew violations.

The way violent offenders – 2% of juvenile arrests in 2012 – and repeat offenders are treated would remain unchanged. A 17-year-old charged with certain serious crimes would automatically be tried in adult court, and any 17-year-old could be moved to adult court through the waiver process.



Under the proposal, 17-year-olds would be treated the same way 16-year-olds are now. They would be provided services in juvenile court unless they commit a very serious crime or a judge decides that adult court would be more appropriate.

The main difference between referral to the juvenile vs adult court system is that the juvenile system has the ability to provide education and other needed services on an individual basis. There are very limited services available to 17-year-olds in adult court, and they are often barred from obtaining services because they are too young. Due to the lack of services in adult court, 17-year-olds tend to re-offend more than 17-year-olds in juvenile court, which results in tax dollars being used ineffectively.

**Solution:**

- Return as many 17-year-olds as possible back to the jurisdiction of juvenile court, at least then if there is a move to waive them to adult court it would be reviewed by a judge.
- Give critical juvenile justice system partners time to prepare for the return by setting an effective date of January 1, 2015 for the change.

**Position:**

NASW-WI strongly supports a change in age from 17 to 18 for mandatory referral of juveniles to adult court.

\*Information in this Fact Sheet was provided by the Wisconsin Council on Children & Families\*



## WISCONSIN CATHOLIC CONFERENCE

TO: Senator Jerry Petrowski, Chair  
Members, Senate Transportation, Public Safety, and Veterans and Military Affairs  
Committee

FROM: Barbara Sella, Associate Director

DATE: October 31, 2013

RE: Senate Bill 308: Juvenile Justice “Second Chance” Bill

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The Wisconsin Catholic Conference (WCC) strongly supports Senate Bill 308, which would return first-time, nonviolent 17-year-old offenders to the juvenile justice system.

The bill is consistent with the principles outlined in 1999 by Wisconsin’s Catholic bishops in their statement, *Public Safety, the Common Good, and the Church: A Statement on Crime and Punishment in Wisconsin* – respect for the human person, common good, option for the poor and marginalized, restoration, and solidarity.

Furthermore, in their 2000 statement, *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*, the U.S. bishops were explicit in their opposition to treating young offenders as adults:

The actions of the most violent youth leave us shocked and frightened and therefore they should be removed from society until they are no longer dangerous. But society must never respond to children who have committed crimes as though they are somehow equal to adults – fully formed in conscience and fully aware of their actions. Placing children in adult jails is a sign of failure, not a solution. In many instances, such terrible behavior points to our own negligence in raising children with a respect for life, providing a nurturing and loving environment, or addressing serious mental or emotional illnesses.

Adult institutions are simply not appropriate places for nonviolent juveniles. The risk of abuse at the hands of adult inmates is too high, as is the risk of re-offending.

Juvenile offenders must be held accountable, but in a way that serves to rehabilitate them in an age-appropriate manner and to eventually re-integrate into the community.

We therefore strongly urge you to support this bill.

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*



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Address: 3195 S. Superior St. Suite 310, Milwaukee, WI 53207

*The Gamaliel Foundation in Wisconsin*

September 30, 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.

### **Options for Legislative Change**

There are at least three basic ways to approach the issue of when offenders should be treated as adults:

- (1) Treat all offenders of a certain age the same with no exceptions.
- (2) Treat all offenders of a certain age the same with discretion given to local shareholders to treat some juveniles as adults (typically called waiver into adult court). This was the pre-1995 approach. Most experienced system actors believed it worked well.
- (3) Treat some offenders of a certain age as juveniles and others as adults, depending on a range of legislatively defined factors. This is the approach reflected in the current legislative proposals.

We respectfully suggest the second alternative is the wisest approach. Local authorities will always be better positioned to know the facts of particular cases than a legislative body seeking to predict and define rules to apply to future events. Our state has been fortunate to have dedicated and experienced police, prosecutors, judges, social service professionals, and defense attorneys who have dedicated their careers to working with youth. Our pre-1995 system did well in balancing the interests involved in such cases and there is no reason to believe our local shareholders could not do the same following a return to that system.

However well-intentioned, legislative line-drawing – requiring some cases to always be adult cases and others to always be juvenile cases regardless of the unique circumstances of a particular case – will always create the risk of being under or over inclusive. Invariably some of the cases the legislature would require to be treated as adult cases may be better dealt with in the juvenile system and vice versa. There will also be hidden costs in line-drawing simply because it creates a system that will be more complex to administer. This can lead to protracted litigation, consumption of scarce judicial, prosecution, police, social service, and defender resources, and unintended disparities in the treatment of youths who present comparable levels of culpability and risk.

The changes we recommend could be achieved with no risk to public safety. Statistics make clear that only a very small percentage of 17 years old engage in dangerous assaultive behavior. The option of waiver into adult court could adequately deal with this population.

### **Costs**

No statewide policy change can be effective without an informed and honest dialogue about its costs and how it will be funded. Under our current system counties bear substantial responsibility for juvenile offenders while the state is responsible for adult offenders. As a consequence, any legislative change which increases the number of offenders treated as juveniles will transfer costs to Wisconsin counties.

As of the morning of September 30, 2013, there was no official Legislative Fiscal Bureau report on the costs to counties of either AB 387 or SB 308. This makes informed discussion of the proposal difficult if not impossible.

WISDOM takes no position on how juvenile justice reform should be funded. At the same time, we believe that a movement toward evidence-based practices in both our adult and juvenile systems can lead to a more cost effective system with improvements in public safety.

We encourage all citizens of Wisconsin, elected and non-elected, to work together to preserve our most important state resource, our children. Frequently we hear that current social programs must be cut for the benefit of future generations. Can we not also embrace public policies that treat the future generations humanely and fairly now?

**WAFCA**

Wisconsin Association of  
Family & Children's Agencies

131 W. Wilson Street, Suite 901

Madison, WI 53703


608.257.5939

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Linda A. Hall

Executive Director

TO: The Honorable Members of the Senate Committee on Transportation, Public Safety, and Veterans and Military Affairs

FROM: Linda A. Hall, Executive Director 

DATE: October 31, 2013

RE: Support for Senate Bill 308

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The Wisconsin Association of Family & Children's Agencies (WAFCA) supports Senate Bill 308 to return certain 17-year-old offenders to the juvenile justice system.

WAFCA represents over forty private for-profit and nonprofit agencies that provide mental health, education and social services to people in need. Our members' services include family, group and individual counseling, chemical dependency treatment, crisis intervention, domestic violence programs, residential care, child welfare services and outpatient mental health therapy, among others.

For adjudicated juveniles, our member agencies provide a variety of services including: treatment foster care, residential and group home care, alternative education, wraparound, mental health and AODA treatment, family counseling, day treatment services, mentoring, vocational training, community monitoring, and intensive in-home therapy. Our members serve youth from pre-disposition through aftercare services. Providers use evidence-based and evidence-informed practices such as trauma-focused cognitive behavioral therapy, motivational interviewing and restorative justice to promote sustained change in delinquent youth and their family systems.

Data show that the majority of youth offenders are non-violent offenders. Data also show that African-American youth are disproportionately represented in adult jails and prisons. Research on neurodevelopment is increasingly confirming what we have long known – that 17-year-old brains lack the capacities of fully-formed, adult brains. Youth who land in the juvenile justice system often arrive

with substantial trauma histories and untreated mental health diagnoses. Investing in rehabilitative, age-appropriate services for juveniles has been proven to generate long-term taxpayer savings.

In fact, there is little question whether or not SB 308 is the right policy for Wisconsin. Nevertheless, for nearly a decade the question of funding for the juvenile justice system has been a barrier to moving Wisconsin's policy into the 21<sup>st</sup> Century.

As major service delivery agents for youth services for counties, WAFCA shares the concerns of our county partners regarding the state responsibility for adequately funding this important policy change. Local county taxpayer dollars fund almost half of the annual expenditures on youth adjudicated through the juvenile system. For many counties the local overmatch is two or three times their state Youth Aids appropriation.

Wisconsin made the right choice in adopting Youth Aids to shift the service delivery focus from institutions to the community. Youth Aids made Wisconsin a leader in structuring funding to encourage community-based care and reduce high-cost institutional expenditures. This community-oriented funding has been critical to the closure of two juvenile correctional institutions.

While community-based services are less costly than institutional care, it is still not financially feasible for counties to absorb 17-year-olds into these systems without continued partnership from the state. As with all prevention-oriented services, in order to realize long term savings, an upfront investment is required.

Thank you for the opportunity to speak to this important proposal. This is the right time for Wisconsin to move forward with a common sense approach to serving juvenile offenders. We urge the Committee to advance this policy with sufficient funding to sustain a juvenile justice system that holds youthful offenders accountable, while serving them in a system designed to address their mental health, educational and developmental needs.



## Frequently Asked Questions about the 2<sup>nd</sup> Chance Proposal

**Q: What is the main purpose of this proposal?**

A: This proposal returns first-time, non-violent 17-year-old offenders to the juvenile justice system.

**Q: What 17-year-olds are NOT covered by the proposal?**

A: The proposal includes a list of “violent offenses” that will remain as adult charges. The bulk of this list is drawn from existing statutes that define “violent offense.” It also keeps 17-year-olds who have previously been found delinquent in the adult system.

**Q: Does this proposal affect provisions related to waiving youth to adult court?**

A: No. The proposal preserves current options and standards for waiver to adult court. Prosecutors can file a waiver petition on any 17-year-old, but the court can then decide on a case-by-case basis what is best for the community. There are a few of the most serious offenses that are “directly filed” in adult court even as young as age 10.

**Q: How many 17-year-olds are affected by this proposal?**

A: There is no centralized data collected at various decision points in the process, but based on records from CCAP and the Public Defender’s Office, we believe about 2,000 more 17-year-olds would be referred to juvenile court statewide than under current law.

**Q: What is the current law related to 17-year-olds?**

A: As of January 1996, any 17-year-old alleged to have committed a crime is treated as an adult.

**Q: Why was the law changed in 1996 to treat 17-year-olds as adults?**

A: Most states made changes in their juvenile laws in the 1990s to reflect growing concerns about an increase in violent juvenile crime that began in the mid-1980s. “Tough on crime” became the theme of many policy changes during this time, sometimes at the expense of effectiveness and community needs.

**Q: What has happened to youth crime since then?**

A: Juvenile arrests in Wisconsin actually peaked in 1994, before the change was made. Since that time, the number and rate of juvenile arrests have both declined steadily.



**Q: Doesn't that decline in youth crime mean the current policy is working?**

A: There are many factors that have contributed to the decline in juvenile arrests, and it's important to recognize that adult arrests have declined as well. There is no evidence that the change has had any impact on the arrest rate for 17-year-olds. In fact, research on this issue concludes that placing youth in the adult system is not a deterrent to juvenile crime.

**Q: How does recidivism compare between youth dealt in the adult system and youth in the juvenile system?**

A: A number of studies have shown that youth in the adult system are significantly more likely to reoffend than youth dealt with in the juvenile system.

**Q: Are there other negative consequences of placing youth in the adult system?**

A: Yes. Youth confined with adults are at greater risk of personal harm. They are also at risk of "learning" more serious criminal behaviors from adults with whom they are confined. Moreover, youth with an adult record face major challenges obtaining post-secondary education and employment, making it much harder to turn their lives around.

**Q: What else has changed over the last decade related to this issue?**

A: Our understanding of brain development has grown dramatically. We now know that the parts of the brain that govern thoughtful decision-making are not really developed until into the 20s. This helps explain why youth often act impulsively when emotionally aroused. This knowledge has guided recent U.S. Supreme Court decisions related to capital punishment and life sentences for youth.

**Q: What do other states do?**

A: Wisconsin is one of only 10 states that treat all 17-year-olds as adults. The others are Georgia, Louisiana, Michigan, Missouri, New Hampshire, South Carolina, Texas, North Carolina, and New York.

**Q: What is the cost of this proposal?**

Based on an assumption of 2,000 added youth to the juvenile system and an average "per youth" cost of \$4-5,000/year, the total cost would be approximately \$8-\$10 million. But like other investments in our children's future, there is an overall net gain. Given the reduced re-offense rate of youth who are dealt with in the juvenile system, the long-term economic benefits of this proposal certainly far outweigh any upfront costs. This has been borne out by experience and studies in other states.

Testimony in Support of SB 308

My name is Phyllis Greenberger and I am here today, representing Disability Rights Wisconsin, to testify in support of SB 308. Disability Rights Wisconsin is the state and federally mandated protection and advocacy system for people with disabilities for the State of Wisconsin. While DRW believes that there are many policy reasons to treat seventeen year olds as juveniles when it comes to criminal prosecution, today I will focus on the specific issues that affect youth with disabilities.

It is an unfortunate fact that many of the youth who find themselves involved in the justice system have significant mental health needs. This includes a higher risk of suicide than other teens. Another unfortunate fact is that Wisconsin's adult criminal justice system is already burdened beyond its capacity to provide mental health treatment.

As a disability advocate, I sometimes visit adolescent clients in adult county jails. On more than one occasion I have encountered a very frightened youth who, after feeling suicidal and crying out for help, has been put in solitary confinement or segregation to minimize risk, without the provision of much needed treatment. Sometimes these youth will tell me that at least in solitary there are not in constant fear of older inmates. I have also had more than one client with significant mental health needs, whose medications were not given to them correctly by jail staff, and at least one where they were not given at all, resulting in an avoidable increase in symptoms. In another situation, my young client, whose condition had improved, was about to be released from an adolescent mental health unit when her case went to court. Although the offense was relatively minor, she deteriorated rapidly when moved to an adult coed forensic unit. Although she had been on the verge of discharge, due to this decompensation she ended up spending two years on that adult forensic unit in constant fear of the adult male residents.

The reality is that a youth's ability to access mental health treatment is greatly enhanced within the juvenile system. Therefore they have a better chance of receiving mental health treatment to help them deal with issues, such as the risk of suicide, in the juvenile system. The reverse is true in the adult system; if a youth ends up in an adult jail there is a higher risk of suicide.

Additionally, seventeen year olds with disabilities who need special education and other services and supports are much more likely to receive those services if they stay in the juvenile system. Adult programs are simply not equipped to evaluate an individual's needs or provide that kind of specialized programming.

Current research on brain development shows that at 17, the part of the brain that helps control impulsive behaviors is still maturing. Many 17 year olds who commit a first non-violent offense, as this bill addresses, will not go on to commit further offenses if they get the right services and opportunities.

Again, these are just not available in the over-burdened adult corrections system. In fact, youth treated as adults are more likely to reoffend than those treated as juveniles. Therefore, it is actually safer for the community and less expensive in the long run, to treat seventeen year olds as the youth that they are and keep them in the juvenile justice system.

Finally, keeping these youth in the juvenile system will also prevent them from having an adult criminal record that can interfere with their ability to get post-secondary education and employment. A seventeen year-old, first time, non-violent offender surely deserves another chance.

Therefore, I urge you to support SB 308 and return non-violent, first time 17 year old offenders to the juvenile justice system.



# DANE COUNTY

**Joe Parisi**  
County Executive

October 31, 2013

Sen. Jerry Petrowski  
Chairman, Senate Committee on Transportation, Public Safety, and  
Veterans and Military Affairs  
State Capitol, Room 123 South  
Madison, WI 53708

Dear Chairman Petrowski:

Thank you and your colleagues for introducing AB 387 and SB 308 which would return 17 year old nonviolent offenders to the juvenile court and corrections systems. I support this initiative and request the committee forward the bills to the Senate Organization Committee for scheduling.

In 1996 the Legislature changed the age of adult jurisdiction from 18 to 17 years old. According to a Wisconsin Council on Children and Families 2011 study, 250,000 seventeen year olds have been arrested since the 1996 law went into effect and about 75,000 spent time in the adult system. Many of these offenders would have been better served in the juvenile corrections system.

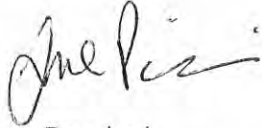
Your bills will allow these young men and women to receive needed services, graduate from high school, go on to higher education, get a job and become productive members of their communities. The stigma of a public, adult criminal record can jeopardize a young offender's ability to turn his or her life around.

I support the return of 17 year olds to the juvenile system because it better provides for the needs of these young people who are at a crossroads. By providing age appropriate services and protection from a damaging criminal record we can help ensure that our troubled 17 year olds have a better chance of success.

These bills present a chance for policy makers to offer a "smart on crime" approach to a serious social problem. We can continue to stigmatize and incarcerate young offenders - often times people of color - without offering help or we can provide hope and opportunity, both of which are lacking in the adult system.

With your support we can help these young people move successfully into adulthood and the work force and not adult prisons.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe Parisi".

Joe Parisi  
Dane County Executive

Cc: The Senate Committee on Transportation, Public Safety, and  
Veterans and Military Affairs  
Dane County Legislative Delegation



### MEMBERS

African Methodist  
Episcopal Church  
American Baptist Churches  
Christian Church  
(Disciples of Christ)  
Christian Methodist  
Episcopal Church  
Church of God in Christ  
Church of the Brethren  
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United Church of Christ  
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Diocese of Green Bay  
Diocese of LaCrosse

### ASSOCIATE MEMBERS

Benedictine Women  
of Madison  
Church Women United  
Interfaith Conference of  
Greater Milwaukee  
Leadership Conference of  
Women Religious Region 9  
Madison-area Urban Ministry

Rev. Scott D. Anderson,  
Executive Director

# Wisconsin Council of Churches

750 Windsor Street, Suite 301 Sun Prairie, WI 53590-2149  
Ph 608.837.3108 Fax 608.837.3038 E-mail [wccoc@wichurches.org](mailto:wccoc@wichurches.org)

DATE: October 31, 2013  
TO: Committee on Transportation, Public Safety, and Veterans  
and Military Affairs  
FROM: Peter Bakken, Coordinator for Public Policy  
Wisconsin Council of Churches  
RE: SB 308 Returning 17-year-old nonviolent, first-time offenders  
to juvenile court jurisdiction

The Wisconsin Council of Churches, which represents 16 Protestant and Orthodox denominations, almost 2,000 congregations and over one million church members in this state, strongly supports SB 308, which would return 17-year old nonviolent, first-time offenders to the jurisdiction of the juvenile court.

There are many solid, practical reasons why this bill is good policy, as its bipartisan co-sponsors have recognized and as the other groups testifying in its support have argued. We share their views that this bill serves our communities' needs for public safety and the wise use of public resources, and that it reflects our best understanding of the developmental needs of young persons who are on the threshold of adulthood but not yet fully adults.

But as the Wisconsin Council of Churches, we take particular interest in this legislation because, for us, healing and restoration are core values. In fact, you could say they are our very reason for being. Jesus' ministry was one of healing minds as well as bodies, and his parables of the lost sheep and the prodigal son are stories of rescue and reconciliation.

This bill would return the majority of 17-year-old offenders to the juvenile court system, where they can be both held accountable and be provided with age-appropriate services and programs. It promotes the healing and restoration of young people – who are especially vulnerable, and for whom we have a special responsibility to guide, care for and protect.

Our concern for this issue is informed by the experiences of Christian ministers who work with juvenile and other offenders. One, the Rev. Julia Weaver (who is not able to be here today) wrote me the following when I told her I would be testifying at this hearing:

*We pray and work together for the unity and renewal  
of the church and the healing and reconciliation of the world*

*I work primarily with the women at the Dane County Jail. It is my belief that the majority of women I see for spiritual care are victims. ... Sexual assaults in the military, date rape, domestic violence, childhood incest are examples of the life circumstances which are outside of their control; circumstances that continue to emotionally control them. When they come in so young it is quite often the case that they are victims of human trafficking.*

She noted the importance of older girls or young women ages 16-17 in such circumstances being able to receive appropriate services in the juvenile system.

The Rev. John Mix, another chaplain at the Dane County Jail, says,

*Remember the broader context behind the vast majority of offenders: unresolved grief. Loss, abuse, trauma and violence that have never been talked about with someone safe is the common ground of virtually everyone in jail and prison (in my experience). Treatment is more effective than incarceration . . . . When addiction and mental health treatment is more effective in general, then juvenile first time offenders especially could benefit with the passage of [this bill].*

As a society, we recognize our responsibility for the young, whose lives are entrusted to us. We want them to realize their potential to grow to become contributing members of our communities – even if they have made mistakes through immaturity and bad judgment. When they've gone astray, we hope that they will get their lives back on track – but we also know that they need help and support to do so.

Seventeen-year-old non-violent, first time offenders can find more effective and appropriate help and support in the juvenile corrections system than in the adult system. They can get on with their lives without the burdens and obstacles that come with a criminal record.

Counties are right to be concerned that they have the resources needed to carry out the human service functions that we as a state expect of them. But if doing what is smart for our communities and what is right for our youth is truly a priority for us, then we must – and can – find those resources.

Therefore, on behalf of the Wisconsin Council of Churches, I respectfully urge you to support passage of SB 308. Thank you for your time and attention.



**LEAGUE OF WOMEN VOTERS® OF WISCONSIN  
EDUCATION NETWORK**

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Madison, WI 53703-4714

Phone: (608) 256-0827  
<http://www.lwwwi.org>

October 31, 2013

To: Senate Committee on Transportation, Public Safety, and Veterans and Military Affairs

Re: Support for Senate Bill 308

The League of Women Voters of Wisconsin strongly supports SB 308, the Second Chance bill, which would return first-time, nonviolent 17-year old offenders to juvenile court jurisdiction. In the mid -1990's there were increased moves and pressures to put juveniles under age 18 into the adult criminal justice system as part of a "tough on crime" strategy that put primary reliance on incarceration.

The League has always believed that the protection of society is not only based on incapacitation but also requires deterrence and, most importantly, reform. This opportunity for reform is especially necessary for juveniles.

The majority of arrests of 17-year olds in Wisconsin are for non-violent or minor offenses. Yet they are now being dealt with in adult criminal court. This proposed legislation would allow those young offenders to stay in the juvenile system which can provide more appropriate services and opportunities for restitution, rehabilitation and behavioral change which allows a "second chance." When the chances of reoffending are lessened, not only the juvenile but also the family and the community all benefit.

Thank you for this public hearing which gives us the opportunity to support SB 308 and its important improvement to Wisconsin juvenile justice.