

**Written Testimony of Illinois Collaboration on Youth**  
Cook County Board of Commissioners Meeting  
February 9, 2015

**Statement of Support for the Cook County Board of Commissioner's Resolution Urging the  
Illinois General Assembly to Pass House Bill 172 to Restore Judicial Discretion in the Transfer of  
Juveniles to Adult Court**

The Illinois Collaboration on Youth (ICOY) strongly supports the passage of House Bill 172 and the efforts made to urge our state's lawmakers to take action through this resolution. HB172 repeals three unfair transfer mechanisms for the prosecution of youth in adult court: excluded jurisdiction<sup>1</sup> (aka "automatic"), mandatory,<sup>2</sup> and presumptive<sup>3</sup> transfer mechanisms. Each of these mechanisms denies youth a meaningful judicial review, which acknowledges youth's capacity to grow and reform.

*Laws and regulations prosecuting [juveniles] as adults in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore and diminish their capacity to grow must be replaced or abandoned.*

- U.S. Attorney General's National Task Force on Children Exposed to Violence<sup>4</sup>

Decisions to prosecute youth in adult criminal proceedings should only be made by a judge — the impartial party — and only after a meaningful, individualized court hearing that takes into account the youth's age, degree of participation in the offense, the benefits of juvenile court in rehabilitating the youth, and the individual youth's circumstances, such as history of trauma(s) and special needs. A diverse compilation of national groups explicitly calls for judicial decision-making.<sup>5</sup>

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<sup>1</sup> 705 ILCS 405/5-130

<sup>2</sup> 705 ILCS 405/5-805(1)

<sup>3</sup> 705 ILCS 405/5-805(2)

<sup>4</sup> Pg 23, (December 2012). Latter part of recommendation 6.9: "Whenever possible, prosecute young offenders in the juvenile justice system instead of transferring their cases to adult courts. No juvenile offender should be viewed or treated as an adult." This report was created as part of the *Defending Childhood Initiative* created by Attorney General Eric H. Holder, Jr. in an effort to prevent children's exposure to violence; mitigate the negative impact of this exposure when it does occur; and improve knowledge and awareness about children's exposure to violence. Importantly, this report emphasizes that the link between children's exposure to violence and involvement in the justice system requiring our responses to youth who commit violent acts to address trauma. Full report: <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>

<sup>5</sup> Some of these groups include: American Academy of Child and Adolescent Psychiatry, American Correctional Association, American Psychiatric Association, Coalition for Juvenile Justice, Council of Juvenile Correctional Administrators, National Association of Counties, National Parent Teachers Association.

The Council of Juvenile Correctional Administrators *opposes all policies that result in the automatic transfer of young people to the adult system without judicial review. If transfer is utilized, it should be accomplished through a process that maintains judicial decision-making to determine the appropriateness of transferring young offenders into the adult correctional system.*<sup>6</sup>

The National Association of Counties (NACo) *opposes trying and sentencing youth in adult criminal court, except in the case of a chronic and violent offender, and then only at the discretion of a juvenile court judge.*<sup>7</sup>

Under current Illinois law, the discretionary transfer mechanism is the only mechanism providing for an individualized hearing. Among the individualized factors a judge considers, the judge ***must give greater weight to the seriousness of the alleged offense and the minor's prior record of delinquency***<sup>8</sup> in making this determination. HB172 maintains the discretionary mechanism for transfer.

Youth deserve a meaningful judicial review because:

- Adolescent brain development research shows that developmental immaturity that can contribute to challenges with self-control, risk-taking behavior, and higher levels of impulsivity.<sup>9</sup>
- Youth subject to harsh sanctions are at a significantly higher risk for interruptions in their personal growth and development of skills in becoming healthy adults and productive members of society.<sup>10</sup>
- Youth who are transferred to adult court possess a greater need for psychiatric care and substance abuse services than incarcerated adults; however, transferred youth most needed psychiatric care are the least likely to receive interventions.<sup>11</sup>
- Most criminal behavior — even that of serious offenders — desists following transition into early adulthood.<sup>12</sup>

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<sup>6</sup> Position Statement: Waiver and Transfer of Youths to Adult Systems adopted October 2009: <http://cjca.net/attachments/article/158/CJCA-Waiver-Position-Paper.pdf>

<sup>7</sup> Pgs 16-17, Transfer of Juveniles to Adult Court, Sec. Justice and Public Safety, *The American County Platform & Resolutions 2011-2012*: <http://www.naco.org/legislation/policies/documents/american%20county%20platform%20and%20resolutions%20cover%20page%2011-12.pdf>

<sup>8</sup> 705 ILCS 405/5-805(3)

<sup>9</sup> Casey, B. J., Jones, R. M., & Hare, T. A. (2008). The Adolescent Brain. *Annals of the New York Academy of Sciences*, 1124, 111–126.

<sup>10</sup> Holman, B. and Ziedenberg, J. Justice Policy Institute (2010). *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*. Accessible: [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf)

<sup>11</sup> Washburn, J.J. (2008). Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court. *Psychiatric Services*, 59, 965.

<sup>12</sup> Mulvey, E.P., Steinberg, L., Piquero, A.R., Besana, M., Fagan, J., Schubert, C.A., and Cauffman, E. (2010). Longitudinal Offending Trajectories Among Serious Adolescent Offenders. *Development & Psychopathology*, 22, 453–475.

These factors have tremendous implications for youth in the juvenile justice system. While youth must be held accountable for their actions, courts should consider these developmental gaps in determining their level of culpability and their propensity for rehabilitation. The U.S. Supreme Court agrees. It opined in a series of cases that children have uniquely different characteristics from adults – children are constitutionally different; subsequently, differences in decision-making diminish culpability and the fact the youth are more inclined to benefit from rehabilitative interventions and supervision must be considered in determining punishment.<sup>13</sup>

The Supreme Court of Illinois recently called for reform of the automatic transfer statute and voiced concern regarding the lack of judicial discretion:

*We do, however, share the concern expressed in both the Supreme Court's recent case law and the dissent in this case over the absence of any judicial discretion in Illinois's automatic transfer provision. While modern research has recognized the effect that the unique qualities and characteristics of youth may have on juveniles' judgment and actions, the automatic transfer provision does not.*<sup>14</sup>

While racial and ethnic disparities exist across the justice system, national data shows that these disparities become more pronounced as youth progress through the juvenile to criminal system.<sup>15</sup>

- *African-American youth are 62% of the youth prosecuted in the adult criminal system and are nine times more likely than white youth to receive an adult prison sentence.*
- *Latino youth are 43 percent more likely than white youth to be transferred to the adult system and 40 percent more likely to be admitted to adult prison.*
- *In Cook County, 257 youth were “automatically” prosecuted in adult court during a three year period; 256 were youth of color.*<sup>16</sup>

The use of automatic transfer schemes produces unjust results that violate the concept of due process and fail to consider the biological, social, and developmental differences between adolescents and

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<sup>13</sup> “[F]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” *Roper v. Simmons*, 543 U. S. 551, 570 (2005); ““(J)uvenile offenders cannot with reliability be classified among the worst offenders.”” *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010), quoting *Roper*, 543 U.S., at 573. “Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults.”; “Children generally are less mature and responsible than adults; they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them; and they are more vulnerable or susceptible to . . . outside pressures than adults. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011); “Youth is more than a chronological fact. It is a time of immaturity, irresponsibility, impetuosity[,] and recklessness. It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient.” *Miller v. Alabama*, 132 S. Ct. 2455, 2467 (2012).

<sup>14</sup> *People v. Patterson*, 2014 IL115102, 2012 IL App (1st) 101573.

<sup>15</sup> Campaign for Youth Justice (2012). *Key Facts: Youth in the Justice System*. Accessible: <http://www.campaignforyouthjustice.org/documents/KeyYouthCrimeFacts.pdf>

<sup>16</sup> Ishida, K., Clarke, E., and Reed, D. Juvenile Justice Initiative. (2014). *Automatic Adult Prosecution of Children in Cook County, Illinois. 2010-2012*. Accessible: <http://jjjustice.org/wordpress/wp-content/uploads/Automatic-Adult-Prosecution-of-Children-in-Cook-County-IL.pdf>

adults. Moreover, these policies do not even result in improved public safety.<sup>17</sup> ICOY strongly supports urging the General Assembly to pass HB172 restoring judicial discretion in transfers of youth to adult court as provided for in the proposed resolution.

We take the position to support HB172 as a statewide policy and advocacy organization comprised of direct-care service providers who work with Illinois' young people everyday — many of these youth have been, or are currently, involved with the justice system. We believe that young people have the ability and propensity to change with access to rehabilitation resources, support, and perhaps most importantly, hope for their futures. This is what drives our policy advocacy efforts.

*Testimony submitted by Nora Collins-Mandeville on behalf of the Illinois Collaboration on Youth.*

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<sup>17</sup> “Six large-scale studies have found higher recidivism rates among juveniles convicted for violent offenses in criminal court when compared with similar offenders tried in juvenile court... Thus, the extant research provides sound evidence that transferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism. On the contrary, transfer substantially increases recidivism.” Redding, R.E. Office of Juvenile Justice and Delinquency Prevention (June 2010). Juvenile Transfer Laws: An Effective Deterrent to Delinquency? *Juvenile Justice Bulletin*: <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>; “On the basis of strong evidence that juveniles transferred to the adult justice system have greater rates of subsequent violence than juveniles retained in the juvenile justice system, the Task Force on Community Preventive Services concludes that strengthened transfer policies are harmful for those juveniles who experience transfer. Transferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence.” McGowan, A., Hahn, R., Liberman, A., Crosby, A., Fullilove, M., Johnson, R., Moscicki, E., Price, L., Snyder, S., Tuma, F., Lowy, J., Briss, P., Cory, S., and Stone, G. Task Force on Community Preventive Services. (2007). Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System. *American Journal of Preventative Medicine*, 32(4S). Accessible: <http://www.thecommunityguide.org/violence/mcgowanarticle4.pdf>