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“The Juvenile Justice Initiative of Illinois works to achieve humane, equitable and sustainable reforms for children and young adults in the justice system.”

September 15, 2020

Members of the Legislature,

RE: Testimony
Criminal Justice Subject Matter Hearing

My name is Elizabeth Clarke and I am the founder and President of the Juvenile Justice Initiative, a nonprofit and independently funded juvenile justice public policy advocacy organization. I want to thank Criminal Justice Chair Sims and Public Safety Chair Peters and the members of the committees for holding these hearings on these critical issues in criminal justice. The increase in prisons in Illinois during my professional lifetime has been shocking – we have gone from a statewide prison population under 12,000 in 1980 to a current population around 38,000 – a threefold increase over four decades.¹

It is critical to highlight the fact that juveniles have been part of this horrific increase. Expansive transfer policies, many of which have since been repealed, swept juveniles automatically into the adult court where sentencing practices such as truth-in-sentencing failed to make exceptions for children under the age of 18. Mandatory life sentences for juveniles, now prohibited, have resulted in resentencing and release for some, but only after decades in prison.

Therefore, we urge you to include the following reforms:

1) Begin all cases of children under age 18 in juvenile court.

The U.S. has treaty obligations to limit the extraordinary power to transfer a child to adult court to “exceptional” cases, implying a thorough review in court of the minor’s potential for rehabilitation as well as the circumstances of the offense, but Illinois law allows the decision to be made *automatically*, based solely on age and charge. That means that for some children charged with certain offenses, **there is no court hearing** to decide whether they belong in adult court. Instead the decision is made automatically within hours/days of arrest upon the filing of a charge by the prosecutor.

In 2015, this total lack of due process in the decision whether to try and sentence a child in juvenile or adult court convinced the Illinois Legislature to intervene, requiring a court hearing on the issue of transfer for children age 15 or children charged with certain armed robbery offenses. This reform has reduced, but not ended, automatic transfers of children to adult court.

In May of this year, the Juvenile Justice Initiative released a report looking at the impact of the 2015 law and the convictions that were ordered to be reviewed as a result. The report shows clearly that time for a prosecutor to fully evaluate the case and prove that adult court is appropriate in a hearing in juvenile court can make a big difference.

When the 2015 transfer reform took effect, there were 186 cases of juveniles pending in the adult criminal court in Cook County. These 186 juveniles had been charged under “automatic transfer” laws but all involved children who, based on age or charge, would not have been automatically in adult court under the 2015 reform. The Illinois Supreme Court held that all 186 cases must get the benefit of the reform and sent the cases to juvenile court for the prosecutor to individually review each case. The outcomes were stunning:

¹ <https://www.civicfed.org/iifs/blog/trends-illinois-department-corrections-spending-and-prison-population>

- After individual review, the prosecutor petitioned to transfer/EJJ suspended adult sentence in only 21 cases. **Thus, upon individual review, the prosecutor decided that most of the cases (88%) belonged in juvenile, not adult, court.**
- Of the 21 cases the prosecutor selected to petition for adult trial/EJJ suspended adult sentencing, the court granted nearly half (45%) - 3 were transferred to adult court, and 6 were granted EJJ status (a suspended adult sentence).
- **23 of 186 cases (13.3%) were never even prosecuted.**

It is also important to note that there has been no increase in violence following the 2015 reform. All of the research demonstrates that the public is safer when courts use the rehabilitative services of the juvenile court, rather than imprisoning children in the adult system. The research has proved true in Illinois, as the juvenile crime rate has continued to decline following the 2015 reform.

Last but by no means least, is the fact – established time and again – that these practices of prosecuting children in adult court have a profound disparate impact on children of color. Research by the JJI has historically established that automatic transfer laws have a hugely disproportionate impact on black youth- nearly exclusively used in cases involving black and brown youth in Cook County. The disparities are also concerning statewide. According to data collected by the Illinois Juvenile Justice Commission, in 2017, 63% of the 32 children under age 18 who were automatically transferred to adult courts across Illinois were Black/African American.²

The data on the 2015 reform and the profound racial disparities in transfer of juveniles to adult court prove that automatic transfer is a failed policy and must be repealed. It is essential for fundamental fairness to give all children a due process hearing in the juvenile court on the critical issue of prosecution as an adult.

2) Give lawyers to all children under age 18 during interrogation in cases that could trigger adult sentencing (HB4609)

The assistance of a lawyer is essential for a child to understand the implications of any statement given the complexity of state laws including transfer and accountability that trigger adult prosecution and sentencing. In 2016, the legislature required a lawyer throughout interrogation of children under the age of 15 in cases involving murder/sex offenses. Legislation filed this year proposed raising the age from 15 to 18. This proposal is part of a national reckoning on the level of protections that are essential for children in conflict with the law. The state of California just passed legislation (SB 203) that raises the age from 15 to 18 for the requirement that all juveniles in custodial interrogation consult with a lawyer prior to waiving Miranda rights. http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB203 The profound racial disparities in the extraordinary practice of prosecuting and sentencing children in the adult court make it imperative to extend the basic protection of a lawyer throughout interrogation to every child at risk of adult sentencing.

3) Provide a legal privilege for communications in restorative justice proceedings (HB4295)

For a restorative justice proceeding to be successful, parties must engage in open and honest dialogue, revealing sensitive information. The risk of disclosing information that could later be used against a participant in court is a barrier to participation for many people who could benefit from restorative justice. By ensuring that participants will not be penalized in court for participating in restorative justice practices, this bill will encourage the expanded use of restorative justice and allow Illinois to continue to be a leader in restorative justice. Participants of a restorative justice practice would not be prevented from disclosing information learned in a practice to law enforcement. This only limits the State from using things said or done by an individual in preparation for, during, or as a follow-up to a restorative justice practice as evidence.

Last but not least – juvenile detention.

Finally, we hope that the legislature will also take into consideration the role detention as a juvenile play in funneling children into adult court. Studies reveal that even short periods of juvenile detention have a profound negative impact on children's life outcomes, including increasing the likelihood of incarceration as an adult.

²http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/IJJC%20Trial%20and%20Sentencing%20of%20Youth%20as%20Adults%20in%20the%20Illinois%20Justice%20System%20Transfer%20Data%20Report%20Calendar%20Year%202017_0.pdf

It is imperative that we take steps to limit time children spend in detention to minimize the damage caused. This can be done by ending the pre-trial detention of children younger than 13 and limiting pre-trial detention to felony charges as proposed in HB 4613. These changes merely make pre-trial detention requirements the same as post-trial incarceration.

Over four times as many children are locked up before trial as after finding of guilt. While as of July 31st only 97 children were being held in prison after trial in IDJJ, the average daily population of children in county detention centers in May was 473³. **Nearly half of the detention admissions (46.98%) before trial were for low level offenses/conduct** meaning property, drug, contempt, status, violation, or outstanding warrants that could not be the basis for incarceration after trial. **There are profound racial disparities in use of detention.** In May, 70.79% of the detention admissions statewide were of children who are Black.

Young children are being locked up before trial despite a ban on incarceration after trial. Through June of 2020, 28 twelve-year old children and 3 eleven-year old children have been locked up in detention.⁴ These children are too young to send to juvenile prison if found guilty after trial, but suffer the profound trauma and negative lifelong consequences of incarceration due to their time in detention before trial.

Before trial, children as young as ten (10) years of age can be locked up in local detention (juvenile jails). After trial, children who are found guilty can only be committed to juvenile prison (IL Dept of Juvenile Justice/IDJJ) if they are age 13 or older. **Illinois also has no limit on offense class to be in juvenile jail before trial.** Before trial, children can be locked up in juvenile detention for misdemeanor offenses. After trial, children can only be committed to juvenile prison if they are found guilty of a felony offense.

The detention reform package setting a minimum age of 13 and prohibition on misdemeanor admissions is a modest reform consistent with that of other midwestern states nearly identical to a reform in Nebraska over a year ago, and similar to a reform recently enacted in Oklahoma after unanimous legislative support. It has also have been the subject of extensive debate in Springfield over several years and was the basis for Rep. Gabel-Ramirez-Slaughter's H.B. 4613 this year. The debates reveal:

- **No fiscal impact** -A similar bill last Spring (HB1468) was carefully scrutinized for fiscal impact, with fiscal notes indicating no fiscal impact on AOIC, OMB, DCFS, IDOC, or DHFS.
- **Emergency 24/7 services exist for police to use** when handling young children, including the statewide community network in CCBYS (ICOY supports this reform) and the statewide behavioral health network in SASS (CBHA supports this reform).

In conclusion - It is essential that the Legislature consider these reforms to ensure all our children are given the basic rights and humane treatment that is essential for a just society. As the home of the world's first juvenile court, we hope Illinois will embrace these reforms that are consistent with basic rights extended to children in most developed nations.

Sincerely,

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³ <http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/JMIS%20Monthly%20Data%20Report%20June.pdf>

⁴ To date, there have been no admissions of children age ten this year. Illinois has de facto ended detention of ten-year olds, nearly ended detention of eleven-year olds, and substantially reduced detention of twelve-year olds. See details at: <http://ijjc.illinois.gov/publications/reports>