

**Treatment of Juveniles
in the Wisconsin Criminal Court System:
An Analysis of Potential Alternatives**

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Foreword

Wisconsin juveniles as young as 14 can be waived into adult court. Seventeen-year-olds and others involved in certain crimes are automatically tried as adults. This has been the case since 1995, when the state of Wisconsin changed its juvenile code and transferred responsibility for juvenile delinquents and offenders from the then Department of Health and Social Services to the Department of Corrections. Since the change, the recidivism rate for 17-year-olds prosecuted in adult criminal court has been measured at 48 percent, much higher than for juveniles in the juvenile correctional system or adults in the adult correctional system. Time and data constraints did not allow for a statistical analysis of why this might be, but the report provides evidence that legislators should re-examine Wisconsin waiver laws and treatment options available to the most troubled juvenile offenders.

This report is the product of collaboration between the Robert M. La Follette School of Public Affairs at the University of Wisconsin–Madison and the Wisconsin Joint Legislative Council. This partnership provides graduate students at La Follette the opportunity to practice their policy analysis skills while contributing to the ability of public agencies to analyze and develop policies on issues of concern to the residents of the state.

The La Follette School of Public Affairs offers a two-year program leading to a master's degree in public affairs. Students study policy analysis and public management and pursue a concentration in a public policy area of their choice. They spend the first year and a half taking courses that provide them with the tools needed to analyze public policies. Although acquiring a set of policy analysis skills is important, there is no substitute for doing policy analysis as a means of learning policy analysis. The authors of this report are all enrolled in Public Affairs 869, Workshop in Public Affairs, Domestic Issues (section 2), which gives students opportunity to do, and thus learn, policy analysis during their final semester.

One of five project teams worked on this report, while the others collaborated with the Wisconsin Department of Natural Resources; the U.S. Government Accountability Office; and the Wisconsin Department of Health and Family Services' Office of Policy Initiatives and Budget and its Bureau of Environmental and Occupational Health in the Division of Public Health.

This report would not have been possible without the support and encouragement of Terry Anderson, Director of the Joint Legislative Council, and Anne Sappenfield, Senior Staff Attorney, with whom I first discussed this project. Anne acted as the primary contact between the project team and the Joint Legislative Council. A number of other people also contributed to the success of the report; their names are listed in the acknowledgments.

The report benefited greatly from the support of faculty and the staff of the La Follette School of Public Affairs, especially that of Publications Director Karen FASTER, who edited the report and managed its production.

I am very grateful to Wilbur R. Voigt whose generous gift to the La Follette School supports the La Follette School public affairs workshop projects. With his contribution, we are able to finance the production of the final reports, plus other expenses associated with the projects.

This report cannot provide the final word on the issues the authors address. The authors are graduate students constrained by the semester time frame, and the topic they address is large and complex. Nevertheless, much has been accomplished, and I trust that the Legislative Council will have been given valuable insight as its members consider incarceration alternatives for Wisconsin's juveniles.

I trust the students have not only learned a great deal about doing policy analysis but have gained an appreciation of the complexities and challenges facing state and local governments in Wisconsin. I also trust that this report will contribute to the work of the Joint Legislative Council and to the ongoing public discussions of corrections policies in Wisconsin and elsewhere.

Karen Holden
May 2008

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Finally, we would like to thank Professor Karen Holden and Publications Director Karen FASTER for their assistance in revising and editing this report.

Executive Summary

The 1995 reforms to the juvenile justice code increased the number of juveniles prosecuted in adult criminal court. The policy change transferred all 17-year-olds to adult criminal court jurisdiction. Judicial waiver, which allows the juvenile court to transfer a case to adult court, was expanded to include 14-year-olds.

Juveniles prosecuted in adult court face adult criminal penalties. Juvenile correctional facilities offer educational programming and a variety of age-appropriate treatment options. Juveniles in the adult system miss out on these resources. A 2008 Legislative Audit Bureau report shows higher rates of recidivism among younger offenders placed into the adult correctional system. Recidivism rates among 17-year-old defendants in Wisconsin are estimated to be as high as 48 percent, three times higher than for adult offenders or younger juveniles in the juvenile system.

The Wisconsin Joint Legislative Council requested an analysis of the juvenile justice process in Wisconsin and examination of current practices in other states. This report evaluates the status quo policy and two categories of alternative policies: waiver laws and blended sentencing. Time constraints prevented the development of a more formal analysis of recidivism rates among these alternatives; however, we conclude that the current system fails to meet the particular treatment needs of younger offenders and that this failure likely contributes to the high recidivism rate among this population. We encourage the Joint Legislative Council to re-examine the 1995 reforms and request a comprehensive audit of the treatment of juveniles in the Wisconsin correctional system that would assess the effectiveness of treatment options available to younger offenders in the juvenile and adult correctional systems.

Key Terms and Abbreviations

AODA screening: Alcohol and other drug abuse assessment courts employ to develop appropriate sentences or dispositions.

Blended sentencing: A set of legal procedures in which a juvenile first receives an adult sentence. The sentence is then “stayed” (suspended) while the juvenile receives a juvenile disposition (see definition below). The juvenile disposition remains in effect unless a court determines the juvenile violated the disposition, in which case the adult sentence is imposed.

Capacity: The legal definition of mental capacity is the ability to understand the general effect of a transaction or document. Capacity as defined by psychology, however, refers more broadly to the power to grasp and analyze ideas and to cope with problems.

Community Youth and Family Aids: A combination of state and federal funds the state distributes to counties through a funding formula to pay for services and out-of-home placements of juveniles. Counties may supplement Youth Aids with tax revenue and grants.

Crime rate: In this report, the term refers to the number of index crimes (as defined by the Federal Bureau of Investigation) divided by the number of people in an area times 100,000. The crime rate measures the number of violent and property crimes per 100,000 people.

Dispositional order: Similar to a sentence in the adult court process, a dispositional order is a treatment plan for a juvenile who is adjudged delinquent (similar to “found guilty”) by a juvenile court.

Index crimes: As defined by the Federal Bureau of Investigation, violent and property crime offenses the bureau tabulates in its uniform crime reports. These offenses include murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault and the property crimes of burglary, larceny-theft, arson, and motor vehicle theft.

Judicial waiver: Wisconsin’s name for transfer, a legal procedure that moves a juvenile’s case from juvenile court to adult court.

Juvenile correctional facilities: State-operated secure detention facilities that educate, rehabilitate, and detain juvenile offenders. The Wisconsin Department of Corrections operates three secure juvenile correctional facilities. The Wisconsin Department of Health and Family Services operates a secure juvenile mental health facility.

Juvenile court jurisdiction: The default type of court (in most cases) for 10- to 16-year-old juveniles.

Juvenile detention facilities: County-operated facilities, which hold juvenile offenders for up to 30 days. Counties run juvenile detention facilities and programming under Wisconsin Department of Corrections supervision.

Juvenile offender: an individual age 10 to 17 who violates a local ordinance, state, or federal law.

Moral culpability: For this report, the degree to which an individual can be held responsible for his or her actions as judged in terms of neurobiological development. This term does not possess a specific legal meaning nor does legal terminology provide an adequate substitute.

Once waived always waived: Once a juvenile has been waived to adult court, he or she is automatically charged in adult court in the future. The juvenile must either be found guilty in adult court or have a case pending in adult court for the “once waived always waived” provision to kick in.

Original adult court jurisdiction: A legal determination where juvenile criminal cases start in adult court instead of juvenile court. Original adult court jurisdiction generally applies to older juveniles and more serious offenses.

Out-of-home placement: Part of a dispositional order’s treatment plan that places a juvenile in outside of the juvenile’s home.

Prefrontal cortex: The area of the brain that regulates impulsivity and rationality. The prefrontal cortex is located behind the forehead.

Recidivism rate: No single definition exists for this term. In this report, recidivism means the percentage of offenders who, within three years of completing their sentences or dispositions, are re-incarcerated for new offenses. Other studies use different time periods and different standards to define recidivism rate.

Reverse waiver: A legal procedure that moves a juvenile’s case from adult court to juvenile court.

Serious Juvenile Offender Program: a disposition (or sentence) for a juvenile 14 or older who committed a serious offense that would be considered a felony if committed by an adult, or for a juvenile 10 or older who committed a serious offense like homicide. A court also may order a juvenile into this program if it determines the program is the only appropriate placement.

Transfer: A legal procedure that moves a juvenile’s case from juvenile court to adult court and vice versa. Transfer procedures include judicial waiver, reverse waiver, discretionary waiver, mandatory waiver, presumptive waiver, direct file, and statutory exclusion

Waiver: (see judicial waiver)

Introduction

Since 1995, an increasing number of Wisconsin juveniles are subject to adult criminal court prosecution and penalties. Reforms shifted 17-year-olds to adult court jurisdiction and expanded the use of judicial waiver,¹ which allows the juvenile court to transfer offenders 14 and older to adult court. Reforms also introduced the “once waived always waived” practice of always charging a juvenile as an adult after he or she is first waived into adult court (Wis. Stats. § 938.01). If a juvenile has committed an offense that was subject to waiver or eligible for original adult court jurisdiction, this case is automatically waived to adult court through a measure known as “Once waived always waived” (Wisconsin Legislative Fiscal Bureau [WLF], 2007). These changes increased the severity of the consequences and reduced treatment options available for 17-year-olds and, if adult criminal penalties are invoked, for juveniles who are repeat offenders or who commit serious crimes.

Legislation introduced in January 2008 as Senate Bill 401 proposed returning 17-year-olds to juvenile court jurisdiction (Wisconsin Senate Bill 401, 2007). The bill was defeated, due to the potential shift of costs of returning jurisdiction over 17-year-olds from the state to the counties, which operate the juvenile justice system.

A high recidivism rate for juveniles processed in the adult system and research on the adolescent brain demonstrate a need to re-evaluate juvenile justice policies and the rationale behind the practice of treating some juveniles as adults. For 17-year-olds incarcerated in adult prison, the Wisconsin Legislative Audit Bureau (2008) reported that recidivism rates are estimated to be as high as 48 percent, three times higher than for juveniles or adults incarcerated in age-appropriate facilities. Recent developmental research has identified marked functional differences between adolescent and adult brains, particularly in the pre-frontal cortex, the area of the brain that regulates impulsivity and rationality.

The Wisconsin Joint Legislative Council (JLC) requested an assessment of the juvenile justice system and potential alternatives. We compare Wisconsin’s current system to practices in other states and consider the impact of alternatives on the treatment of juveniles who commit serious offenses. Our findings are informed by national and statewide juvenile crime statistics, legal theory underlying the existence of a juvenile justice system, and research on neurobiological development. Our analysis is consistent with the intent of the juvenile justice system to protect the community, impose accountability for law violations, and equip juvenile offenders with competencies to live responsibly and productively (Wis. Stats. § 938.01).

¹ Wis. Stat 938.18 defines the conditions that allow petition for judicial waiver. These include age at the time of the crime, the nature or seriousness of the crime, and prior record of adult criminal offenses or delinquency.

The Wisconsin Juvenile Justice System

The Wisconsin juvenile justice system operates at the local, county, and state levels. Local law enforcement and school officials initiate contact and direct juveniles who are alleged delinquent into the system. County circuit courts serve as the “juvenile court” and are responsible for adjudication and development of dispositional orders (treatment plans) for delinquent juveniles. County governments administer juvenile detention facilities and develop specific programming and policies. The state supervises county facilities, administers Community Youth and Family Aids funds, and operates secure juvenile corrections and community corrections programs (WLFB, 2007; Jackson, 2008; Moelter, 2008; Wisconsin Legislative Reference Bureau [WLRB], 2007).²

Juvenile Court

Juveniles age 10 to 16 proceed through juvenile court system as outlined below, unless they are waived to adult court or are subject to original adult jurisdiction. See Wis. Stats. §938.18.

Initial Contact

A juvenile age 10 or older may be taken into custody (similar to an arrest) by law enforcement officials or referred to intake by a school official, parent, or guardian if he or she is suspected of being a runaway or of violating a municipal ordinance, state or federal law, or a court order.

Intake

Once the juvenile is in custody, an intake worker examines the case and determines whether it is under jurisdiction of the juvenile court, and whether the juvenile should be held in temporary custody.

Dismissal or Deferred Prosecution

A recommendation to dismiss is simply a recommendation, and the district attorney may still petition for delinquency.

Delinquency Proceedings

If the intake worker recommends that the case continue to delinquency proceedings, the district attorney must file a delinquency petition (similar to a charge), dismiss the case, or refer the case to the intake worker for further inquiry. The court may establish a consent decree with conditions for the juvenile and family. If these conditions are met, the formal petition is dropped. Otherwise, the court proceeds with adjudication of delinquency and disposition.

² Community Youth and Family Aids totaled \$88.3 million in fiscal year 2006-07. The aids are a combination of state and federal funds the state distributes to counties through a funding formula. Counties use these funds to pay for services and out-of-home placements for adjudicated delinquent juveniles. Counties may supplement Youth Aids with tax revenue and grants (WLFB, 2007).

Hearings

At this point a juvenile may be subject to a plea hearing, a fact-finding hearing, which is similar to a trial, and a dispositional hearing, which is similar to a sentencing hearing. If the juvenile submits to the delinquency petition at the plea hearing, which is similar to admitting guilt, the process moves to the dispositional hearing, otherwise he or she faces a fact-finding hearing in which the prosecutor must prove to the judge that the juvenile committed the offense.

Dispositional Orders

A juvenile adjudicated “delinquent” must attend the dispositional hearing in which the judge determines an appropriate dispositional order (similar to a sentence). The order details the case, services to be provided, responsible agencies, compliance conditions, and out-of-home placement orders, if applicable (WLFB, 2007). See Appendix A for more information on out-of-home placements.

Juvenile Detention and Correctional Facilities

Sixteen Wisconsin counties in 2007 operated secure juvenile detention centers supervised and approved by the Wisconsin Department of Corrections. Juveniles may be detained at secure juvenile detention centers for up to 30 days. A county without a juvenile detention center within 40 miles of the county seat or without available space for new juveniles may contract with private juvenile detention providers or with the state juvenile correctional facilities to house juveniles from that county (WLFB, 2007).

The Department of Corrections (DOC)’s Division of Juvenile Corrections operates three secure juvenile correctional facilities, one adventure-based program, and community programs. Typically, a juvenile who commits a serious offense, one that would result in a six-month sentence for an adult, or who is considered a threat to public safety is placed in one of these secure facilities (WLFB, 2007). The Wisconsin Department of Health and Family Services operates four secure juvenile mental health facilities. State and federal laws regulate the treatment of juveniles within these facilities. Wisconsin participates in the federal Juvenile Justice and Delinquency Prevention Act, which provides additional funding for county programming if the state complies with certain provisions regarding the treatment of juvenile delinquents (Moelter, 2008; U.S. Juvenile Justice and Delinquency Prevention Act [USJJDP], 2002).³ Of the \$174.6 million allocated to the juvenile justice system, \$85.8 million funded counties through Community Youth and Family Aids, and \$46.4 million funded state correctional facilities (WLFB, 2007). See Appendix B for additional information on juvenile correctional facilities.

³ The U.S. Office of Juvenile Justice and Delinquency Prevention (JJDP) requires that states meet four requirements: 1) remove status offenders from juvenile detention and juvenile correctional facilities, 2) maintain “sight and sound” separation of adjudicated delinquent juveniles from adults prisoners, 3) reduce disproportionate minority contact, and 4) remove juveniles from county jails unless there is a separate juvenile section (Moelter, 2008; USJJDP, 2002; WLFB, 2007).

Programming and Treatment

For juveniles placed in state-controlled juvenile correctional facilities, a number of services and educational opportunities are available. Ethan Allen School, Lincoln Hills School, and Southern Oaks Girls School employ 56 teachers, guidance counselors, and school psychologists and offer educational programming for juveniles with a wide range of educational backgrounds. Juveniles detained at these institutions may earn high school credits that apply toward graduation (WLFB, 2007). Of the 525 juveniles detained in 2006, 50 percent participated in these institutions' special education programming (WLFB, 2007). Other available services and programming include vocational training; alcohol and other drug treatments; individual, group and family counseling; mental health services; recreational activities; trauma and parenting skills groups; anger management; the serious sex offender program; mentoring programs; and restorative justice (WLFB, 2007; Jackson, 2008).

A comprehensive list of programming and treatment is not available for county-controlled detention facilities.

Transfer Law and Options

For juveniles who commit serious offenses, the judge may determine that standard dispositional options are inadequate to serve the interests of the juvenile and to meet public safety concerns. The Serious Juvenile Offender Program and judicial waiver are two options available to circuit court judges for cases that meet specific criteria.

Judicial Waiver

Judicial waiver allows a circuit court judge to transfer a juvenile to adult court if that juvenile is accused of committing a serious offense. Appendix C outlines the conditions that allow petition for judicial waiver include age at the time of the crime, the nature or seriousness of the crime, and prior record of adult criminal offenses or delinquency. The circuit court judge bases the decision to waive the juvenile into adult court on these criteria and on the "best interests" of the juvenile and public. If the judge orders the waiver, the case is transferred to a district attorney to proceed in adult criminal court, where adult criminal penalties may apply (Wis. Stats. § 938.18(6)). See Appendix D for the annual number of judicial waiver cases.

Reverse Waiver

An adult criminal court judge may determine that a juvenile offender who committed a serious crime that would normally lead to adult court would

be better served by the juvenile court system and use a reverse waiver to return the suspect to juvenile court (WLFB, 2007).⁴

A 2007 case in Portage, Wisconsin, illustrates the reverse waiver and what can happen when a teenager is automatically waived into adult court because he or she is accused of a serious offense. Fifteen-year-old Felicia Garlin, along with three adults, was charged in Columbia County adult court with killing her mother, Tammy Garlin, and physically abusing her 11-year-old brother. The three adults and Felicia Garlin allegedly kicked, burned, and strangled Tammy Garlin until she died. Felicia's brother was allegedly mistreated in a similar manner and was forced to stay in a closet (State v. Felicia Mae Garlin 2007).

Because of the seriousness of the charges and her age, Felicia Garlin was automatically waived to the adult justice system. On November 14, 2007, however, the court granted the prosecuting attorney's request to transfer Felicia back to the juvenile court through reverse waiver. The prosecuting attorney requested reverse waiver as the result of plea negotiations with Felicia's attorney. Given the case's high profile and the seriousness of the charges, the prosecuting attorney likely agreed to Felicia's reverse waiver only because she could not legally justify keeping her in adult court. Now in the juvenile system, Felicia's case is confidential, so it is impossible to know her specific outcome (Krysiak, 2007, November 15).

We present the Garlin case to suggest the complexity of waiver law and the need for a greater understanding of waiver use and criteria adopted for its application. While this case may seem a clear example of a juvenile who should be tried in adult court, her age and questions about her moral capacity demonstrate the moral and legal difficulties that arise in judging the appropriate use of waiver.

Serious Juvenile Offender Program

The Serious Juvenile Offender Program is an additional option for juveniles 14 and older who commit serious offenses that would be felonies if committed by an adult, for juveniles 10 and older who commit serious offenses, and for whom the court determines the program is the only appropriate placement (Wis. Stat. § 938.34 (4h); Tubbs, 2007, October 19).⁵ The program ensures that juveniles

⁴ All three of these conditions must be met for the adult criminal court to enact reverse waiver: adequate treatment is not available in the criminal justice system for the convicted juvenile, transferring the case to juvenile court would not lessen the 'seriousness of the crime', and adult court jurisdiction would not prevent the juvenile or other juveniles from committing similar offenses (WLFB, 2007).

⁵ The Serious Juvenile Offender Program applies to a juvenile 14 or older who committed an eligible felony or to a juvenile 10 and older who committed first-degree intentional homicide (Wis. Stat. § 940.01), first-degree reckless homicide (Wis. Stat. 940.02), or second degree intentional homicide (Wis. Stat. § 940.05). (Tubbs, 2007, October 19).

receive education and assistance that is appropriate to their ages while keeping them incarcerated for the mandated period of time (Tubbs, 2007, October 19).⁶

Through the Serious Juvenile Offender Program, the Department of Corrections selects one or more of these treatment options, as determined appropriate for the sentenced juvenile:

- Juvenile correctional facility or secured residential care center placement
- Alternative care placement that includes secured care, residential care centers, group homes, foster homes, and treatment foster homes
- Intensive supervision that includes electronic monitoring, mental health and drug-and-alcohol-abuse treatment and services, community services, and education and employment services (WLFB, 2007)

Adult Criminal Court

Juveniles subject to original adult court jurisdiction and waiver to adult court proceed through the adult criminal court process as outlined below, unless they are waived back to juvenile court through reverse waiver. See Appendix E for legal conditions for original adult jurisdiction.

Initial Contact

The police make initial contact by stopping and questioning an individual, or through the reporting of an offense.

Arrest

The police arrest the individual if they have probable cause to believe that he or she committed an illegal act. The individual is then taken into custody, and the police refer the case to the district attorney's office in a police report.

District Attorney Review

Based on the police report, a district attorney determines whether to file a criminal complaint with specific charges, declines to file, or defers to a later date (deferred prosecution).

Initial Appearance and Preliminary Hearing (felony cases only)

Within a few days of arrest, the individual, represented by counsel, has an initial appearance before a judge who reviews the charges and sets bail. In misdemeanor

⁶ The Serious Juvenile Offender Program allows for supervision for five years if the juvenile's offense could be considered a Class B felony or until age 25 for offenses that could be considered a Class A felony (WLFB, 2007).

cases, the defendant also enters an initial plea. In felony cases, a date is set for the preliminary hearing where the defendant enters an initial plea. Additionally, at the preliminary hearing, the district attorney's office must convince the judge that there is enough evidence to believe the defendant committed a felony.

Trial

After several pre-trial hearings, the defendant's case goes to trial where a judge or a jury determines whether the defendant is guilty beyond a reasonable doubt.

Sentencing

If the defendant is found guilty or if he or she enters a guilty plea, the judge imposes a sentence at a separate hearing.

Guilty Pleas

Although the aforementioned process is available to all individuals, the majority of cases in which charges are filed ultimately result in guilty pleas, which may be entered at any time up until trial. Once a guilty plea is entered, the case automatically moves to the sentencing portion of the adult criminal court process (Dane County District Attorney's Office, 2006).

Rationale for Policy Change

To assess whether a policy change is advisable, a program evaluation to document whether current policy achieves intended goals and a policy analysis to compare outcomes of current policy against probable outcomes of alternatives are desirable. Had time allowed and data been available, this report would include such analyses. Our one-semester time frame and the difficulty in accessing data on juveniles limit the scope of this report. Nevertheless, our review of the system and data we present suggest problems with Wisconsin's waiver policy that a fuller analysis could explore.

Crime Rates and Expenditures

When compared to the rest of the country, Wisconsin is a relatively low-crime state. In 2005, the number of index crimes was lower in Wisconsin than in all but seven states and the District of Columbia, ranking 44 out of 51 for violent offenses.⁷ The 2005 rate continues Wisconsin's history of relatively low crime rates and is consistent with the low crime rate in Midwestern states in general (Uniform Crime Reporting Data [UCRD], 1994-2004; Wisconsin Office of Justice Assistance [WOJA], 1997-2006).

Wisconsin's position relative to other states is not as favorable when one looks at changes in crime rates over time. By 2005 Wisconsin's crime rate had declined to about 87 percent of its mid-1990s peak, a reduction that was less than that of only 12 other states. In comparison, the Midwest had a 66 percent drop, while the United States overall declined to 62 percent. While Wisconsin reports relatively low levels of crime, during a period of declining crime rates across the United States it reports smaller declines (UCRD, 1994-2004; WOJA, 1997-2006).

Juvenile arrests tell a similar story of decline, but at lower rates than for the nation as a whole. Arrests of juveniles for violent crimes in Wisconsin in 2005 had dropped by 50 percent from the 1994 peak, compared to a national decline of 64 percent from the 1993 national peak. In 1994, there were 2,421 juvenile arrests per every 100,000 juveniles in Wisconsin, considerably more than the national peak of 1,639 juvenile arrests per 100,000 juveniles. (UCRD, 1994-2004; WOJA, 1997-2006).

Wisconsin corrections facilities housed approximately 3,980 adults and juveniles in 1980 at an expense of \$221 million (all dollar amounts in this discussion are adjusted for inflation to 2008 dollars). By 2006, the Wisconsin state prison population had grown to 22,069, an increase of 445 percent. 2005 total expenditures for corrections were \$1.03 billion, an increase of 467 percent from 1980, moving

⁷ We use 2005 rates here. 2006 data indicate that Wisconsin's crime rate hit a new peak. Whether this was an anomaly will not be known until 2007 crime data are available.

the per-inmate corrections expenditure ranking of Wisconsin from the 26th highest in 1980 to the 16th and the total corrections spending ranking from 17th to the 14th highest. (WLFB, 2007-2009).

Budgets for corrections and criminal justice have grown not only in annual expenditures but also as a percentage of the state budget. This accounted for by the Department of Corrections in 1980 was 1.1 percent of the state's budget and grew to 3.26 percent in 2006 (WLFB, 2007-2009; U.S. Department of Justice, n.d.). Total justice-related expenditures have risen modestly, from 3.7 percent to 5.7 percent of the state's budget, but with that growth accounted for entirely in Corrections, which has grown from 2.1 percent of the Wisconsin Budget to 4.1 percent in 2002 (WLFB, 2007-2009).

Recidivism

Wisconsin's juvenile arrest rate, while decreasing, has done so at a slower rate than the rest of the nation. This has occurred at the same time that per capita corrections spending has increased faster than it has for the nation as a whole. It would appear that the state is realizing diminishing returns from increased corrections expenditures. High recidivism rates among 17-year-old offenders placed under the jurisdiction of the adult criminal justice system also raise questions about gains realized from greater expenditures.

A 2008 Legislative Audit Bureau report estimated that among 17-year-old offenders in the jurisdiction of adult criminal courts, more than 43 percent were incarcerated again within three years of release. This compares to 16.2 percent of juveniles 16 or younger and 18.5 percent of adults. While these 17-year-olds may have characteristics that make them more prone to repeat offenses or have needs that cannot be met under the current system, their substantially higher rates of recidivism indicate a failure of rehabilitation programming in the adult correctional system. We were unable to find estimates of recidivism rates for juveniles (age to 10 and 15) waived to adult courts. However, the differences in rates between 17-year-olds and older adult offenders suggest that the current treatment options available in the adult corrections system are inadequate for the rehabilitation of younger offenders (WLAB, 2008).

Moral Culpability and Neurobiological Research

The juvenile justice system once adopted a paternalistic view that delinquent adolescents were childlike, immature, and able to be rehabilitated. Judicial intervention could lead them away from crime and help them become productive.⁸

⁸ The United States has recognized differences between juveniles and adults since 1825 with the opening of the New York House of Refuge, a strictly run institution that provided food, shelter, and education for petty juvenile criminals and poor children (Fox, 1970). The intent was not exclusively to punish prisoners but also to nurture and reform delinquent juveniles. This type of

The informal rules of this system allowed for individually tailored responses to delinquency based on the needs of the offender. With the 1970s and 1980s came the attitude that adolescents had the ability to know right and wrong and make correct moral judgments. The belief that juveniles who commit adult crimes should be subject to adult punishment led to a shift away from rehabilitation, toward a more punitive system for juvenile offenders (Scott & Grisso, 1998).

The paternalistic view in part was supportive of the argument that adolescents have limited moral culpability in the commission of crimes, that they cannot be held responsible for their actions in the same way as adults. This argument is reflected in the court system and in developmental research. In Wisconsin, judicial waiver and reverse waiver most directly addresses the question of moral culpability, albeit in a limited manner. The legal concept of “competency to stand trial” also addresses a juvenile’s moral responsibility in an indirect way. Criminal defendants cannot be found guilty or adjudged delinquent unless they possess the mental capacity to stand trial. Furthermore, a 2005 Supreme Court case declared the death penalty to be unconstitutional for juveniles because today’s “evolving standards of decency” recognize a juvenile’s diminished capacity to be held fully accountable for her or his actions (*Roper v. Simmons*, 543 U.S. 551, 112 S.W. 3d 397 [2005]). While both of these legal exceptions address moral culpability to a degree, the first refers only to competency during a trial (and not during the underlying act) and the second relates only to the appropriateness of a juvenile’s sentence and not whether a juvenile is morally responsible for her or his deviant behavior.

The Wisconsin Legislature has addressed the question of a juvenile’s moral culpability, most recently in 1995 when it lowered the age of adult court jurisdiction, lowered age guidelines for waiver into adult court, and expanded the type of offenses in which waiver could be applied. An examination of these legal changes, the legislative history, and the Juvenile Code’s updated statutory intent suggests that the Legislature determined juveniles as a class to be more morally culpable than previously considered. Traditionally, however, the creation of juvenile courts and their use of distinct terminology represent the legal and political judgment that juveniles were actually less morally culpable than adults. The 1995 legal code changes do not represent the only fluctuation in legislative thinking on this question; legal and political judgments on moral culpability have frequently changed and differences in thinking on this issue often compete for prominence (Melli, 1996).

Moral culpability is addressed in the legal arena only to a limited degree. Recent neurobiological research, however, suggests that developmental capacity for

institution lasted until the 20th century when rehabilitation took an ever more prominent role; the “treatment of choice” was placing children in better homes. Juvenile courts first emerged in 1899 in Illinois and followed a “non-adversarial clinical—therapeutic model” where paternalistic judges focused on protecting “vulnerable juveniles and rehabilitating offenders” (Melli, 1996, p 379).

moral responsibility is legitimately part of the legal analysis (*Roper v. Simmons*, American Medical Association Amicus Brief, 2005). This research suggests that adolescents perhaps should be held less morally culpable than adults. The conventional wisdom is that juveniles are especially prone to impulsive and risky behavior due to a number of factors, including fluctuating hormone levels, inexperience, and peer pressure. All of these explanations have empirical support (Martin et al., 2002; Moffitt, 1993). Recent technological advances in magnetic resonance imaging throughout have allowed researchers to view images of the brain in various stages of development. Studies using this technology have discovered that the prefrontal cortex, an area of the brain believed to control impulsive behavior and rational thought, is not fully developed until individuals are in their early 20s (Giedd, 2004). Preliminary research causally links prefrontal cortex activity to intentional behavior (Blakemore, 2007). These findings have prompted reconsideration of the concept of adulthood. While developmental psychology has shown us that adolescents are able to discern the risks and potential consequences of dangerous behavior, newer evidence shows that delayed development of higher brain regions limits adolescents' ability to regulate their behavior accordingly.

While factors such as peer pressure, inexperience, and fluctuating hormones all play a role in adolescent decision-making, we must consider the possibility that adolescents are not biologically capable of rational action at "adult" levels. The conclusion drawn from developmental research is that adolescents are more capable than children of acting morally and rationally, but not as capable as fully developed adults. Age has been used as a proxy for defining adulthood, yet we have evidence that development is continual and takes longer than we once thought. The current system of juvenile justice in Wisconsin does not conform to our new understanding of adolescent development, and this may point to potential solutions to the problems of recidivism and failure to rehabilitate young offenders. We will discuss these solutions in terms of how well they achieve goals of justice, equity, efficiency, operability, and scientific validity.

Criteria for Evaluation

In assessing the key aspects of Wisconsin's juvenile justice system and the use of judicial waiver and reverse waiver, we evaluate the status quo and explore two alternatives: revision of Wisconsin's transfer laws and blended sentencing. Our evaluation uses these criteria: justice, equity, efficiency, operability, and scientific validity. We indicate where we are unable to make an assessment, and we recommend areas for further analysis.

Goal 1: Justice

Justice is defined by the extent to which the policy alternative is consistent with legal principles embodied in statutes, case law, and historical analyses of the juvenile justice system in Wisconsin and other states. We identify four principals within the justice goal: public safety, punishment, rehabilitation, and consideration of moral capacity.

According to the Wisconsin Juvenile Justice Code Wis. Stats §938.01(2)(a)-(c), the three main purposes of juvenile justice are to:

1. "protect citizens from juvenile crime" (public safety),
2. "hold each juvenile offender directly accountable" (punishment), and
3. develop "competency in the juvenile offender" (rehabilitation).

We draw our fourth principal from the 2005 U.S. Supreme Court case *Roper v. Simmons*: consideration of each juvenile offender's moral capacity.⁹

Goal 2: Equity

Wisconsin's juvenile justice system affects demographic groups in statistically different ways. The Office of Justice Assistance reports highly disparate levels of minority contact with the Wisconsin justice system, including significantly higher probability for secure detention and confinement of minority juveniles in the state. Of the two counties that had information available on juvenile waiver, the results were contradictory: Brown County demonstrated near equal treatment, while minorities in Rock County were almost four times as likely to be transferred to adult court than were their white counterparts (Wisconsin Office of Justice Assistance [WOJA], 2007, April).

We will evaluate the alternatives to determine what impact, if any, each would have on the extent to which racial disparities occur at different contact points (i.e., intake, adjudication, and disposition).

⁹ For an argument supporting the legal definition's realignment, see the American Medical Association's amicus brief in *Roper v. Simmons*: U.S. Briefs 633; 2004 U.S. S. Ct Briefs LEXIS 431.

Goal 3: Efficiency

Wisconsin's juvenile justice system has become more expensive and less efficient in terms of lowering incarceration and recidivism rates. To contain long-term costs without increasing crime rates, Wisconsin must increase efficiency. Our evaluation of system efficiency takes into account recidivism rates, system costs, and service duplication.

Goal 4: Operability

For a juvenile justice system to function efficiently and achieve goals of justice and equity, it must be supported by its employees and other stakeholders (institutional support) and provide the jails, prisons, treatment centers, courthouses, and other capital resources (institutional capability) to meet sentencing, incarceration, and treatment needs. It cannot consume state resources to the degree that the public begins to resist further funding or reasonable policy changes (cost).

Goal 5: Scientific Validity

Evaluation of the alternatives in terms of scientific validity will consider the degree to which the juvenile justice policies conform to current understanding of adolescent and young adult neurobiological development.

Evaluation of the Status Quo

Wisconsin's juvenile justice system uses a combination of statutory regulation and judicial discretion to prosecute juveniles ages 10 to 16 who commit serious offenses. Some cases involving juveniles, due to the juvenile's age and the nature and seriousness of the offense, automatically originate in adult court jurisdiction, as defined by Wisconsin statute 938.13. In other cases, circuit court judges use discretion to determine if a juvenile who committed a serious offense should be waived to adult court jurisdiction or stay in the juvenile system. The Serious Juvenile Offender Program is one dispositional option within the juvenile system to detain, supervise, and offer treatment for the most serious juvenile cases. In this section we assess how Wisconsin's juvenile justice system in general meets the five goals.

Goal 1: Justice

The Wisconsin juvenile justice code serves the goals of public safety and of punishment and rehabilitation of juvenile offenders. This is evident in the statutes that guide judicial decisions regarding juveniles who commit serious offenses, in sections that define waiver criteria and eligibility for the serious juvenile offender program. Only a U.S. Supreme Court case, and not Wisconsin statute, encompasses the legal principle that a juvenile's moral capacity should be considered if he or she is to be held accountable for a crime (Wis. Stats. § 938.01).

Goal 2: Equity

Minority juveniles have a higher probability of police contact, arrest, and of secure detention and confinement (WOJA, 2007, April) than their white counterparts. Recent findings that Wisconsin has a greater percentage of African-Americans incarcerated than any other state in the nation (Dixon, 2005) suggest that racial disparity in the juvenile justice system is an important issue that needs investigation.

Goal 3: Efficiency

As referenced earlier, recidivism rates for 17-year-olds under adult criminal court jurisdiction are high. We were unable to determine recidivism rates for juveniles (age 10 through 16 years) waived to adult court, due to our inability to obtain juvenile court records. We do observe that service duplication is high; 16 counties provide duplicative services to juveniles such as detention and programming. Wisconsin is one of only a dozen states that maintain county-administered rather than state-administered juvenile detention centers. System costs are high and have grown at a faster rate compared to other state programs and other state correctional spending. This duplication of services among multiple levels of government may be one reason.

Goal 4: Operability

Institutional support is a function of support from employees at all levels who deal with juveniles as they pass through the justice system. We did not explore employee attitudes or support for existing practices. This issue needs further research. The status quo requires no change or additional resources for institutional capability. Finally, in terms of operation costs, we found an absence of easily accessible data on juvenile system budget costs across responsible units; this issue requires further analysis.

Goal 5: Scientific Validity

Various programs based on different treatment models are used with juveniles at state correctional facilities, each considering individual mental health and development issues. Juveniles waived into the criminal court system do not have access to age-appropriate treatment and the potential implications of neurobiological research on moral capacity and development are not considered in what treatment is available.

Alternatives to the Status Quo

All states allow for prosecution and sentencing of juveniles in adult criminal court under some circumstances, through transfer laws, blended sentencing, or some combination of both. We next discuss potential changes to Wisconsin's waiver law, then explore how Minnesota uses blending sentencing.

Transfer Laws: Revising the Wisconsin Model

Transfer laws define categories of juveniles who may or must be tried in criminal court. Transfer laws come in three forms. The first is judicial waiver, in which juvenile court judges clear the way for criminal prosecutions by waiving jurisdiction over individual juveniles. The second is direct file, in which prosecutors decide whether to initiate cases in juvenile or criminal court. Statutory exclusion provisions, the third form, grant criminal courts original jurisdiction over certain classes of cases involving juveniles. The three types of transfer laws are not mutually exclusive and are often used in concert (Griffin, 2007). Wisconsin uses a combination of judicial waiver and statutory exclusion.

Forty-five states, including Wisconsin, use a judicial waiver. A case against a juvenile must originate in juvenile court; it cannot be channeled elsewhere without a judge's formal approval. Most of these states, including Wisconsin, leave the decision largely to the judge's discretion, though 15 states set presumptions that favor waiver in certain cases, typically felonies, violent crimes, and crimes involving firearms. Additionally, four states that allow discretionary and presumptive judicial waiver have set conditions under which a waiver is mandatory. An advantage of mandatory waiver laws is that they streamline the justice process, attempting to ensure equal treatment based on age. The acceptability of mandatory waiver depends on the acceptance of implied assumptions: that all adolescents of the same age have similar levels of maturity and responsibility, that decisions are made on objective factors such as maturity and an individual's histories (family, criminal, rehabilitation, treatment), and that irrelevant factors such as race or gender do not overtly or subconsciously influence decisions (Griffin, 2007).

Ten states use discretionary and mandatory waiver, while Connecticut is the only state that primarily uses a mandatory waiver. In Connecticut, any child at least 14 years old who is charged with a capital felony, class A or B felony, or arson murder is automatically transferred from juvenile to superior court for arraignment. This mandatory transfer is not open to opposition by the juvenile's attorney. Massachusetts, Montana, Nebraska, New Mexico, and New York are the only states that do not rely on some form of judicial waiver, primarily using direct file or statutory exclusion to determine whether a youth will be tried in juvenile or criminal court (Griffin, 2007). Appendix D lists juvenile justice arrangements involving waiver laws and blended sentencing.

Two provisions in Wisconsin, reverse waiver and “once waived, always waived,” are common to other states. Twenty-five states use reverse waiver to allow a juvenile being prosecuted in adult criminal court to petition to have the case transferred to juvenile court for adjudication or disposition. Fifteen of the states with reverse waiver also require that a juvenile who has been waived into criminal court be automatically waived for any future offense. Nineteen states, however, have enacted the “once waived, always waived” provision without allowing reverse waiver (Griffin, 2007).

Options available to Wisconsin in revising the waiver laws include increasing waiver justification thresholds, increasing judicial guidance for waiver, increasing court information collection and public dissemination, and expert determination of capacity for waiver decisions.

We consider revisions to the waiver law in the context of the five policy goals, justice, equity, efficiency, operability, and scientific validity.

Goal 1. Justice

Judicial waiver laws can be used in many ways. Taken in isolation, waiver is a tool that gives judges discretion when juvenile offenders have moved past the limits of the juvenile system. Judges use waiver when the needs for “public safety” outweigh other concerns, when they deem higher levels of “punishment” are necessary due to the nature of the crime or the history of the offender, or when the offender has failed to respond to rehabilitation in the juvenile system. Waiver laws are, however, only tools and not hard guidelines — therefore they do not require judges to consider moral capacity.

Options to revise waiver thresholds include requiring consideration of maturity and moral capacity. Wisconsin has age thresholds on waiver petition, but there are no thresholds against which judges are asked to gauge the “seriousness” of a crime, individuals’ histories, or whether juveniles have sufficient mental capacity to stand trial.

Wisconsin’s statutory guidance for judicial waiver is vague. Making the criteria for judicial waiver more clear and instructive would give judges more guidance on factors relevant to waiver decisions. Improved information systems on judicial decisions would provide judges with tools to evaluate themselves against other judges’ use of waivers. Better coordination of information among the several justice systems could lead to policy change that helps Wisconsin attain justice. A coordinated information system could increase the availability and use of experts and their knowledge in determining a juvenile’s moral capacity to stand trial as an adult.

Goal 2: Equity

Studies show that the waiver use has disproportionately moved minorities and males to criminal courts (USOJJDP, 2000, August). Even if used as intended,

waiver laws are based on age as a threshold for applicability. While age is a generally accepted means of defining maturity, it is an imperfect measure.

Revision of waiver thresholds alone would not have any effect on racial disproportionality if practices in their application are not changed.

Greater clarity in judicial guidance may provide for more equitable decisions across courts and juveniles, and increased awareness of guidelines in determining or justifying waiver could reduce unintentional judicial bias.

Court information systems are underutilized. The collection of demographic information for waiver decisions and availability of aggregate data on judges' decisions publicly or within bounds of confidentiality requirements, would provide evidence on whether waiver decisions are based on justifiable and defensible factors.

Goal 3: Efficiency

Waiver laws attempt to increase efficiency by moving certain offenders to a system deemed to be better suited to the offender and offense. When used in this manner, waiver laws can reduce recidivism, one of our measures of efficiency. However, this is achieved only if judges use waiver laws appropriately with regard to juveniles' development stage and potential for rehabilitation. High prison costs and high recidivism rates among 17-year-old offenders in Wisconsin suggest waivers are inefficient.

Revision of age thresholds for waiver is likely to have little effect, since, we argue, age alone is a poor measure of moral capacity. Clarifying judicial guidelines for waiver would allow judges to reach more appropriate decisions.

The impact of increased information on waiver use would allow for improvements and increased efficiencies. While a relatively small number of cases are waived to adult court each year in Wisconsin (approximately 300 out of 45,000 individual offenses), the outcomes for these juveniles and the roles waiver played in their cases are important to understand. An information records system should be mandatory, comprehensive, and supported by sufficient resources for analysis. Elements of such a data information system exist in state agencies, including the Department of Corrections, Office of Justice Assistance, and Consolidated Court Automation Programs. The consolidation of these information systems along with mandatory reporting on key items would allow analysis of ways the system could be improved and of the effects of judicial policies on juveniles in the adult court system (Wisconsin Court System, 2003-2007).

Goal 4: Operability

Waiver is used in Wisconsin and 44 other states in some form. Reforms to the waiver system are likely to require additional funds, including in developing an expanded and consolidated information collection systems.

Goal 5: Scientific Validity

The waiver provision allows a judge to decide whether a juvenile should be moved to adult court. It is the judge — a legal expert — who makes a decision about the maturity or moral capacity of the juvenile, rather than child development experts, including psychologists and child and family social workers.

A major flaw underlying the application of age-based guidelines to juvenile offenders is that maturation does not occur incrementally and uniformly but gradually and with great variation across individuals. Judicial guidelines could allow for the consideration of broadly accepted developmental criteria and neurobiological research.

Blended Sentencing: The Minnesota Model

Blended sentencing laws focus not on the judicial forum but on the correctional system (juvenile or adult) to which the serious juvenile offender is sanctioned or sentenced. Blended sentencing laws are a set of legal procedures courts employ to impose sanctions not typically available to them and to allow juveniles one last chance at success in the juvenile system. In a blended sentencing system, a juvenile first receives an adult sentence from an adult court; the sentence is stayed or suspended; and then the juvenile receives a juvenile disposition from a juvenile court. The juvenile disposition remains in effect unless a court determines the juvenile violated the disposition, in which case the adult sentence is imposed. Blended sentencing is not usually available for all offender classes. In Minnesota, for example, only juveniles charged with felonies (other than intentional homicide) are eligible for blended sentencing (Minnesota Rules of Juvenile Procedure: Delinquency, Juvenile Petty Offenses and Juvenile Traffic Offenses, 19.01).

We consider Minnesota's system of blended sentencing in the context of the five policy goals, justice, equity, efficiency, operability, and scientific validity.

Goal 1: Justice

In Minnesota, blended sentencing may not be imposed unless a judge determines that it serves to increase public safety. Theoretically, the sentence and the disposition of the case should address punishment in proportion to the seriousness of the offense. A 2002 study of Minnesota, however, found that serious offenders were more likely to receive a blended sentence than to be transferred to adult court, while some lesser offenders were sent to the adult system. Thus, "punishment" appears to receive more limited consideration in judges' decisions. Blended sentencing considers "rehabilitation" in two ways. It allows more juveniles to pass through the juvenile court system, where more resources are available, and the stayed adult sentence allows the juvenile one last chance to avoid the adult system. Moral capacity also receives limited consideration in that offense severity is the primary consideration of eligibility in the Minnesota model (Cheesman & Montgomery, 2002, December 3; Feld, 1995).

Goal 2: Equity

A 2002 evaluation of Minnesota's blended sentencing model found that race and geographic location were affecting how blended sentences were used. This may be the result of the discretionary nature of blended sentencing (Cheesman & Montgomery, 2002, December 3). However, judicial guidelines, information data systems, and coordination across judicial systems should increase the likelihood of more equitable treatment by reducing bias.

Goal 3: Efficiency

More research is needed to properly assess the efficiency of blended sentencing. Preliminary results from Minnesota indicate that recidivism rates for blended sentence juveniles are lower, although more research is needed. Minnesota has not addressed "system costs" or "service duplication costs" associated with blended sentencing, probably because only 3 percent of juveniles receive blended sentences. Nevertheless, system costs and service duplication might increase since two court proceedings would be necessary to craft an adult sentence and a juvenile disposition. This creates work for prosecutors, defense attorneys, judges, and the court staff (Cheesman & Montgomery, 2002, December 3; Feld, 1995), although more appropriate and effective sentencing could offset these effects.

Goal 4: Operability

In Minnesota, blended sentencing appears to have high institutional support in that no particular set of key actors oppose it publicly. Blended sentencing has not yet changed "institutional capability" because few juveniles have received blended sentences. For this reason, juvenile justice costs have not changed (Cheesman & Montgomery, 2002, December 3; Feld, 1995).

Goal 5: Scientific Validity

Blended sentencing is more consistent with neurobiological research than is Wisconsin law, in that blended sentencing is available to adults as old as 21. However, judges, not development experts, determine whether blended sentences are appropriate, although the introduction of blended sentencing in Wisconsin could specify otherwise (Cheesman & Montgomery, 2002, December 3; Feld, 1995).

Conclusions and Recommendations

Wisconsin's judicial waiver law, with thresholds based primarily on age and the nature of the crime, fails to take into account variations in maturity levels, moral capacity, and treatment needs of an individual offender, whether considered a juvenile or adult under the current system. The cost of inappropriate use of waiver laws is high in that failure to place an offender in the appropriate venue potentially has long-lasting costs for the individual and the public. We suspect that the inability of the adult correctional system to meet the treatment needs of younger offenders plays a major role in the high recidivism rate identified by the Legislative Audit Bureau. Attempts at juvenile justice reform should refocus efforts away from the trial process, complex though it is, and expand the available treatment options for young offenders. Wisconsin's Serious Juvenile Offender Program and blended sentencing options available in Minnesota and other states offer ways for improving the treatment of juvenile offenders.

Any reform intended to allow greater discretion in the disposition of juvenile offenders, however, would first require a fundamental shift in how juvenile treatment facilities are funded. The most recent attempt to alter juvenile justice laws, introduced in 2007 as Senate Bill 401, was defeated largely because it would have resulted in a major shift in costs onto the counties. Any attempt at policy change would likely meet the same fate unless the funding structure is reformed as well.

By its nature, juvenile justice policy requires decision-makers to address moral questions whose answers may lack public consensus. Furthermore, there will always be individuals that the juvenile justice system appears to treat inappropriately. Predicting treatment outcomes for individual offenders, of course, is always an uncertain exercise, but one that is necessary in making placement decisions. Thus, decision-makers and the public must become comfortable with ambiguity and uncertainty. Ongoing public education and public input into juvenile justice policy, if done in a deliberate manner, likely will provide broader support for changes to the current system when difficult cases arise (Gutmann & Thompson, 1997).

Time constraints prevented us from assembling a more formal policy analysis based on specifically defined alternatives. We have, however, concluded that a number of problems exist within Wisconsin's juvenile justice system. These deserve further attention. Specifically, the Joint Legislative Council should request an audit of the treatment of juveniles in the justice system, building on the 2008 Legislative Audit Bureau report that investigates the underlying reasons for high rates of recidivism among 17-year-old offenders. The audit also should examine the effectiveness of rehabilitation programs in the juvenile and adult systems. We recommend that efforts continue toward improving data collection to allow for frequent performance evaluations of the juvenile justice system and that Wisconsin move to incorporate research on adolescent development into judicial guidelines.

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Appendix A: Juvenile Offender Treatment Options

Types of out-of-home-placements for adjudicated delinquent juveniles:

- Relative's home
- Non-relative's home (up to 30 days)
- Licensed foster home (up to one year)
- Licensed treatment foster home (up to one year)
- Licensed group home (up to one year)
- Licensed residential care center (up to one year)
- Juvenile detention facility or juvenile section of a county jail if facility is authorized by county board resolution (up to 30 days)
- County supervised residential care center (up to two years)
- Juvenile correctional facility or secured-care center or group home (up to two years)

Source:

Wisconsin Legislative Fiscal Bureau. (2007). Juvenile Justice and Youth Aids Program. Madison: Author. Retrieved April 21, 2008, from <http://www.legis.state.wi.us/lfb/Informationalpapers/58.pdf>.

Appendix B: Juvenile Correctional Facilities

Facility	2006-07 Funding	Standard Programs	Academic and Vocational Programs
Ethan Allen School	\$18,867,000	<ul style="list-style-type: none"> ● Individualized case planning ● AODA treatment ● Serious sex offender program ● Juvenile cognitive interventions ● Culturally specific services ● Individual, group and family counseling ● Anger management ● Intensive mental health services ● Alcoholics Anonymous ● Recreational activities ● Parenting groups ● Victim impact programs ● Independent living services ● Trauma groups ● Spiritual/pastoral counseling ● Mentoring programs ● Restorative justice 	<ul style="list-style-type: none"> ● Academic programs for range of grades ● LifeWorks Education program ● High school diploma program ● Special education services ● Library services ● Computer classes ● Human sexuality and health education ● Physical education and WIAA sports ● Vocational programs
Lincoln Hills School	\$15,426,000		
Southern Oaks Girls School	\$7,812,000		
SPRITE	\$531,000	<ul style="list-style-type: none"> ● Adventure-based programming 	
Mendota Juvenile Treatment Center	\$3,769,000	<ul style="list-style-type: none"> ● Mental health treatment 	
Total	\$46,407,000		
<p>Source: Wisconsin Department of Corrections (2008). "Type 1 Facilities." Division of Juvenile Corrections. Retrieved May 13, 2008, from http://www.widoc.com/index_juvenile.htm.</p>			

Appendix C: Criteria for Judicial Waiver Petition

A petition requesting the court to waive its jurisdiction under this chapter may be filed if the juvenile meets any of the following conditions.

A juvenile, 14 years or older, who is alleged to have committed the following offenses:

- Controlled substances: manufacture, distribution or delivery
- Sexual assault, first or second degree
- Kidnapping or hostage-taking
- Armed robbery or burglary
- Robbery of a financial institution
- Felony murder or second-degree reckless homicide
- Criminal gang activity equivalent to a felony if committed by an adult
- A juvenile, 15 years or older, who is alleged to have committed any violation of state criminal law

Sources:

Wisconsin Legislative Fiscal Bureau. (2007). Juvenile Justice and Youth Aids Program. Madison: Author. Retrieved April 21, 2008, from <http://www.legis.state.wi.us/lfb/Informationalpapers/58.pdf>.

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Appendix D: Juvenile Cases Waived into Adult Court

Total Juvenile Cases Waived into Adult Court 2003 to 2007						
	Pre-2003	2003	2004	2005	2006	2007
Number of Cases	Unknown	323	370	377	303	281
<p>Note: Number of cases is not a complete listing due to the voluntary nature of Consolidated Court Automation Programs.</p> <p>Source:</p> <p>Wisconsin Court System. (2003-2007). Year-end juvenile caseload summary: 2003-2007. Statewide Report. Retrieved April 21, 2008, from http://www.wicourts.gov/about/pubs/circuit/circuitstats.htm.</p>						

Appendix E: Juveniles Under Adult Court Jurisdiction

Juveniles under original adult jurisdiction are those who are:

- A juvenile placed in a state juvenile correctional facility, county juvenile detention facility or secure residential care center for children and youth who is alleged to have committed battery or assaults by prisoners as defined by Wisconsin statute.
- A juvenile age 10 or older who is alleged to have committed any of the following offenses as defined by Wisconsin statute:
 - First degree intentional homicide
 - First degree reckless homicide
 - Second degree intentional homicide
- A juvenile who is alleged to have violated any state criminal law if the juvenile court waived jurisdiction for a previous violation. Also known as “once waived, always waived.”

These juveniles are subject to adult criminal proceedings and penalties with following exceptions:

- Juvenile is younger than 15 may only be held in custody in a secure detention facility or juvenile portion of a county jail.
- If the criminal court transfers jurisdiction to a juvenile court under the reverse waiver, the juvenile is subject to juvenile procedures and dispositions.
- If the juvenile is found to have committed a lesser offense than the alleged offenses detailed above.
- If the court finds a juvenile age 15 or older has not attempted violations listed above and the court determines there is clear and convincing evidence that it would be in the best interest of the public and the juvenile to adjudicate the juvenile delinquent and impose a disposition rather than adult criminal penalty.

Source: Wisconsin Statutes, Chapter 938. The “Juvenile Justice Code.” Retrieved April 21, 2008, from <http://www.legis.state.wi.us/statutes/stat0938.pdf>.

Appendix F: Transfer Laws and Blended Sentencing Provisions

	Judicial Waiver			Direct File	Statutory Exclusion	Reverse Waiver	Once/ Always	Juvenile Blended	Criminal Blended
	Discretionary	Presumptive	Mandatory						
Total States	45	15	15	15	29	25	34	15	17
Alabama	x				x		x		
Alaska	x	x			x			x	
Arizona	x			x	x	x	x		
Arkansas	x			x		x		x	x
California	x	x		x	x	x	x		x
Colorado	x	x		x		x		x	x
Connecticut			x			x		x	
Delaware	x		x		x	x	x		
District of Columbia	x	x		x			x		
Florida	x			x	x		x		x
Georgia	x		x	x	x	x			
Hawaii	x						x		
Idaho	x				x		x		x
Illinois	x	x	x		x	x	x	x	x
Indiana	x		x		x		x		
Iowa	x				x	x	x		x
Kansas	x	x					x	x	
Kentucky	x		x			x			x
Louisiana	x		x	x	x				
Maine	x	x					x		
Maryland	x				x	x	x		
Massachusetts					x			x	x
Michigan	x			x			x	x	x
Minnesota	x	x			x		x	x	
Mississippi	x				x	x	x		
Missouri	x						x		x
Montana				x	x	x		x	
Nebraska				x		x			x
Nevada	x	x			x	x	x		
New Hampshire	x	x					x		
New Jersey	x	x	x						
New Mexico					x			x	x
New York					x	x			
North Carolina	x		x				x		
North Dakota	x	x	x				x		
Ohio	x		x				x	x	
Oklahoma	x			x	x	x	x		x
Oregon	x				x	x	x		
Pennsylvania	x	x			x	x	x		

	Judicial Waiver			Direct File	Statutory Exclusion	Reverse Waiver	Once/ Always	Juvenile Blended	Criminal Blended
	Discretionary	Presumptive	Mandatory						
Rhode Island	x	x	x				x	x	
South Carolina	x		x		x				
South Dakota	x				x	x	x		
Tennessee	x					x	x		
Texas	x						x	x	
Utah	x	x			x		x		
Vermont	x			x	x	x		x	
Virginia	x		x	x		x	x		x
Washington	x				x		x		
West Virginia	x		x						x
Wisconsin	x				x	x	x		x
Wyoming	x			x		x			

Source: Griffin, Patrick. (2007). National overviews. *State Juvenile Justice Profiles*. Pittsburgh: National Center for Juvenile Justice. Retrieved May 6, 2008, from http://www.ncjj.org/stateprofiles/overviews/transfer_state_overview.asp.