

*Examining  
the impact of  
prosecuting and  
incarcerating kids  
in Michigan's  
criminal justice  
system*

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# YOUTH BEHIND BARS

*By*  
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*and*  
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STALEY

## Methodology & Data Limitations

MCCD used qualitative and quantitative data sources to inform this report. A comprehensive literature review was conducted on the history, laws, and policies relevant to youth tried as adults in Michigan. Additionally, the authors interviewed 52 stakeholders and government officials from the Michigan Department of Corrections (MDOC), Michigan State Court Administrative Office (SCAO), local courts, human service agencies, advocacy organizations, and families.

The findings herein are limited to those individuals who entered or were under the jurisdiction of Michigan's criminal justice system from 2003 to 2013 for an offense committed before age 18.

The report relies upon three primary sources of data: the 2003 through 2013 SCAO Caseload Reports and the MDOC's Offender Management Network Information (OMNI) and Offender Tracking Information System (OTIS). All information from OTIS is a point-in-time reference as of November 21, 2013. Earlier research conducted by the University of Michigan on cases of Michigan youth tried as adults from 1985 to 2004 is also heavily cited.<sup>1</sup>

There are some limitations to the data. First, data reporting is inconsistent across the state. Case-level information is maintained by local courts and self-reported to the SCAO annually. Due to local variability in data tracking, the aggregate data noted in the report should be considered an estimation. Secondly, the courts, law enforcement, jails, community corrections and the MDOC each use different information systems, and they do not share data across systems; this can result in inconsistencies. Lastly, the qualitative data gathered through interviews reflect only individual perspectives, not agency positions. The recommendations in this report solely reflect MCCD's position on the issues as determined by our understanding of the data and interviews.

## Acknowledgements

MCCD is grateful to the many collaborators on this project. First, we extend our thanks to the individuals who participated in interviews for this report and to the Michigan Department of Corrections, the Michigan State Court Administrative Office, and local courts for assisting with data collection. Your experience and diverse perspectives offered tremendous insight and strategies for addressing such complex issues. Next, we appreciate the guidance from our research advisory team, specifically Dr. Dorinda Carter, Associate Professor in the Department of Teacher Education and African American and African Studies Program at Michigan State University, for help with data analysis. Many thanks to Dr. Francisco Villarruel, Alison Shames, and Benjamin Chambers for their assistance in editing. The inspired design and layout is a Redhead Design Studio creation. Finally, this report would not have been possible without the generous support from the W.K. Kellogg Foundation, to whom we are incredibly thankful.

We dedicate this report to the thousands of young people, their families, and their communities, who have endured tremendous hardship as a result of involvement in Michigan's adult criminal justice system.



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# EXECUTIVE SUMMARY

In the mid-1990s, Michigan became part of a national trend to get tough on youth crime. Although crime rates were steadily declining, the state passed a series of harsh laws that funneled thousands of youth into the adult criminal justice system. In addition to automatically considering all 17-year-olds as adults, Michigan broadened juvenile prosecutors' discretion to automatically file in criminal court, expanded the number of juvenile offenses requiring an adult sentence, and allowed children *of any age* to be criminally convicted and sent to prison.

**MOST YOUTH IN THE ADULT SYSTEM ARE THERE FOR NON-VIOLENT OFFENSES.** From 2003 to 2013, over 20,000 Michigan youth were placed on adult probation, detained in jail, or imprisoned for a crime committed when they were younger than 18 years old.<sup>a</sup> The majority of these cases included non-violent offenses. Some were as young as 10 years old and a disproportionate number were youth of color.

**PROCESSING YOUTH IN THE ADULT SYSTEM IS HARMFUL TO THEM AND BAD FOR PUBLIC SAFETY.** The trend to criminalize children was quickly met with the reality that processing youth in the adult system is detrimental to public safety and youth well-being. Youth in prison face extreme risk of violence, sexual assault, and self-harm.<sup>2</sup> Without access to rehabilitative services, young people exiting adult prison are more likely to reoffend and reoffend more violently compared to their counterparts in the juvenile justice system.<sup>3</sup>

**MICHIGAN'S ADULT PROBATION AND PRISON SYSTEMS ARE NOT EQUIPPED TO ADDRESS THE UNIQUE NEEDS OF YOUTH.** The majority of the youth sent to adult court in the past decade never received an education higher than the 11th grade or completed a GED. Over half entered the system with known drug or alcohol abuse issues and mental health concerns, and approximately 1,500 young people had at least one dependent.

A small number of youth tried as adults are girls, who often enter the system with histories of violence and sexual victimization. Because so few girls are on probation or in prison, there are essentially no services for this vulnerable population.

**YOUNG PEOPLE LEAVE THE ADULT SYSTEM WITHOUT ADEQUATE SUPPORT TO KEEP THEM FROM RETURNING.** Once youth leave the corrections system, the lifelong consequences of an adult conviction are devastating. Nearly all youth in prison will eventually return to the community but will find significant barriers to employment, education, housing, and public benefits—the key elements to a successful future. Without effective reentry and support services, young people may find themselves in a revolving door to prison.

Contrary to sentiments of the mid-1990s, public opinion in Michigan and across the country has shifted toward becoming “smart on crime.” In an effort to protect public safety, improve child outcomes, and save money, leaders nationwide are re-evaluating previous policy decisions and making significant changes to youth transfer laws. It is time for Michigan to join them.

Keeping in line with contemporary research and opinion, *Youth Behind Bars* offers a series of “smart” recommendations to safely reduce the number of young people exposed to the adult criminal justice system.

<sup>a</sup> Michigan law considers a youth to be younger than 17; however, for the purposes of this report, youth are considered under age 18 based on lines drawn by the U.S. Supreme Court, U.S. Federal Legislation, and the United Nations.



**RECOMMENDATIONS  
FOR SAFE  
REDUCTION OF  
YOUTH IN THE  
ADULT SYSTEM:**

1.

Raise the age of juvenile court jurisdiction to 18. This alone would impact 95 percent of the children currently being sent into adult corrections.

2.

Remove youth from adult jails and prisons.

3.

Require oversight and public reporting on youth in the adult system.

4.

Require judicial review of all transfer cases.

5.

Develop policies to reduce the overrepresentation of youth of color in the adult system.

6.

Provide effective legal representation to youth.

7.

Offer developmentally appropriate and rehabilitative alternatives to youth in the community.

8.

Restrict the use of segregation.

9.

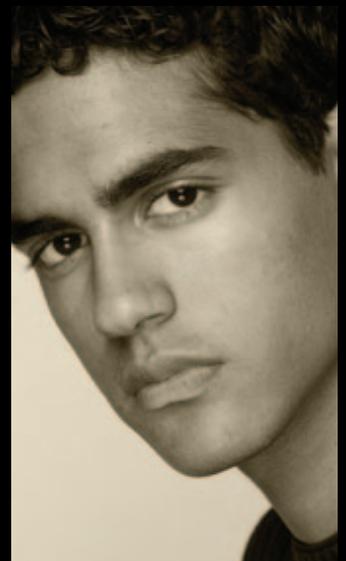
End the option to sentence youth to life without the possibility of parole.

10.

Effectively partner with families and victims at all stages of the criminal justice system.

RUSS MARIAN,  
EXECUTIVE BUREAU  
ADMINISTRATOR,  
MICHIGAN DEPARTMENT  
OF CORRECTIONS:

*There's been an evolution in the criminal justice system. We're moving from a model that gets tough on crime to one that is smart on crime and uses what works.*



# The practice of treating children as if they were fully mature adults ... has particularly inequitable consequences in the realm of criminal justice.

— GOV. WILLIAM MILLIKEN, ET AL.  
AS AMICI CURIAE, *MICHIGAN V. CARP* (2014).

## INTRODUCTION

Between 1988 and 1996, Michigan became part of a national trend to get “tough on crime” by enacting punitive laws that expanded ways to prosecute, convict, and incarcerate youth in the adult criminal justice system. In addition to including all 17-year-olds in the adult system, Michigan lawmakers created new laws—self-proclaimed as the “toughest in the nation”—to crack down on perceived youth violence. They eliminated a minimum age limit on who could be sent to adult prison, allowed prosecutors to file certain juvenile cases in adult court without judicial oversight, and expanded adult sentencing options for youth of all ages. A 400-bed youth prison was created and juvenile record expungement was limited. Additionally, the reforms proposed zero tolerance policies in schools and reintroduced judicial discretion to detain status offenders for skipping school and violating curfew.<sup>4</sup>

Despite being contrary to research and public opinion, these harsh policies serve as the foundation for how Michigan treats young people in the justice system. In 1997, the privately-operated “punk” prison, Michigan Youth Center, was constructed, housing hundreds of boys who had committed mostly low-level, non-violent offenses. During its operation, a lawsuit was filed claiming numerous instances of abuse and neglect. A few years later, Michigan charged and convicted one of the youngest Americans ever as an adult, 11-year-old Nathaniel Abraham.

But things are changing. Over the last decade, Michigan has seen a steady decline in the number of young people arrested for violent offenses. The Michigan Youth Center was shut down in 2005 in response to a shrinking population and and extremely high costs of operation. These changes galvanized public discussion, questioning whether adult prison was the best place to deal with youth.

Moreover, policy makers are now shifting their focus to be “smart on crime,” recognizing that harsh policies do little to repair the harm caused to communities and victims. Over the past ten years, nearly half of states limited the ways in which youth can be prosecuted, convicted, and incarcerated as adults. These states cite public safety, cost-savings, and improved outcomes for youth as the impetus for change.

Michigan has not reviewed how its policies, enacted decades ago, could be updated to reflect current research and best practices. In fact, no statewide entity currently tracks how many youth are being tried in adult criminal court, what offenses are being committed, nor monitors the impact of probation, prison, and parole on public safety and individual outcomes.

The Michigan Council on Crime and Delinquency (MCCD) embarked on this study to help inform sound public policy by answering three important questions:

1. What are the pathways that lead youth into Michigan’s adult criminal justice system?
2. What impact does conviction and incarceration have on young people and their families?
3. What policy changes should be enacted to safely reduce the number of young people being treated as adults?

The findings in this report uncover some of the answers and, more importantly, encourage dialogue among all stakeholders dedicated to promoting public safety, wisely investing public dollars, and improving outcomes for children.

## Pathways into Michigan's Adult Criminal Justice System

The most common way for a young person to enter the adult system is simply based on age. Michigan is one of only ten states that automatically prosecute all 17-year-olds as adults.<sup>5</sup>

However, regardless of age, Michigan's justice system provides no right to be treated as a juvenile.<sup>6</sup> In other words, a youth of *any age* can be tried and sentenced as an adult.

A youth who is 14, 15, or 16 years old may be *waived* into adult court and out of the juvenile system.<sup>7</sup> There are two ways to waive jurisdiction: *traditional waiver* and *automatic waiver*.

Traditional waiver occurs after a judge in the juvenile court<sup>b</sup> conducts a two-part hearing, determining if waiver is in the best interest of the public and the youth. The judge must consider a number of factors in making this determination; however prior delinquency history and the seriousness of the offense must be considered more heavily than any other factor.<sup>8</sup> A traditionally waived youth must receive an adult conviction and sentence.<sup>9</sup>

Automatic waiver allows a prosecutor to bypass the juvenile court altogether and directly file a case in adult criminal court, but only if a youth is accused of committing one of 18 "specified offenses."<sup>10</sup> An automatically waived youth must receive an adult conviction if found guilty; however, sentencing is slightly different. Twelve of the 18 specified offenses require an adult sentence, and the remaining six permit adult sentencing as an option.<sup>11</sup>

Once waived into adult court, there is no ability to "reverse" or petition the court to change that waiver.<sup>12</sup> Michigan is one of only five states allowing prosecutorial discretion to automatically waive a case but provides no opportunity to reverse it.<sup>13</sup>

Michigan also allows youth of any age to be tried and sentenced as an adult via *designated proceedings*. A designated youth stays in juvenile court, but is given an adult conviction if found guilty.<sup>14</sup> These youth are eligible for a *blended sentence*, allowing the court to enter a juvenile disposition or an adult sentence.<sup>15</sup>

Once tried as an adult, that youth must be tried as an adult for any future felony charges, even if the offense would not normally warrant transfer to adult court. This applies even if they were never convicted of the original offense.<sup>16</sup>

An adult sentence can be extreme in Michigan. A person convicted in the adult system must serve 100 percent of his or her minimum sentence, with no opportunity for good time or earned credits.<sup>17</sup> A person 14 years or older may also be sentenced to life in prison without the possibility of parole. While Michigan law no longer requires this sentencing, pursuant to *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the state still allows it as an option.<sup>18</sup>



### MICHIGAN'S HARSH LAWS:

- Michigan automatically prosecutes all 17-year-olds as adults.
- For some offenses, a prosecutor can choose to skip juvenile court altogether and file directly in adult criminal court.
- A youth of any age can be tried as an adult and sent to prison.
- Once tried as an adult, even if not convicted, that youth can never be tried in juvenile court again.
- Michigan allows youth as young as 14 to be sentenced to life in prison without the possibility of parole.

<sup>b</sup> Juvenile delinquency cases are primarily processed in the Family Division of Michigan Circuit Courts. For brevity, it is hereinafter referred to as "juvenile court."

# CONSEQUENCES OF HARSH POLICIES

As a result of these harsh policies, youth under the age of 18 in Michigan may be placed in adult prisons and jails, with extraordinarily harmful consequences.

## Incarceration threatens a youth's safety and well-being.

National research shows that youth in adult prisons and jails are twice as likely to be beaten by staff, five times as likely to be sexually assaulted, and 36 times more likely to commit suicide than peers in the juvenile justice system.<sup>19</sup> Because of these high risks, prisons often place youth in segregation or restraints; unfortunately, this only serves to increase the risk of depression, anxiety, and self-harm.<sup>20</sup>

## Youth incarceration actually increases violent crime.

The Centers for Disease Control and Prevention found that youth exiting the adult system are 34 percent more likely to reoffend, reoffend sooner, and escalate to more violent offenses than their counterparts in the juvenile justice system.<sup>21</sup>

## Incarcerating youth is expensive and ineffective.

The average cost of housing a prisoner in Michigan is about \$34,000 a year,<sup>22</sup> with an average sentence served of 4.3 years.<sup>23</sup> Further, a young person convicted in the adult system can expect to suffer a lifetime earnings loss of about 40 percent, translating into a significant loss of state tax revenue.<sup>24</sup>

## An adult conviction has lifelong consequences.

The vast majority of youth entering prison will eventually be released back into the community. Once they leave the system, an adult criminal conviction creates immense barriers to finding housing, employment, and education.<sup>25</sup>



## Lawmakers are Listening: Research drives policy change

There is a growing body of adolescent development research confirming that teens are different from adults, and that treatment is more effective when development is a primary consideration.

As part of normal development, teens are more inclined to take risks, act impulsively, and succumb to peer pressure—characteristics often associated with delinquency.<sup>26</sup> While the cognitive capacities of adolescents are very close to an adult level by age 16, their ability to reason and exercise sound judgment, particularly in emotional situations, improves well into one's early to mid-twenties.<sup>27</sup> Because development continues into young adulthood, youth are very amenable to rehabilitative programs and behavior modification during these formative years. Many jurisdictions are now using risk and needs assessments to drive individualized case planning and prioritizing diversion and community-based programs for low-risk cases.<sup>28</sup>

Policymakers around the country are using this research to develop best-practices for kids in the justice system. States are reevaluating their transfer policies, and the federal government has confirmed that youth should only be in the adult system as a last resort.

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**In recent years, the U.S. Supreme Court has made clear that children under 18 must be treated differently from adults in the criminal justice system.**

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In 2005, the Court abolished the juvenile death penalty in *Roper v. Simmons*,<sup>29</sup> setting a precedent that distinguished different standards of culpability between adolescents and adults. In 2010, *Graham v. Florida*<sup>30</sup> eliminated the sentence of juvenile

life without parole for non-homicide offenses. Most recently, in the joint cases of *Miller v. Alabama* and *Jackson v. Hobbs*,<sup>31</sup> the Court deemed mandatory sentences of life without parole for those under age 18 as cruel and unusual punishment and unconstitutional.

Throughout all of these decisions, the Supreme Court expressed a common sentiment: youth under the age of 18 are fundamentally different from adults, and important mitigating factors such as the child's age, immaturity, home environment, and the potential for rehabilitation, must be considered when imposing a criminal sentence on a youth.

In addition to limiting who can be processed in the adult system, the federal government has also imposed new standards for protecting children incarcerated as adults. In 2009, the national Prison Rape Elimination Act (PREA) Commission<sup>c</sup> determined that “more than any other group of incarcerated persons, youth incarcerated with adults are at the highest risk for sexual abuse.”<sup>32</sup> Based on this finding, the U.S. Department of Justice established the Youthful Inmate Standard within the 2012 PREA regulations, requiring all youth under age 18 to be separated by sight and sound from adults in jails and prisons and restricting the use of isolation to achieve that separation.

The last ten years have seen significant reforms on the state level as well. Since 2006, nearly half of the states enacted legislation to limit when a youth can be transferred to the adult system. Forty states now require 17-year-olds to be initially processed in the juvenile justice system. Since 2011, eleven states passed laws limiting the authority to house youth in adult jails and prisons; four expanded their juvenile court jurisdiction; twelve changed their transfer laws making it more likely that youth will stay in the juvenile justice system; and eight amended their mandatory minimum sentencing laws to account for the developmental differences between youth and adults.<sup>33</sup>

<sup>c</sup> In 2003, Congress passed the Prison Rape Elimination Act (PREA), which created an investigative commission charged with developing national standards to prevent and ultimately eliminate sexual abuse in our nations' jails, prisons, and detention facilities.

PARENT OF AN  
INCARCERATED  
YOUTH:

*“If we know of  
effective options  
for working  
with youth,  
why are we  
sending any of  
them to  
adult prison?”*

**YOUTH ENTERING  
THE SYSTEM  
HAVE EXPERIENCED  
SIGNIFICANT TRAUMA,  
INSTABILITY, AND  
ARE AMONG  
THE MOST  
VULNERABLE.**



## Youth in Michigan's Adult Justice System

Since 2003, a shocking 20,291 youth were convicted as adults and placed on probation, sent to jail, or imprisoned for a crime they committed before turning 18 years old.<sup>34</sup> As of November 2013, when data was collected, one in three (6,764) of these former youth were *still* under the jurisdiction of the Michigan Department of Corrections (MDOC) on adult probation, in prison, or under parole supervision.<sup>35</sup>

Fortunately, data from recent years indicates that these numbers are dropping. Between 2008 and 2012, arrests of youth under 18 declined by 34 percent.<sup>36</sup> As a result, fewer young people are entering adult court or ending up in adult corrections. From 2003 to 2013, the rate of youth entering MDOC jurisdiction decreased by 56 percent.

Despite this optimistic trend, Michigan's antiquated laws still stand. There are thousands of people in the adult corrections systems that were transferred in as a child—and more enter each day. And, as the report's findings will show, the adult system is ill-equipped, ineffective, and too expensive to handle the complex treatment and needs of this young population.

### INDIVIDUALS CURRENTLY UNDER THE JURISDICTION OF THE MDOC

*offense committed between 2003 – 2013*

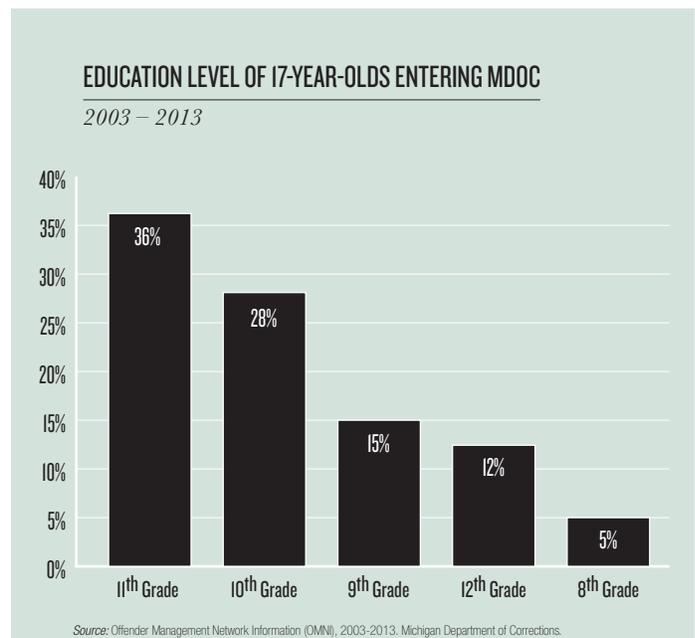
Age when offense was committed	Currently on probation	Currently in prison	Currently on parole
11 years old	2	0	0
12 years old	1	2	1
13 years old	4	12	4
14 years old	10	59	12
15 years old	25	210	43
16 years old	83	536	143
17 years old	1298	3108	1211
<b>TOTAL</b>	<b>1423</b>	<b>3927</b>	<b>1414</b>

Source: Offender Tracking Information System, Michigan Dept. of Corrections (Nov. 2013)

Young people who have committed crimes should be held accountable for their actions. Nonetheless, it is important to acknowledge the strikingly difficult life circumstances these youth share in order to properly design rehabilitative services and prevent future reoffending.

Based on research of Michigan youth in adult prison from 1985 to 2004, this young population experiences an exceptionally high rate of violence. Seventy-eight percent had a friend who was killed, and 48 percent had a family member that was killed.<sup>37</sup> They also have great instability in their home lives. Eighty-one percent had parents with substance abuse issues, and 44 percent spent time in child welfare or foster care and were placed out of the home an average of 11 times.<sup>38</sup> A great number had family members in prison: 45 percent had a father in prison; 25 percent had a mother in prison; and 19 percent had a sibling in prison.<sup>39</sup> Additionally, many had only one parent or needed to depend upon public assistance: 78 percent lived in a single mother household and 47 percent relied upon public benefits.<sup>40</sup>

These same data points are not available for youth under the MDOC jurisdiction in more recent years; however, it is known that youth entering the adult system in the past decade were almost all behind in school—many by at least two grade-levels. This is especially true for 17-year-olds, who make up the majority of the population. While most 17-year-olds in Michigan are entering their senior year of high school and looking toward graduation, 28 percent of the same-aged peers who enter the adult criminal justice system had an educational-level no higher than tenth grade, 15 percent only had ninth grade, and 5 percent had an eighth grade or lower education.<sup>41</sup>

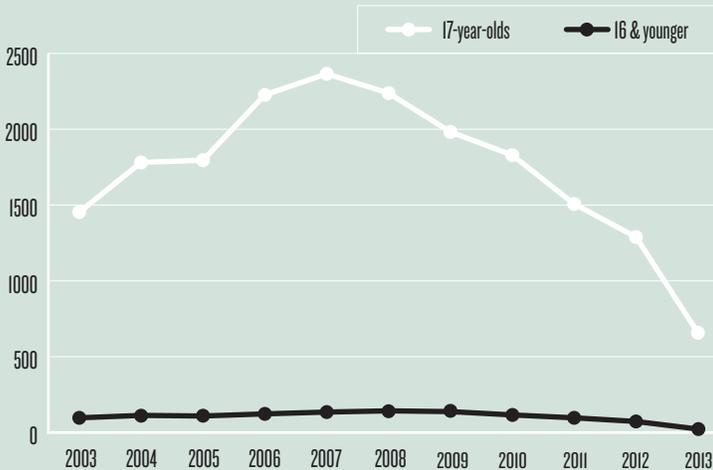


17-year-olds comprise the majority of youth in the adult system despite committing mostly non-violent offenses.

Furthermore, substance abuse and mental health issues are of serious concern. More than half of the population (10,782 youth) had known drug abuse problems; almost one-fourth had previously been treated for mental health issues; and 40 percent of youth entering prison had been formerly committed to a juvenile facility.<sup>42</sup>

Young people entering the adult system fall into two main categories: 17-year-olds who are automatically considered adults and youth who are 16 years old or younger who have been transferred into the adult system either by a waiver or designated proceeding.

**YOUTH UNDER MDOC JURISDICTION**  
2003 – 2013



Source: Offender Management Network Information, 2003-2013. Michigan Department of Corrections.

### 17-year-olds

In the last ten years, 95 percent of all youth entering adult jail, prison, or probation were 17 years old at the time of their offense—totaling 19,124 young people.<sup>43</sup> By the end of 2013, there were 5,617 former 17-year-olds still under the jurisdiction of the MDOC (probation, prison, or parole). Of that population, 55 percent were in prison.<sup>44</sup>

Most 17-year-olds entering the criminal justice system committed non-violent offenses—nearly 60 percent were non-violent and did not include a weapon.<sup>d</sup> Additionally, 58 percent of those entering the system at age 17 had no prior juvenile record.<sup>45</sup>

Nearly 68 percent of all 17-year-olds who entered MDOC in the last decade came from some of the most populated counties: Wayne, Oakland, Macomb, Kent, Kalamazoo, Genesee, Saginaw, Muskegon, Berrien, and Ottawa. The top four counties account for half (51 percent) of the 17-year-old population.

Youth of color are overrepresented among 17-year-olds in the adult corrections system. Fifty-three percent of all those currently under MDOC jurisdiction for an offense committed at 17 are youth of color; however, only 23 percent of Michigan’s statewide 17-year-old population are youth of color.<sup>46</sup>

Seventeen-year-olds sentenced to prison receive a range of sentence lengths, but many are given long terms. Nearly 25 percent of those currently in the system received sentences with a maximum term of 15 years or more, and 16 percent have sentences with a maximum term of 20 years or more.<sup>47</sup> At a rate of \$34,299 per year, a 20-year sentence for one person equates to \$685,980. When considering all the 17-year-olds serving this term or longer, the figure adds up to over \$2.1 billion.

<sup>d</sup> Based on the FBI’s Uniform Crime Reporting, violent crimes include those offenses that involve force or threat of force.

Youth 16 and younger charged as adults come from only a few Michigan counties, with a disproportionate impact on youth of color.

### Transferred Youth: 16-years-old and younger

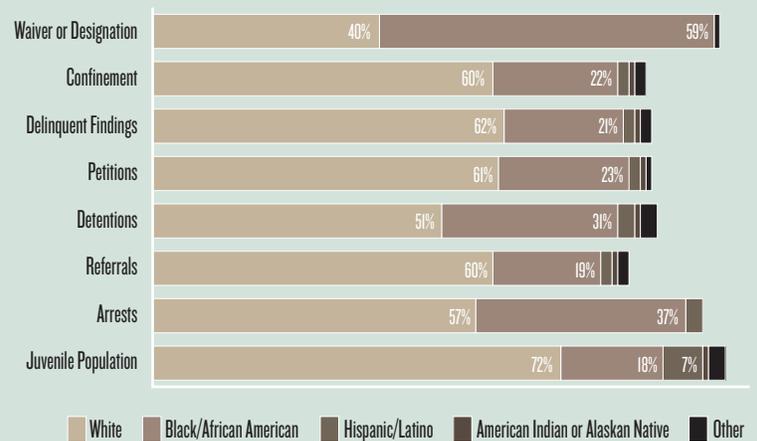
In the last decade, 75 percent of all youth under age 17 charged as adults<sup>e</sup> (3418) came from ten of 83 Michigan counties, Berrien, Wayne, Calhoun, Kent, Muskegon, Saginaw, Oakland, Ingham, Allegan, and Macomb.<sup>48</sup> The majority of transferred cases were for serious offenses; however, 25 percent were non-violent charges and did not include a weapon.

Youth of color are disproportionately prosecuted or convicted as adults. In 2012, 59 percent of youth who were waived or designated as adults were Black or African American, even though Black youth only make up 18 percent of the youth population statewide.<sup>49</sup>

There is concern that racial and ethnic disparity may be even more pronounced than is currently reported. Michigan’s justice system has no standard procedure for collecting race and ethnicity information. In turn, many people are miscategorized compared to how they would self-identify. For example, individuals who self-identify as Latino, Arab American, or biracial may be categorized as White. Moreover, race and ethnicity are reported differently at each stage of the system, including the courts, law enforcement, jails, community corrections and the MDOC, making it nearly impossible to assess the extent of inequitable treatment at key decision points.

### RACIAL DISPARITY AT STAGES OF THE JUVENILE JUSTICE SYSTEM

All Reporting Counties 2012



<sup>e</sup> This includes all designated and waived youth.

## Michigan prosecutors have broad discretionary power to charge youth 16 and younger as adults.

Michigan law grants prosecutors broad discretion regarding when and how to use transfer mechanisms (designation, traditional, or automatic waivers) to try a youth as an adult.<sup>50</sup> Of special concern are automatic waivers. Michigan is one of only 15 states allowing automatic waiver by a prosecutor.<sup>51</sup> Automatic waivers occur when a youth is accused of one of 18 specified offenses. The prosecutor then has the option to directly file the case in adult court, bypassing the juvenile court altogether.

Specified offenses were determined by the Michigan Legislature in 1996 to include the most serious crimes. In the past ten years, only 29 percent of all youth under MDOC jurisdiction aged 16 or younger at the time of the offense were convicted of one of the 18 specified offenses.<sup>52</sup> It seems the majority of youth (71%) received an adult conviction for a broader range of offenses, not necessarily those deemed most serious.

State prosecutors, judges, and other court officials revealed that a wide range of factors are considered before deciding to seek transfer and it is clear that the decision to try a youth as an adult is not made lightly—often used as a last resort. Internal policies do govern their use of these legal mechanisms, and the personal philosophy of the head prosecutor or presiding juvenile judge tends to play a large role in the types of and frequency that cases are waived or designated.

A number of interviewees expressed concern with the broad level of open-ended discretion. There is no uniform statewide guidance on how to apply these complex policies to their case-loads. Interviews also indicated there is little external governance over the decision-making process. Thus, transfer laws are applied differently from county to county and from case to case. For example, a number of jurisdictions reported weighing each case individually, using mitigating factors such as age, culpability, family dynamics, and other personal characteristics, to help make the decision. On the other hand, many reported that the

decision to transfer is based mainly on a youth's past record or the seriousness of the current offense.

Other interviewed officials noted that prosecutors, by nature of their role in the adversarial court process, view cases on behalf of law enforcement and victims. “There’s a political component to this power,” cautioned one juvenile defense attorney. “Prosecutors get elected for being ‘tough on crime.’” Yet, there is no requirement to consider the impact of the decision on the accused youth or the availability of rehabilitative services in the adult system. For example, if a case is waived into adult court and the youth is *not* convicted, that young person will always be considered an adult in court. In other words, once an adult, always an adult—regardless of conviction.<sup>53</sup>

### IS THERE A FINANCIAL INCENTIVE TO TRANSFER YOUTH TO THE ADULT SYSTEM?

Most juvenile justice services in Michigan are funded through the County Child Care Fund (CCF),<sup>54</sup> a 50 percent cost-share between the state and counties. The CCF can be used toward community-based programs as well as out-of-home placement. However, once a youth is convicted as an adult, all costs are born by the state and the counties pay nothing.

During a number of interviews for this report, county officials acknowledged that this payment structure creates a financial incentive to transfer youth and indicated that “other” counties may use transfer as a cost-saving measure. No officials believed this was the case in their own county; however, many reported that a lack of available local resources is an influencing factor when deciding whether to transfer or sentence a youth to the adult system.

FRANK VANDERVORT,  
CLINICAL PROFESSOR OF LAW,  
UNIVERSITY OF MICHIGAN  
LAW SCHOOL:

*“They say juvenile justice  
is more expensive but  
it’s actually more expensive  
to send a child to prison  
for 20 years  
with no rehabilitation.”*

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**SINCE 1996,  
75 CHILDREN  
UNDER THE  
AGE OF 14  
HAVE BEEN  
CONVICTED  
AS ADULTS**

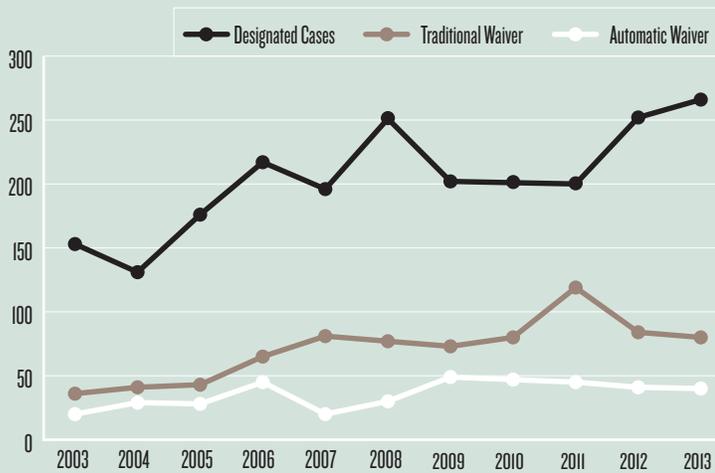


## Designation is the most common way to try children of any age as adults.

From 2003 to 2013, a total of 3,418 youth<sup>†</sup> under 17 years old were prosecuted as adults, either through traditional waiver, automatic waiver, or designation proceedings.<sup>55</sup> The most frequently used method is a designated proceeding, accounting for 66 percent of all such cases.

### WAIVERS AND DESIGNATED CASES

2003 – 2013



Source: Annual Report of Michigan State Courts Statistical Supplements, 2003-2013. Michigan Supreme Court Office of Administration

In a designated proceeding, a youth of *any age* may be tried, or designated, in the same manner as an adult while staying under the jurisdiction of the juvenile court.<sup>56</sup> Michigan is one of only 22 states without a minimum age of transfer. Since 1996, when the state eliminated a lower age threshold, 75 children under the age of 14 have been convicted as adults.<sup>57</sup>

Prosecutors' decision-making power applies when making the choice to designate a case. Since 2003, prosecutors filed 2,245 cases for youth to be designated and tried as adults. These proceedings can include those youth who have committed a specified offense. However, with designation, there is judicial review—only 660 of those cases, about 29 percent, were actually granted by a judge.<sup>58</sup>

All designated youth will receive an adult criminal conviction if found guilty. However, the juvenile judge may impose a blended sentence, including juvenile disposition, an adult sentence including prison or jail, or delay imprisonment and place the youth on probation.<sup>59</sup> Anecdotally, it appears these youth more frequently receive juvenile dispositions rather than adult sentences; yet without clear data, it is impossible to track the actual sentences or long-term outcomes of these cases.

Designation proceedings were born out of the concern that young kids were increasingly being recruited by older criminals to commit violent crimes.<sup>60</sup> “Many criminal court judges were perceived as lenient on waiver kids, considering young age more of a factor than the violent crime,” explained one former state legislator who served during the 1996 juvenile reforms. “Designation created a way for the juvenile court to keep the case and gave the juvenile judge more authority to impose a harsher sentence.”

Nonetheless, interviews proved that convicting youth at such young ages is a big concern for many who work in juvenile court. While these children are eligible for blended sentencing options, they are still tried and convicted as adults. They face lifelong criminal records and risk of adult prison time.

<sup>†</sup> The number of transfers are higher than the actual youth under 17 in the adult system, as not all cases end with a conviction.



## Michigan's defense attorneys receive little specialized training or resources for complex youth cases.

Michigan's public defense delivery system<sup>9</sup> has been characterized as one of the worst in the nation, fraught with inconsistent funding, under-resourced attorneys, and a lack of oversight.<sup>61</sup> Still, the majority of youth charged as adults, including transferred youth and 17-year-olds, depend upon the public defense system for legal representation.

When facing an adult conviction that could remain on record for the rest of a child's life, informed and experienced legal counsel is crucial. Yet, nearly all persons interviewed felt that a lack of training and resources leave defenders in Michigan ill-equipped to handle these complex cases. Defending a young person at risk of ending up in adult corrections requires a diverse range of knowledge. To effectively argue a case, attorneys should be familiar with not only criminal, juvenile, family, and education law, but adolescent development research, trauma-informed practices, child welfare issues, and a host of other topics. In fact, every recent Supreme Court case dealing with young people in the adult system has been successfully argued using these secondary research sources.<sup>62</sup> However, there is no statewide infrastructure providing attorneys with access to this type of information or research.

Most youth in adult court never proceed to trial and, instead, accept a plea agreement. For youth who are 16 or younger, 73 percent plead guilty and 86 percent of 17-year-olds plead guilty.<sup>63</sup> Negotiating a plea agreement requires that youth have the capacity to appreciate the nature of the charges and weigh the consequences of their decisions. Even with quality legal representation, research shows that young people, especially children under 15, are significantly less likely than adults to understand court proceedings or effectively assist their attorney in their own defense.<sup>64</sup>

Despite these findings, youth tried as adults are not required to have a competency evaluation. In 2013, Michigan established new juvenile competency laws for youth processed in juvenile court; however, the law does not extend to youth in the adult system.<sup>65</sup> Due to lack of aggregate data, it is unclear how many youth tried as adults in Michigan are evaluated for competency on an annual basis.

<sup>9</sup> In 2013, the state created the Michigan Indigent Defense Commission, tasked with establishing standards and oversight of public defense delivery systems.

## HOLMES YOUTHFUL TRAINEE ACT

The Holmes Youthful Trainee Act (HYTA) is a sentencing option available to youth between the ages of 17 and 20 who have been charged with certain offenses. If the youth agrees to plead guilty, following successful completion of the punishment imposed, the charges will be set aside and there will be no public criminal record. A sentence can include jail, prison, or probation, none of which may exceed three years. Youth charged with a traffic offense, a major controlled substance offense, or a felony for which the maximum punishment is life imprisonment are not eligible for HYTA sentencing.<sup>66</sup>

It is unknown how many HYTA youth received probation or jail as a sentence. However, as of March 2014, there were 338 young people serving a HYTA sentence in prison, most frequently from Wayne, Oakland, and Macomb Counties. When the HYTA offenders are in prison, they are housed primarily in a separate unit at the Thumb Correctional Facility until the age of 22, at which point they can be transferred to the general population.<sup>67</sup>

Many stakeholders agree that HYTA provides young people with an opportunity to not be burdened with a lifelong record for a teenage mistake. However, interviewees expressed concerns that spending up to three years in prison as part of a probationary term does not align with the rehabilitative spirit of the law. Regardless of whether or not a person leaves with a clean criminal record, three years in prison can be extremely dangerous and can greatly affect a young person emotionally, mentally, and physically for the rest of their lives. Moreover, there is no MDOC supervision or reentry services for most HYTA youth to assist with their return to the community.

HONORABLE FAYE  
HARRISON,  
CHIEF JUDGE PRO TEM,  
PROBATE COURT, 10TH  
JUDICIAL CIRCUIT  
COURT FAMILY  
DIVISION:

*Jails are no good for kids—they are not going to get the same degree of education, mental health services, anything. It's designed to be an adult facility, not a long-term residential program for kids.*

# THE ADULT SYSTEM CAN'T SUPPORT YOUTH



## Youth under the age of 18 often spend time in adult jail.

A young person under 18 years old may be placed in an adult jail awaiting a hearing, as part of a sentence, if found in contempt of court, or considered a “menace to others.”<sup>68</sup> In the last ten years, 10,531 young people received jail as part of their sentence for a crime they committed under age 18—over half of the entire youth population in the adult system.<sup>69</sup> On average, a youth served 145 days in jail as part of his or her sentence and an average of 35 days awaiting a hearing—equivalent to the typical number of annual school days in Michigan.<sup>70</sup>

Young people are particularly vulnerable in jail settings. National research shows that youth make up only one percent of the jail population, yet they accounted for 21 percent of inmate-to-inmate victimization in jails in 2005 and 13 percent in 2006.<sup>71</sup>

Michigan’s laws have yet to align with federal PREA regulations, although it is likely to have changed in practice among the state’s prisons and jails. Currently, the federal Juvenile Justice Delinquency Prevention Act provides that a youth under juvenile court jurisdiction placed in jail (this includes those awaiting a designated trial) must be separated from the adult population physically and from sight and sound.<sup>72</sup> However, for youth under adult criminal court jurisdiction who are placed in an adult jail, there is no state requirement yet to separate them from adults.<sup>73</sup>

PREA standards make it cumbersome for many jails to accommodate younger populations without using isolation, which can cause even greater trauma and upheaval. Even if a jail can accommodate youth without the use of isolation, adult jails are not equipped for long-term stays of youth who are still developing mentally, physically, and emotionally and require age-appropriate educational and mental health services.

Some juvenile detention centers also house youth with adult charges. According to one juvenile detention official, youth facing adult charges remain in detention for 10-12 months, compared to 18-27 days for youth in the juvenile court.<sup>74</sup> While the services in a juvenile detention center are designed for youth, detention, like jail, is intended to provide short-term care; as a result, there are fewer services designed to meet long-term educational, mental health, or programming needs. Furthermore, youth charged as adults do not get appointed a juvenile probation officer to facilitate services while in detention such as school work, visitations, or medication reviews.

### Girls in the adult system do not receive adequate treatment.

While girls make up about 30 percent of the juvenile justice population at any given time, in the last ten years they accounted for only 10 percent of youth (2,016 girls) tried as adults in Michigan.<sup>75</sup> As of November 2013, only 227 women were under the jurisdiction of the MDOC for offenses committed prior to their 18th birthdays. Of that population, 79 were in prison, 116 were on probation, and 32 were on parole. Three of these girls were currently under 18—two were on probation and one was in prison for running away from a juvenile facility.<sup>76</sup>

The majority (86 percent) of the girls charged as adults over the last decade were 17 years old at the time of their offense. Seventy percent had no juvenile record and 58 percent of the offenses were non-violent.<sup>77</sup>

Girls in the justice system often have severe histories of trauma, physical violence, sexual exploitation, and substance use.<sup>78</sup> Stakeholders noted that girls tried as adults may have become system-involved through boyfriends or gangs, or are victims of human trafficking or domestic violence. Over the past decade, 45 percent of girls entered the corrections system with known drug abuse, 26 percent had known alcohol abuse, 31 percent had received mental health treatment, 40 percent had only a 10th grade education or lower, and 13 percent had at least one dependent.<sup>79</sup>

Girls incarcerated in adult prison are housed at MDOC's Women's Huron Valley Correctional Facility. While MDOC has made efforts to develop gender-specific programming for the female population, programming is not designed to be youth-specific given the small number of incarcerated girls. Even after they are over the age of 17, interviewees suggested that there are far fewer female-specific programs in the community; as a result, women may be forced to stay longer in jail or prison because they cannot attend local rehabilitative programs.

### There is a lack of age-appropriate community-based services for youth serving adult probation.

As of November 2013, the MDOC actively supervised 1,423 individuals on probation in the community for offenses committed prior to age 18. Of this population, five were 16 years old and 21 were 17 years old.<sup>80</sup>

Among youthful probationers, 91 percent were 17 years old at the time of their offense. The majority, 71 percent, committed non-violent offenses, and about two-thirds had no previous juvenile record. Additionally, 93 percent spent an average of 24 days in jail prior to conviction.<sup>81</sup>

The sentencing judge determines the conditions of probation.<sup>h</sup> This can include jail confinement, substance abuse treatment, community service, high school completion, restitution, fines, court costs and supervision fees, electronically-monitored home confinement, or finding and keeping employment.<sup>82</sup> The judge also sets the length of probation, with a maximum of five years for felony offenses and two years for misdemeanors.<sup>i</sup> In the last decade, almost half (49 percent) received some jail time as part of their probation conditions.

Many of these young people enter the justice system undereducated and with serious substance abuse and mental health issues. Among 17-year-olds on probation in the last ten years (the largest age group on probation), the overwhelming majority (77 percent), never completed high school nor a received a GED; 27 percent had an education level no higher than 10th grade and 15 percent only reached 9th grade. Additionally, prior to entering the corrections system, 51 percent had known drug abuse issues, 24 percent had alcohol abuse problems, and 23 percent previously received treatment for a mental health issue.<sup>83</sup>

Despite their young age, youth in adult probation cannot access the rehabilitative programs offered through the juvenile court. Interviews indicated that very few community-based programs available through adult probation are designed to meet the specific needs of youth.

Thus, it is not surprising that prior research discovered an alarming 54 percent of youth probationers aged 16 or younger escalated to prison as a result of a probation violation, either due to technical violations or because of a new sentence.<sup>84</sup> However, current statistics do suggest this number is dropping. MDOC's population of as of November 2013 revealed only 16 percent of individuals in prison for an offense committed at 16 or younger were there as a result of a probation violation.<sup>85</sup>

<sup>h</sup> While it is the responsibility of the department to supervise adult felony probationers in Michigan, courts retain legal control over the offender's status.

<sup>i</sup> Lifetime probation is authorized for some drug offenses.

## Adult prisons are ill-equipped to address the developmental, educational, and mental health needs of youth.

As of November 2013, there were 3,927 people in prison for a crime committed before age 18. Of that population, 50 of those individuals were 17 or younger at the time the data was collected.<sup>86</sup> Male youth are generally placed at the Thumb Correctional Facility (TCF), which has one youthful offender unit with approximately 120 beds.<sup>l</sup>

MDOC does not have a separate policy directive specifically addressing youthful offenders in prison. Other than separating all youth under age 18 by sight and sound from adults (as required under the PREA regulations), MDOC treats youth in much the same way as adult inmates. However, youth present different challenges and issues than the adult population. As a result, they tend to be more disruptive, experience high rates of victimization and mental health concerns, and are often placed in isolation.

### Youth in prison are more disruptive than adults.

Youth in adult prisons are more disruptive than either adults in prison or youth in juvenile facilities.<sup>87</sup> According to national research, youth in adult prisons are more likely to commit a violent infraction, including threatening a correctional officer, possessing a weapon, rioting, fighting, and committing an assault with or without a weapon.<sup>88</sup> This behavior is often attributed to the impulsive behavior of teens, the extreme stress of confinement, and high rates of mental illness.<sup>89</sup>

“When TCF first brought on the youthful offenders on October 1, 2005, things were very rocky,” noted a TCF employee. “Large numbers of youth were allowed to be on the yard at one time . . . or meander[ing] between dayrooms. This caused chaos and brought on more opportunities for fights and disturbances within the youthful offender population.”<sup>90</sup>

In an effort to reduce fighting, TCF developed a daily schedule to keep youth occupied throughout the day. The schedule includes three one-hour segments each day for education, structured programming and recreation time.

At its worst, there were 307 incidents of misconduct during the month of December 2008; after instituting the new schedule, misconduct incidents declined to only 88 in the month of December 2010—the last year for which data was collected.

MDOC has also developed a youthful offender curriculum for staff at TCF to train them on adolescent development, cultural awareness, anger management, Attention Deficit Hyperactivity Disorder, and suicide awareness and prevention.<sup>91</sup> From 2009 to 2012, sixty-three corrections officers, management, and other staff participated in this 16-hour youthful offender-training program.<sup>k</sup> Unfortunately, according to the most recent legislative report, no staff received this training in 2013-2014.

### YOUTH IN PRISON CONTINUE TO FALL BEHIND IN EDUCATION

In the past ten years, about 82 percent of youth in prison had no high school diploma nor had they completed a GED. In fact, while the majority of youth in prison are 17 years old, 32 percent entered with only a 10th grade education, 20 percent had a 9th grade education, and 10 percent had an 8th grade education or lower.<sup>92</sup>

Prior research indicates that youth only receive about eight hours of education a week while in Michigan's prisons.<sup>93</sup> According to an interviewee, there are currently 25 youthful offenders participating in GED classes.<sup>l</sup>

<sup>l</sup> Some youth may be housed in Woodland Center Correctional Facility due to need of acute mental health care. Female youthful offenders are housed at the Women's Huron Valley Correctional Facility.

<sup>k</sup> The training was originally designed to be 24 hours in length but was reduced to 16 hours in 2012.

<sup>l</sup> Trade programs are also available, such as Building Trades, Food Tech ,or Job Readiness. TCF also offers personal development programs, including Man 2 Man, Mo Money, and Current Events/Real Talk.

PATRICIA CARUSO,  
FORMER DIRECTOR OF  
THE MICHIGAN DEPARTMENT  
OF CORRECTIONS,  
2003-2011:

*People who are treated  
inhumanely become more  
inhumane—this is  
especially true for  
young people in prison.*

---

**YOUTH FACE  
EXTREME  
RISK OF  
VIOLENCE AND  
VICTIMIZATION  
WHILE IN  
ADULT PRISON.**





### Young people are at the greatest risk of violence and victimization in prison.

In 2013, a class action lawsuit, *John Doe v. Michigan Department of Corrections*, was filed on behalf of over 500 youthful prisoners, ages 14 to 17, “who are, were, or will be confined in adult prisons in Michigan and who have been or will be subjected to sexual and physical assaults and abuse, sexual harassment, and degrading treatment from adult prisoners as a result of incarceration in adult prisons.”<sup>94</sup>

The complaint describes sexual assaults, with many of the plaintiffs reporting violent rapes, of which MDOC staff members may have been aware. At least two plaintiffs allege they were coerced into sex with female MDOC officers. In the case of one plaintiff, the complaint alleges that an MDOC staff member opened a youth’s cell to allow an adult prisoner to assault him. That same youth alleges that he was put into solitary confinement for reporting sexual abuse.

The case argues that having young prisoners in contact with adult prisoners resulted in the youth getting more punishment, degrading treatment, solitary confinement, and being deprived of rehabilitative programming and educational services. Additionally, it asserts that MDOC staff failed to separate juvenile prisoners from adult prisoners by sight and sound as required by federal PREA law; failed to adequately supervise juvenile prisoners; failed to properly train, monitor, discipline, or regulate prison staff; and still fails to implement proper policies and procedures to identify and house youth in prison.

Interviewed family members and advocates reported awareness of similar experiences of youth while in prison. For example, youth were reported to be restricted in chains, threatened with violence, or left in isolation for weeks or even months at a time. They also reported allegations of sexual harassment, particularly towards those who have severe mental health needs. Youth were also said to be more likely to join gangs for protection or turn to prostitution within prison to “pay” for their safety.

### Youth in prison are in great need of mental health treatment.

National research indicates that 68 percent of youth in the adult criminal justice system have at least one psychiatric disorder and 43 percent have two or more types of disorders.<sup>95</sup> Those sentenced to prison were far more likely to have a disruptive behavior disorder, a substance use disorder, or co-morbid affective and anxiety disorders than those with lesser sentences.<sup>96</sup>

All youth entering Michigan prisons under 17 are automatically admitted into Outpatient Mental Health Treatment to monitor their needs, whether or not they have a mental health diagnosis. Each youth receives a psychosocial evaluation and a behaviorally-based treatment plan, which could include medication, group therapy, crisis intervention, family support, and case management services. The plans are reviewed with the youth and clinical team at least every 90 days. Despite their similar needs to 16-year-olds, 17-year-olds only receive an individualized treatment plan if they have a mental health diagnosis.<sup>97</sup>

Although the MDOC recognizes that young people in prison need some form of mental health treatment, interviewed stakeholders almost unanimously agreed that MDOC is neither designed nor equipped to provide adequate mental health services for youth.

Of all youth entering prison in the past ten years, 60 percent had known drug abuse issues, 25 percent had issues with alcohol abuse, and 22 percent were treated for a mental illness before entering prison. Interestingly, these numbers change slightly when accounting for age; one-third of all youth 16 or younger received mental health treatment before going to prison.<sup>98</sup>

Youth who need more intensive psychiatric care or are at risk of harming themselves may be transferred to Woodland Center Correctional Facility for inpatient treatment, where they may participate in a crisis stabilization program, acute services treatment, or rehabilitation treatment. Despite significant research showing that segregation can further exacerbate mental health conditions, psychiatrists are permitted to order the use of “therapeutic seclusion” and/or “therapeutic restraints.”<sup>99</sup>

## JUVENILE LIFE WITHOUT PAROLE

Michigan is home to 363 people serving a life sentence without the possibility of parole for crimes committed before age 18—the second largest population in the nation.

In 2012's *Miller v. Alabama* ruling, the U.S. Supreme Court declared *mandatory* sentencing of youth to life in prison without the possibility of parole to be unconstitutional. Under current Michigan law, juvenile life without parole (LWOP) is permitted, though no longer mandatory, as a sentence for those 14 years or older.<sup>103</sup> This sentence may only be given after the judge considers the mitigating factors required by *Miller*.<sup>104</sup> The law does not apply retroactively to those youth who are currently in prison; however, there is ongoing litigation among Michigan's courts to settle the matter.<sup>105</sup>

According to national research, nearly 80 percent of youth serving LWOP experienced family violence and more than half grew up in neighborhoods with consistent violent crime. About 20 percent reported experiencing sexual abuse and about half had been physically abused prior to their prison sentence.<sup>106</sup>

Michigan youth serving LWOP are predominantly African American (69%), which is greatly disproportionate to the overall state population of only 15 percent.<sup>107</sup> There is also a large racial discrepancy among those offered plea arrangements. Cases with white victims were 22 percent less likely to be offered a lower sentence than those cases with victims of color.<sup>108</sup>

Michigan LWOP youth also reportedly received poor defense and often did not understand the judicial proceedings. Thirty-eight percent of their defense attorneys had been disciplined for unethical conduct, compared to only 5 percent of attorneys defending other cases.<sup>109</sup> Nearly one-third of these youth reported not understanding the meaning of "parole" and rejected plea agreements that would have resulted in a lesser sentence.<sup>110</sup>

### Isolation is harmful.

Solitary confinement<sup>m</sup> has been documented as one of the most traumatic and dehumanizing penalties that a person can endure. The MDOC uses segregation to isolate inmates who pose safety, security, or escape risks. Among persons interviewed, it was noted that youth who are at risk of suicide may end up tied down in 4 or 5 point restraints to either a metal bed or a concrete slab in an observation cell.

On any given day, there are approximately 982 people in segregation statewide, including 44 people with severe mental illness or developmental disabilities.<sup>100</sup> In total, MDOC inmates spent 358,590 days in isolation from 2012-2013, equating to nearly ten years of segregation during only one calendar year.<sup>101</sup>

TCF recently created isolation cells in the youthful offender unit in order to create sight and sound separation from isolation units used for adults. On a single day of data collection, six youth were in segregation<sup>n</sup> (out of an estimated 50 youth in TCF); sixty additional isolation beds were available.<sup>102</sup>

<sup>m</sup> Solitary confinement, isolation, and segregation are all used interchangeably.

<sup>n</sup> This is a point-in-time figure and does not represent the daily average number of youth in segregation at the Thumb Correctional Facility.

FORMERLY  
INCARCERATED  
YOUTH:

*When I got out of prison,  
I had nowhere to live  
and no one to help me.  
I didn't know how to be  
a man in the  
real world.*

---

**YOUTH HAVE  
LIMITED  
OPTIONS  
UPON  
RETURNING  
HOME**



## **An adult conviction has lifelong consequences.**

Regardless of the age a person enters prison, the vast majority of prisoners do not stay for a lifetime. Of the 3,927 people currently in Michigan prisons for a crime committed before age 18, about 61 percent have a maximum sentence of five years or less; 98 percent will return to their community and family within 10 years.<sup>111</sup>

Once released from prison, these individuals are placed on parole supervision, which typically lasts from one to four years. At the end of 2013, there were 1,414 individuals on parole for offenses committed as youth.<sup>112</sup>

Currently, Michigan does not collect data specific to recidivism rates of those who entered prison as youth. However, national research indicates that this population is at high risk to reoffend, in part due to the criminal education received while in prison. Because youth enter at such an impressionable age, it stands to reason that they would need additional resources and support to remain crime-free when reentering the community.

While many youth are looking forward to the opportunity to be productive citizens, they quickly realize that a number of challenges exist as a direct result of having an adult conviction.

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### **Individuals face immense barriers to securing housing, finding employment, and continuing their education.**<sup>113</sup>

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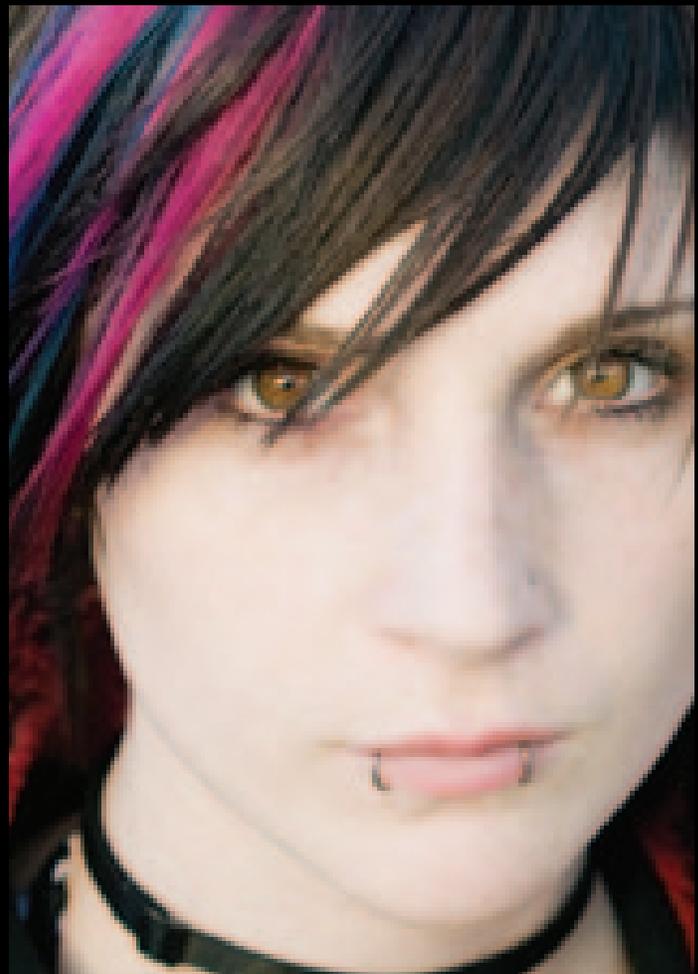
Additionally, parental rights can be terminated, all federal student loans are prohibited for certain convictions, joining the military is off limits, and many will be restricted from receiving professional or driver's licenses.<sup>114</sup>

To reduce recidivism overall, the state implemented the Michigan Prisoner Reentry Initiative (MPRI) in 2005. The model installed regional community coordinators to assist people on parole to find housing, gain employment, and access public

benefits. MPRI was successful at preventing individuals from returning to prison; at the highest estimate, 38 percent fewer parolees returned to prison because of the aid received via MPRI.<sup>115</sup> Unfortunately, state and local funding for reentry has diminished so significantly that people of all ages are struggling to connect with the resources they need upon release.<sup>116</sup>

MPRI initially targeted youth leaving prison as a special population for reentry services. In 2009, MDOC contracted with Professional Consulting Services (PCS) to design reentry services for youthful offenders and young people imprisoned as Holmes Youthful Trainees (HYTA). Prior to release, PCS worked with young people and their families to identify individual needs and arrange services for housing, education, mental health, and more. Despite successful outcomes, the MDOC discontinued reentry services for most HYTA youth in December 2013.

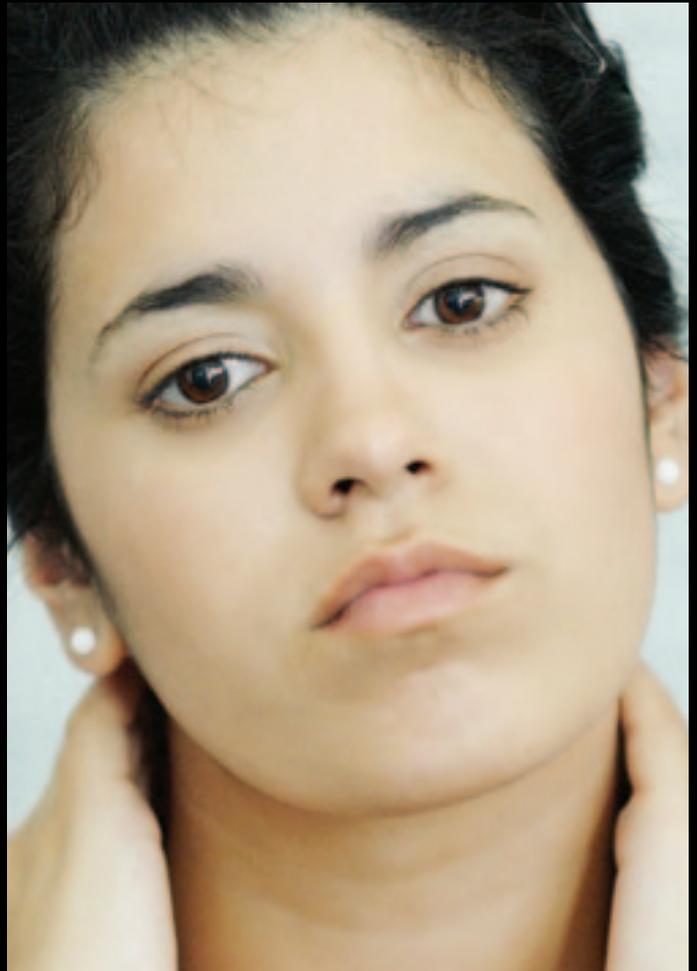
However, MPRI did not create a special reentry designation for those who enter prison as youth and leave as adults, which is the case for the vast majority of youthful offenders. Once a youth turns 18, he or she qualifies for adult reentry services, and there is no recognition of the unique circumstances of the youthful offender. For people who entered prison at age 17 or younger, they are less likely to have completed high school, driven a car, opened a bank account, or even gone grocery shopping on their own. A youth's support network of family and friends is often strained or lost while in prison. Moreover, the prospect of living independently can be overwhelming, especially for those who spent their lives in juvenile justice or foster care institutions prior to prison. Without effective reentry and support services, these young people often find themselves in a revolving door to prison.



*Michigan is one of  
only ten states  
that automatically  
prosecutes  
17-year-olds  
as adults.*

BUT THE TRUTH  
REMAINS:

# 17-YEAR-OLDS ARE NOT ADULTS



VICKI SEIDL,  
SENIOR ATTORNEY,  
JUVENILE DIVISION,  
KENT COUNTY  
PROSECUTOR'S OFFICE:

*Michigan should  
consider shifting  
17-year-olds to the  
juvenile system in order to  
comply with federal standards  
and get us in line  
with other states.*

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# POLICY RECOMMENDATIONS

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Prosecuting, sentencing and incarcerating young people as adults is proven to do more harm than good. The most effective way to reduce youth involvement in adult corrections is to intervene as early as possible with age-appropriate care. A solution to the current approach can build on Michigan's broad range of juvenile justice services—both public and private—which have the capacity and willingness to serve youth of all risk levels.

MCCD is committed to increasing dialogue among all stakeholders as we work together to promote public safety, wisely invest taxpayer dollars, and improve outcomes for children.

As such, MCCD offers the following recommendations as next steps to safely reduce the number of and effectively treat youth in the adult system.

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1.

### **Raise the age of juvenile court jurisdiction to 18.**

Nearly every stakeholder interviewed felt strongly that Michigan should align with the national standard and raise the age of juvenile court jurisdiction to 18. Michigan remains one of the few remaining states that automatically prosecute all 17-year-olds as adults. This policy is increasingly at odds with state laws and national and international policies that declare adulthood to begin at age 18.

States that have recently raised the age of juvenile court jurisdiction have reported little to no cost impact, in large part due to effective diversion and community-based treatment for low-risk offenders. In fact, research estimates that including 17-year-olds in the juvenile justice system could result in a \$3 savings benefit for the correctional and judicial systems for every \$1 spent.<sup>117</sup>

While the majority of stakeholders agree that raising the age makes sense, the greatest barrier appears to be the funding structure. In Michigan's juvenile justice system, the county and the state share the cost of all juvenile services, including long-term placement and community-based programs. When youth are processed in the adult system, the state bears 100 percent of the cost and the county pays nothing. A change in policy would require that costs be shifted from the state to the county level to accommodate services for 17-year-olds.

Although some counties would need to make adjustments to their services and detention facilities if 17-year-olds were included in the juvenile population, the long-term benefits far outweigh the short-term costs. When fewer youth enter adult prison, the risk to public safety decreases due to lower reoffending rates and youth are less likely to be victims of violence and sexual assault and suicide.

2.

### **Remove all youth from adult jails and prisons and provide access to rehabilitative services available in youth-serving systems.**

Jails and prisons are proven to be more dangerous for youth due to physical and sexual violence and do little to strengthen a child's potential for rehabilitation. Youth in adult corrections have the same needs as those in the juvenile justice system; yet they cannot access age-appropriate rehabilitative programs offered in youth-serving systems. The MDOC recognizes that adult facilities are not designed to meet the developmental, educational, and mental health needs of young people. On the other hand, Michigan's juvenile facilities and community-based programs generally provide age-appropriate therapy and mental health services, drug treatment, education, and vocational training. Unlike the adult system, juvenile justice specializes in holding youth accountable for their actions while also providing individualized treatment to youth with high risks and high needs.

3.

### **Require oversight and public reporting on youth in the criminal justice system and in adult prisons.**

Michigan does not currently require the courts or MDOC to systematically monitor and publicly report on youth as they move through the adult criminal justice system. Reporting on the number and type of waivers, the types of offenses, and aggregate characteristics of youth would help to monitor its occurrence and hold stakeholders accountable. Additionally, tracking outcomes (i.e., the success or failure of the youth after disposition) is critical to determining what works to reduce recidivism, treat young people, and keep communities safe. By tracking the youth who enter the adult system, state legislators and other system stakeholders will be better able to target resources toward prevention services.

4.

**Require judicial review of all transfer cases and allow equal consideration of mitigating factors in each case.**

The role of the judge is to make fair and impartial decisions based on the facts of each case; yet Michigan law allows prosecutors unfettered discretion to waive youth charged with certain offenses into adult court without a judicial hearing. No standards, guidance, or protocols are imposed on prosecutors when making this decision. Imposing judicial review (in the form of “reverse waiver” hearings) would encourage a balanced approach without limiting the ability of prosecutors to pursue harsher punishment for serious crimes.

In making the decision to transfer a case, the judge must consider a number of factors; however, the statute requires prior delinquency history and the seriousness of offense be considered more heavily than any other factor.<sup>118</sup> Rather, the judge should have the authority to equally weigh all factors, including the child’s development, mental health concerns, educational needs, and family support, instead of prioritizing a youth’s history of delinquency and severity of the offense above else. This limitation restricts judicial review, weakening the ability to review the case on an individual, case-by-case basis. Additionally, given the lack of age-appropriate services at most adult facilities, the judge should be required to consider the availability of rehabilitative services when deciding to transfer a case.



5.

**Develop policies and procedures aimed at reducing the overrepresentation of youth of color in the adult system.**

Racial disparity exists at every level of the justice system, but it appears to be amplified among youth who are transferred to the adult system. A first step to addressing this issue is to consistently track demographic information statewide and allow self-identification of race and ethnicity. With a better understanding of the actual characteristics of the youth inside the adult system, community-based interventions can be better targeted to effectively reduce justice involvement among youth of color.

6.

**Strengthen the quality of legal representation by offering training to court-appointed counsel and requiring a competency evaluation for youth who are transferred.**

Youth transferred to the adult system almost always receive court-appointed counsel even though there is little to no training or specialized resources available to attorneys representing this population. Most youth end up accepting a plea agreement; yet, it is unclear whether youth have the capacity to fully appreciate the charges or understand the consequences of their decision to plea. In order to strengthen legal representation, statewide standards should be established and training offered to all court-appointed counsel. Additionally, every youth under age 18 should be evaluated for competency in criminal court to ensure that his or her constitutional rights are upheld.

7.

**Expand the availability of community-based and reentry options for youth convicted as adults.**

Research shows that community-based programs under the juvenile court are highly effective at reducing recidivism and at a much lower cost than prison or placement. Yet similar programs are not offered to young people serving probation or parole. Reentry planning and services do not recognize that youth who are returning to the community have needs that may differ from other adult parolees. Moreover, reentry funding has been dramatically cut from the MDOC budget, even though it is clear that these services are directly related to a reduction in state recidivism rates. In order to increase the availability of effective community-based programs, it is imperative that funding, particularly for reentry services, be restored and sustained.

8.

### Restrict the use of segregation.

Solitary confinement can cause extreme psychological, physical, and developmental harm. For young people, who are still developing and more vulnerable, this can cause irreparable damage, especially for those with disabilities or histories of trauma and abuse. In order to comply with PREA regulations, and ensure the safety and well-being of children, Michigan's prisons and jails should significantly restrict the use of segregation. In situations when an individual must be removed from a group, it is recommended that separation be used sparingly and only for short periods of time.

9.

### Eliminate the option to sentence youth to life without parole and other extremely lengthy sentences.

Because adolescents are still developing, they are highly amenable to rehabilitation. Yet Michigan is one of the few jurisdictions in the world that allows young people to serve life in prison without the possibility of parole for offenses committed prior to their 18th birthdays. Equally concerning are the very long sentences imposed on youth 17 years old or younger. Nearly 25 percent of those currently in the system received sentences with a maximum term of 15 years or more, and 16 percent have sentences with a maximum term of 20 years or more. The option to sentence juveniles to life without parole should be abolished and lengthy sentences for youth should always allow for regular parole review.

10.

### Establish procedures for effectively partnering with families and victims.

Whenever possible and safe, it is preferable to treat youth in the context of their families and communities. Providing services to the whole family can help bolster support for their child and improve dynamics within the home. Likewise, engaging victims provides an opportunity for youth to make amends and repair harm they may have caused. If a youth is removed from the home, it is important that family members and victims are informed and, when appropriate, encouraged to engage in the child's treatment plan and reentry process.



## ENDNOTES

- <sup>1</sup> ROSEMARY SARRI, ET AL., UNIVERSITY OF MICHIGAN, INSTITUTE FOR SOCIAL RESEARCH, JUVENILES COMMITTED TO THE MICHIGAN DEPARTMENT OF CORRECTIONS AND THE MICHIGAN DEPARTMENT OF HUMAN SERVICES 1985-2003: A PRELIMINARY REPORT (2006).
- <sup>2</sup> Robert Hahn, et al., Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, 56 MMWR RECOMMENDATIONS & REP. RR-9 (2007); MACARTHUR FOUND. RESEARCH NETWORK ON ADOLESCENT DEV. & JUVENILE JUSTICE, THE CHANGING BORDERS OF JUVENILE JUSTICE: TRANSFER OF ADOLESCENTS TO THE ADULT CRIMINAL COURT (2006).
- <sup>3</sup> *Id.*
- <sup>4</sup> Governor John Engler, Address to the Prosecuting Attorneys Association of Michigan, Mackinac Conference (July 27, 1995).
- <sup>5</sup> MICH. COMP. LAWS § 712A.2(a). Michigan has considered 17-year-olds as adults for over a century, *see* Mich. Pub. Acts 1907, Ex. Sess. No. 6 § 1; for a listing of other states' age of juvenile jurisdiction *see* OJJDP STATISTICAL BRIEFING BOOK (2012) *available at* [http://www.ojjdp.gov/ojstatbb/structure\\_process/qa04115.asp?qaDate=2011](http://www.ojjdp.gov/ojstatbb/structure_process/qa04115.asp?qaDate=2011).
- <sup>6</sup> *People v. Hana*, 504 N.W.2d 166 (1993).
- <sup>7</sup> MICH. COMP. LAWS § 712A.4(1)(traditional waiver); MICH. COMP. LAWS § 764.1f (automatic waiver).
- <sup>8</sup> MICH. COMP. LAWS 712A.4(4)(a)-(f). The following are the six factors that the court must weigh during a traditional waiver hearing:
1. The seriousness of the offense in terms of community protection, including the use of a weapon, the impact on the victim, and the existence of aggravating factors;
  2. The culpability of the youth, including the level of participation in planning or carrying out the offense or other mitigating or aggravating factors;
  3. Prior offense records, including detention, police arrests, school records, or any other evidence indicating delinquent behavior;
  4. History of treatment and willingness to participate in available programming;
  5. Adequacy of available treatment or punishment in the juvenile justice system; and
  6. The dispositional options available.
- <sup>9</sup> MICH. COMP. LAWS § 712A.4
- <sup>10</sup> MICH. COMP. LAWS § 712A.2(a)(1). The specified juvenile offenses include: arson of a dwelling, assault with intent to murder, assault with intent to maim, attempted murder, conspiracy to commit murder, solicitation to commit murder, first degree murder, second degree murder, kidnapping, first degree criminal sexual conduct, armed robbery, carjacking, assault with intent to rob, assault with intent to commit great bodily harm, bank/safe robbery, escape from a juvenile facility, first degree home invasion, and drug possession or delivery of more than 1000 grams.
- <sup>11</sup> MICH. COMP. LAWS § 769.1. The other option is to make the youth a state ward under the Department of Human Services.
- <sup>12</sup> *People v. Conat*, 605 N.W.2d 49 (Mich. Ct. App. 1999).
- <sup>13</sup> OJJDP STATISTICAL BRIEFING BOOK *supra* note 5.
- <sup>14</sup> MICH. COMP. LAWS § 712A.2d
- <sup>15</sup> MICH. COMP. LAWS § 712A.18(1)(m)
- <sup>16</sup> MICH. COMP. LAWS § 712A.4(5); MCR § 3.950(D)(2)
- <sup>17</sup> MICH. COMP. LAWS § 791.233
- <sup>18</sup> MICH. COMP. LAWS § 769.25
- <sup>19</sup> Jeffrey Fagan, et al., *Youth In Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, 40 JUV. & FAM. CT. J. 1, 1 (1989); NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA (2007).
- <sup>20</sup> Hahn, *supra* note 1.
- <sup>21</sup> *Id.*
- <sup>22</sup> The average daily prisoner cost in Michigan is \$93.97 a day or \$34,299 a year. *Cost per Prisoner per Day*, MICH. DEP'T OF CORR., [https://www.michigan.gov/midashboard/0,4624,7-256-60564\\_60567\\_60618---,00.html](https://www.michigan.gov/midashboard/0,4624,7-256-60564_60567_60618---,00.html) (last visited May 1, 2014).
- <sup>23</sup> THE PEW CTR. ON THE STATES, PUBLIC SAFETY PERFORMANCE PROJECT, TIME SERVED: THE HIGH COST, LOW RETURN OF LONGER PRISON TERMS (2012).
- <sup>24</sup> GREAT LAKES ECONOMIC CONSULTING, THE SOCIO-ECONOMIC BENEFITS AND ASSOCIATED SAVINGS OF COMMUNITY-BASED PROGRAMS FOR JUVENILE OFFENDERS (2013).
- <sup>25</sup> LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO RE-ENTRY A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS 18 (2004).
- <sup>26</sup> MACARTHUR FOUND. RESEARCH NETWORK ON ADOLESCENT DEV. & JUVENILE JUSTICE, LESS GUILTY BY REASON OF ADOLESCENCE (2006).
- <sup>27</sup> Laurence Steinberg & Elizabeth S. Scott, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 2, 15 (2008).
- <sup>28</sup> STEPHANIE LEE, ET AL., WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, NO. 12-04-1201, RETURN ON INVESTMENT: EVIDENCE-BASED OPTIONS TO IMPROVE STATEWIDE OUTCOMES: APRIL 2012 UPDATE (2012).
- <sup>29</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).
- <sup>30</sup> *Graham v. Florida*, 560 U.S. 48 (2010).
- <sup>31</sup> *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

- <sup>32</sup> NATIONAL PRISON RAPE ELIMINATION COMMISSION, REPORT 16-19(2009).
- <sup>33</sup> CARMEN DAUGHERTY, CAMPAIGN FOR YOUTH JUSTICE, STATE TRENDS LEGISLATIVE VICTORIES FROM 2011-2013; REMOVING YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM (2013).
- <sup>34</sup> MICH. DEP'T OF CORR., *Offender Management Network Information (OMNI), 2003-2013*.
- <sup>35</sup> MICH. DEP'T OF CORR., *Offender Tracking Information System (OTIS), 2003-2013*. This current number reflects a point-in-time data set, November 21, 2013.
- <sup>36</sup> MICH. STATE POLICE, MICHIGAN CRIME INCIDENT REPORTING, STATEWIDE ARREST TOTALS 2012: ARRESTS BY AGE, SEX, AND RACE (2013).
- <sup>37</sup> Irene Ng, et al., *Comparison of Correctional Services for Youth Incarcerated in Adult and Juvenile Facilities in Michigan*, 92 Prison J. 4, 460-483 (2012).
- <sup>38</sup> *Id.*
- <sup>39</sup> *Id.*
- <sup>40</sup> *Id.*
- <sup>41</sup> MICH. DEP'T OF CORR., *Offender Management Network Information (OMNI), 2003-2013*.
- <sup>42</sup> *Id.*
- <sup>43</sup> *Id.*
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- <sup>48</sup> MICH. SUPREME COURT OFFICE OF ADMIN., ANNUAL REPORT OF MICHIGAN STATE COURTS, STATISTICAL SUPPLEMENTS, 2003 - 2013.
- <sup>49</sup> MICH. DEP'T OF CORR., *Offender Management Network Information (OMNI), 2003-2013*; MICH. COMM. ON JUVENILE JUSTICE, *Michigan Disproportionate Minority Contact Data*, 2012.
- <sup>50</sup> *People v. Conat*, 605 N.W.2d 49 (Mich. Ct. App. 1999), holding that the court should not interfere with the prosecution's broad discretion as to what charge to bring.
- <sup>51</sup> OJJDP STATISTICAL BRIEFING BOOK *supra* note 5.
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- <sup>53</sup> MICH. COMP. LAWS § 712A.4(5); MCR3.950(D)(2)
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- <sup>61</sup> STATE BAR OF MICHIGAN, JUDICIAL CROSSROADS TASK FORCE, REPORT AND RECOMMENDATIONS: DELIVERING JUSTICE IN THE FACE OF DIMINISHING RESOURCES (2011).
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- <sup>64</sup> Thomas Grisso, et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 4 (2003).
- <sup>65</sup> MICH. COMP. LAWS §330.2062
- <sup>66</sup> MICH. COMP. LAWS § 762.11
- <sup>67</sup> *Id.*
- <sup>68</sup> MCR § 3.950(E)(2)(requiring a waived youth to be subject to the same procedures used for adult criminal defendants, including being held in a jail); MICH. COMP. LAWS § 764.27a(3)(allowing youth designated to be tried as an adult to be held in adult jail); MICH. COMP. LAWS § 712A.16(1)(allows youth under juvenile court jurisdiction to be held in adult jail); MCR 3.928(C) (allowing a person 17 or older to be held in jail up to 93 days if found in contempt of court); MICH. COMP. LAWS § 712A.18(1)(e)(allowing a person 17 or older to be imprisoned in adult jail if found violating a PPO).
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<sup>74</sup> Interview with Washtenaw County Detention Center Administrator, Feb. 27, 2014.

<sup>75</sup> MICH. DEP'T OF CORR., *Offender Management Network Information (OMNI)*, 2003-2013.

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<sup>84</sup> SARRI *supra* note 3.

<sup>85</sup> MICH. DEP'T OF CORR., *Offender Tracking Information System (OTIS)*, 2003-2013. This current number reflects a point-in-time data set, November 21, 2013.

<sup>86</sup> *Id.*

<sup>87</sup> Margaret E. Leigey & Jessica P. Hodge, *And Then They Behaved: Examining the Institutional Misconduct of Adult Inmates Who Were Initially Incarcerated as Juveniles*, 93 PRISON J. 3, 272 (2013); Kuanliang et al., *Juvenile Inmates in an Adult Prison System: Rates of Disciplinary Misconduct and Violence*, 35 CRIM. JUST. & BEHAV. 9, 1186 (2008) (finding that even after controlling for gang affiliation, education level, time served, conviction for a violent offense, and sentence length, juvenile inmates were significantly more likely to have committed the specific misconduct than adult inmates).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Memo from Michigan Department of Corrections staff at Thumb Correctional Facility, May 25, 2010 (on file with author).

<sup>91</sup> MICH. DEP'T OF CORR., TRAINING REPORT FOR STAFF WITH YOUTHFUL OFFENDERS (2014). The training modules are a sixteen (16) hour program consisting of:

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Youthful Offenders: Anger Management

Youthful Offenders: Behavioral Observation and Recording

Youthful Offenders: Cultural Awareness

Youthful Offenders: Effective Communication

Youthful Offenders: Offender Rights

Youthful Offenders: Suicide Awareness and Prevention

<sup>92</sup> MICH. DEP'T OF CORR., *Offender Management Network Information (OMNI)*, 2003-2013.

<sup>93</sup> Ng *supra* note 37.

<sup>94</sup> Summons and Complaint for Petitioner, John Doe v. Mich. Dep't of Corr., No. 13-1196-CZ (22nd Mich. Cir. Dec. 9, 2013).

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<sup>97</sup> Mich. Dep't of Corr., THUMB CORRECTIONAL FACILITY OPERATING PROCEDURES, NO. 04-06-180 (2014).

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<sup>100</sup> MICH. DEP'T OF CORR., ADMINISTRATIVE SEGREGATION REPORT (2014).

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<sup>104</sup> Miller v. Alabama, 132 S. Ct. 2455 (2012). These factors include a youth's age, immaturity level, failure to appreciate risks and consequences, family

and home environment, circumstances of the offense and extent of participation, competency and inabilities to deal with police or prosecutors, and the possibility of rehabilitation.

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<sup>113</sup> LEGAL ACTION CENTER *supra* note 25.

<sup>114</sup> MICH. COMP LAWS § 712A.19b (allowing termination of parental rights for the formerly incarcerated); 20 U.S.C. § 1091(r)(1)(automatically prohibiting federal loan dollars for those with a drug conviction); 10 U.S.C. §504 (ineligibility for all armed services); see Michigan Law Reentry for complete listings of employment and licensing limitations.

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