

For more information, contact: (202) 558-7974



Jason Ziedenberg, M.S.
Research and Policy Director
Justice Policy Institute
www.justicepolicy.org

**COUNCILMEMBER TOMMY WELLS, CHAIRPERSON
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY**

**BILL 20-825, THE “YOUTH OFFENDER ACCOUNTABILITY AND REHABILITATION ACT
OF 2014”**

**Wednesday, October 22, 2014, 11 a.m.
John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004**

Thank you, Chairman Wells for allowing me to testify in support of Bill 20-825, the Youth Offender Accountability and Rehabilitation Act of 2014. Along with this written testimony, I am providing the Committee with a paper I authored on youth transfer to the adult system for the National Institute of Corrections.

My name is Jason Ziedenberg. I am the Research and Policy Director of the Justice Policy Institute, a Washington, D.C.-based think tank whose mission is to reduce the use of incarceration and the justice system and promote policies that improve the well-being of all people and communities.

I am also a 13-year resident of Washington, D.C. and a home owner in Ward 1.

I support the YOARA, and encourage you and your colleagues to enact this legislation. This is the right legislation for Washington, D.C. from a public safety, youth development, and juvenile correctional perspective.

The reason I support this legislation includes reasons that you have heard already:

- 1) **YOARA will enhance public safety in Washington, D.C.:** Numerous studies have shown that children prosecuted as adults are more likely to reoffend than those who stay in the juvenile justice system. The U.S. Justice Department’s Office of Juvenile Justice and Delinquency Prevention, the Centers for Disease Control, and studies done by researchers in academia and in states have found that youth placed in the adult system are more likely to commit future crimes than similar youth treated in the juvenile system.
- 2) **YOARA will keep young people safer:** Youth in adult facilities are also at greater risk for sexual victimization, physical assault, and suicide. This is why we are working so hard under the Prison Rape Elimination Act (PREA) to remove young people from adult facilities, and why we are seeing PREA as a catalyst for adult transfer reform.

For more information, contact: (202) 558-7974

- 3) **YOARA will help young people connect to more appropriate services while they are in the justice system:** The rehabilitative programs available in adult facilities are not always appropriate for adolescents, which can mean those in juvenile facilities and youth charged as adults are more likely to return to the community with few skills and the same issues they had prior to incarceration. This is important both for young people sentenced in the adult system, and for young people who are detained pretrial in the adult system.

My perspective on YOARA is informed by a couple of key professional experiences.

Prior to my position at JPI, I served under Marc Schindler when he ran the Department of Youth Rehabilitation Services. I also affirm his testimony presented earlier today.

Prior to that, I served under Scott Taylor, the Director of the Multnomah County Department of Community Justice, the county government department covering Portland, Oregon that supervises adult probation and parole, as well as juvenile pretrial detention and juvenile probation in Oregon's largest county.

After serving in these juvenile and adult criminal justice staff positions, I served as a researcher to the U.S. Justice Department's National Institute of Corrections (NIC), an agency within the U.S. Department of Justice, Federal Bureau of Prisons. NIC provides training, technical assistance, information services, and policy/program development assistance to federal, state, and local corrections agencies. As of October 2014, I have been the author of a half dozen monographs for NIC that have covered the domains of corrections, community corrections and juvenile justice.

Given what you have heard already, I'd like to speak to two areas around YOARA from my professional experience in juvenile corrections and as a researcher and writer on juvenile justice issues.

- 1) **The evolving thinking in juvenile corrections on removing young people from adult correctional settings, especially pretrial settings;**
- 2) **The evolving thinking among corrections administrators on the issue of juvenile transfer.**

For more information, contact: (202) 558-7974

1) The evolving thinking in juvenile corrections on removing young people from adult correctional settings, especially pretrial settings;

When I served under Director Taylor at the Department of Community Justice (DCJ) in Portland, Oregon, the county commissioners wisely chose to pass a resolution that set policy between the department – which is responsible for the management and conditions of a pretrial detention center for juveniles – and the Multnomah County Sheriff’s office, which is responsible for the county jail.

The resolution held that the juvenile pretrial detention center would become the presumptive place that young people might be held pretrial, pending court processes. The resolution memorializes a policy that has ensured that young people are detained pretrial in the juvenile justice system, rather than held in an adult jail (even pending trial on a charge that might transfer their case to the adult system). There is a policy in place that, if the Sheriff and head of DCJ believe a young person cannot have their needs met in the juvenile system, they may be held in the adult jail. I should note that the provision has rarely been used. After Multnomah County Oregon began housing all youth charged as adults in a juvenile facility, there was no increase in peer fights or assaults on staff at the facility in the following five years.

Since the county took this step, Oregon has taken steps to see that pretrial detention for youth is the norm, not the exception, by making it the presumption that when youth are detained pretrial, they are detained in the juvenile system, not the adult system—across the state of Oregon.

Since that time, a slew of other states have followed suit: Texas, Pennsylvania, Virginia, Colorado and Ohio. These are very different states, with different philosophies, representing different regions of the country, all taking steps to reduce young people’s exposure to adult jails.

Along with the changes to how youth are served pretrial, these states are also reducing the number of young people transferred to the adult system overall by changing statute and practice. Ohio, Virginia and Pennsylvania have all narrowed their transfer statutes.

How are these states getting here? These states linked reform of the transfer statute and ongoing juvenile correctional reform together: All of these states *1) expanded the use of diversion, 2) reduced confinement in the juvenile justice system, 3) increased resources so that young people in juvenile custody could be served close-to-home*—if not in their home—and *4) used the empty space* within the revamped juvenile justice system to serve those young adults who had once been confined in the adult system.

You have already heard from Marc Schindler about this earlier in the day, but it strikes me that in Washington, D.C. we are now touching a lot of the elements that other states had to work through to bring young people out of the adult system and into the juvenile justice system.

There are systemic policy reforms that still need to be addressed in Washington, D.C – for example, expanding the use of diversion at the front end of the system – that can be addressed, and that should be addressed because it is the hallmark of an effective criminal justice system.

For more information, contact: (202) 558-7974

2) The evolving thinking among corrections administrators on the issue of juvenile transfer.

As a consultant writer to the National Institute of Corrections (NIC), I worked with NIC staff to convene two dozen correctional leaders to look at the issue of youth transfer to the adult system.

Again, NIC provides training, technical assistance, information services, and policy/program development assistance to federal, state, and local corrections agencies.

The convening resulted in a white paper—entitled *Youth in the Adult Criminal Justice System*—that reflected the two dozen individuals’ thinking on what needs to happen in juvenile justice reform and juvenile corrections.

The monograph included statements from the leading authorities on juvenile corrections, including:

- **Council of Juvenile Correctional Administrators:** *“The juvenile justice system is the most appropriate system to hold youths accountable and receive age-appropriate and effective treatment and rehabilitation opportunities.”*
- **American Jail Association:** *“The American Jail Association is opposed to the concept to housing juveniles in any jail unless that facility is specifically designated for juvenile detention and staffed with specially trained personnel.”*
- **Prisoner Rape Elimination Act Commission:** *“Commission urges that individuals under the age of 18 be held separately from the general population.”*
- **National Association of Counties:** *“Counties are urged to remove juveniles from correctional facilities which detain accused or adjudicated adults.”*
- **American Probation and Parole Association:** *“All agencies, acting on behalf of the government and involved in the life of a child or youth must accept the responsibility to provide services or assist in securing appropriate services which guide and nurture children and youth toward healthy and productive adult lives.”*

Among those stakeholders we convened, the National Institute of Corrections heard the following in regards to how young people fair in adult facilities.

- *“In Georgia, kids being held pretrial weren’t being treated much differently than adults. When kids are in adult facilities, I am not sure there is much learning going on that would enable the kids to mature.”* – Orlando Martinez, former director, Georgia Department of Juvenile Justice.
- *“The average 14-year-old is a ‘guppy in the ocean’ of an adult facility. The law does not protect the juveniles: it says they are adults and treats them as such.”*—Sheriff Gabe Morgan, Newport News, Virginia.

The key policy recommendations from the NIC white paper, *“Youth in the adult criminal justice system”* include the notion that systems should ***“revisit policies allowing youth to be held in adult jails pretrial.”***

The white paper reads:

- ***“Legislators and executives should review where the appropriate place is to manage youth pretrial.”*** Jurisdictions across the country have begun to make juvenile facilities the presumptive place where youth should be detained pretrial awaiting an adult charge. Elected officials who are responsible for the entire public safety budget should be encouraged to facilitate these discussions. The costs that a change could have on the system are an important consideration, but the fiscal impact of any change also needs to take in account the benefits of reduced recidivism, and reduced liability to government.”

For more information, contact: (202) 558-7974

Other recommendations in the NIC white paper were developed to improve our understanding of ways to reduce young people's contact with the adult criminal justice system. These recommendations include: Expanding options for pretrial release for young defendants in adult court, developing case processing agreements between criminal justice stakeholders to structure charging decisions in juvenile transfer cases, development of appropriate strategies to manage young adults on adult probation and parole, and clarifying ways the federal government and other levels of government can partner to operationalize these reforms.

Issue of supervision and “risk and need” principals.

Finally, I understand that there have been some concerns floated by some stakeholders as to whether or not some of these youth can be successfully supervised outside of a correctional setting (e.g. in the community).

Best practices in community supervision means aligning the whole system with “risk and need.” I understand that not every “child advocate” uses the same terminology, but the approach is the same.

The essence of the approach is that we study how we have served a population, we analyze the data on the outcomes of our approach, and then we come up with strategies that recognize the needs of the individual and their assessed risk to reoffend.

How we do all this is based on finite resources and the science on what works: We are not going to lock every young person up, simply because we do not have the resources to do so, and it is the wrong thing for them. Similarly, we are not going to provide intensive supervision to every single young adult who has been convicted, simply because they will not need the same things (either the supervision or the service).

If we follow the risk and need principle and apply it to the youth population designed to be served under YOARA, we will protect public safety and see better outcomes for those youth, their families, and their communities. There is nothing dramatically different about a young person who may require a certain supervision approach because of a variety of assessed factors, and an adult –other than we should have a developmentally appropriate approach to the supervision.

I thank you for your consideration, and I am happy to answer any questions in regards to my testimony or the issues raised here.