

Testimony of Jim Moeser

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Before the Wisconsin State Assembly

Committee on Corrections and the Courts - Assembly Bill 732

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Good afternoon. My name is Jim Moeser, and I currently serve as the Deputy Director of the Wisconsin Council on Children and Families. I have been in this role since November of 2008, following nearly 34 years of work in the juvenile justice system. My experience includes serving as the Juvenile Court Administrator for Dane County for over 16 years, as the Administrator for the Division of Juvenile Corrections in 2003, and as juvenile justice consultant and trainer at the state and national level.

As you know, the Wisconsin Council on Children and Families has been an active voice for returning 17 year-olds to the juvenile justice system, to correct what we believe is a serious public policy mistake made beginning in 1996 when all 17 year-olds, no matter how minor the offense, became subject to being treated as adults. While many of the changes made with the implementation of the Juvenile Code in 1996 reflected a reasonable and more balanced approach to dealing with youthful offenders, the decision to remove 17 year-olds from juvenile jurisdiction was not one of those changes.

I could talk for hours on this issue, but let me list six of the reasons why we believe the question is not “how we can afford to return 17 year-olds to the juvenile system?” but how we can afford not to?”; not how we can be “tough on crime?” but rather “how can we be smart on crime?”.

First, the vast majority of the approximately 28-30,000 17 year-olds arrested each year in Wisconsin are arrested for relatively minor and certainly non-violent offenses. In fact, arrest data from the Office of Justice Assistance indicates that in 2008 (and similar in other years), only 1.8% of all 17 year-olds arrested each year are arrested for violent crimes and less than 15% for what might be considered serious offenses. That, then subjects over 24,000 non-violent, non-serious youthful offenders to a system that is ill-equipped and under-resourced to successfully deal with them. In fact, it commits your 17 year-old son or daughter, even ticketed for an offense such as underage drinking, to being included in the public CCAP record, accessible to everyone (employers, landlords, etc.), for that violation.

Secondly, we have learned a lot over the last 15 years about both adolescent and particularly brain development – in many ways the scientific evidence now reinforcing what we already knew, that the part of the brain that is responsible for “executive decision-making”, weighing out choices and consequences and making rational decisions, is the last part of the brain system to fully develop – even up until the early 20’s. Conversely, we know that the part of the brain that produces chemicals that arouse emotion is, as a result, often more in control of how decisions are made. I do not suggest that 17 year-olds do not know the difference between right and wrong – that they are not capable of intelligent thought – but, what I do know as a parent and as someone who spent over 30 years working with teens that it was not uncommon for me to think, and often say “how can such a smart kid do something so stupid?”. Nor, am I suggesting that somehow no matter what youth do that could potentially harm someone else should be written off as a “stupid mistake” – but, what I am suggesting is that there is nothing to be gained by treating all 17 year-olds as adults in this one area of their lives.

Third, community safety is jeopardized by treating all 17 year-olds as adults. That needs more explanation – namely that the best and only, I repeat only, credible research conducted comparing similar youth processed in the juvenile vs. the adult systems indicates that youth dealt with in the adult system are 34% more likely to reoffend, and in fact reoffend faster and more seriously, than similar youth dealt with in the juvenile system. The Center for Disease Control screened reliable and valid research on this issue and concluded that processing youth in the adult system as a long-term crime reduction strategy is counter-productive. The Legislative Audit Bureau study in 2008 noted that 17 year-olds released from prison, fortunately a relatively small number, were more likely to reoffend than either youth placed in a juvenile facility or their adult counterparts. There will always be some 17 year-olds, based on the nature of the offense and their circumstances, who may need to be dealt with in the adult system – but make no mistake about it, if the intent of dealing with 17 year-olds in the adult system is to enhance long-term community safety, there is no credible research evidence to support that it works. Some changes were made in the waiver provisions when the Juvenile Code was written, lowering the hurdle for a court to transfer a youth into adult court – and, we believe that the courts and judges are perfectly capable of weighing out the circumstances in individual situations, as may be necessary, to determine which 17 year-olds are best dealt with in the adult system. This bill simply proposes returning the responsibility for these decisions to the courts.

Proponents of the 1996 change will talk about “sending a message”, about “teaching a lesson”, and about “getting tough on crime” as if youth hear the message, take it into consideration in what they do, and believe they will be caught. Are there some circumstances in which this is true – undoubtedly. Does it really reflect what you know about how all 17 year-olds think?

Fourth, youth can be harmed by involvement in the adult system. Youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility. They are an elevated risk of being assaulted or otherwise victimized, and in what can only be described at best as an unintended consequence of current law, they are inevitably negatively influenced during this critical developmental stage by adult inmates. They are subject to discrimination in employment and housing, albeit unstated discrimination, carrying with them a record of an adult conviction – and in perhaps the more egregious situations subject to denial of federal financial aid if they have been convicted of certain drug offenses. Again, if the court has determined that a 17 year-old needs to be dealt with in the adult system and “pay the price” for their decisions in this way, at least there has been some thought and due process to it – not subjecting an entire cohort of youth to this potential harm with no evidence of long-term benefit to the community. There is a cost now to doing what we are doing. We may not see it as a fiscal cost, but make no mistake about it, there is a cost.

Fifth, there are economic benefits to our communities in treating youthful offenders appropriately – and I might add this really includes all youthful offenders, not just 17 year-olds – in that cost-benefit analysis indicates that for each youth who may be at moderate to high risk of continuing down a path of criminal behavior and is redirected from that path, there is a net benefit to the community of from \$1.7 to \$3.4 million – and that is actually in values from the early 2000’s. Recent updating of that suggests the net benefit could be as high as \$5.8 million, depending on what the criminal trajectory of that youth could be compared to their potential value-added to the community by being redirected to a life of education and employment – contributing to our communities rather than taking from it. And, as important to that fiscal benefit, there is a benefit of reducing the number of people who are victimized by crime – how much is that worth? If the cost of returning 17 year-olds to the juvenile system is \$50-75 million, being able to redirect as few as 50 17 year-old offenders means that we “break even” – and I have no doubt at all we could exceed that modest goal.

Sixth, the Juvenile Code of 1996 is not the same as the Children’s Code of 1976 – I worked through and under both codes. The 1996 code in particular, takes a

much more balanced approach – focusing on three core goals of community safety, competency development, and accountability for offenders. It replaces prior language about using the least restrictive disposition to using the most effective disposition. Out of necessity and based on good research, since 1996 our juvenile justice system has become increasingly more effective at meeting those three core goals. So, returning 17 year-olds to the juvenile system, despite the rhetoric of some, is not returning them to a system that is soft on crime but a system that is smart on crime. If we are going to be tough on crime, let's at least be effective – and I believe that the Juvenile Code, for the most part, has proven to be effective. That is reflected in continuing declines in juvenile arrests and petitions, and the continued creation and utilization of effective programs across the state.

WCCF is well aware of the fiscal resources needed to support returning 17 year-olds to the juvenile system and we believe that in returning them there needs to be the necessary fiscal support to enable the juvenile system to continue its effectiveness. We may differ from others about what that cost should be – and there are some options on how that fiscal support could be structured – for example, is the amount needed within the range note by the Legislative Audit Bureau's report, by some county estimates in the neighborhood of \$75 million, or in the approximately \$55 million gap between what the Youth Aids allocation would be if it increased at the same rate as the daily rate charges for Juvenile Corrections services, OR is there some other number out there?

Ideally, this change might occur during the budget process – allowing for a more thorough analysis of what is needed and how to best implement this change over time – but whether it is this bill, or another one to follow, or something included in the budget process, I return to an earlier statement – that it is not how can we afford to make this change; rather I assert it is how can we afford not to?

For the safety of our communities, for the long-term fiscal health of our state, for the reduction in victims, and for providing these youth an opportunity to learn from their mistakes and gain the skills they need to become successful community members, we believe there is only one sound public policy response – namely returning 17 year-olds to the juvenile system.

Attached:

WCCF Policy Brief, dated 3.16.10

Release from the National Council on Crime and Delinquency re: AB732