

ISSUE BRIEF

ON
THE IMPACT OF
INCARCERATION &
REENTRY

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Real Impacts

The actual results of Rhode Island's new policy that charges 17-year-olds as adults

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Introduction

Article 22 of the 2007-2008 Rhode Island State Budget, passed last June, requires 17-year-olds to be tried and sentenced as adults for criminal offenses.¹ According to House Speaker William Murphy (D-26), the measure was meant to save money. "When the proposal came over from the governor in his budget, it was a cost saving issue, and it was just over three and a half million dollars that we were supposedly going to save."² However, legislators are now reconsidering the provision. The Senate has passed a compromise bill, S1141, which would have undone Article 22 and instituted a diversion program for juveniles to try to cost costs. The cost saving predictions of Article 22 have also now been demonstrated to be incomplete. Again, according to Murphy, legislators discovered that it costs "\$39,000 a year to house the average inmate," while, "it's costing almost \$100,000 to house [the 17-year-olds in High Security]."

Since the Budget passed, the RI Department of Corrections has taken into custody 36 17-year-olds who would previously have entered DCYF custody, with more jailed every week.³ An examination of these young people reveals that they are receiving unduly harsh treatment for their offenses. Juveniles are imprisoned in the High Security prison, causing them and their families severe trauma. Also, although it was not an explicit intention of the bill, one of the most important outcomes is that these juveniles will now have adult records, seriously limiting them as they become adults.

Furthermore, although the new law impacts all of Rhode Island, urban communities and communities of color, already over represented in the criminal justice system, are disproportionately impacted by Article 22. As a result, the change will have ripple effects on young people and their communities with negative long term consequences for the state. Meanwhile, Article 22 has generated a number of procedural inconsistencies and is in legal disagreement with a number of previous Rhode Island laws. Finally, an array of studies has shown that transferring juveniles to adult courts exacerbates youth crime and increases long-term costs.

A Look at the 17-Year-Olds

Because full arrest records are not available, the 36 17-year-old offenders admitted to DOC custody since June represent only those who have been arrested *and* committed to the Adult

Correctional Institution. There are many more juveniles who have been arrested and charged under the new law, but were never sent to the ACI.

Anecdotally, there is a lot of variation among the 36; some had never been in trouble with the law before, and some had spent time at the Training School.⁴ However, regardless of whether they receive prison time, they all now have an adult record following them.

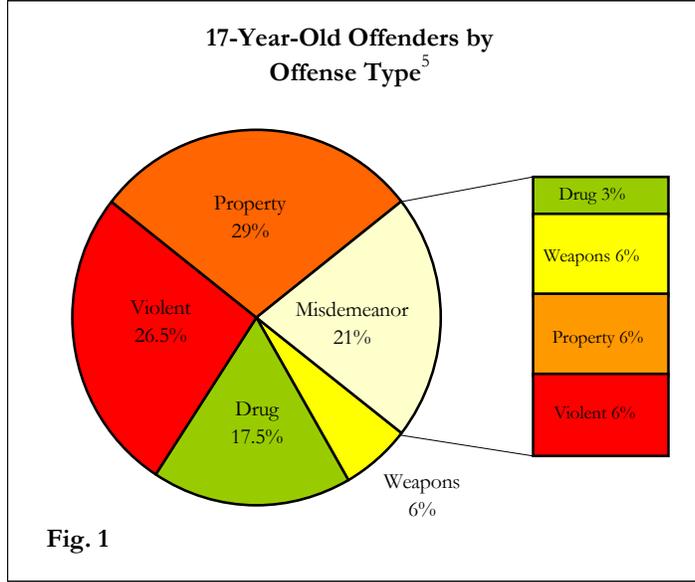
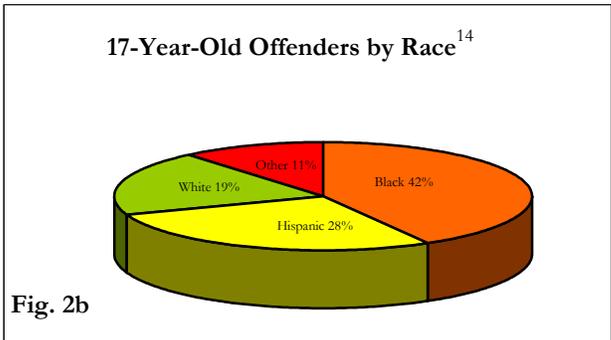
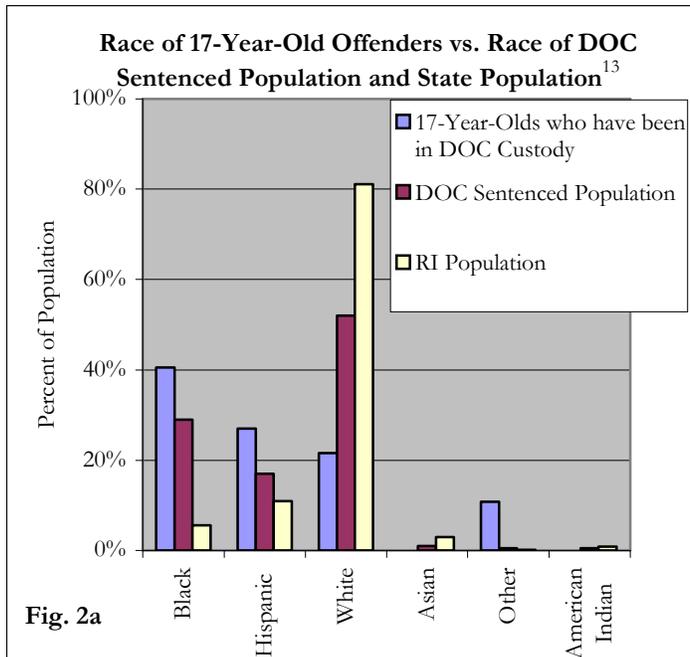


Figure one illustrates that the majority of 17-year-olds that have spent time in DOC custody were charged with property-related felonies or for a misdemeanor. Drug crimes were less common and violent felonies represented only 26.5% of all crimes. All the juvenile criminal background of these individuals is sealed and thus unavailable, but evidence demonstrates that the vast majority of the offenders now being punished as adults have committed nonviolent crimes and misdemeanors. This is the case of Scott, a 17-year old and first-time offender who was sent to High Security prison for being a look-out during the theft of copper pipes from an empty house (see box for more details).

Historically, in Rhode Island, serious juvenile offenders can be waived into adult court if their crime warrants it. In the past 10 years, 146 cases have been waived into adult court, and only 5 cases that have been filed have been waived or dismissed.⁶ If Article 22 is reversed, this will not affect the ability of the state to waive certain offenders into adult court if their crime merits it.

The net result, so far, of Article 22, has been predominantly to punish non-violent and misdemeanor offenders. It has also been to punish juveniles living in urban centers, most with below an 11th grade education, and almost all living in broken or separated families. The juveniles have come from all over Rhode Island, from Bristol County to Newport to Warwick. However, roughly 50% come from Providence alone⁷. Of the 36 individuals, only 4 live with both parents.⁸ 23 out of the 36 live with only one parent, and in one third of those families the father’s residence is unknown. Nine of the 36 are living with a non-parental care-taker, including girlfriend’s family, uncle, grandmother, friend, and brother.

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Figures 2a-2b. – Blacks and Hispanics, already over represented in the DOC population appear even more disproportionately among the 17-year-olds that have been charged under Article 22 so far.

Additionally, of the 36, 22 (60%) have below an 11th grade education.⁹ The effect of Article 22 has fallen largely on juveniles with less education and less parental support.

While Article 22 has affected youth from all backgrounds in Rhode Island, the relative incarceration rates of the races illustrate a disproportionate tendency to imprison people of color. 29 of the 36 kids are kids of color (81%) and based on this data 17-year-olds of color are 28 times more likely to be incarcerated as adults than white 17-year-olds¹⁰. Such inequity is a known feature of Rhode Island's prison system. Alarming, however, the bias already present is markedly exaggerated among 17-year-old offenders (figure 2a). In fact, the racial bias amongst 17-year-olds is four times that of the overall prison population.¹¹ In other words, young people of color are even more disproportionately represented in the criminal justice system than people of color in general, who are already over represented. This may indicate disproportionate policing of youth of color and unfair treatment at other stages of the criminal justice system, and also reflects higher rates of poverty, fewer employment opportunities, and low rates of high school graduation amongst communities of color in Rhode Island.¹²

Short-Term Financial Cost

The cost of incarcerating a juvenile offender in the Adult Correction Institution is \$100,012 per year, making it more costly than the average cost of the Training School, \$98,000.¹⁶ While the 2008 budget assumed a three million dollars savings as a result of Article 22, this savings will not materialize as a result of increased costs to the ACI, which were not sufficiently accounted for. Because the ACI is already at capacity, it is no easier for the ACI to absorb these additional inmates than it is for the Training School. According to A.T. Wall, the Department of Corrections Director, "At this point we're so close to capacity that we have no vacant cellblocks."¹⁷

The final short-term costs to the state with respect to Article 22 will depend on the length of sentences given to 17 year olds, which cannot be estimated at this point. However, the evidence is clear that the adult system is not cost effective in the short term in regard to incarceration. While actual prison time is variable, there is no reason that juveniles should be given more time to serve in the juvenile system as opposed to the adult system. If a juvenile does not require a sentence which includes significant incarceration, they could just as well be dealt with in the juvenile probation system. This would avoid the collateral consequences of the adult system, which make the adult system considerably less effective for juveniles, as discussed in the next two sections.

In addition to higher incarceration costs, there are several other costly repercussions of Article 22. One is that it is more likely that juveniles that have been arrested will be held in custody. Previously, juveniles arrested by the police could only be held with specific judge approval while awaiting a court

Scott¹⁵

Scott spent two-and-a-half days in the High Security Prison and faces an adult felony charge of breaking and entering that will likely be on his record for at least ten years. This is Scott's first encounter with the law, and he was arrested for keeping lookout while two adult men took copper pipes from an abandoned building. Scott had been working on cars all summer through a summer internship, and was looking for a new job. He took part in the crime because he wanted money now that he could not find a job. He stated he just wanted a good legal job so he could stay busy and get ahead. "It feels good when you have that check. I'm no criminal, I'm no gangster; I see people out on the street and I know I don't want to be like that. I was proud I was the only kid I knew that had not been in the training school, I didn't let the streets suck me in."

Scott described being in the same room every day with murders and child molesters in High Security, "It's scary in there, if someone gets angry at you, they are probably going to do something to you. You gotta watch your back." Had Scott's mother not been able to scramble to make bail, Scott would have spent a month in High Security. Scott's biggest concern was being able to finish his last year of High School, get a job, and go to technical college, where he wants to learn to be an electrician. "I want to have a good life, go to school, go to work. I'm worried about my future now, whether I can get a job and get into school."

appearance. Now, juveniles can be held for one or several nights without oversight before bail is set. This is the case with Vincent, who was held for three days at the High Security facility before being given bail, despite that fact that he was a nonviolent, first-time offender (see box).

Elements of probation have also become more costly. Previously, if a juvenile was waived into adult court they were taken out of Family Court jurisdiction entirely. Currently, if a juvenile with a Department of Children Youth & Families probation officer is sentenced to adult probation, they will continue with two probation officers. The state incurs twice the cost of probationary oversight.

Collateral Consequences of Article 2

While the final affect of the law change is that 17 year old offenders can end up in adult prison instead of the Training School, the collateral affects are just as important and just as devastating to juveniles and their families.

For many juveniles who are tried in the adult system, the most important consequence of their experience will be a permanent adult record. This is not an intended effect of the initial law change, but

for many it is the most real. As the mother of one 17 year old boy who had been tried as an adult stated, “No one wants their kids to have an adult record following them for the rest of their life.” Adult records will follow juveniles for a long and crucial time in their life, when they are trying to finish their education and start careers. In Rhode Island, felony convictions cannot be expunged for ten years at the earliest, following juveniles until at least their 27th birthday.

Having a criminal record can keep individuals from receiving loans for higher education, prevents them from entering many trades in Rhode Island, and is a major obstacle to finding any job. In addition, some 17 year olds that are tried as adults will no longer even be able to live

with their families. In Providence, people with felony records are barred from living in public housing or Section 8 housing for ten years after a felony conviction.¹⁸ Kids living in public housing will have to either find new homes or their whole families will be forced to move.

Vincent

Vincent had never spent time in the Training School, and never had problems with the police or the law until July, when the State Police stopped him and a cousin because she did not have a front license plate. He had possession of her drugs, which police found when they searched the car.

He was arrested and then spent three days at the ACI, in the high security facility. Vincent said, “Being in there wasn’t a good experience for a 17-year-old who’s just starting to live life. I know that being in jail doesn’t mean you should be treated well, but there should be a little more consideration for minors.” During his stay at the ACI, he was too frightened to leave his cell to bathe or eat, provoking verbal abuse from the guards.

Several weeks after being arraigned, Vincent was informed he owed the court \$788 in court fines and fees or he would be sent back to prison. He may have to take time out of his GED program to try and earn the money.

Procedural Complications and Legal Inconsistencies

There is considerable established legal precedent for treating juveniles differently than adults in Rhode Island law. Juveniles have previously been found to require different protections in terms of interrogation and confession, ability to enter into legal contracts, and access to state care.

Sean

Sean spent 60 days in High Security prison. The first week he was there he was taken to the hospital where he was stripped naked and left in a room for talking about suicide. His mother stated, “This has been the hardest 60 days of my life. These children are not equipped with the social skills to deal with the elements they are exposed to at the ACI. My son eats his meals with child predators and rapists, is it any wonder he wants to die?” Sean’s incarceration at the ACI has cost the state significantly more than if he had spent the same amount of time in the Training School.¹⁹

Rhode Island law has strongly upheld this difference in competency. Juveniles are required by law to have extra access to legal council, to insure that they properly understand the circumstances of their trial.²⁰ Jennifer Fitzgerald, attorney for the Rhode Island Office of the Public Defender, stated, “There is a serious question of whether a substantial portion of these individuals are even competent to stand trial in adult court.” Rhode Island law also requires that confessions of juveniles be evaluated more critically.²¹ Under Article 22, these extra protections, previously deemed critical in the Family Court system, are not part of adult court protocol.

A significant and unanticipated consequence of Article 22 is that extenuating factors can now determine whether an individual is tried as a juvenile or adult. The determining fact is the date that the charge is filed, which is decided by the arresting police office and the Attorney General’s office. In cases where the crime was committed before the individual turned 17, the individual may still be tried as an adult. If the case is not filed until the individual’s 17th birthday, the defendant will be automatically dealt with in adult court. This puts extraordinary discretion in the hands of officers and prosecuting attorneys and can make the determination arbitrary. If evidence for the case takes time to materialize, postponing the date that the case is filed, the case may unintentionally be forced into adult court.

Daniel

Daniel was incarcerated for a charge of delivery of cocaine for a total of 34 days in High Security. It was his first ever arrest. He currently lives with the family of his girlfriend, previously he lived with his elderly father. His father has little to no income, and the family’s house lacked electricity and hot water. While in the ACI, he spent 23 hours in solitary confinement because of accusations of misconduct and at one point he claims he was not allowed to shower for a period of five days. When he appeared in court, he was initially brought out in shackles, although the judge insisted that the shackles be removed. Sean’s incarceration at the ACI has cost the state significantly more than if he had spent the same amount of time in the Training School.²²

Lastly, Rhode Island Statute § 14-1-28 directly contradicts Article 22, stating, “If, during the pendency of a criminal ... it shall be ascertained that the person was under the age of eighteen (18) years at the time of committing the alleged offense, it shall be the duty of the court to immediately transfer the case...to the family court.”

The Adult Criminal Justice System Fails at Dealing with Juveniles

Shifting youths into the adult criminal justice system deprives them of the rehabilitative approach

Leslie

After Leslie’s mother insisted on removing her from school over Leslie’s protest, an argument ensued and Leslie threw a rock at her mother’s car. Although no damage was done, her mother called the police and Leslie was arrested and charged as an adult with Domestic Malicious Damage. When brought into court, Leslie gave an uncounseled ‘No Contest’ plea. A ‘No Contact Order’ was also issued against Leslie. The judge accepted the plea. The story would have ended there, had not the Office of the Public Defender and DCYF eventually been able to intervene, vacating the plea as well as the no contact order. Because of Leslie’s lack of parental care and her clear inability to provide for herself, Leslie has since been taken in DCYF care.

that has proven to be successful with juvenile offenders. Attorney General Patrick Lynch agrees. He told *The Phoenix*, “It will ultimately prove more costly, literally from an economic, budgetary perspective. But I would argue even further that the untold impact – and perhaps, un-measurable from a budgetary perspective – on the quality of life of Rhode Islanders is going to cost us dearly as well.”²³

Numerous studies in the last several decades have supported these statements and proven that putting juveniles in the adult criminal justice

system costs more in the short term and long term, causes more crime by increasing recidivism rates, and endangers the juveniles. Several large-scale government and academic studies have compared similar youth tried in the juvenile versus the adult system and proven that the adult system increases crime rates in comparison to the juvenile system.²⁴ The Federal Office of Juvenile Justice and Delinquency Prevention reports that children in adult prisons are five times more likely than youths in juvenile facilities to be sexually assaulted, twice as likely to be beaten by staff or administrators, 50 percent more likely to be attacked with a weapon, and eight times more likely to commit suicide.²⁵ In addition, one study demonstrated that juveniles in adult courts are given sentences 83 percent more severe than those in similar cases involving adults.²⁶

Part of the reason that the adult system is faulty for juveniles, is that juveniles think and behave fundamentally differently from adults. Juveniles are less able to make correct decisions under stress, and neurological evidence has proven that their brains are still maturing.²⁷ This evidence was part of the 2005 decision by the US Supreme Court which ruled that it is unconstitutional to sentence 17 year olds to death.²⁸ According to this ruling, juveniles must be legally viewed to have different moral culpability for their actions.

Recommendations

Article 22 has been shown to be more costly for the state in both the short-term and the long-term. This report recommends that the legislature and the governor undo its affects as soon as possible by returning 17 year olds to the juvenile system unless they are waived into the adult system. In addition, the state should retroactively undo the adult records of any juvenile tried under the new law. Because Article 22 will cost the state money in both the short and long-term, undoing Article 22 will be cost-effective within the 2008 budget. Just as importantly, it will adopt a more fair, safe, and effective policy of juvenile justice.

¹ An Act Making Appropriations for the Support of the State for the Fiscal Year Ending June 30, 2008, H5300. (Rhode Island, 2007) Article 22. Accessed at: <http://www.rilin.state.ri.us/BillText07/HouseText07/H5300.pdf>

² *10 News Conference*. Jim Taricani (Host), Bill Rappleye (Co-host). NBC. WJAR, Providence. Sept. 30, 2007. Accessed at: mms://wmvod.mgnetwork.com/vod/jar/NewsConference_093007.wmv

³ Source: RI DOC, analysis by the Rhode Island Family Life Center. As of Oct. 8, 2007, 36 young people entered DOC custody as 17-year-olds who, before the passage of H5300, have entered DCYF. Throughout this report, "17-year-old offenders" refers to this population only. Two other 17-year-olds have entered DOC since June, but they are charged with offenses for which they would have been tried as adults regardless of Article 22.

⁴ The Family Life Center conducted interviews with young people impacted by Article 22.

⁵ Source: RI DOC, analysis by the Rhode Island Family Life Center. As of Oct 8, complete offense information was not available for 2 offenders. Family Life Center defines property crime to includes Burglary and Breaking and Entering. Violent crime includes Robbery, Simple Assault and Assault with a dangerous weapon.

⁶ Source: Rhode Island Kids Count, *Kids Count Factbook*, 1997-2006.

⁷ Source: Family Life Center analysis

⁸ Source: RI DOC, Family Life Center analysis. Family situation is estimated based on self-reported addresses of parents. If a parent's address is listed as unknown, it is assumed the residence is unknown. If there is no listing, no assumption is made about their residency. It is assumed the juveniles live at the address they provide as address for notification.

⁹ Source: RI DOC, Family Life Center Analysis

¹⁰ Source: RI DOC, Family Life Center Analysis. The rate data is based on the 2000 US census demographic data on Rhode Island. It is assumed that the racial demographics for the population of 17-year olds is equivalent to the overall Rhode Island population.

¹¹ Source: 2000 US Census, Rhode Island demographic data, and RI DOC demographic data, *FY-2006 Population Report*.

¹² Source: The Family Life Center report, "Employment and Reentry-Issue Brief"(2004) describes the overlap between job opportunities, unemployment, and incarceration in Rhode Island. The four neighborhood in Providence with the highest rates

of incarceration have unemployment rates that are double and triple that average Providence rate. Available at <http://www.riflc.org/pagetool/reports/employmentbrief.pdf>. Statistics on education and high school dropout rates by race are from *The Cradle to Prison Pipeline*(2007) by the Children's Defense Fund. Available at http://www.childrensdefense.org/site/PageServer?pagename=c2pp_report2007.

¹³ Source: US Census and RI DOC, analysis by the Rhode Island Family Life Center.

¹⁴ Source: RI DOC, analysis by the Rhode Island Family Life Center. No self-identified Asian-Americans or American Indian 17-Year-Olds have entered DOC custody.

¹⁵ Names and some identifying information has been changed.

¹⁶ The estimate for the ACI is based on the Department of Correction's FY-2006 *Population Report*. The estimate for the Training School has been reported numerous times in the *Providence Journal*, most recently on September 20,2007 in the article "Critics of juvenile crime law fill hearing."

¹⁷ Source: "Trying 17-year-olds as adults might not cut costs," *Providence Journal*, July 8, 2007.

¹⁸ "We are here to stay-The Consequences of Housing Discrimination Against People with Criminal Records"(2005). The Rhode Island Family Life Center.

¹⁹ This estimate is based on an average cost of \$100,012 for incarceration at the ACI and \$98,000 for the Training School, averaged over 60 days. While these are averages, and not marginal costs per offender, because the overall costs are greater for the ACI, the full marginal costs will also be greater.

²⁰ Source: In re John D. ,479 A.2d 1173, R.I.,1984. "Allowing uncounseled juveniles to admit to acts of delinquency which would constitute felony if committed by an adult should be done only under most extraordinary circumstances. "

²¹ Source: In re John D., 822 A.2d 172, R.I.,2003.

²² This estimate is based on an average cost of \$100,012 for incarceration at the ACI and \$98,000 for the Training School, averaged over 60 days. While these are averages, and not marginal costs per offender, because the overall costs are greater for the ACI, the full marginal costs will also be greater.

²³ Source: "Screwing the Youth." *Providence Phoenix*, August 20, 2007.

²⁴ Sources: Bishop, D., Frazier, C., Lanza-Kaduce, L., and White, H. 1996. The transfer of juveniles to criminal court: Does it make a difference? *Crime & Delinquency* 42:171-191. Available from National Council on Crime and Delinquency at 415-896-6223. Website address: <http://www.nccd-crc.org>. ; Fagan, J. 1995. Separating the men from the boys: The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders." In *A Sourcebook: Serious, Violent, and Chronic Juvenile Offenders*, edited by J. Howell, B. Krisberg, J.D. Hawkins, and J. Wilson. Thousand Oaks, CA: Sage Publications, Inc. Available from National Criminal Justice Reference Service at 800-851-3420. Website address: <http://www.ncjrs.org>; Mason, C. and Chang, S. *Re-arrest Rates Among Youth Sentenced in Adult Court: An Evaluation of the Juvenile Sentencing Advocacy Project*. 2001. Juvenile Sentencing Advocacy Project, Miami-Dade County Public Defender's Office. Available online: http://www.pdmiami.com/JSAP_2001_Impact_Evaluation.pdf; Winner, L., Lanza-Kaduce, L., Bishop, D., and Frazier, C. 1997. The transfer of juveniles to criminal court: Reexamining recidivism over the long term. *Crime and Delinquency* 43(4): 548-563. Available from National Council on Crime and Delinquency at 415-896-6223.; Walter S Johnson Foundation. *Less Hype, More Help: Reducing Juvenile Crime, What Works—and What Doesn't*.

²⁵ In Connecticut specifically, suicides were reported to be 7 times more likely. Source: The Corrections Yearbook: Juvenile Corrections, 1995, p. 27; The Corrections Yearbook: Adult Corrections, 1995, p. 26. National data on suicides from Flaherty G. "An assessment of the national incidence of juvenile suicide in adult jails, lockups, and juvenile detention centers." The University Of Illinois, Urbana-Champaign, 1980; Data on sexual assault, rape, and assault are from Fagan, Jeffrey, Martin Forst and T. Scott Vivona. "Youth In Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy." *Juvenile and Family Court*, No. 2, 1989., p. 10.

²⁶ Source: Center for Policy Alternatives, 2005. *Juvenile Transfer Reform*.

²⁷ Source: Baird, A.A. Moral reasoning in adolescence: The integration of emotion and cognition, *Moral Psychology* Sinnott-Armstrong, W. (ed) *forthcoming*; Kagan, J., Baird, A.A. Brain and behavioral development during childhood and adolescence, *The New Cognitive Neurosciences III* Gazzaniga, M.S. (ed) MIT Press, Cambridge, MA, November, 2004.

²⁸ *Roper v. Simmons*, 543 U.S. 551 (2005)