



STATE BAR OF WISCONSIN

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Date: January 28, 2014

To: Honorable Members of the Wisconsin Legislature

From: Attorney Patrick J. Fiedler, President
State Bar of Wisconsin

Re: Support for Assembly Bill 387/Senate Bill 308 (Second Chance Bill – Juvenile Court Jurisdiction)

The State Bar of Wisconsin strongly supports Assembly Bill 387/Senate Bill 308, which would return first-time, nonviolent 17-year-old offenders to juvenile court jurisdiction.

This legislation is an important opportunity for the legislature to reverse portions of current law – enacted in 1996 – which requires that any 17-year-old who is alleged to have committed a crime be treated as an adult. At this time, all 17-year-olds are considered adults for the purposes of criminal prosecution with no ability to be waived into juvenile court.

The 1996 changes occurred at a time when the trend was to be “tough on crime.” Since then, we’ve learned that it makes more sense to be “smart on crime” rather than “tough on crime.” The latter approach allows us to educate our young people, especially the ones who make a one-time mistake, instead of pouring our resources into incarcerating these individuals for an extended period of time.

Being smart on crime is a nonpartisan issue. National organizations from both sides of the aisle are advocating for smarter approaches to skyrocketing criminal justices costs. Two such organizations are [Right on Crime](#), a project of the Texas Public Policy Foundation, which is backed by Newt Gingrich and Grover Norquist and the [Models for Change Initiative](#) of the MacArthur Foundation created by John D. and Catherine T. MacArthur. Both groups advocate for a smarter, more rational evidenced-based strategy for dealing with public safety and criminal justice spending. They say that over-reliance on incarceration is not a cost-effective approach to public safety.

This especially rings true when you look at the number of 17-year-olds who are committing crimes. Only 2 percent of 17-year-olds commit a violent offense, which means that 98 percent of 17-year-olds are committing a nonviolent offense. During my time as a judge, I witnessed many young people come through my courtroom for relatively minor offenses, such as shoplifting. These young individuals should be held accountable for their actions, but in a manner that does not hurt their chances at a successful future. Research has shown that youth with adult criminal records are less likely to graduate from high school, will have greater difficulty finding employment, and may suffer from other collateral consequences such as restrictions on voting rights, access to higher education, joining the military, or living in public housing.

An excerpt from a recent report titled [“Mandatory Sentencing 17 year-olds in Adult Court – Is There a Better Alternative for Wisconsin’s Youth and Taxpayers?”](#), by the [MacIver Institute](#) and the [Texas Public Policy Foundation](#) concluded the following:

The worry that returning the upper age boundary of the juvenile court's jurisdiction to 17 will deprive the government of the ability to appropriately punish serious juvenile offenders is also misplaced. The State of Wisconsin's criminal code already permits the transfer of serious juvenile offenders to the adult criminal justice system.

Research from around the country shows that the vast majority of 17 year-old offenders, those who committed a low-level crime and are of little risk to reoffend, belong under the jurisdiction of the juvenile justice system. The juvenile justice system is better-equipped to dispose of the nuanced cases that juveniles often present. The experience of other states has shown that returning 17 year-old, first-time, non-serious offenders to the purview of the juvenile court allows both the adult and juvenile courts to process the cases they are best equipped to handle.

A study conducted by the Wisconsin Legislative Audit Bureau found that only about 50 percent of youth placed on adult probation successfully complete their time and that youth placed in an adult prison reoffend after release at higher rates than either youth placed in a juvenile institution or older adults. The study also found that juveniles in the adult system reoffended at twice the rate as adults.

When I was a judge, I continued to feel frustrated by our system because I knew that most of the 17-year-olds who came through my courtroom would have gotten much better services and a much better chance at success had they been in the juvenile system – where I believe they belong.

In *Roper v. Simmons*, a 2005 U.S. Supreme Court decision and *Graham v. Florida*, a 2010 decision, the court warns against treating juveniles in the same manner as adults because of the significant scientific research about the developmental immaturity and diminished responsibility of juveniles. And recent polling shows that the general public is four times as likely to believe that youth are capable of changing over not changing. The public also believes that rehabilitation is the best and most effective means of treating a 17-year-old first-time offender.

Assembly Bill 387/Senate Bill 308 is a step in the right direction because the bills keep intact important elements of the law while making smart changes to improve the criminal justice system. Support for this legislation is prudent because:

- It focuses on first-time, nonviolent offenders
- It includes a list of 30 violent crimes that will remain as adult charges
- A 17-year-old with previous delinquency adjudication will be prosecuted in adult court
- Court standards and options for waiver into adult court will remain the same

It is important to note that the rights of victims are still recognized and protected. The Juvenile Code places equal importance on victims' rights, as does the adult system. Law enforcement, human service staff, prosecutors and judges are required to provide the same services that all victims are entitled to in the adult system. The juvenile system is more likely to provide services that require a youth to make restitution and/or community service; offers victims the opportunity to participate in victim-offender dialogue if they choose to do so; and requires youth to participate in treatment services that reduce the likelihood of reoffending.

Ultimately, we are making the wiser decision, which is to give these young people a second chance. All young people, whether part of the criminal justice system or not, are part of Wisconsin's future, and we need to invest in our future.

As a father and member of the legal community, I believe that this legislation will make our communities safer. These bills couple the results of contemporary research with real experience to offer the smartest, most efficient and effective solutions possible. Passing this legislation would mean that Wisconsin has pledged to be "smart on crime" and equip its young people with the tools they need to succeed. Currently, Wisconsin is one of ten states that treat all 17-year-olds as adults; this is one time Wisconsin should not be in the top ten.

It's time for Wisconsin to look forward and truly give nonviolent 17-year-olds a second chance.

The State Bar of Wisconsin asks for your support of this legislation.

Patrick J. Fiedler is the 58th President of the State Bar of Wisconsin. He served as a Dane County Circuit Judge from 1993 to 2011 and was Secretary of the Wisconsin Department of Corrections from 1991 to 1993. He also served as U.S. Attorney for the Western District and as a Waukesha County Assistant District Attorney. Fiedler is a partner at Axley Brynson LLP.