# *TWO STEPS FORWARD AND ONE STEP BACK:*

## Progress and Regression in Chicago and Philadelphia's Juvenile Justice Policies

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## Abstract

Fewer than 120 years ago, juvenile offenders were tried as adults – in adult court – and sentenced as adults – to adult prison. The juvenile justice system, which was first established in Cook County, Illinois in 1899, challenged those norms. Though it is still relatively young, the juvenile justice system has gone through many phases. From its initial informality and lack of oversight, to juveniles gaining the right to due process, then a shift toward punishment in the "tough on crime" era of the 1980s and 90s, the system has constantly been in flux. Amid falling crime rates the past ten years, there has been a transformation in attitudes about how the justice system should be interacting with juveniles. Activists and policy-makers alike are calling for the adoption of progressive, research-informed policies. While the progressive sentiments are heartening, policy adoption and implementation is a slow process. Through case studies of Chicago and Philadelphia, this paper considers *what progressive juvenile justice policy looks like in 2019 and why certain jurisdictions readily adopt these progressive policies while others lag behind.* Studying the variation in spread and adoption of policies in these two jurisdictions will help to inform future juvenile justice reform efforts.

## Introduction

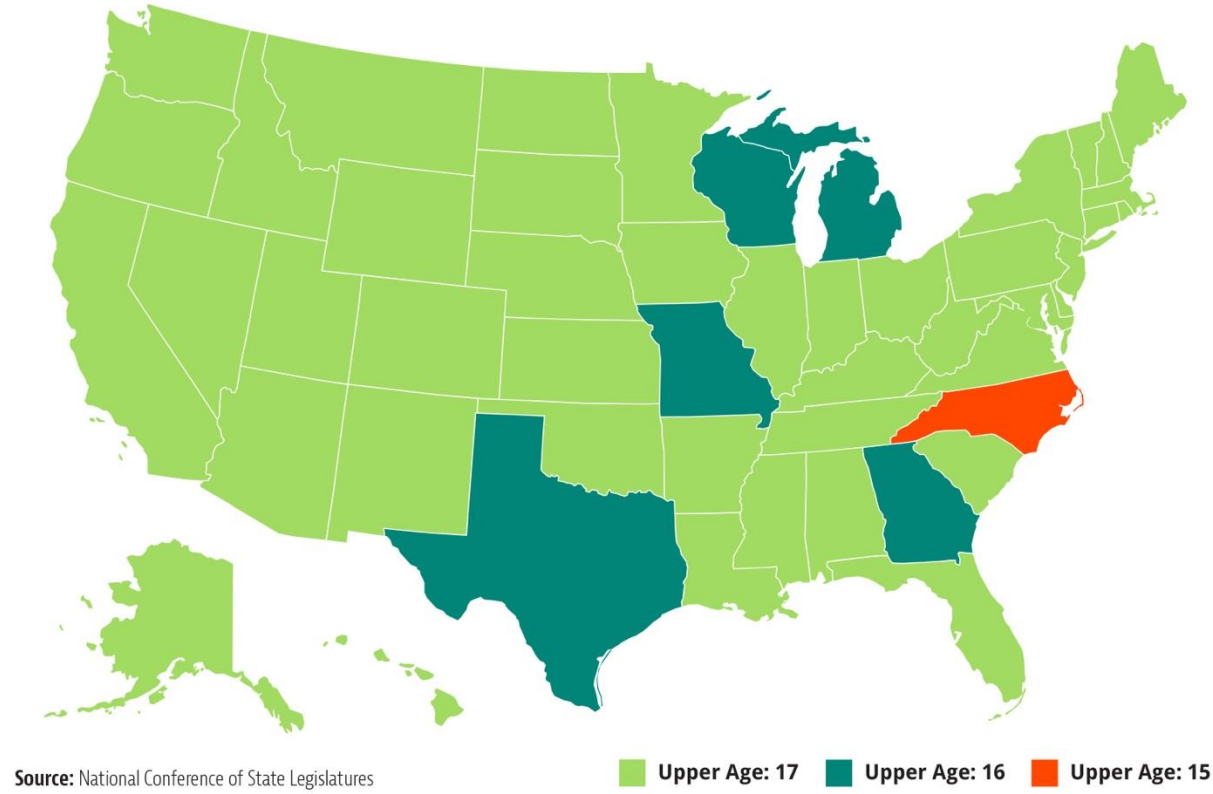
Every day nearly 60,000 juveniles are incarcerated in the United States. While the past 15 years have seen significant headway in reducing that number, the United States still stands apart from every other industrialized nation as having the highest youth incarceration rates (Bochenek, 2016). While progressive policy change is not linear or inevitable it is achievable. Tangible change is possible and it is taking place all across the United States. In addition to a passion for improving juvenile justice, strong leadership, public support, and reliance on research-driven policies are imperative to achieving the goal of creating and implementing quality policy outcomes in the arena of juvenile justice. This paper will take a look at the history of the juvenile justice system from its start in Chicago with its foundation based on informal and paternalistic ideals, to the court cases that defined it, its shift toward more draconian forms of punishment during the 90's, and finally its recent penchant toward progressive reforms. In addition, it will take a close look at both Chicago and Philadelphia's juvenile justice systems, through the cities' most current policy initiatives, measurements of public support for juvenile justice reform, and the track records of their respective public officials.

## History

Before 1899 juvenile offenders were tried as adults in adult court and received sentences to adult prisons. Fortunately, the Illinois Juvenile Court Act of 1899 changed that as it established the first juvenile justice system in Chicago in Cook County Illinois which served as the blueprint for all other juvenile court across the country. Initially, the juvenile justice system was created to act as a child-welfare system; Its purpose was to protect and correct. It acted as a protective entity that allowed for broad discretion among police, judges, and other actors.

Founders of the system saw juveniles as immature, and dependent - thus, less culpable for their actions(5). So what do we mean by "juvenile justice systems?" Well, each state has its own system which operates at a variety of levels including law enforcement, youth courts, as well as separate institutions like schools and community programs that focus on prevention and early intervention. The states also vary on their definitions of "juvenile offenders." (Burfeind, Bartusch, & Hollist, 2018) Some states only consider offenders over the age of eighteen to be adults while some thirteen others have no minimum age for prosecuting children as adults. While all states acknowledge that children younger than 18 are not cognitively equipped to vote in national elections or know the implications of signing a legally binding contract, five states require children as young as 16 to be tried in adult courts and one state, North Carolina, has set its upper age limit for juvenile court jurisdiction at 15. Still other states have no minimum age for juveniles to be transferred to adult courts even for infractions as innocuous as drug offenses. For our purposes, we will be referring to juveniles as youth between the ages of ten and eighteen.

**Figure 1. Age of Juvenile Court Jurisdiction by State**




**Source:** National Conference of State Legislatures

(Guze, 2017)

Initially, the juvenile court system was established on the principal that juveniles are less culpable for their actions and more able to be reformed than adults. Interestingly, even the legal terminology used in juvenile court is more rehabilitative and less adversarial than the language used in adult proceedings. Instead of arresting youth, police "take youth into custody," rather than being indicted, youth are "petitioned" into juvenile court, proceedings are called "hearings" rather than trials and instead of a sentence, juvenile offenders are given a "disposition." (Burfeind, Bartusch, & Hollist, 2018)

Early on in the life of the juvenile justice system, juvenile proceedings were private and informal. This informality allowed judges to deprive some juvenile offenders of their freedom while just giving a slap on the wrist to other offenders. In order to end these discrepancies, the

1967 Supreme Court granted due process rights to juveniles. Fifteen years later, during the "super predator" scare, there was a dramatic shift away from rehabilitation efforts, toward harsher punishments across the country. This "lock them up and throw away the key" mentality left hundreds of juveniles in prison for life – causing the juvenile system to stray away from its initial goals. As of the 1990s the juvenile system has begun to look increasingly like the adult criminal justice system and up until the mid 2000s the punishment mindset was pervasive in the juvenile justice system. In the mid 2000s things began to change and in the past 20 years there has been a return to the protective ideals of the original juvenile justice model. As evidenced by the integration of psychological and behavioral research into policy, public opposition to placing juveniles in large state facilities, and the recent election of progressive candidates, this reformist movement has gained some significant momentum.

## Cases

Since its inception, the policies and practices of the juvenile justice system has been shaped by court cases challenging existing norms. Prior to 1966, the informality of the juvenile justice system meant that juveniles were not granted the same basic due process rights that the Constitution established for adults in the criminal justice system. The issue before the court in *Kent v. United States* was that the juvenile courts were allowed to waive jurisdiction of a juvenile, transferring them to adult court following a "full investigation." Unfortunately, due to the informality of the juvenile justice system for the past seventy years, the meaning of a "full investigation" was unestablished and varied from case to case. (Sixth Amendment Center, n.d.). In its ruling, the court said, "[The state's] function in a 'parental' relationship is not an invitation to procedural arbitrariness. (Kent v. United States, 1966)" *Kent v. United States* granted juveniles

in the justice system a right to a formal hearing that "must measure up to the essentials of due process and fair treatment" (Kent v. United States, 1966). before being transferred to adult court.

Just one year later, in 1967, the court heard a case, *In re Gault*, which established once and for all that juvenile offenders have the same legal rights as adults in court. After Gault was accused of making a lewd phone call he was taken into police custody and his parents were not notified. After this case, the court determined that juveniles proceedings have to comply with the constitutional rights guaranteed to those under its jurisdiction. The newly acquired rights included the right to remain silent, the right of notice, the right to counsel, and the right to a hearing. This decision essentially brought juvenile offenders under the prevue of the 14th Amendment. (In re Gault, 1967)

In 1970, a juvenile court in California heard the case of 17 year old Gary Jones and found him guilty of robbery. After a juvenile hearing and sentencing, the court decided that Jones should be tried as an adult. Jones fought the last-minute transfer to adult court saying that his 5th amendment rights were being violated. The Supreme Court took Joneses case and decided that a juvenile cannot be tried as an adult after the juvenile court hearing and judgement – doing so constitutes double jeopardy, thus violating the defendant's 5th Amendment rights. Juvenile courts must decide whether a defendant ought to be tried as an adult before any adjudication occurs. (Breed v. Jones, 1974)

Some more recent cases, *Roper v. Simmons, Graham v. Florida, and Miller v. Alabama* deal with developmentally appropriate punishments for juvenile offenders. Marsha Levick of Philadelphia's Juvenile Law Center said, "For years we were trying to convince the courts that kids have constitutional rights just like adults. Now we realize that to ensure that kids are protected, we have to recognize that they are actually different from adults (Levick, 2012)."

First, *Roper v. Simmons* challenged the constitutionality of the death penalty for juvenile offenders. In 1993, Christopher Simmons was sentenced to death at the age of seventeen. After Simmons exhausted his appeals, the Missouri Supreme Court ruled that because of the "evolving standards of decency", the execution of minors violated the 8th amendment and constituted cruel and unusual punishment. After some pushback from the United States government, the Supreme Court heard the case in 2005 and, ruling in favor of Simmons, determined that the Missouri Supreme Court got it right and the execution of juveniles was unconstitutional. (Roper v. Simmons, 2005)

In a similar case five years later, 16 year old Terrence Graham was on probation when he was convicted of a second armed burglary offense. The Florida state court sentenced him to life without the possibility of parole which brought up the question as to whether sentencing a juvenile of life without the possibility of parole for a non-homicide offense constitutes cruel and unusual punishment. The Supreme Court determined in *Graham v. Florida* that because children have, "distinctive (and transitory) mental traits and environmental vulnerabilities" they cannot be sentenced to life without the possibility of parole for nonhomicide offenses. (Graham v. Florida, 2010) Doing so violates the 8th amendment ban on cruel and unusual punishment. (Scott, Grisso, Levick, & Steinberg, The Supreme Court and the Transformtion of Juvenile Sentencing, 2015)

Another case that argued the violation of the 8th amendment and drastically changed the juvenile justice system is *Miller v. Alabama*. In 2002, the Supreme Court of Alabama denied the appeal of Evan Miller, a 14 year old who was given a mandatory sentenced of life without the possibility of parole. Miller made a motion for a new trial arguing handing down a mandatory sentence of life in prison to a 14 year old was cruel and unusual punishment, violating the 8th amendment. In 2008 another juvenile lifer, Kuntrell Jackson, attempted to appeal his mandatory

sentence of life without the possibility of parole, also citing cruel and unusual punishment. Again, the lower courts dismissed the petition. In 2012, these companion cases made it to the Supreme Court and in a 5-4 ruling, the court decided that a mandatory sentence to life in prison without the possibility of parole for juveniles did, in fact, violate the 8th amendment. This ruling does not bar judges from sentencing juvenile offenders who commit particularly heinous crimes to life in prison, rather, it allows judges to decide, based on the facts of a case, what an offender's sentence ought to be. (Miller v. Alabama, 2012) Miller requires that the following mitigating factors be considered in the sentencing of a juvenile offender: The juvenile's age, lack of maturity, and decision-making skills, the juvenile's home life, the extent that peer pressure played a role in the offense, the ways in which the youth might be impaired in dealings with police, and the juvenile's potential for reform. (Scott, Grisso, Levick, & Steinberg, The Supreme Court and the Transformtion of Juvenile Sentencing, 2015)

## Case Studies

Both Pennsylvania and Illinois were participants in The MacArthur Foundation's Models for Change initiative which advances reforms "to make juvenile justice systems more fair, effective, rational and developmentally appropriate (Models for Change, 2015)." I chose to Chicago as one of my case study cities because the first juvenile justice system was established in Chicago over 100 years ago, and Chicago continues to break ground in the juvenile justice debate. Philadelphia was my next choice because it has had a bit of a rough track record in the juvenile justice arena. In 2015, Philadelphia housed 9% of the country's juveniles serving life sentences - the highest number of any city in the United States. However, since the election of District Attorney Larry Krasner in 2018, Philadelphia has been in the national spotlight as a city ready to take on the challenges of reforming the juvenile justice system. Studying the policies

and practices of these two jurisdictions will hopefully serve as a model that other jurisdictions can replicate.

## Strong Leaders

Public officials who are willing to push the envelope are a key ingredient to successful juvenile justice reforms. As the decision-makers and the boots on the ground, District Attorney and States Attorney Larry Krasner and Kimberly Foxx are two of the most important actors in the fight to create an equitable and developmentally appropriate juvenile justice system. While Kim Foxx and Larry Krasner are certainly not the only juvenile justice leaders in their cities, they are often the ones on the front lines of criminal justice reforms and on center stage during criminal justice debates.

In Pennsylvania, strong leadership, strong partnerships among Pennsylvania's stakeholders, and considerable consensus about the strengths and weaknesses of the state's juvenile justice system have created a positive political climate where good public policy can flourish (Models for Change, 2015). Larry Krasner, Philadelphia's District Attorney since 2017, has gotten a lot of press because of his campaign promises to overhaul the DA's office and ultimately the criminal justice system. Krasner ran on a platform of never seeking the death penalty in any case, reforming the cash bail system, rejecting illegal use of stop-and-frisk, and focusing on alternative to incarceration. Krasner background in civil rights litigation and as a public defender make him a unique choice for district attorney but perhaps it is that unconventional background that has people talking. Before running for District Attorney in Philadelphia, Krasner worked in Philadelphia as a public defender and eventually started his own firm specializing in civil rights and criminal defense. Krasner has been criticized on both sides – both by criminal justice activists and police officers, victims-advocates, prosecutors who want to

maintain the status quo. Because of his strong focus on lessening sentences and reducing jail and prison populations, Krasner has become unpopular with victims and families of victims who feel that the shortened sentences reflect a lack of justice. Despite his lofty goals and progressive ideas, Krasner has come under fire for failing to live up to the campaign promises he was elected to fulfill. While Krasner successfully implemented the first phase of a bail reform policy, the policy only applies to 10% of folks who are awaiting hearings in county jail and the second phase of the bail reform - which is supposed to address the other 90% of individuals awaiting their hearings in jail, has stalled out a bit.

Before the 2012 supreme court case outlawing mandatory life without parole for juveniles, Philadelphia had more juveniles sentenced to life in prison than any other jurisdiction in the world. Many scholars consider Philadelphia "ground zero" for JLWOP which has caused a number of advocacy groups and nonprofit organizations to focus their attention on the city. Organizations like Juvenile Law Center, Defender Association of Philadelphia and the Campaign for the Fair Sentencing of Youth. DA Krasner's willingness to resentence nearly half of the juvenile lifers – making all but two eligible for parole right away, points to his ability to both recognize and right the injustices of past policymakers. (Tawa, 2018)

### Chicago

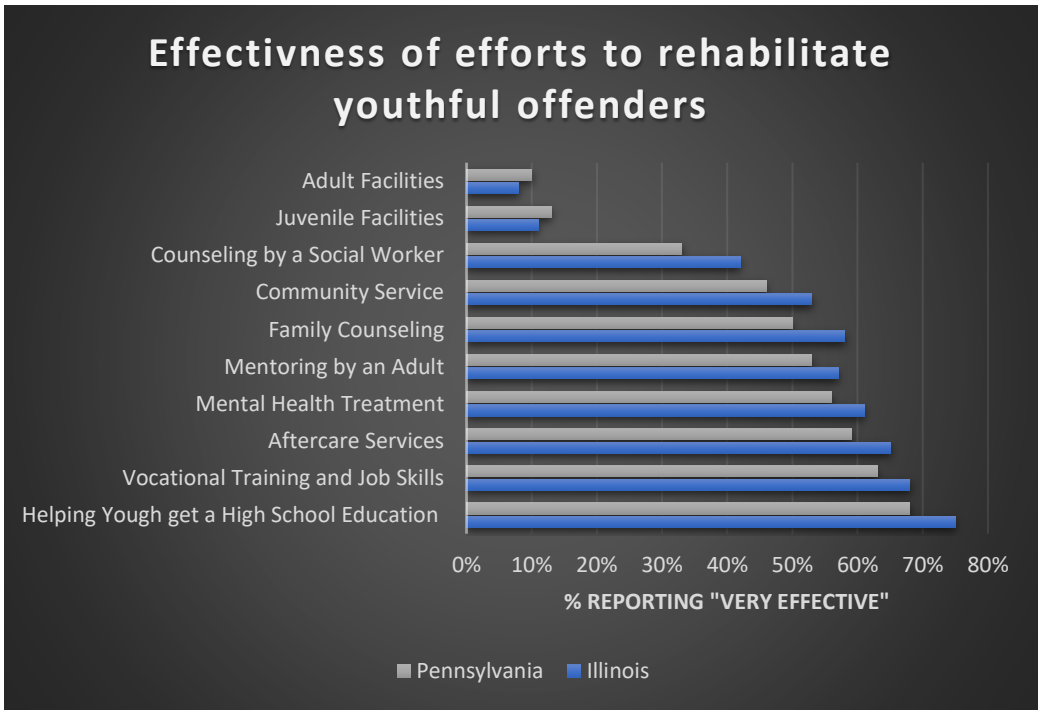
In 2016 Cook County elected Kimberly Foxx as their State's Attorney. Foxx has a history of working to advance justice both through her work with the child welfare system and through her work of address racial disparities in the criminal and juvenile justice systems. Foxx ran on a reformist platform which included promises to advance bail reform, increase transparency and accountability, end the war on drugs, and reduce overcharging. Just two years ago, in 2017, Foxx announced an initiative to reform Chicago's bail system. Less than a year later, Cook county put an end to their cash bail system because, as Foxx commented, "Public

safety is best served by detaining those who pose a threat to our communities rather than jailing those who are simply poor and unable to post bond for nonviolent offenses… This costs taxpayers millions of dollars per year, and does not serve public safety (Cook County State's Attorney's Office, 2017).” Foxx has made progress on fulfilling several of these commitments, such as reforming the bail system in Cook County and releasing a report on the types of criminal cases her office pursued, where these cases were pursued, and the demographics and sentences of defendants. Unfortunately, Foxx has lagged behind on some of her commitments including reducing drug charges and overcharging. In a report compiled by a number of Chicago nonprofit organizations, the community partners noted that the “driving force in the office was convictions, not justice” because retaining office has historically been dependent on the number of trials won (Reclaim Chicago, The People's Lobby, Chicago Appleseed Fund for Justice, 2017). While Foxx has certainly done a lot of good, she has received criticism for breaking a campaign promise to lower charges for low-level crimes such as theft and drug possession. Instead of lowering charges, Foxx is continuing the practice of overcharging certain levels of crimes. Foxx also made a point during her campaign to address the failed war on drugs, however, the number of drug charges have not been reduced during Foxx’s first year at the helm.

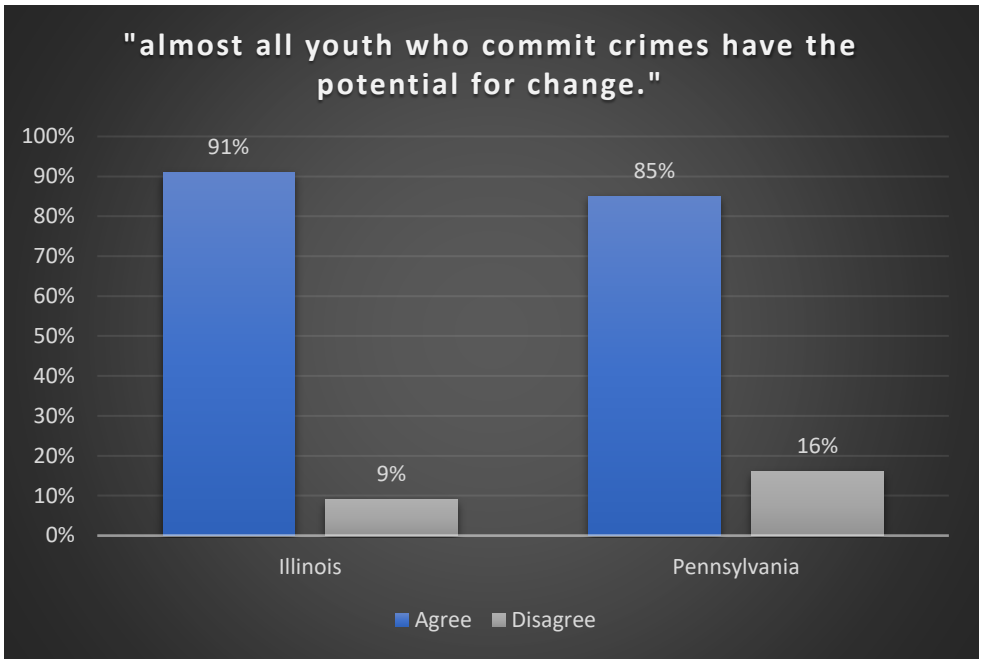
## Public Support

One key aspects of adopting progressive juvenile justice policies is having a public that supports the reform efforts. According to a 2008 study conducted by the MacArthur Foundation’s Models for Change juvenile justice reform initiative, Illinois and Pennsylvania’s populations largely support juvenile justice reforms that are more focused on rehabilitation rather than punishment. Both Illinois and Pennsylvania were subjects in the MacArthur Foundation’s Models for Change project.

For example, the 2008 study found that the public recognizes the ability of youth to reform, they support redirecting funds from prisons and locked facilities to counseling, education, and job training programs for juvenile offenders, and they view rehabilitation efforts such as treatment and social services as more effective means of rehabilitation than incarceration. (Policy, Center for Children's Law and, 2008). In line with the original ideals of the juvenile justice system, the survey of Pennsylvanians and Illinoisans found that they recognizes that young people have great potential to change. 85% of Pennsylvanians and 91% of Illinoisans surveyed agreed with the statement, “almost all youth who commit crimes have the potential for change”.

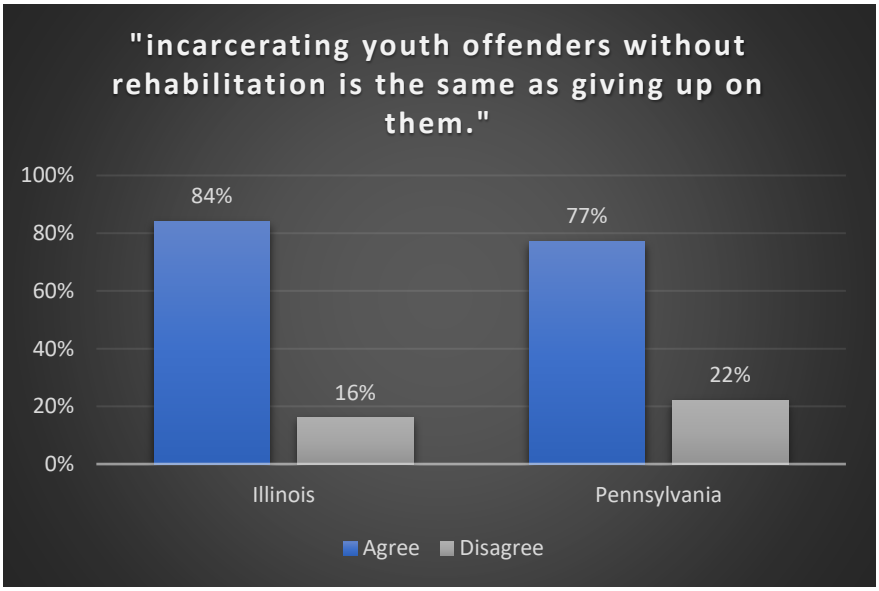



(Center for Children's Law and Policy, 2007)



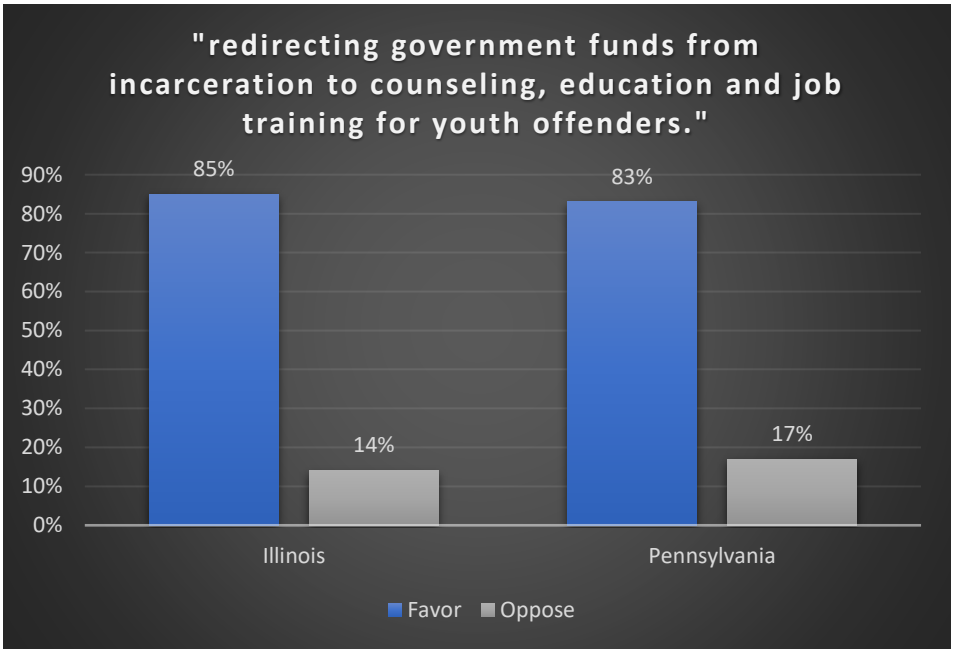

(Center for Children's Law and Policy, 2007)

Over 70% of those surveyed also agreed that “incarcerating youth offenders without rehabilitation is the same as giving up on them”. These Pennsylvania poll results point to a state that has strongly progressive opinions regarding the ability of juveniles who have committed crimes to learn and grow given the proper tools. (Policy, Center for Children's Law and, 2008)




(Center for Children's Law and Policy, 2007)

In addition to holding strong beliefs about the ability of juveniles to change, survey respondents are largely willing to put their money where their mouth is. Nearly 90% of the public supports "reallocating money from incarceration to education, job training and counseling programs for youthful offenders." Because of this public support for services and treatment for juvenile offenders, the Pennsylvania legislature has enacted policies that discourage the incarceration of youth. Instead of locking kids up in state facilities, there is strong support for community supervision methods.




(Center for Children's Law and Policy, 2007)

While the survey responses from both states were within several percentage points of one another, in almost every category, survey respondents in Chicago were more progressively minded – consistently showing several percentage points higher than their Pennsylvanian counterparts. This distinct difference between the two states suggest that the Chicago public is perhaps more poised to support juvenile justice reform than residents of Philadelphia. Perhaps Chicago's history of acting as a leader in the juvenile justice debate has influenced

## Policy Changes

After the passage of Public Act 98-0558 in 2012, the Illinois Department of Juvenile Justice launched a program in Cook County to address the aftercare needs of juveniles leaving the justice system. Rather than assigning juveniles to the Illinois Department of Corrections parole officers, juveniles are provided with "specialized, developmentally appropriate and rehabilitative community-based supervision and support (Models for Change, 2015)". The pilot community based supervision program was so successful in Chicago that the state allocated funds in the 2014 budget to expand the program state-wide. In addition to rolling out the Illinois Department of Juvenile Justice aftercare program, Cook County also launched Neighborhood Recovery Initiatives which work to offer jobs, education opportunities, mentoring, and other support to juveniles and young adults re-entering the Chicago community after they are released from correctional facilities. (Models for Change, 2015)

In the year 2005, the Illinois State Legislature established "Redeploy Illinois" through the passage Public Act 93-0641. The Redeploy Illinois program incentivizes participating counties to commit to a 25 percent reduction in the number of juveniles locked in state facilities by expanding the use of community-based programs. Participating community-based programs include counseling, substance abuse and mental health treatment, and life skills training. Since the creation of Redeploy, the juvenile justice system has been reduced by 56 percent and the 2014 juvenile detention population was at its lowest in two decades (State of Illinois, 2014).

In February of 2019, Krasner's DA office rolled out a number of juvenile justice reforms. Among these reforms are policies that attempt to keep juveniles out of detention facilities and in their communities. The policies lay out guidelines for Assistant District Attorneys to follow when handling juvenile cases. These guidelines include, recommending an alternative to detention at the time of any new arrest, asking the Court for the least restrictive community

supervision available, and if community supervision is not possible, the Assistant District Attorney should recommend the closest residential placement possible. Further, the guidelines also lay out that residential placement should only be sought if all other options – placing the juvenile in the care of another relative, in home detention, intensive supervision programs, and GPS monitoring, – have been exhausted (Philadelphia DAO, 2019).

In the 2019 report, the District Attorney's Office made a strong stance against the use of solitary confinement. There is no research that suggests solitary confinement is an effective behavioral management tool – in fact, just the opposite is true. The report states, "Keeping children in isolation can have long-lasting and devastating consequences on youth including trauma, psychosis, depression, anxiety, and an increased likelihood of self-harm" relying on scientific research to support an official stance against the practice.

## Reliance on Research

Policy makers and juvenile justice advocates must be willing to challenge the status quo and insist that we rely on research-backed policies. Rather than continuing to do what's been done since the 90s, being tough on crime and locking juveniles up for life, focus has shifted to creating a juvenile justice system that is focused on developmentally appropriate rehabilitation solutions. Within the past 15 years there has been extensive psychological research conducted regarding the brain development of adolescents. This research has been used by some jurisdictions to reimagine the ways in which the justice system interacts with minors.

In their decisions regarding the culpability of juveniles, The Supreme Court relied on recent research to determine that the sentencing of juveniles ought to be significantly more lenient than adult sentencing because juveniles are developmentally immature, vulnerable to negative external pressure, and have unformed character. The juvenile court system was based

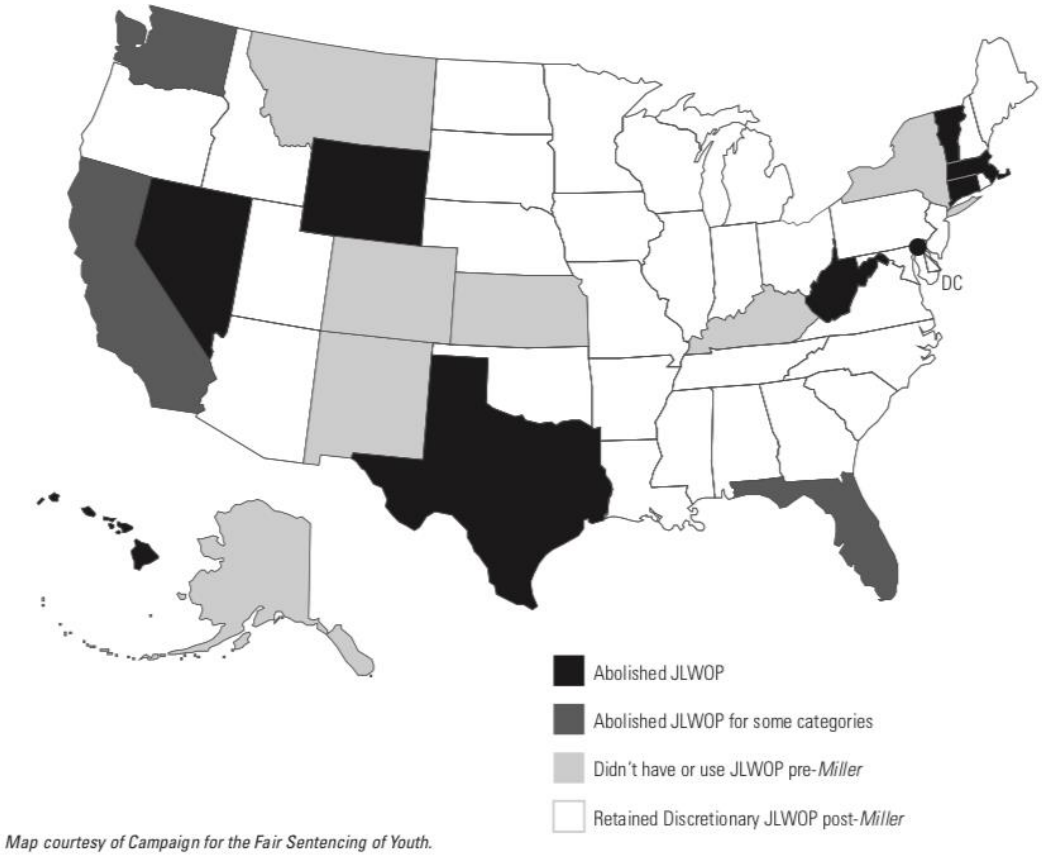
on the core belief that juvenile offenders have a greater potential for reform than adult offenders. Because the majority of juveniles will mature out of their delinquent tendencies, life sentences for juvenile offenders are seen as unnecessary and oftentimes excessive. If juveniles are locked up for the rest of their lives because of an immature decision, they are not allowed the opportunity to mature and develop good character.

Neuroscientists and Supreme Court justices alike, agree that adolescents are particularly vulnerable to negative outside pressures and coercion. A juvenile's environment, including neighborhoods, schools, and families, greatly contribute to a likelihood of criminal activity. Because children are they are not able to change their environments, as they are reliant on their families and communities, the court recognizes that they cannot always be held responsible for their actions.

In writing the Miller decision, the court also points to juvenile's "inability to assess consequences" and to the "recklessness, impulsivity, and heedless risk-taking" which contribute to an "underdeveloped sense of responsibility" (Scott, Grisso, Levick, & Steinberg, The Supreme Court and the Transformtion of Juvenile Sentencing, 2015). The development of the adolescent brain negatively impacts a juvenile's ability to make decisions and leads to an inability to understand long-term impact of their short-term decisions and leads to the understanding that juveniles are less culpable for their actions than their adult counterparts.

Finally, The Supreme Court noted that an undeveloped sense of right and wrong contributes to poor decision-making skills. Juvenile offenders, even those who commit the gravest crimes, often commit these crimes because they are immature, not because they have bad moral character.

The United States is the only country in the world that allows juveniles to be sentenced to life in prison for an offense they committed while they were still considered minors. Although the 2012 Supreme Court ruling made mandatory life without parole sentences unconstitutional for juveniles, judges can still sentence minors to life sentences (Human Rights Watch, 2012). However, after the Supreme Court's decision in Miller ended mandatory juvenile life without parole, the justices suggested that juvenile life without the possibility of parole would become increasingly "uncommon". This word choice has effectively set the Court up to end JLWOP all-together in the future as it becomes increasing unusual – violating the 8th amendment's prohibition on cruel and unusual punishment.




*Map courtesy of Campaign for the Fair Sentencing of Youth.*

(Scott, Grisso, Levick, & Steinberg, The Supreme Court and the Transformation of Juvenile Sentencing, 2015)

Ultimately, while significant progress in the juvenile justice arena has been achieved, it is important to remember that progress is not linear or inevitable. Real change takes real work. It takes strong leaders pushing the envelope and taking a stand, it takes supportive communities, and it takes an insistence on implementing research-driven practices to drive positive change. The United States still leads the industrialized world in the number of children it locks in juvenile detention centers and adult prisons and it is one of the only countries that still allows juveniles to be sentenced to life imprisonment for crimes they commit before they are even able to vote. In spite of the United State's unparalleled numbers of imprisoned children, youth incarceration rates have fallen by 54% in the past 15 years (Bochenek, 2016). Even with great strides toward more equitable juvenile justice policies, clearly there is still work to be done.

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