

## FACT SHEET SUPPORTING Age of Detention Proposal (FY15-JJ #2)

**Presented to the Colorado Commission on Criminal and Juvenile Justice on June 13, 2014**

*(Prepared by Kim Dvorchak of the Colorado Juvenile Defense Coalition on behalf of the Juvenile Justice Task Force.)*

### **Facts about the Use of Secure Detention**

- **Detention can increase recidivism.** An evaluation of secure detention in Wisconsin conducted by the state's Joint Legislative Audit Committee found that 70% of the youth held in secure detention were arrested or returned to secure detention within one year of release. Prior incarceration was a greater predictor of recidivism than carrying a weapon, gang membership, or poor parental relationship. A similar study of youth in Arkansas found the experience of incarceration is the most significant factor in increasing the odds of recidivism.<sup>1</sup>
- **Congregating delinquent youth negatively affects behavior and increases recidivism**  
Researchers call this process "peer deviancy training" when delinquent youth are congregated together.<sup>2</sup>
- **Detention pulls youth deeper into the juvenile and criminal justice system.** Studies have shown that once youth are detained, they are more likely to be referred to court, see their case progress through the system, and receive a more serious disposition.<sup>3</sup>
- **Detention makes mentally ill youth worse.** Researchers estimate two-thirds of detained youth could meet the criteria for having a mental disorder.<sup>4</sup> Children 10-12 years of age are in a period of development from concrete thinking toward more abstract thinking, and a change in emotional development that includes increased moodiness and fearfulness.<sup>5</sup> Incarcerating younger children puts their normal development at risk. Cognitively, children under 13 are significantly impaired in their understanding the legal process,<sup>6</sup> and need age-appropriate services. A Santa Clara County California study on children 12 years of age and younger in the juvenile justice system found younger children were more likely to have mental health diagnoses, a history of abuse and neglect, trauma exposure and learning disabilities.<sup>7</sup> Incarcerating such children is traumatizing and prevents access to outside care.<sup>8</sup>

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<sup>1</sup> *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Barry Holman & Jason Ziedenberg, Justice Policy Institute (2006), p. 4.

<sup>2</sup> *Id.*, p. 5.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, p. 8.

<sup>5</sup> Child Delinquency Presentation by Jennine Hall PhD, CACIII, Division of Youth Corrections Lead Clinical Trainer.

<sup>6</sup> *Issue Brief 1: Adolescent Legal Competence in Court*, MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, (undated).

<sup>7</sup> *Children 12 Years Old and Younger in Juvenile Hall: A Report by the Juvenile Justice Commission*, Santa Clara County, California, (January 5, 2010).

<sup>8</sup> *The Dangers of Detention*, p. 6.

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- **Detention is not cost effective.** In Colorado, it costs approximately \$150 a day to detain a child in a juvenile detention facility. Community based supervision and treatment options cost much less, and are more likely to prevent youth from committing crimes in the future.<sup>9</sup> Alternatives to incarcerating children 12 and younger include: (1) return home with support or wraparound services; (2) placement with another family member; (3) foster care or therapeutic foster care; and/or (4) residential treatment that can appropriately meet the needs of younger children.

The Juvenile Justice Task Force created a study group to examine and reconsider the minimum age of juvenile delinquency court in Colorado. The study group looked at scientific research regarding the developmental period of “middle childhood,” data from the judicial branch on delinquency cases involving 10 to 12 year olds, and data from the Division of Youth Corrections on the number of younger children in secure facilities. The Juvenile Justice Task Force approved an age of detention subcommittee to develop a proposal restricting pre-trial detention of younger children, and voted to approve this recommendation on May 7, 2014.

Colorado law already restricts the commitment of children under the age of 12. Children under twelve can only be committed if adjudicated as an aggravated juvenile offender, or for an offense that would constitute a class 1, 2, or 3 felony, C.R.S. § 19-2-909(1)(a). No 10-11 year old children were committed in the last three fiscal years, and only seven 12 year olds were committed during the same period.<sup>10</sup> This proposal regarding pre-trial detention would provide similar limits to secure confinement for younger children pending trial.

In the landmark decisions of *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama*, the U.S. Supreme Court recognized fundamental differences between children and adults. The Court arrived at these key differences based upon adolescent brain science and social science research [*Roper*, 543 U.S. at 569; *Graham*, 130 S. Ct. at 2026; *Miller*, 132 S. Ct. at 2465 (finding “the science and social science supporting *Roper’s* and *Graham’s* conclusions have become even stronger”)]. Younger children have years of development and growth ahead, providing opportunities for change, maturation, and rehabilitation [*Graham*, 130 S. Ct. at 2026]. How we treat younger children during this period can profoundly impact the rest of their lives.

The Annie E. Casey Foundation’s number 1 recommendation for reforming juvenile corrections is to **limit eligibility for secure confinement** solely for youth who have committed serious offenses and pose a clear and demonstrable risk to public safety.<sup>11</sup> Their Juvenile Detention Alternatives Initiation Standards recommends that children under 12 years of age should not be held in secure detention facilities.

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<sup>9</sup> *Id.*, p. 6.

<sup>10</sup> *Management Reference Manual - Fiscal Year 2011-2012*, Colorado Division of Youth Corrections (March 2013), p. 24 (Statement references fiscal years 2009-2010, 2010-2011, & 2011-2012).

<sup>11</sup> *No Place for Kids: The Case for Reducing Juvenile Incarceration*, Richard A. Mendel, Annie E. Casey Foundation (2011), p. 28.