

**Report  
of the  
Juvenile Justice  
Task Force**



**December 2014**

## Missouri General Assembly

December 2014

The Honorable Tom Dempsey  
President Pro Tem  
Missouri Senate  
Jefferson City, Missouri

The Honorable Timothy Jones  
Speaker  
Missouri House of Representatives  
Jefferson City, Missouri

Dear Mr. President and Mr. Speaker:

Pursuant to your charge and the provisions of Senate Concurrent Resolution 29, your Juvenile Justice Task Force heard testimony from a variety of experts in juvenile justice issues over the course of an informational session and five hearings held from June to November of 2014.

The task force expresses its gratitude to all the parties who provided vital information and assistance during the task force's examination of the issues surrounding the juvenile justice system in Missouri. Enclosed is our report and recommendations.

Sincerely,

Senator Jolie Justus, Chairman

Representative Ron Hicks, Vice Chairman

REPORT OF THE  
JUVENILE JUSTICE TASK FORCE

Committee Members

Senator Jolie Justus  
District 10

Representative Ron Hicks  
District 107

Senator Wayne Wallingford  
District 27

Representative Jeremy LaFaver  
District 25

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Karen Kraft, Division Director  
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Jason Lamb, Executive Director  
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Tim Decker, Director of Children's Division  
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Tracy McClard, Founder/Organizer  
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Patsy Carter,  
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Ed Morris, Chairman  
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Report of the Juvenile Justice Task Force  
**December 2014**

**I. INTRODUCTION**

The Juvenile Justice Task Force was formed to study the issue of juveniles under the age of 18 in the adult criminal justice system. Under current law, children who are 17 years of age are automatically considered adults for purposes of prosecuting criminal offenses. Also, children as young as 12 years of age may be prosecuted as adults and held in adult jails. The state's Division of Youth Services has been lauded and held out as a model for rehabilitative, secure care throughout the country, however, the juveniles held in adult jails cannot access the rehabilitative services offered by the division. Research has suggested that juveniles in the adult criminal justice system have an increased risk of suicide, being sexually assaulted and beaten. During the second regular session of the 97th General Assembly, Senate Concurrent Resolution No. 29 won approval from both chambers. The resolution authorized the establishment of the Juvenile Justice Task Force and directed the task force to consider raising the age of juvenile court jurisdiction to age 18, removing juveniles from adult jails pre-trial, revising the age of certification to adult court, current laws relating to the jurisdiction of the juvenile court, current research on best practices for handling offenses committed by youth in the court system, the benefits of retaining youth under the juvenile justice jurisdictions in this state, methods to reduce the number of youth in adult detention centers and prisons, and the long-term fiscal impact of treating youth in the adult criminal system. The resolution also directed the task force to deliver a report of its findings and recommendations to the General Assembly by January 1, 2015.

**II. TASK FORCE MEMBERSHIP**

Pursuant to Senate Concurrent Resolution No. 29, the Speaker of the House of Representatives appointed Representative Ron Hicks and the Minority Leader of the House appointed Representative Jeremy LaFaver. The President Pro Tem of the Senate appointed Senator Wayne Wallingford and the Minority Leader of the Senate appointed Senator Jolie Justus. Senator Justus served as chairman and Representative Hicks served as vice chairman of the task force.

In addition to the legislator members of the task force, Gary Waint served as the State Courts Administrator, Phyllis Becker served as the Director of the Division of Youth Services, Tim Decker served as the Director of the Children's Division of the Department of Social Services, Ed Morris served as the chairman of the Juvenile Justice Advisory Group, Karen Kraft served as the designee appointed by the Director of the Missouri State Public Defender System, and Jason Lamb served as the Director of the Office of Prosecution Services.

As directed by the resolution, the Speaker of the House of Representatives appointed Mary Chant as a representative from a state coalition in existence for more than 30 years that advocates for Missouri's at-risk, abused, and neglected children and the people who care for them, Patsy Carter as a mental health provider specializing in adolescent and mental health, and Vivian Murphy as an at-large public member. The President Pro Tem of the Senate appointed Tracy

McClard as a representative from the advocacy community who has organized to advocate for juvenile justice policy reform on the state and federal levels and Bev Newman as a representative from the juvenile and family courts. The task force appointed LaVante Falls to the group as a Youth Representative during the July hearing.

### **III. MEETINGS**

After its establishment, the Juvenile Justice Task Force met six times. The task force's public hearings and informational session took place on the following dates at the State Capitol Building in Jefferson City:

June 18, 2014 (Informational Session)

July 2, 2014

August 6, 2014

September 16, 2014

October 1, 2014

November 7, 2014

At the meetings, the task force received information from experts in national juvenile justice reform efforts, state and local officials who work within the adult and juvenile criminal justice systems, and youth advocates, including family members of youth who have died in adult correctional facilities. The following pages include a summary of the testimony and the recommendations of the task force.

#### **A. JUNE 18, 2014**

An informational session was held to discuss ideas for the upcoming task force. A presentation was given by Carmen Daugherty from Campaign for Youth Justice on national juvenile justice reform trends.

The four main trends which have occurred from 2005 through 2013 include:

- (1) Removing youth from adult jails and prisons (11 states);
- (2) Expansion of juvenile court jurisdiction so that an older youth who previously would be automatically tried as an adult is not prosecuted in adult criminal court (4 states with one pending);
- (3) Changing state transfer laws making it more likely that youth will stay in the juvenile justice system (11 states); and
- (4) Changing mandatory minimum sentencing laws, allowing for post-sentence review for youth facing juvenile life without parole or other sentencing reforms (8 states).

Ms. Daugherty reported that there are 15 states where a prosecutor can automatically file in adult court. Usually a juvenile court judge makes the decision. However, the case often defaults to the adult system. The prosecutor can then request that it be moved back down to the juvenile court.

She also presented information on the research that has been conducted relating to the adolescent brain and how the cognitive control system develops gradually from preadolescence through the mid-20's. As the youth grows older, the individual is able to have more impulse control, foresight, reasoning and can better regulate emotions and plan ahead.

Ms. Daugherty also presented information about the U.S. Department of Justice Prison Rape Elimination Act (PREA) Inmate Standards which were adopted in June 2012. The standards provide that "as a matter of public policy, the Department supports strong limitations on the confinement of adults with juveniles."

Bev Newman from the Missouri Juvenile Justice Association and Chief Juvenile Officer for the 17th Judicial Circuit as well as Scott Odum from the Department of Social Services, Division of Youth Services, presented on the issue of Missouri youth's entrance into the adult criminal system.

As was presented, in Missouri, a juvenile person less than 17 years of age at the time of the commission of an alleged offense may not be charged with a crime or convicted of an offense absent a transfer or waiver to a court of general jurisdiction (adult court). This process is known in Missouri as a certification and is the action in which the juvenile court relinquishes jurisdiction of a case by granting a motion to dismiss the petition in juvenile court to allow for prosecution under general law.

There are two types of certification hearings, permissive and mandatory.

(1) Permissive (Discretionary)- Under this type of hearing, a juvenile between the ages of 12 and 17 years of age at the time of the alleged offense occurred may be certified to the adult court in circumstances where the alleged violation of law would constitute a felony if committed by an adult.

(2) Mandatory- In these instances, a certification hearing must be held in matters where a juvenile of any age is alleged to have committed one or more of the following felony offenses: First Degree Murder, Second Degree Murder, First Degree Assault, Forcible Rape, Forcible Sodomy, First Degree Robbery and Distribution of Drugs.

It is also mandatory when the juvenile is alleged to have committed two or more prior unrelated offenses which would be felonies if committed by an adult.

There are specific procedural protections that must be followed such as notice, access to social reports and investigations, an evidentiary hearing, representation by counsel and a specific statement of the reasons for the certification or transfer, and specific findings by the court and reasons for granting the motion to dismiss in Juvenile court, if it is so granted. The court does not

make a determination of guilt as to the alleged offense but considers certification in the context of the juvenile eventually being found to have committed the offense and whether or not the juvenile could be dealt with appropriately in the juvenile system. The factors to be considered by the court include:

- (1) Nature of the offense;
- (2) Juvenile record;
- (3) Sophistication and maturity of the juvenile;
- (4) Programs and facilities available in the juvenile system;
- (5) Age; and
- (6) Racial disparity

If the motion to dismiss the case in juvenile court is not granted, the matter is then set for a hearing on the petition in juvenile court. If it is granted, prosecution under general law may occur and the jurisdiction of the juvenile court is forever terminated unless the juvenile is found not guilty under general law.

#### **B. JULY 2, 2014**

The task force heard testimony on the issues of raising the age, House Bill 1550 and children in adult courts and jails in Missouri.

Stephanie Kollmann, clinical fellow from the Northwestern University Law Children and Family Justice Center presented on the "Raising the Age of Juvenile Court Jurisdiction" report for the Illinois Juvenile Justice Commission (IJJC). Beginning in 2008, the Illinois General Assembly debated the issue of raising the age of juvenile jurisdiction. There were concerns about the effect such a change would have on public safety, probation caseloads, crowded detention facilities and high fiscal costs. In the end, a compromise was reached and it was decided that "bifurcating" or "staggering" the change would help minimize such concerns. In 2009, Illinois passed legislation to have 17-year-old youths who commit misdemeanors go through the juvenile system while 17-year-old youths who commit felonies, violent or nonviolent, would remain in the adult criminal court, as was already the practice under state law. The plan was to study the effects of such changes and to possibly move all 17-year-old youths to the juvenile system at a later date based on such findings.

According to Ms. Kollmann, prior to implementation of the new law, many experts predicted that raising the age of juvenile court jurisdiction from 16 to 17 would increase the overall juvenile justice system workload by a third. The National Center on Juvenile Justice in 2005, estimated that adding 17-year-olds to the juvenile system would increase the Illinois juvenile



detention population by 25 to 35 percent. Some predicted a 40 percent increase in the first year of implementation.

However, as Ms. Kollmann noted in the report presented to the IJJC, since the January 1, 2010, change in law took place, none of the predicted negative impacts occurred. Because of a significant decline in juvenile crime and crime in general, there were fewer arrests than when the legislation was first debated in 2008. County juvenile detention centers and state juvenile incarceration facilities were closed and excess capacity has become the norm in Illinois. In July 2013, the General Assembly changed the law to raise the age of juvenile court jurisdiction to age 18, thereby having 17-year-olds who are charged with misdemeanors and nonviolent felonies tried and sentenced in juvenile court rather than adult court.

Ms. Kollmann noted that while changing the law in phases seemed appealing to the General Assembly at the time of debate because it was thought it would lessen the impact, in fact practitioners in the field were not equipped to handle a youth at the moment of arrest or detention. There were not clear guidelines on how to determine where to deal with the youth as it depended on the charges to be filed and verification of the youth's age. There was no uniformity of procedure statewide. She would recommend raising the age all at once. She also noted that states need to focus on funding programs geared toward youths at high risk for incarceration such as Redeploy Illinois which provides fiscal incentive to counties that provide services to such youths within their home communities.

The next presenter, Mae Quinn, Professor of Law and Director of the Juvenile Law and Justice Clinic from Washington University testified on the issue of children in adult courts and jails in Missouri.

Professor Quinn runs a program within her clinic that is targeted to representing 17-year-olds throughout the legal process. It has been her experience that youths between the ages of 17 and 18 can go unnoticed in the court system. Under these conditions, 17-year-olds become invisible. Furthermore, she argues that recent United States Supreme Court decisions have demonstrated that 17-year-old youths should be treated as children under the law.

During the public testimony portion of the hearing, Charles McClard from Jackson, Missouri testified about his time in jail when he was 17 years old. He got in a fight over a girl being abused, was arrested and served ten days in jail. He described himself as a 140-pound target and that his ten days in jail were "absolute hell." The guards did not help him and he thought about harming himself and committing suicide. He told the task force that 17 is too young to be jailed with adults.

The last presenters, Vivian Murphy, youth advocate, and Gary Waint, the Office of the State Courts Administrator (OSCA), distributed copies of HB 1550 (2008), and the corresponding fiscal note as well as a June 2009 study conducted by OSCA to assess the impact of HB 1550. HB 1550 expanded the jurisdiction of juvenile courts to include individuals who are over 17 years of age but not yet 18 years of age, for the sole purpose of status offenses, by modifying the definitions of "child," "adult," and "status offense." However, the provisions relating to extension

of the juvenile court's jurisdiction shall not take effect until such time as appropriations by the General Assembly for additional juvenile officer full-time equivalents and deputy juvenile officer full-time equivalents exceed by 1.9 million dollars the amount spent by the state for such officers in fiscal year 2007 and appropriations by the General Assembly to single first class counties for juvenile court personnel costs exceed by 1.9 million dollars the amount spent by the state for such juvenile court personnel costs in fiscal year 2007.

The impact report studied Missouri's 35-multi-county circuits only and concluded among other things that there would be a 19% increase in status referrals, a need for an additional 27 full-time equivalent officers to process and supervise 17-year-old status offenders, and 156 additional referrals for 17-year-olds requiring detention annually.

The report concluded that the fiscal impact for 35 multi-county circuits would be:

Direct Service Personnel Cost=\$1,873,989

Detention Cost=\$17,482

Program Cost=\$1,287,853

Total= \$3,179,324

Mr. Waint also testified that a good current analysis of resources is needed, particularly in light of the fact that since there were more violent crimes in the past and that Missouri is down from 200 youths certified to about 50 certifications as of July 2014. The recidivism rate in family courts is down 23 to 25 percent. It is because of this that juvenile officers now have the time to spend on high risk youths.

Scott Odum of the Division of Youth Services, provided copies of an April 1, 2014, presentation regarding certification and dual jurisdiction that had been discussed in the June 18, informational session. Dual jurisdiction is a blended sentencing alternative in which the court may dually commit a certified youth offender to both the Division of Youth Services and the Department of Corrections. It allows the court to simultaneously invoke both a juvenile and adult sentence (with the execution of such sentence suspended). It was noted that Missouri certifications peaked in 1996 at 302, while last year there were 53 certifications. Also, due to the passage of Jonathan's Law in 2013, there is expanded eligibility for programming up to age 17 years and six months of age. Judges must now "consider" dual jurisdiction in all certifications resulting in findings of guilt.

### **C. AUGUST 6, 2014**

At the August hearing, the task force received testimony on the topic of detention of juvenile offenders in adult jails.

The first witness, Cole County Sheriff Greg White, said 68 youth were certified as adults throughout the state in 2013. He said that number is in line with an annual average of 60 to 70 certifications a year. Sheriff White said county jails place minors with adults, which causes several logistical problems, and often leads to separating the youth from the adults for safety reasons.

Sheriff White testified in support of placing juveniles who are certified as adults in juvenile detention facilities or creating a holding facility for certified juveniles. At separate facilities, the certified juveniles may better access services offered to youth who remain in the juvenile criminal justice system, including educational services and substance abuse treatment. Sheriff White also reported that, in his experience, many of the juvenile offenders have substance abuse issues or recurring mental disorders and that the juvenile system is better equipped to provide proper services than the adult system.

He noted that federal standards under the Prison Rape Elimination Act require 17-year-old offenders to be held out of the sight and sound of the general population of adult offenders and that Missouri treats 17-year-olds as adult offenders. He recommended changing the age of automatic adult criminal jurisdiction to 18 years of age.

He mentioned that county jails should not be responsible for the education of juvenile offenders and said the local school district would be better equipped to provide educational services. He said the jail will provide access to homework to the students and mail completed assignments back to the school, but the jail does not provide tutoring. He also said it is not feasible to expect a school district to provide teachers for incarcerated youth.

Some issues raised by Sheriff White's testimony included whether greater regionalization of jails would allow for enhanced educational and mental health services available to juvenile offenders in adult county jails and whether the state should adopt model standards for housing juveniles in adult county facilities.

Next, Judy Parrett and Scott Odum, both of whom work for the Division of Youth Services, provided informational testimony regarding the history and requirements of the federal Prison Rape Elimination Act. The act took effect in August 2012 and applies to all adult prisons and jails and juvenile facilities. Although the act applies to county jails, it was noted during testimony that there is no penalty imposed on county jails for failing to comply. Funding from federal grant programs may be reduced as a result of non-compliance by a state.

The act requires correctional facilities to separate "sight and sound" the offenders who are under the age of 18 from offenders who are 18 years of age and older and include requirements for the reporting of sexual assaults. The witnesses testified that, to create total sight and sound separation, the facility needs to house the juvenile offenders in a separate unit.

According to the witnesses, any program that contracts with the Division of Youth Services must meet the standards of the act. Task force members and the witnesses discussed whether juveniles certified as adults could be housed in Division of Youth Services facilities since such facilities follow the federal standards whereas county facilities may not be in compliance with the act. The witnesses testified that Colorado places its juvenile offenders who are being held before trial in its state-run juvenile facilities.

The Reverend John Bennett of Missouri Faith Voices testified next. He said Missouri Faith Voices endorses Senate Concurrent Resolution 29, which established the task force. He noted that youth housed in adult jails are more likely to commit suicide than those housed in juvenile facilities.

Karen Kraft of the Missouri Public Defender System and Steve Lynxwiler, the district defender in Poplar Bluff, provided testimony regarding their representation of youth held in adult jails. Mr. Lynxwiler spoke about the experiences of a teenage client of his who was housed in an adult jail cell with several adult women. He noted the lack of a facility for juvenile offenders in the Poplar Bluff area and the need for localized detention facilities for youth to accommodate access to their families and legal counsel.

Next, Ian Dunlap of the Department of Corrections and Vevia Sturm, the Prison Rape Elimination Act coordinator for the Department of Corrections, testified about the department's compliance with federal law. Only juvenile offenders who are certified and found guilty are detained in the department's facilities. According to the testimony, the offenders who are 17 years of age and under are kept in separate facilities from the adult offenders and the facilities housing the youth are more like dormitories than cells. Male offenders under the age of 18 are detained at the Farmington Correctional Center while female youth are detained at the Women's Eastern Reception, Diagnostic and Correctional Center in Vandalia. In August, six boys under the age of 18 were detained in Farmington and two girls were detained in Vandalia. Once the offenders turn 18, they are placed in the general population.

The witnesses provided the following description of the process of accepting a juvenile offender:

- (1) A local law enforcement agency notifies the department that a juvenile has been certified;
- (2) The juvenile is transported to the appropriate facility depending on whether the offender is a boy or girl;
- (3) Once the offender is in his or her unit, an assessment is conducted to assess medical and educational needs, the offender receives instructions on how to complete requests for medical services and legal assistance and they are told about the Prison Rape Elimination Act. They are also taught the process for filing a grievance.

Mr. Dunlap reported that youths in the department's prisons receive daily educational instruction from licensed teachers and have structured daily routines.

Senator Justus then invited the public to testify. Mary Marquez, Deputy Court Administrator for Jackson County and Bill Jackson, the Juvenile Officer for Jackson County, testified regarding youth certified as adults in Jackson County. The witnesses reported that there are a small number of youth certified in Jackson County and the number continues to decrease every year. In 2013 in Jackson County, nine youth were certified as adults. Currently, 22 youth are being detained in the Jackson County Jail.

The witnesses testified that the majority of certification hearings are required by law and are not sought by the juvenile officer. According to the witnesses, the prosecutor almost always agrees with the juvenile officer's recommendations regarding certification. The witnesses expressed concern with detaining certified youth in juvenile detention facilities, stating that the juvenile facilities may not be equipped to handle older and possibly more violent youth. In addition, the witnesses expressed concern with housing youth who are suspected of violent crimes with younger youth who are detained for less serious offenses and are susceptible to peer pressure. Finally, Kelly Greer told the story of her son, Vincent Greer, a youth who was certified as an adult and sentenced to life without parole who died in a Department of Corrections facility.

#### **D. SEPTEMBER 16, 2014**

At the September hearing, the task force heard additional testimony on the issue of juveniles certified as adults.

Youth advocate Vivian Murphy spoke on the issue of juveniles certified as adults being held in adult jails before trial. She testified that adult jails are not appropriate detention centers for youth because adult facilities do not offer educational, mental health, and rehabilitative services. She reported that some adult jails prohibit the youth from having books and writing materials. She said youth held in adult facilities do not have the appropriate access to their families and face a higher risk of sexual abuse and suicide. According to her testimony, adult facilities place youth in isolation to punish normal teenage behaviors. In addition, she said studies indicate the practice of detaining children in adult facilities does not result in increased public safety. Ms. Murphy testified that, while county jails have challenges with housing juvenile offenders, the Division of Youth Services is equipped to handle them. She noted the lack of a statute prohibiting the placement of juvenile offenders certified as adults in facilities operated by Division of Youth Services or juvenile detention centers.

Following Ms. Murphy's testimony, Gary Wait, the State Courts Administrator, provided youth certification statistics, which detailed the types of felonies charged against juveniles who were certified as adults in 2013. The list identified 154 felonies and involved 73 juveniles. The crimes most often charged included robbery in the first degree and armed criminal action. The statistics distributed by Mr. Wait also provided information on youth certified to adult court by race from 1992 to 2013. These statistics showed a decline in certifications among both African-American and white juvenile offenders over the last two decades with a spike in certifications of African American youth from 1994 to 1997 and, to a lesser extent, in 2000. White certifications also increased dramatically during the 1994 to 1997 time period and there was a small bump in 2002.

Ian Dunlap of the Department of Corrections then provided follow-up testimony to answer questions posed at the previous hearing about youths being held in adult correctional facilities. He reported that the teachers instructing the youths detained in the department's prisons are trained in dealing with juveniles, but the corrections officers who oversee the youths do not receive special training. He testified that a statute, section 217.345, specifies that juveniles who are certified as adults are legally emancipated for purposes of decisions involving medical care and participation in the department's programs. Mr. Dunlap reported that there have been no

reported instances of sexual abuse by an adult staff member against a juvenile offender and one suicide by a youth being held in a prison since 1998. According to his testimony, isolation was used in 48 instances with juvenile offenders during the past five years. He said all the offenders who were placed in isolation had repeated disciplinary issues and isolation is not used as a long-term punishment by the department.

Mr. Dunlap's testimony raised questions among the task force on the lack of information regarding youths being held in adult county jails and methods for gathering such data from the counties. Senator Justus provided information sent by Mick Covington, Executive Director of the Missouri Sheriff's Association. According to Mr. Covington, twenty-three 17-year-olds are currently being held in adult jails in 43 counties throughout the state. Mr. Covington had asked counties to provide the information on behalf of the task force and 43 of the state's 114 counties responded. Senator Justus noted that the state's most populated counties of St. Louis, St. Charles, and Jackson did not return responses.

Information was distributed at the hearing by the Missouri Juvenile Justice Association regarding the Missouri Juvenile Code and operational standards for juvenile detention centers. The association also distributed recommended statutory amendments to the section of law dealing with certification of juvenile offenders as adults. In addition, the Division of Youth Services distributed its annual report to the task force.

#### **E. OCTOBER 1, 2014**

In October, the task force focused on the process for transferring juvenile cases to adult court.

Washington University Professor Mae Quinn identified several problems in the current process and recommended changes to address the issues. For instance, Professor Quinn noted that Missouri has adopted model provisions for adult certifications that have also been adopted by 37 other states; however, Missouri has failed to adopt one provision, which would require the juvenile officer to establish probable cause to transfer a juvenile to adult court. According to Professor Quinn, not only does Missouri law not require evidence of probable cause in transfer hearings, Missouri law actually precludes evidence of probable cause in transfer hearings.

Professor Quinn also noted the lack of a statutory requirement for a probable cause hearing in order to detain a juvenile accused of committing a crime even though the Eighth Circuit Court of Appeals has determined that probable cause hearings in such cases are necessary.

Other problems identified by Professor Quinn include a provision requiring a certification hearing if the juvenile has two prior unrelated felonies even if the juvenile was not found guilty of the felonies. Also, she testified that once a juvenile has one case transferred to the adult system, additional crimes committed by the juvenile are automatically handled in the adult system even if the juvenile is ultimately found guilty of a misdemeanor offense in the transferred case. She questioned whether a juvenile can even return to juvenile court for subsequent cases if the original case is dismissed. She recommended the state enact a law similar to a California law

that allows juveniles who are found guilty of a lesser charge in adult court to have subsequent criminal cases handled by the juvenile court.

During her testimony, Professor Quinn advocated for repealing the law requiring a transfer hearing in certain circumstances. She said she realizes it is probably unrealistic to believe lawmakers would repeal the transfer hearing statute altogether and said limiting the statute to the possible transfer of offenders who are at least 15 years of age may be a good compromise for now. She said, while of questionable rationality and problematic from the perspective of many youth advocates, past public policy in Missouri supports using the age of 15 in light of a state law providing that offenses by juveniles who are at least 15-years-old may be prosecuted in municipal court. She noted, however, her prior testimony in favor of raising the age to 18 for general juvenile court jurisdiction and removing minors from municipal court jurisdiction.

Next Boone County Prosecuting Attorney Dan Knight who also serves as the President of the Missouri Prosecuting Attorneys Association testified regarding the perspective of prosecuting attorneys. Mr. Knight agreed with Professor Quinn's recommendation to require a probable cause hearing in the certification process. In addition, he noted that the prosecutors are not necessarily opposed to increasing the age of adult criminal jurisdiction to 18 years of age. He expressed concern, however, that raising the age would mean 17-year-olds facing misdemeanor assault charges would not be handled in adult courts.

Mr. Knight also testified regarding the limited role of prosecutors in the juvenile court, saying prosecutors in the majority of states handle juvenile cases. He said prosecutors who later receive cases from the juvenile court system are at a disadvantage because they are not involved at the beginning of the case while defense attorneys become involved earlier in the juvenile court. He noted prosecutors can assist in collecting time-sensitive evidence, especially in child sex crimes. He also pointed out that prosecutors have staff with special training in working with child witnesses. In addition, he said offices of prosecuting attorneys employ advocates for crime victims whereas only five or six juvenile offices have victims' advocates.

According to Mr. Knight's testimony, prosecutors also want to be more involved with the certification hearing. He said prosecutors want to have the ability to cross-examine witnesses and argue before the judge for adult certification in some cases.

Finally, Mr. Knight discussed proposals to modify the list of offenses that result in a mandatory certification hearing in juvenile court. He argued that all dangerous felonies as defined in section 556.061 should be included in the list of offenses that trigger a certification hearing and said prosecutors do not oppose removing distribution of drugs from the list in current law.

After Mr. Knight testified, Jessica Meyers of the Missouri Victim Assistance Network spoke about the importance of the perpetrator being held accountable in proportion to the impact on the victim. Ms. Meyers noted that there were 33 adult certification hearings in St. Louis last year and the majority of the offenders were 15- or 16-years-old. She said the crimes included armed robbery and homicide and included a 12-year-old murderer. She testified that victims experience high rates of post-traumatic stress syndrome and said, in cases of murder, the syndrome does not

appear until an average of 16.6 years after the crime. Given the long-lasting impact on victims, she said any proposals to change the juvenile justice system should ensure that offenders are not released after just a few years.

She testified that she does not oppose efforts to rehabilitate juvenile offenders, removing distribution of drugs from the list of crimes that require a certification hearing, and increasing the age of adult responsibility. In addition, she expressed support for the Prison Rape Elimination Act, saying there needs to be careful consideration of how juveniles are housed to ensure they do not become victims themselves. She also urged the task force to consider providing greater access to victim assistance in the juvenile justice system and encouraged cooperation between the juvenile officers and prosecuting attorneys.

Tracy McClard, founder of Families and Friends Organizing for Reform of Juvenile Justice, testified next about her son Jonathan who spent seven weeks in adult prison following a conviction for first degree assault for an event that occurred when he was 16. He committed suicide in prison three days after his 17<sup>th</sup> birthday. She noted that Jonathan spent four out of the seven weeks in solitary confinement for putting his hands in his lap.

Ms. McClard said Jonathan should have been a part of the state's dual jurisdiction program which allows courts to suspend the imposition of an adult sentence and impose a juvenile disposition on juveniles whose cases have been transferred to adult courts. Instead, the court refused to allow Jonathan to participate in the dual jurisdiction program and sentenced him to serve the maximum adult sentence of 30 years.

Ms. McClard testified that juveniles held in adult jails and prisons are more likely to be assaulted and sexually abused. She noted studies indicate the recidivism rate for adult prisons is higher than the rate for those who are held in facilities operated by the Division of Youth Services. She pointed out that juvenile offenders are more likely to be released because of the young age they enter the system and they are in need of proper rehabilitation. Finally, she noted that Missouri is one of only seven states that prosecute 17-year-olds as adults.

## **F. NOVEMBER 7, 2014**

At the November meeting, the task force considered the draft report and discussed recommendations. Task force members discussed the lack of consensus on various issues and the need for more information on issues, such as lowering the age of jurisdiction for adult court. Senator Justus made a motion for approval of a recommendation to continue the task force and, at the same time, possibly expand the membership and mission of the task force. The task force unanimously approved the motion with a voice vote. The task force also agreed to include all the recommendations submitted by individual task force members in the final report.

In addition, Representative Ron Hicks described a recent visit he made to the St. Charles Juvenile Justice Center where he toured the facility and spoke to its residents. He noted the facility had a beautiful gym, but no sports equipment because money had been spent on books and pencils instead. He said after the visit he immediately drove to Walmart and bought a cartful



of sports equipment for the facility, which the kids were very excited and grateful to receive. He said the juvenile center has an excellent facility and staff, but all the kids' needs are not being met. He mentioned a particularly tough and guarded 16-year-old who hugged Representative Hicks during the visit and later wrote the legislator a letter expressing how long it had been since he had received a hug. Representative Hicks shared a number of the letters he received from the kids in the facility with the task force.

#### **IV. RECOMMENDATIONS**

After review of all the information received by the task force during its public meetings, the task force has determined that the General Assembly should enact legislation to re-commission the task force. Given the complex nature of the issues surrounding juveniles, the multiple stakeholder perspectives, and the challenges associated with gathering local data, the re-commissioned task force should be expanded to include additional representation, such as victim advocates and representatives from the Department of Corrections, the Department of Public Safety, law enforcement agencies, the Governor's Office, and any others impacted by or interested in reform of the juvenile justice system. In addition, the mission of the task force ought to be expanded to include additional topics.

Senator Wallingford, Representative Hicks and Representative LaFaver recommend that Senator Wallingford and Representatives Hicks and LaFaver pursue legislation to raise the age of majority to 18 and to remove minors from adult jails.

Finally, the task force recommends the re-commissioned committee move forward on discussing the following initiatives submitted by individual members of the task force:

#### **BEV NEWMAN, CHIEF JUVENILE OFFICER OF THE SEVENTEENTH JUDICIAL DISTRICT**

Recommendation: *Raise the age of juvenile court jurisdiction to age eighteen*

Establish a specific juvenile justice commission or expand and extend the charge of the Juvenile Justice Task Force to further study and examine the impact of expanding the jurisdiction of the Juvenile Court to include youth 17 years of age or youth 17 years of age at the commission of the alleged offense.

#### Rationale:

Duly noting the compelling testimony provided and the evidence in support of the need to raise the age of juvenile court jurisdiction to the age of 18 while remaining mindful of the need to maintain the careful balance of ensuring continued accountability for young offenders and the paramount need for public safety with the substantial societal interest in promoting - *not limiting* - life opportunities for young people involved in the juvenile or adult criminal justice systems; it would be prudent to acknowledge the short time frame allocated to the Juvenile Justice Task

Force to examine this potentially complex system change that arguably equates to the creation of an enhanced Missouri juvenile justice system.

Undoubtedly, the current research compels critical questions of any practice that criminalizes non-violent conduct of a not yet fully developed young person as an unnecessary and costly practice. The same further substantiates the effectiveness of the trademark practices of the juvenile justice system including the emphasis on rehabilitation, diversion services, mental health treatment, competency development, social supports and family engagement – all of which reduce the likelihood that the young person will become a repeat offender and thereby benefit not only the young person but society as a whole.

There remain however many unanswered questions as to the actual impact of raising the age of juvenile court jurisdiction in Missouri and as this change has the potential to impact the outcomes for all youth involved in the Missouri juvenile justice system by over extending the resources and personnel of the existing system – those unintended consequences should be avoided and the most appropriate mechanism to do so would be a comprehensive study of the impact across all aspects of the system including child welfare, mental health, substance abuse, law enforcement, education, victim services, juvenile corrections, and the courts.

Specific elements to be considered may include but not be limited to:

1. Collect and examine data as to the number of youth 17 years of age or 17 years of age at the commission of the alleged offense arrested or charged in a state or municipal court inclusive of the nature of the offense and the number of days of incarceration relating to the same;
2. Conduct a current analysis of projected cases relating to Section 211.031.1(2) and examine best practices and alternatives for status offenders 17 years of age;
3. Identify resource issues and cost mitigation strategies;
4. Investigate alternate strategies such as “civil citations” or other diversion processes;
5. Identify statutory implications of raising the age of juvenile court jurisdiction; and
6. Develop implementation and action plans.

Recommendation: *Removing juveniles from adult jails pre-trial*

Establish and fund regional secure pre-trial residential facilities for certified juveniles. Each facility should be required to minimally operate in a manner consistent with the applicable and relevant standards established in the “Standards for the Operation of a Secure Juvenile Detention

Facility”. See Rule 129. Additional services and supports consistent with the identified needs of certified juveniles pending trial should also be considered.

Rationale:

Certified juveniles present unique challenges in the context of pre-trial detention and require a facility designed in purpose and structure to meet those needs. The length of stay may be much longer than a comparative pending adjudication in juvenile court and appropriate mental health and transitional supports are of critical concern.

Recommendation: *Revising the age of certification to adult court*

Change the language relating to certification of juveniles as follows:

211.071. 1. If a petition alleges that a child between the ages of [twelve] **fourteen** and seventeen has committed an offense which would be considered a felony if committed by an adult, the court may, upon its own motion or upon motion by the juvenile officer, the child or the child's custodian, order a hearing and may, in its discretion, dismiss the petition and such child may be transferred to the court of general jurisdiction and prosecuted under the general law[; except that if a petition alleges that any child has committed an offense which would be considered first degree murder under section 565.020, second degree murder under section 565.021, first degree assault under section 565.050, forcible rape under section 566.030 as it existed prior to August 28, 2013, rape in the first degree under section 566.030, forcible sodomy under section 566.060 as it existed prior to August 28, 2013, sodomy in the first degree under section 566.060, first degree robbery under section 569.020, or distribution of drugs under section 195.211, or has committed two or more prior unrelated offenses which would be felonies if committed by an adult, the court shall order a hearing, and may in its discretion, dismiss the petition and transfer the child to a court of general jurisdiction for prosecution under the general law].

Rationale:

Retain elements of judicial review, specific findings by the court, and consideration of established criteria.

**TRACY MCCLARD, FOUNDER OF FAMILIES AND FRIENDS ORGANIZED FOR REFORM OF JUVENILE JUSTICE;  
VIVIAN MURPHY, YOUTH ADVOCATE; AND  
MARY CHANT, CHIEF EXECUTIVE OFFICER OF MISSOURI COALITION OF CHILDREN'S AGENCIES**

Recommendation: *Raise the age of juvenile court jurisdiction to 18*

The General Assembly ought to enact legislation similar to HB 215 (2007). See <http://www.house.mo.gov/content.aspx?info=/bills071/biltxt/intro/HB0215I.htm>.

Recommendation: *Remove all youth from adult jails pre-trial*

Establish a collaborative workgroup including Division of Youth Services and the Office of State Courts Administrator to ensure that all youth who are certified be transferred to a juvenile facility that uses the DYS " Missouri Model" pending trial. All youth will be removed from county jails pre-trial by January 1 2016.

Enact the following statutory language with an effective date of January 1, 2016:

**A juvenile who has been certified under section 211.071 shall be detained in a juvenile facility pre trial.**

Recommendation: *Increase the age of certification to age 16 and only for certain offenses*

Revise the dual jurisdiction language so that more youth are served by the program in the following ways:

211.071. 1. If a petition alleges that a child [between the ages of twelve and seventeen has committed an offense which would be considered a felony if committed by an adult, the court may, upon its own motion or upon motion by the juvenile officer, the child or the child's custodian, order a hearing and may, in its discretion, dismiss the petition and such child may be transferred to the court of general jurisdiction and prosecuted under the general law; except that if a petition alleges that any child] **has reached the age of sixteen and** has committed an offense which would be considered first degree murder under section 565.020 , second degree murder under section 565.021 , first degree assault under section 565.050 , forcible rape under section 566.030 as it existed prior to August 28, 2013, rape in the first degree under section 566.030 , forcible sodomy under section 566.060 as it existed prior to August 28, 2013, sodomy in the first degree under section 566.060 , **or** first degree robbery under section 569.020[, or distribution of drugs under section 195.211 , or has committed two or more prior unrelated offenses which would be felonies] if committed by an adult, the court shall order a hearing, and may in its discretion, dismiss the petition and transfer the child to a court of general jurisdiction for prosecution under the general law.

211.073. 1. The court shall, in a case when the offender is under [seventeen] **eighteen** years and six months of age and has been transferred to a court of general jurisdiction pursuant to section 211.071, and whose prosecution results in a conviction or a plea of guilty, [consider] **and upon agreement of the division of youth services impose** dual jurisdiction of both the criminal and juvenile codes, as set forth in this section. The court is authorized to impose a juvenile disposition under this chapter and simultaneously impose an adult criminal sentence, the execution of which shall be suspended pursuant to the provisions of this section. Successful completion of the juvenile disposition ordered shall be a condition of the suspended adult

criminal sentence. The court may order an offender into the custody of the division of youth services pursuant to this section:

- (1) Upon agreement of the division of youth services; and
- (2) If the division of youth services determines that there is space available in a facility designed to serve offenders sentenced under this section. If the division of youth services agrees to accept a youth and the court does not impose a juvenile disposition, the court shall make findings on the record as to why the division of youth services was not appropriate for the offender prior to imposing the adult criminal sentence.

**JASON LAMB, EXECUTIVE DIRECTOR OF THE MISSOURI OFFICE OF PROSECUTION SERVICES**

Recommendation: *Raise the age of adult court jurisdiction to 18 via a phase-in process and increase the role of prosecutors in the certification process*

The General Assembly may consider raising the age to 18 of adult court jurisdiction to 18, but must take precautions with the phase-in period. If the age is raised, prosecutors will need to be more involved in the decision-making process relating to certification, particularly on high-level violent offense committed by older juveniles.

Recommendation: *Modify automatic certification statute*

Do not eliminate automatic certification hearings on dangerous or violent felonies, but consider eliminating drug distribution from the list of offenses that result in automatic certification hearings.

**MARY CHANT, CHIEF EXECUTIVE OFFICER OF MISSOURI COALITION OF CHILDREN'S AGENCIES**

For each issue that the Task Force agrees on, the Task Force should proceed to evaluate what would be necessary to facilitate, such as funding, legislatively transferring authority, developing program models, etc. These discussions or debates can take place without having information on number of youth impacted, funding, authority, etc. In fact, they can help us prioritize and move more quickly on those areas that we have a strong consensus.

I support all five of the recommendations listed below, though understand the process to get there functionally will take much more discussion, planning, and representation from other cohorts. I also want to hear more discussion from members regarding increasing the age of certification, as I understand there to be different perspectives on the age to which it should be raised. I support continuation of the Task Force and expansion of membership to include other groups not represented.

- (1) Raise the age of juvenile court jurisdiction to 18;

- (2) Remove all youth from adult jails pre-trial;
- (3) Increase the age of certification;
- (4) Increase access to dual jurisdiction for all certified and evaluated by the Division of Youth Services as appropriate candidates;
- (5) Certifying only crimes that are against a person (no drug or theft based certifications).

### **ED MORRIS, CHAIRMAN OF THE JUVENILE JUSTICE ADVISORY GROUP (JJAG)**

The purpose of JJAG is to advise the Governor, the Director and staff of the Missouri Department of Public Safety, and the General Assembly on matters relating to improving the juvenile justice system and its services to youth; to advocate for the continued full implementation of the federal Juvenile Justice and Delinquency Prevention Act, and to develop policy and funding recommendations to improve the quality of life for all Missouri's children. Thus, it is incumbent that the JJAG be represented on the SCR29 Juvenile Justice Task Force by the JJAG chair. The JJAG Chair presented the SCR 29 draft report to the JJAG at their regular meeting on October 29, 2014 for input; the members present reviewed and discussed the draft report of the task force. The JJAG remains interested in working with the Juvenile Justice Task Force in learning the details of implementation, reviewing the recommendations of other task force members and key stakeholders, and receiving feedback after review by the Department of Public Safety and the Governor's Office.

### **PHYLLIS BECKER, INTERIM DIRECTOR OF THE DIVISION OF YOUTH SERVICES**

The task force should consider engaging a consultant or university researcher to conduct a system-wide impact study. This would help ensure the state bases its decisions on a complete understanding of the population and system needs. This will also provide a framework to evaluate the issues through the lens of public safety and improved outcomes for youth and families involved in the system. This could include data on the potential impact of raising the age of majority to 18 in terms of projected number of additional youth who would be involved with the Juvenile Courts and the Division of Youth Services. It would also be useful to know the types of crimes committed by youth under age 18 who are currently in the adult system and the demographics of those youth.

As the group continues to explore the best options for detaining certified pre-trial youth in the juvenile system, it will be absolutely critical to ensure that suggested policies do not co-mingle juvenile residential and detention services in any way. Residential treatment and juvenile detention serve different purposes and are not compatible services. Research on the characteristics of this population, including length of stays in adult jails while on pre-trial status, age, types of crimes, and demographics, would be helpful. Further research of successful programs in other states with this population would also be informative.

The state will need further time to explore the impact of any suggested changes that impact the dual jurisdiction program to ensure best practices. In regard to the work of the task force, it will be important to thoroughly evaluate the potential fiscal impact to the Juvenile Courts and the Division of Youth Services. The state can do this best with sound research and population data.