



The Civic Column

[[Strengthening our community through increased awareness and accountability]]

Report from the Mercyhurst Civic Institute

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The purpose of the Mercyhurst Civic Institute

- Enhance and facilitate citizen participation in decision-making.
- Provide high-quality, objective information to assist local decision-making.
- Convene community forums that encourage reasoned reflection and free and open discussion of regional issues.
- Educate the Erie community and Commonwealth of Pennsylvania about various issues through Institute reports and publications.
- Foster human networks that enhance communication, link resources, strengthen community participation and build social capital.
- Promote research, learning, teaching and service opportunities for the Mercyhurst community.

Adult Crime, Adult Time: Final Report on Erie County Fisher Bill Cases

By: Kristen Burillo, Dr. Pete Benekos, and Allison Owens

In 2008, researchers from the Mercyhurst Civic Institute (MCI) in Erie, Pennsylvania began collecting local data on juveniles charged as adults with particular focus on automatic transfer. Two previous MCI reports summarized data from 1992 through 2011^{1,2,3}. This report provides a brief background on charging juveniles as adults, updated trends in juvenile transfer laws that were discussed in the last report, and includes data about the local Fisher Bill cases from 2009 through 2014.



In the mid-1990s, legislators across the nation began to respond to significant increases in the juvenile crime rate. The most common response was the introduction of policies that made it easier to transfer youth into the adult system for processing. Though some states utilized an expansion of judicial waiver to accomplish this goal, the most common strategy was for state legislatures to statutorily exclude some offenders from juvenile court based on age and/or offense criteria^{4,5}. The rationale for these policies was the belief that the stricter punishments and an increased sense of accountability supposedly offered by the adult court would decrease recidivism of juvenile offenders, deter youth crime, and ultimately increase community protection. In Pennsylvania, Act 33 (commonly known as the Fisher Bill) widened the criteria for automatic transfer into

the adult court (see sidebar on next page for a more detailed description).

As time went on, the effectiveness of “get tough” policies was questioned and the potential negative consequences of juvenile transfer have been increasingly discussed. Most data indicates that the “get tough” legislation has not met its intended goals⁶. Various studies have shown a failure to link juveniles tried as adults to a reduction in recidivism or the overall youth crime rate^{4,7}. In fact, at least six studies have found higher recidivism rates for juveniles convicted as adults as compared to comparable offenders maintained in the juvenile system⁵. A variety of reasons for these poor outcomes have been suggested. The adult criminal system often lacks appropriate rehabilitative services and

Adult Crime, Adult Time: Final Report on Erie County Fisher Bill Cases

continued

provides inappropriate or limited opportunities for socialization that are important during adolescence. It is also possible that as youth are labeled by the system, they may perceive themselves as already being on a negative path that they are incapable of overcoming; the youth may then engage in a self-fulfilling prophecy as they continue to reoffend⁸. Transferred youth may also perceive themselves as having been treated unjustly, which possibly leads to further defiant and criminal behavior⁹. Youth who are convicted as adults receive a felony record and thus, depending on the state, may be denied employment, citizenship, loans for housing or education, military service eligibility, and the right to vote; denial of these positive activities increases the chances of recidivism^{8,10}. Finally, juveniles may not be aware of the transfer laws or believe that such laws will be enforced⁵.

One of the main criticisms of transfer laws is the disregard of developmental differences between juveniles and adults. Research has shown that adolescent brains differ from adult brains in a variety of ways. The brain continues to mature and develop until an individual reaches

Act 33 (Fisher Bill)

The 1996 legislation known as Act 33 or the Fisher Bill changed the criteria for automatically transferring youth into the adult criminal system in Pennsylvania. The revised law excluded youth from the juvenile court system if the youth met all of the following criteria [42 Pa. C.S. Sec. 6302 (2)(ii)]:

- The youth was 15 years or older at the time of the alleged crime.
- The youth was charged with rape; involuntary deviate sexual intercourse; aggravated assault; robbery; robbery of a motor vehicle; aggravated indecent assault; kidnapping; voluntary manslaughter; or an attempt, conspiracy, or solicitation to commit murder or any of the crimes listed.
- The youth used a deadly weapon during commission of the crime.

The act also excluded any youth 15 years or older at the time of the alleged crime who committed any of the above offenses, except for aggravated assault, and who had previously been adjudicated delinquent for one of the offenses [42 Pa. C.S. Sec. 6302 (2)(iii)].

his or her mid-20s¹¹. As a result, adolescents rely on emotion-focused areas of the brain (i.e., limbic system) because the brain's more complex, cognitive functions (i.e., prefrontal cortex) are the last to develop¹¹. Furthermore, synaptic pruning and myelination affect the communication between brain cells, and dopamine levels impact the perception of risks and rewards^{11,12}. Research on adolescent brain development has raised questions about an adolescent offender's culpability (i.e., should they be held as responsible for their offense as adults if their brains are not developed enough to control all of their behavior, or should developmental immaturity be a mitigating factor?), competence (i.e., are adolescents able to understand the processes of the court and do they have the cognitive ability to participate in their defense and make decisions regarding plea agreements?), and amenability (i.e., at what point is an adolescent offender no longer considered amenable and thus handled in the adult justice system?). (For further review, please see The Civic Column, Volume 2, Issue 2, entitled "Less Capable Brain, Less Culpable Teen?"¹³)

How do youth end up in the adult system?

While the local data in this report is limited to the juvenile offenders who are in the adult system as a result of the Fisher Bill, it is important to note that the Fisher Bill is not the only mechanism by which juveniles can end up in the adult system. There are three types of transfer mechanisms, differentiated by who makes the transfer decision, which are outlined below^{27,28,29}.

Concurrent jurisdiction: The prosecutor is allowed discretion on whether to file a case in juvenile or criminal court because original jurisdiction is shared by both courts. This type of transfer is the least common of the three and does not exist in Pennsylvania.

Judicial waiver: The juvenile court judge decides in a hearing that the youth is waived from the juvenile court to the criminal court. The judge must consider criteria such as the client's age, the offense, and the youth's amenability to treatment. This process is also sometimes called certification, remand, or bind over for criminal prosecution. There are three types of judicial waiver:

1. Discretionary judicial waiver, used in 45 states, allows the judges in juvenile courts to have discretion as to whether they should or should not transfer a juvenile's case into the adult court system.
2. Presumptive waiver laws, which exist in 15 states, designate cases in which waiver to criminal court is presumed to be appropriate. If the juvenile's case meets the presumptive criteria and the youth fails to make an adequate argument against transfer, the case must be sent to criminal court.

3. Mandatory waiver laws, which exist in 15 states, essentially limit the purpose of the juvenile court to confirm that the mandatory waiver requirements are met. If so, there is no opportunity to remain the juvenile system. This type of judicial waiver does not exist in Pennsylvania.

Statutory exclusion: Youth are automatically handled by the adult court as a result of laws that exclude certain juvenile offenders from juvenile court jurisdiction based on age and/or offense criteria. Statutory exclusion accounts for the largest number of transfers. The Fisher Bill is an example of statutory exclusion.

Across the United States, about 1% of the petitioned delinquency cases resulted in judicial waiver in 2011²⁷. In 2011, juvenile courts waived about 5,400 cases, which was 61% fewer cases than the peak in 1994. Data for Pennsylvania and Erie County was available through 2012³⁰. In Erie County, only three cases were judicially waived between 2009 and 2012. In Pennsylvania, the number of cases that have been judicially waived has been decreasing each year between 2009 and 2012 (see below).

	2009	2010	2011	2012
Erie County	0	1	2	0
Pennsylvania	157	141	106	79

RECENT TRENDS IN CHARGING JUVENILES AS ADULTS

The 2012 *Civic Column* on this topic reviewed four trends in legislation designed to remove juveniles from the adult criminal justice system. The original publication from the Campaign for Youth Justice examined the five-year period of 2005-2010¹⁴. Updates to this report re-examined the trends and included data from 2011-2013¹⁵ and 2013-2014¹⁶. Overall, there have been a number of changes to the legislation that reflect the movement to remove youth from the criminal justice system and to keep youth in the more rehabilitative juvenile system. In the 2013-2014 legislative year alone, nine states made changes that align with one or more of the four trends.

Trend 1: States and Local Jurisdictions Remove Youth from Adult Jails and Prisons

- Reforms in this area recognize the negative outcomes of housing juveniles with adult offenders, particularly while the juveniles await a decertification hearing or trial.
- From 2005-2014, eleven states have limited the authority to place youth in adult facilities.
- Example: Through Pennsylvania Senate Bill 1169, which was passed in October 2010, a judge may allow for a juvenile offender to be held in a juvenile facility in order to have access to rehabilitative services.
- Example: In Ohio's Senate Bill 337, youth who are in the process of being transferred to adult court and youth under the juvenile court's extended jurisdiction (i.e., youth ages 18-21 who do not receive new charges but violate their parole) remain in juvenile detention facilities instead of being placed in adult jails.



Trend 2: States Raise the Age of Juvenile Court Jurisdiction

- States vary in the age at which juvenile court jurisdiction ends, with some states charging 16 or 17 year olds as adults regardless of the offense or other circumstances.
- From 2005-2014, five states raised the age of juvenile court jurisdiction so that older youth who previously would have been automatically tried as adults no longer go straight into the adult criminal justice system.
- Example: Connecticut raised the age of juvenile court jurisdiction from 16 to 18 in 2007.
- Example: Illinois raised the age of juvenile court jurisdiction for 17 year olds who committed misdemeanor offenses only. After finding that both reported crime and arrests of juveniles decreased following the bill, it was recommended that all 17-year-olds be charged as juveniles, and the legislature expanded the juvenile court jurisdiction to 18.



Trend 3: States Change Transfer Laws to Keep More Youth in Juvenile Court

- From 2005-2014, fifteen states have made changes that make it more likely that youth will stay in the juvenile justice system. Some examples of ways in which this has occurred include more easily allowing reverse waiver hearings and thus return to the juvenile court; adjusting laws regarding "once an adult, always an adult"; and limiting the types of offenses that required transfer to the adult system.
- Example: A Colorado bill raised the minimum age for direct-filing to adult court from 14 to 16.
- Example: Among other reforms, Ohio created a reverse waiver mechanism which allows youth who were automatically transferred to adult court and who meet certain criteria to potentially be eligible for juvenile sentencing.



Trend 4: States Rethink Sentencing Laws for Youth

- From 2005-2014, twelve states have changed their mandatory minimum sentencing laws or made other changes to how youth are sentenced.
- Example: Washington State passed a bill in 2005 that eliminated mandatory minimum sentences for youth tried as adults.
- Example: A bill in Indiana established sentencing alternatives by allowing a review hearing at the age of 18 in order to reassess the youth's adult sentence.



Juvenile Crime Data

Data from the Pennsylvania State Police Unified Crime Report was utilized to look at the trends of overall juvenile arrests and juvenile arrests for violent crime in Pennsylvania and in Erie County during the same time period for which local Fisher Bill data is available (2009-2014). Violent crimes include murder and nonnegligent manslaughter, manslaughter by negligence, rape, robbery and aggravated assault²⁶.

As shown in Figure 1 below, the number of juvenile arrests in Pennsylvania has been decreasing each year from 2007 to 2014. The numbers have dropped from a high of 91,888 in 2009 to a low of 60,073 in 2014. Similarly, as shown in Figure 2, juvenile arrests for violent crimes have also decreased each year, from a high of 4,595 in 2009 to a low of 3,024 in 2014.

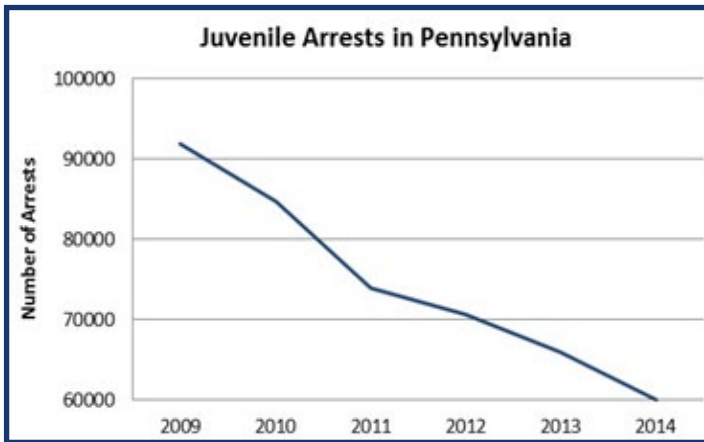


Figure 1

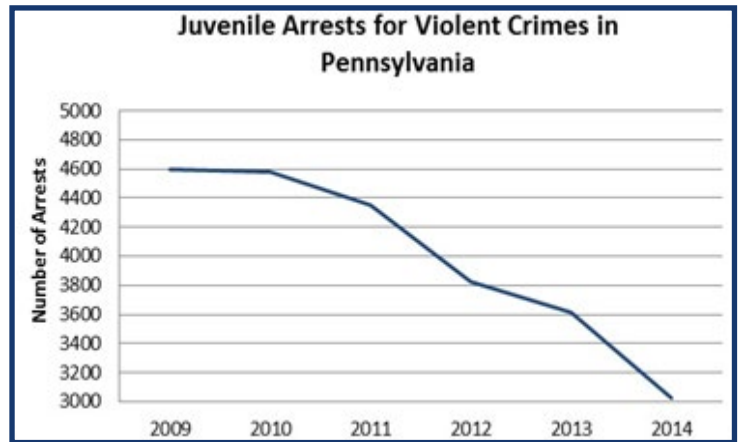


Figure 2

Juvenile arrests in Erie County increased from 2009 to 2010 but then declined each year since; the number of juvenile arrests in 2014 was lower than the number in 2009 (Figure 3). Though juvenile arrests for violent crimes in Erie County have fluctuated during this time span (Figure 4), the 2014 number of 56 is the lowest of all the years considered; this follows the highest number of juvenile arrests for violent crimes in Erie County within a single year during the period of interest-123 in 2013.

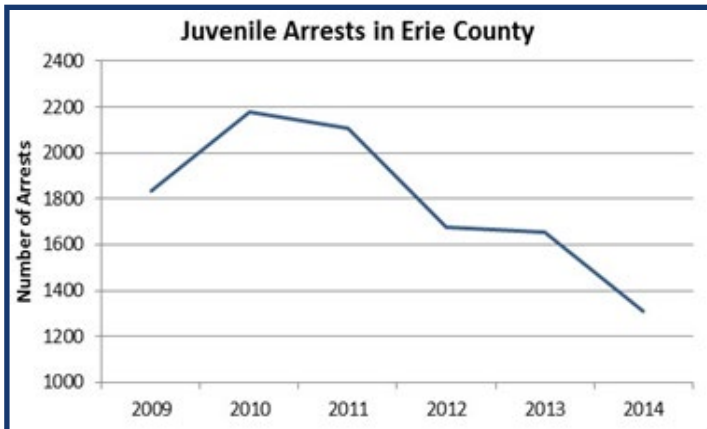


Figure 3

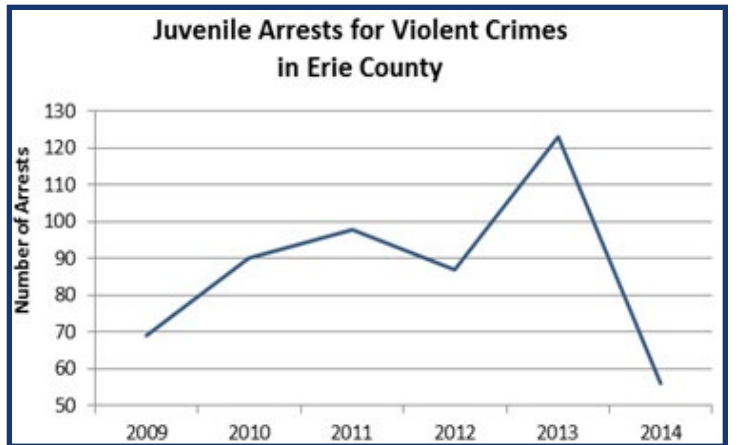


Figure 4

Court Cases

“Since 2005, the United States Supreme Court has issued four major opinions reaffirming the principle that youth are developmentally different than adults and that these differences are relevant to their involvement with the justice system.”¹⁹ These four cases are *Roper v. Simmons* from 2005 that states juveniles cannot be sentenced to death due to a direct violation of Eighth Amendment rights; *Graham v. Florida* from 2010 which states that it is unconstitutional to sentence a juvenile to life in prison without the possibility of parole if the juvenile has committed a “non-homicide” offense; *J.D.B. v. North Carolina* from 2011 that states that a juvenile’s age has to be considered when it comes to the Miranda custody test; and *Miller v. Alabama* from 2012 stating that sentencing juveniles to life in prison without the possibility of parole is unconstitutional for any offense. In addition, there have been other key recent legislation and cases that will be highlighted below.

The Prison Rape Elimination Act (PREA)¹⁵– The Prison Rape Elimination Act (PREA) is legislation that was passed in 2003 by the United States Congress. This legislation sought to “prevent, detect, and respond to sexual abuse in detention facilities and the regulations state, ‘as a matter of policy, the Department [of Justice] supports strong limitations on the confinement of adults with juveniles.’”¹⁵ Although PREA was intended to be implemented in both juvenile and adult systems, there were some facilities that were not in compliance. Other facilities cooperated fully including totally removing juveniles from adult prisons. In 2013, some governors decided to enforce PREA even further by implementing fiscal sanctions to facilities that were not in compliance with PREA stating that these facilities would risk losing funding.

***Roper v. Simmons*¹⁹**– Seventeen-year-old Christopher Simmons, with a couple of friends, planned to murder a woman. He was tried, convicted, and sentenced to death nine months later. He was 18 at the time of his conviction. The sentence was appealed and the Missouri Supreme Court affirmed the sentencing. Another motion for post-conviction relief was filed by Simmons when the new case of *Atkins v. Virginia*. Simmons’ motion argued that “the reasoning of *Atkins* established that the Constitution prohibits the execution of a juvenile who was under 18 when the crime was committed.”¹⁹ The Missouri Supreme Court agreed that sentencing a juvenile to death was in direct violation of both the Eighth and Fourteenth Amendments. This decision was then appealed to the United States Supreme Court. The Supreme Court decided, in a 5-4 decision, that it is in fact unconstitutional to sentence juveniles who committed a crime while under the age of 18 to death.

***Graham v. Florida*²⁰**– In 2003, a 16-year-old boy named Terrance Graham, attempted to rob a restaurant and was arrested and charged with the attempted robbery as well as armed burglary with assault and battery. He was charged as an adult, but entered a plea



bargain with the state and was sentenced to probation, and the court withheld the adjudication. Six months later, Graham was charged with breaking into a home, and his probation was revoked. He was subsequently sentenced to life in prison without the possibility of parole due to his previous charges and his violation of probation. Graham appealed his sentence due to its violation of Eighth Amendment rights. The case made its way to the Supreme Court of the United States who reversed the sentence and issued an opinion stating that it was in fact unconstitutional for juvenile offenders to be sentenced to life in prison without the possibility of parole for non-homicide offenses.

***J.D.B. v. North Carolina*²¹**– In 2011, the Supreme Court of the United States decided the case of *J.D.B. v. North Carolina*. In this case a 13-year-old boy was suspected by the police of having taken part in recent home break-ins. The police arrived at the boy’s school and began to question him in regards to some stolen property that had been seen in his possession. While questioned at his school, he was not given his *Miranda* rights. Later, he confessed to the police. He was tried and later adjudicated delinquent. This decision was appealed on the grounds that the police should have allowed J.D.B. to be given his *Miranda* rights or call his grandmother, who was his legal guardian. The sentence was affirmed by both the North Carolina Court of Appeals and the North Carolina State Supreme Court. The Supreme Court of the United States reversed and remanded the sentence. The U.S. Supreme Court stated that it is important to find out the age of the juvenile in regards to *Miranda* rights.

***Miller v. Alabama*¹⁵**– In 2012, the case of *Miller v. Alabama* prompted changes in the sentencing of juveniles throughout the United States. This case involved Evan Miller, a 14-year-old boy that was sentenced to life in prison without the possibility of parole. This ruling was overturned by the United States Supreme Court, as it was found to constitute cruel and unusual punishment, in direct violation of United States citizens’ Eighth Amendment rights. The Supreme Court notes that “youth are prone to recklessness, immaturity, irresponsibility, more vulnerable to

Court Cases, continued

peer pressure, less able to avoid negative environments, and more amenable to rehabilitation than adults and therefore punishment should be ‘graduated and proportioned’ not only to the offense but also to the offender.”¹⁵

Jackson v. Hobbs²²– In 1999, Kuntrell Jackson, a 14-year-old, was with a friend who went into a convenience store and attempted to rob it at gunpoint. The boy shot the clerk in the face, and Kuntrell Jackson witnessed the whole thing. Jackson was convicted of capital felony first degree murder as well as aggravated robbery and sentenced to life in prison without the possibility of parole. In 2012, *Jackson v. Hobbs* was argued to the Supreme Court in tandem with *Miller v. Alabama* due to violation of not only Eighth Amendment rights but also Fourteenth Amendment rights. In both cases, the Supreme Court found that sentencing anyone under the age of 18 years old to life in prison without the possibility of parole is unconstitutional under the Eighth Amendment.

Montgomery v .Louisiana– In March 2015, the Supreme Court decided to hear this case to determine if *Miller v. Alabama* is retroactive (if juveniles servicing life without parole may fall under *Miller*).

Gingerich v. Indiana²³– In 2010, a 12-year-old boy named Paul Gingerich was charged with the murder of his friend’s step-father. Gingerich’s case was transferred to the adult court where he then pled guilty to the murder charge which the court accepted, never considering Gingerich’s age. He was sentenced to life in prison without the possibility of parole. In 2012, Indiana’s Court of Appeals reversed the conviction due to the trial court’s error on not considering Gingerich’s age.

Commonwealth of Pennsylvania v. Ian Cunningham²⁴– In 2002, Ian Cunningham, who was 17 at the time, was convicted of second degree murder and was sentenced to life in prison without the possibility of ever being paroled. Pennsylvania state law specifically stated that “any juvenile convicted of first or second degree murder must be sentenced to life without parole.”²⁴ After the *Miller v. Alabama* verdict was handed down from Supreme Court, Cunningham argued that the life in prison without parole sentence was unconstitutional and should be overturned. In October of 2013, the Pennsylvania Supreme Court decided that regardless of *Miller v. Alabama*, Cunningham’s sentence would remain the same because *Miller v. Alabama* is not retroactive. The Pennsylvania Supreme Court decided that for Ian Cunningham and the over 500 other juveniles serving life sentences, they are “not entitled to individualized sentencing hearings, and therefore must continue to serve their unconstitutional mandatory life without parole sentences.”²⁴

Commonwealth of Pennsylvania v. Jordan Brown²⁵– In 2009, 11-year-old Jordan Brown was arrested and charged with the murder of his father’s fiancé who was 8 months pregnant. This case quickly gained attention because if he were to be convicted, Brown would be the youngest person in United States history to be incarcerated with a sentence of life without the possibility of parole. Regardless, the case was bound over to the adult system. In April 2012, Brown’s attorneys were successful in their arguments, and the case was transferred back into juvenile court where Brown was adjudicated delinquent. It was instantly appealed to the Pennsylvania Superior Court and ultimately overturned in May 2013. That ruling was then appealed by the prosecution and taken to the Pennsylvania Supreme Court who, in December 2014, “vacated the order of the state Superior Court, which had overturned Brown’s conviction. Instead, the court remanded the case back to juvenile court, where Brown will be allowed the opportunity to file a motion for a new trial.”²⁵ This case is still ongoing.

Update!

The national study of youth charged as adults commissioned by the Bureau of Justice Statistics has been delayed. The data collection process was rolled into a larger project conducted by the same contracted agency. The results will be available in 2015³².

In the News

In the state of New York, Governor Cuomo is pushing for new legislation that would remove all options that would allow a juvenile to be tried as an adult. Governor Cuomo alleges that there are roughly 800 juveniles being incarcerated in adult facilities and he is largely advocating for laws banning this from continuing³¹.

Summary of Local Findings: 2009-2014

The Mercyhurst Civic Institute has been working in conjunction with staff from the Erie County Prison, the Erie County Adult Probation department, the Erie County Juvenile Probation department, and the Erie County Clerk of Courts in order to collect local information on juveniles in the adult system. The initial study was retrospective in nature and included all youth under age 18 who were in the Erie County Prison between January 1992 and November 2007, regardless of the mechanism by which they ended up in the adult system. The historical records yielded some demographic information, but it was difficult to track case outcomes. The main conclusion drawn from the study was that despite the vulnerability of this age group and the outcomes proposed by changes in legislation, there is not a comprehensive national, state-wide, or local tracking system in place to oversee and evaluate any outcomes. Beginning in 2009, the Mercyhurst Civic Institute began to track youth who were automatically transferred to the adult system as a result of the Fisher Bill on an annual basis. Data from 2009 through 2014 are included in this report.

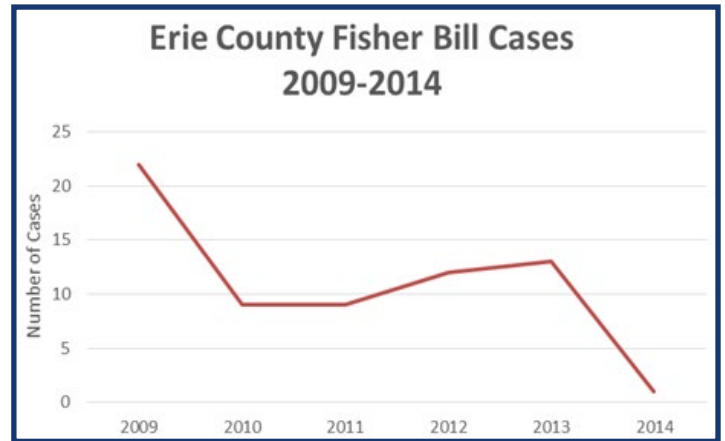


Figure 5

The total number of Fisher Bill cases per year in Erie County fluctuated from a high of 22 cases in 2009 to a low of 1 case in 2014 (Figure 5).

Figures 6 and 7 illustrate the Fisher Bill cases by gender. Figure 6 illustrates the percentages for each year, while Figure 7 shows the total percentages for all six years. Only three females have been charged as adults due to the Fisher Bill during this time frame, all of which occurred in 2009.

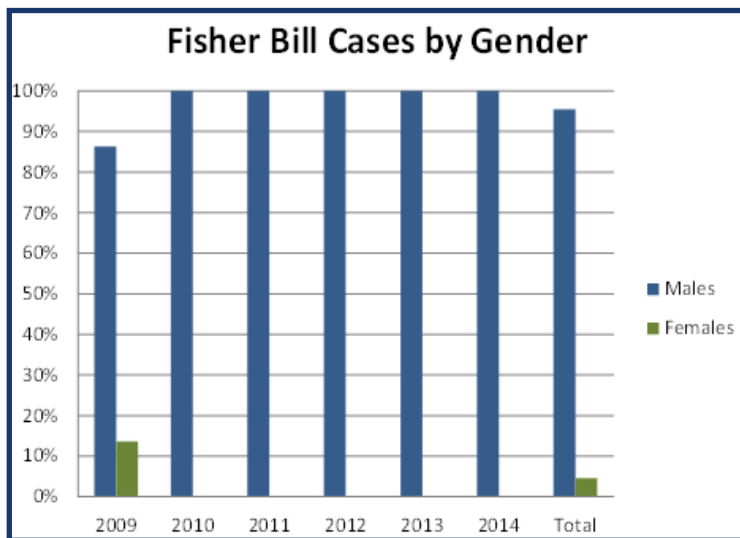


Figure 6

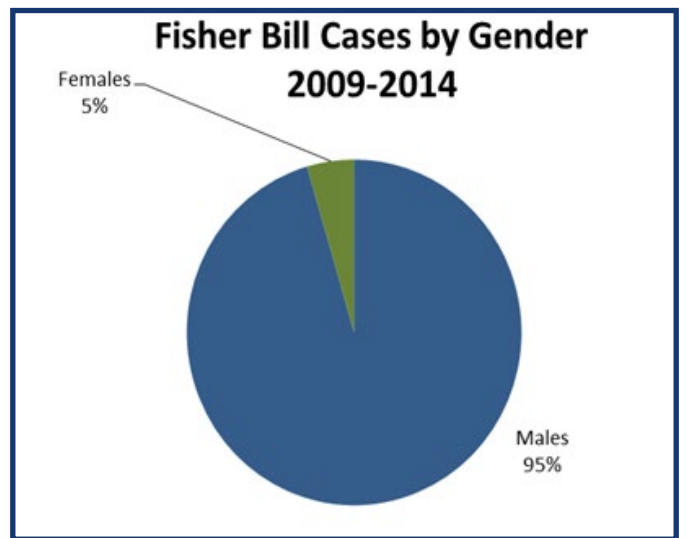


Figure 7

On the next page, Figures 8 and 9 illustrate the Fisher Bill cases by ethnicity. Figure 8 illustrates the percentages for each year, while Figure 9 shows the total percentages for all six years. About 75% of the total number of Fisher Bill cases in the past three years have been African American. Seventeen percent of the cases have been Caucasian.

Summary of Local Findings: 2009-2014, continued

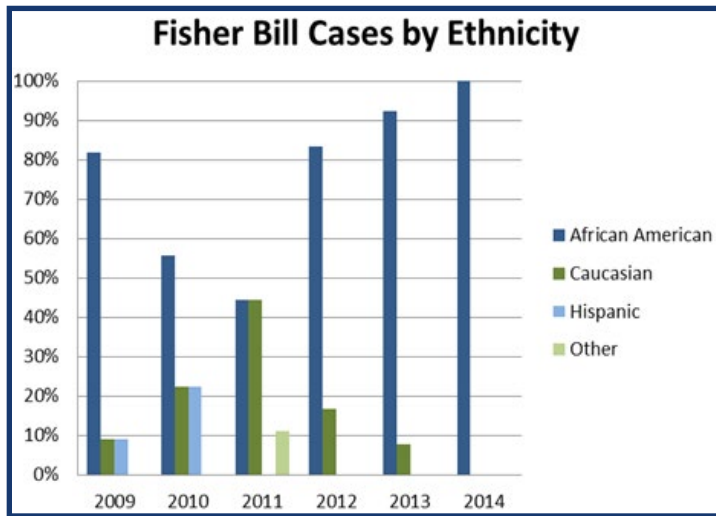


Figure 8

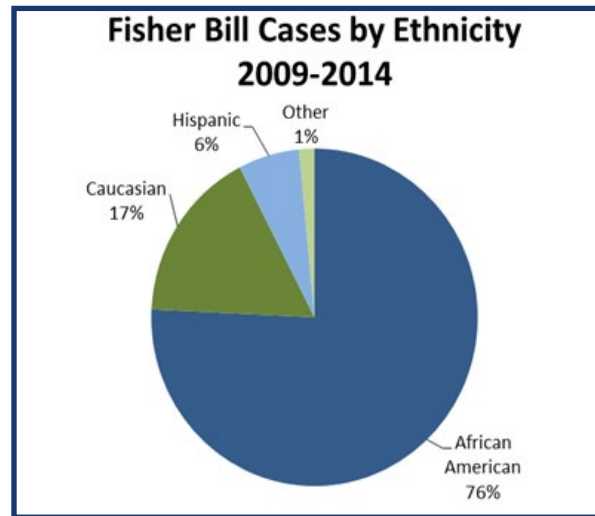


Figure 9

Figures 10 and 11 illustrate the Fisher Bill cases by age. Figure 10 illustrates the percentages for each year, while Figure 11 shows the total percentages for all six years. Overall, the majority of cases were seventeen-year-olds. In only one year (2011) were most Fisher Bill cases fifteen-year-olds.

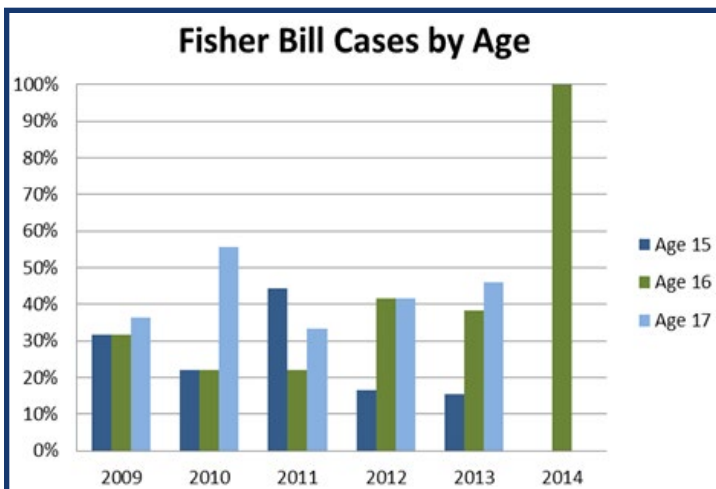


Figure 10

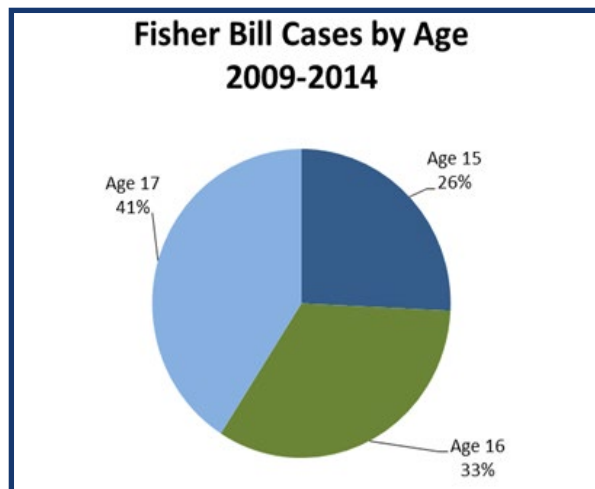


Figure 11

On the next page, Figures 12 and 13 illustrate the case outcomes. Figure 12 illustrates the percentages for each year, while Figure 13 shows the total percentages for all three years. During the first three years studied, more cases remained in the criminal court than were decertified. In 2012, there were an equal number of cases decertified, dismissed, and kept in the adult system. In 2013, the majority of Fisher Bill cases for the year were decertified. Overall, just under half of cases remained in the criminal court, a little over a third of cases were decertified, and the remaining cases had the charges dropped or dismissed.

Summary of Local Findings: 2009-2014, continued

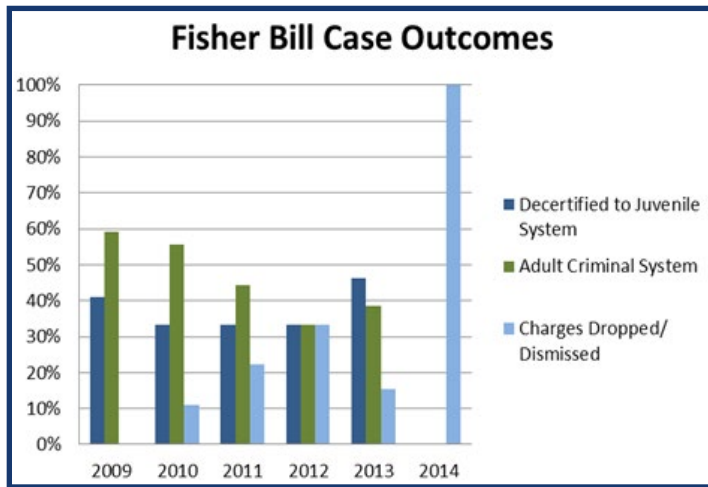


Figure 12

Offenders who were decertified were most often placed (84% of the time) but were sometimes put on probation only (Figure 14).

Offenders who remained in the adult system received a state sentence 55% of the time, a county sentence 19% of the time, and probation only 19% of the time (Figure 15). There were two cases that remained in the criminal system for which the outcome was unknown.

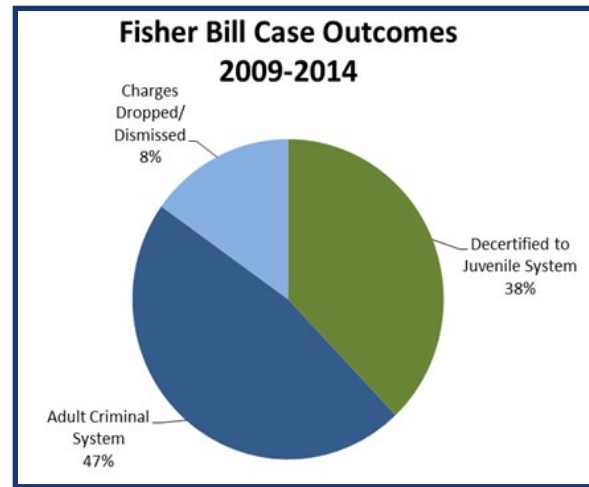


Figure 13

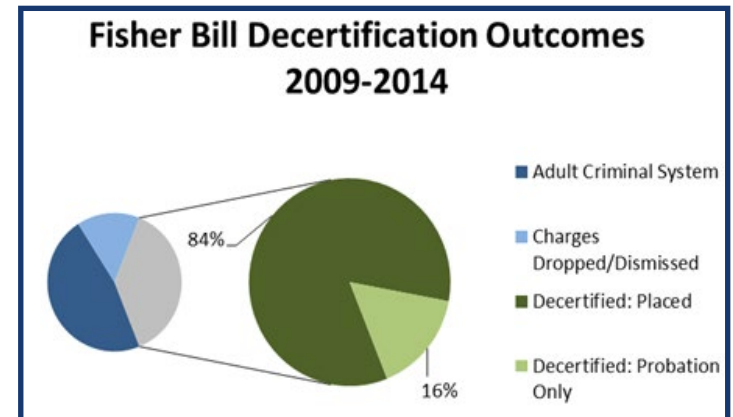


Figure 14

Thank You

Special thanks to the following individuals who assisted with this project over the past several years:

- | | |
|--------------------------|-----------------------|
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| <i>Mandi Linz</i> | <i>Caitlin Ross</i> |
| <i>Sarah Olson</i> | <i>Ben Singeltary</i> |

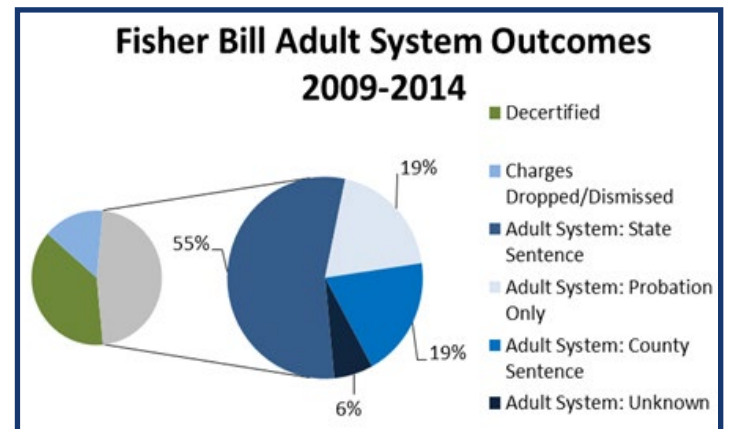


Figure 15

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