

A CALL TO STOP CHILD PROSECUTIONS

IN WYOMING ADULT COURTS

Pat Arthur
Mikaela Rabinowitz
The National Center for Youth Law

Jennifer Horvath
American Civil Liberties Union, Wyoming Chapter

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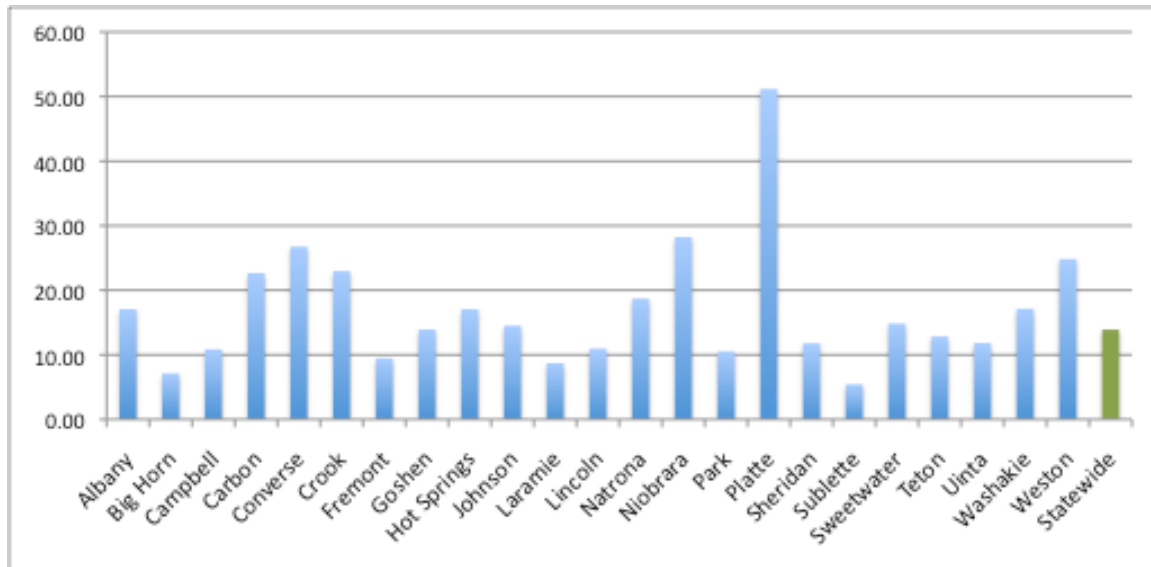
INTRODUCTION

Unlike any other state in the nation, Wyoming commonly prosecutes children as criminals, imposing adult sentences for misbehavior more typical of normal adolescence than criminal.¹ At significant cost to Wyoming taxpayers, children as young as eight years old who get in trouble for such transgressions as smoking at school, drinking at a weekend party, stealing a pack of gum, or skateboarding in the wrong place are being criminally prosecuted in adult courts in counties and cities throughout the state.

While these adolescent misbehaviors may be challenging to families and communities trying to raise healthy kids, they present little or no real threat to public safety. Nevertheless, Wyoming uses costly criminal procedures and expensive detention beds² to punish children for conduct that is more effectively addressed in the home or at school.

It is estimated that 85-90% of children in trouble with the law in Wyoming are currently being processed through adult, not juvenile, courts where they become saddled with adult criminal convictions for minor misbehaviors.³

Number of cases filed against children in adult circuit court per 1000 juvenile residents in 2008

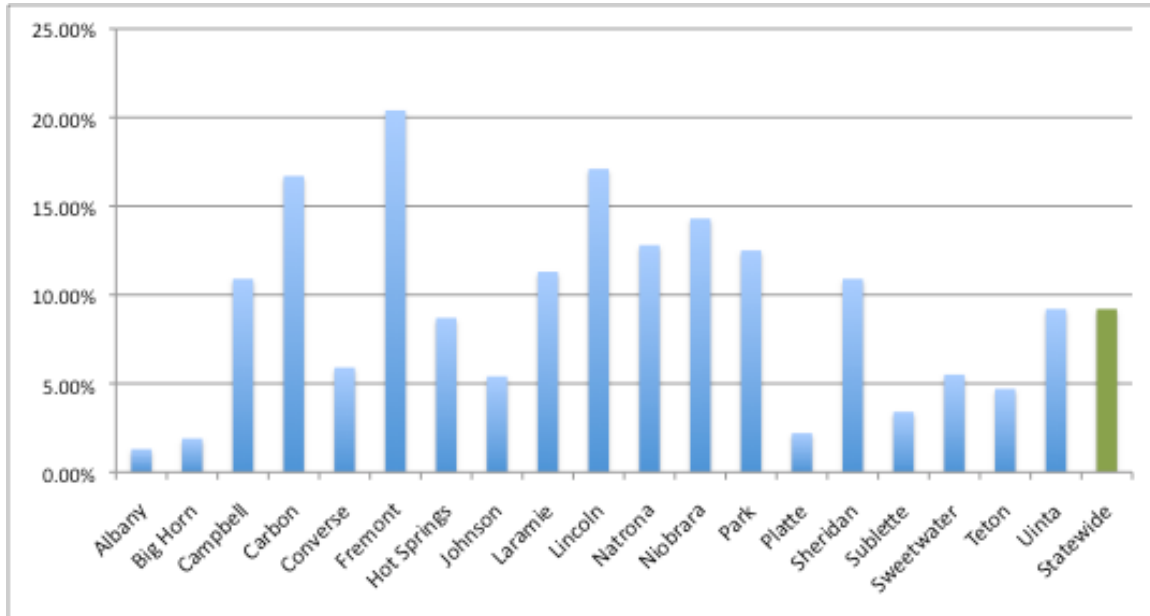


Data Sources: Wyoming Supreme Court Case Management System (correspondence on file with authors); annual estimates of juvenile population (0-17 years of age) from Office of Juvenile Justice and Delinquency Prevention, Easy Access to Juvenile Populations, available at <http://www.ojjdp.ncjrs.gov/ojstatbb/ezapop> (last visited 5/24/2010).

In the adult court system, kids receive few of the rehabilitative social services available in the juvenile justice system. With such extraordinary criminal court involvement in the

rearing of Wyoming's teens, it is no wonder that the state has the second highest juvenile incarceration rate in the country.⁴

Percentage of circuit court cases involving minors that resulted in incarceration in 2008 and 2009⁵



Data Source: Wyoming Supreme Court Case Management System (correspondence on file with authors).

These widespread criminal prosecutions inflict the stigma of a criminal conviction on far too many young people in Wyoming – convictions with severe consequences that will last a lifetime.⁶ For example, being convicted of a crime may later affect a person's ability to find a job or place to live, and prevent him or her from obtaining a student loan or professional license.⁷

Furthermore, the adult criminal court process, during which sensitive matters of a confidential nature concerning the child are discussed, is open to the public almost without exception. Not only does the public have access to the child's criminal record, it also often has access to court proceedings and court files that include private information. In contrast, juvenile court proceedings and files are not open to the public, are not criminal prosecutions, and do not result in criminal convictions or criminal records.

With few notable exceptions,⁸ children prosecuted in adult courts are deprived of the special protections and opportunities afforded to children in juvenile court under the state's Juvenile Justice Act.

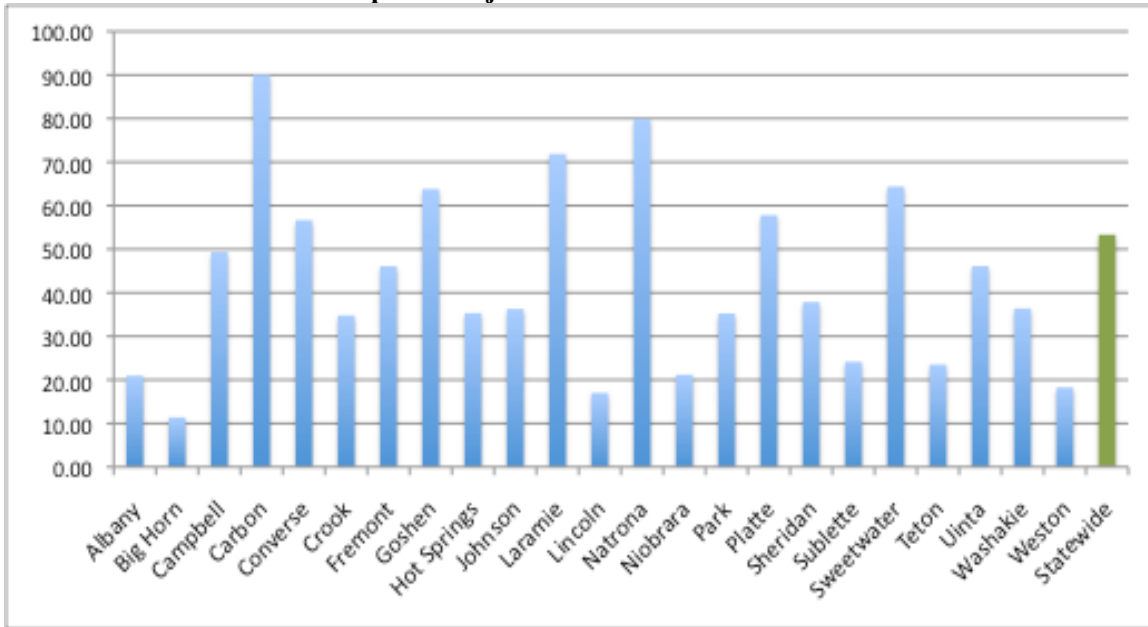
The state provides a variety of treatment services and supports to the small number of youth who are processed in juvenile court.⁹ These services include a broad continuum of

prevention, intervention and treatment options such as mental health and substance abuse services, home detention and monitored probation, foster or shelter care, job training services, mentoring, counseling, family support services, independent living services, and work programs.¹⁰

For the most part, these services are not offered to youth subjected to adult prosecutions. County circuit and city municipal courts (adult courts)¹¹ typically have a limited range of sentencing options available and rely mostly on fines, community service, unsupervised probation and incarceration to address youthful offenses.

The critically important decision of whether to prosecute a child after arrest as an adult or send him or her to juvenile court is left up to each of the Wyoming's 23 prosecuting attorneys, resulting in a disparate system of juvenile justice throughout the state.

Number of children arrested per 1000 juvenile residents in 2008



Data Sources: Annual estimates of juvenile population (0-17 years of age) from Office of Juvenile Justice and Delinquency Prevention, Easy Access to Juvenile Populations, *available at* <http://www.ojjdp.ncjrs.gov/ojstatbb/ezapop> (last visited 5/24/2010); annual estimates of juvenile arrests from State of Wyoming Division of Criminal Investigation, Crime in Wyoming Annual Report, *available at* <http://attorneygeneralstate.wy.us/dci/CrimeInWyomingReports.html> (last visited 5/24/10).

Treatment opportunities offered and punishments meted out thus differ, depending not on a rational statewide system with uniform standards, but on the prosecutorial philosophy in the county where the child is charged.

Wyoming has long resisted the creation of a statewide juvenile justice system that uniformly offers treatment services in a fair and equal manner to its youth in need of guidance. While there have been heartfelt efforts in the past several years to change Wyoming's widely varying juvenile justice practices, these efforts have resulted in mere baby steps toward true system reform. The crux of the problem—state laws and practices that give adult courts jurisdiction over teen misbehavior—must be altered for real reform to take place.

Reform is especially challenging in Wyoming given the historical lack of political will to halt the widespread use of adult courts to prosecute children. But change is not impossible.

Many system stakeholders, including parents, youth, and public officials, share a vision of a fairer and more effective uniform statewide juvenile justice system. The time has surely come to change how youth in Wyoming are held accountable for their mistakes and given the help they need when they go off-course.

WYOMING'S DISPARATE SYSTEM OF YOUTH JUSTICE

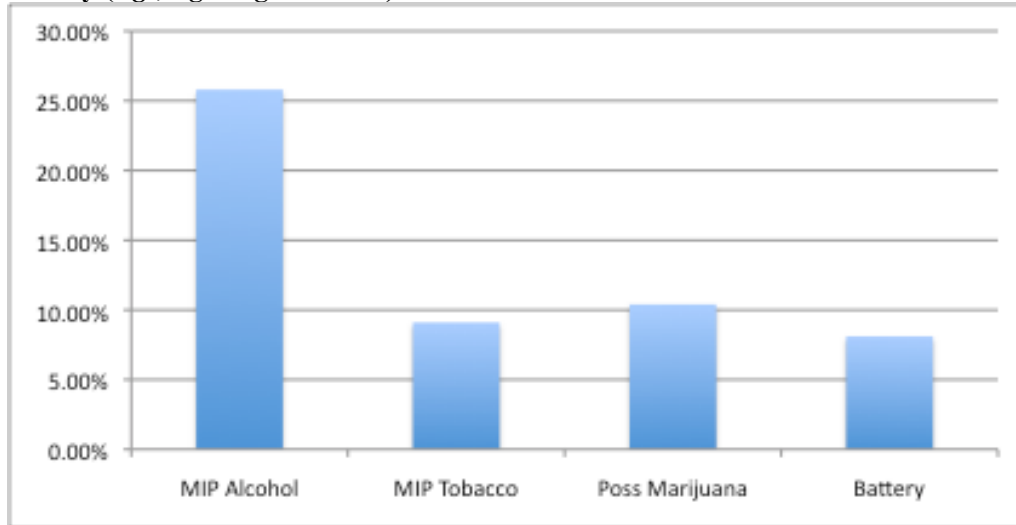
The movement to change how children are held accountable for misbehavior in the eyes of the law began in the United States at the turn of the twentieth century. Recognizing that children are still developing and deserve to be treated differently than adults, states across the country created special juvenile courts to provide a separate system of justice for children and youth. Instead of punishing children for crimes in adult courts, these states began to offer treatment and opportunities for reform through specialized juvenile court systems. By 1925, every state had a functioning juvenile court system—*except* Wyoming and Maine.¹²

Wyoming did not codify the notion that children are not as responsible for their behavior and should be handled through a separate court system until 1945. In doing so, Wyoming gave concurrent jurisdiction over juvenile matters to district courts, but continued to permit child prosecutions in adult courts for most of the same offenses.¹³

To this day, the overwhelming majority of young people in conflict with the law in Wyoming are still prosecuted in the state's adult courts, where they are tried, convicted, sentenced and otherwise typically treated exactly as adults.¹⁴ And due to the unconventional notion that juvenile court services and process should be reserved for only the most serious juvenile offenders, the overwhelming majority of child prosecutions are for non-serious misconduct, much of which would not even be criminal if committed by an adult.¹⁵

In Park County, for example, roughly 95% of the children charged with law violations are prosecuted in adult courts for minor offenses, such as possessing tobacco or alcohol, or getting into a typical adolescent fight at school.¹⁶

The most common offenses that juveniles are charged with in adult circuit courts are Minor in Possession of Alcohol, Minor in Possession of Tobacco, Possession of Marijuana, and Battery (e.g., fighting in school)



Data Source: Wyoming Supreme Court Case Management System (correspondence on file with authors).

Because prosecutions in the adult courts are not subject to the state’s Juvenile Justice Act,¹⁷ children in many Wyoming counties are not getting the support and services they need to help them address the personal, social, academic, and family problems underlying their troubling behaviors.

In addition, awareness of a child’s record or needs may not exist from one court to the next, even when the courthouse is down the block. The management of circuit, municipal, and juvenile district courts is separate and distinct from one another—court records and files are separately maintained, and data and information are not uniformly shared. A judge hearing the case of a minor being prosecuted on a misdemeanor charge in a circuit court may be, and often is, entirely unaware that the same child has pending or prior charges in the same county at the juvenile district court, or was recently found guilty of being a minor in possession of alcohol by a municipal court judge in the same or different county. With separately managed courts having jurisdiction over child offenses, kids all too often fall through the cracks, at the risk of the child’s *and* the community’s health and safety.

Furthermore, there is no uniform system for reporting data in adult courts concerning child prosecutions.¹⁸ Thus, Wyoming is simply unable to adequately track information necessary to determine how effectively it is addressing juvenile crime, protecting the public, or meeting the needs of its most troubled children.¹⁹

TINKERING AROUND THE EDGES OF TRUE REFORM: “THE SINGLE POINT OF ENTRY”

In 2009, the Wyoming State Legislature sought to tackle the state’s longstanding concurrent jurisdiction problem and disparate system of youth justice. Taking a step toward addressing widely varying practices for handling youthful offenders statewide, the legislature amended the Juvenile Justice Act to require prosecuting attorneys to develop objective criteria for determining whether to file a case in juvenile or adult court in cases in which there is concurrent jurisdiction.²⁰ The revisions to the Act also gave prosecuting attorneys the authority to be the “single point of entry,” or gatekeeper, of filing decisions countywide.

However, the filing criteria developed by Wyoming’s 23 counties as required by the new law vary significantly.²¹ By mandating that each county develop its own criteria for making filing decisions, the Legislature has actually demanded system-wide arbitrariness. The “single point of entry” attempt to rationalize the current system thus reinforces Wyoming’s longstanding disparate system of youth justice.

The “single point of entry” legislation notwithstanding, child prosecutions in adult courts in Wyoming remain the norm rather than the exception. The procedures and practices used to prosecute youth in circuit and municipal adult courts are still a hodgepodge throughout the state. In addition to the disparate “single point of entry” criteria, plea practices, appointment of counsel processes, advisement of rights procedures, confidentiality protocols, practices related to parental involvement, the availability of publically funded court-ordered treatment services, and fine and restitution practices for indigent children all vary greatly from place to place.

A closer examination of what is happening to children prosecuted and punished through adult courts is essential to a better understanding of Wyoming’s “system” for handling youthful offenders. Unfortunately, very little quantitative or qualitative data exists to provide an accurate picture of statewide practices involving child prosecutions, or its effects.

OBSERVATIONS OF EXISTING PRACTICES

To help fill the void of data and information, the authors sought to gather for this report information about how child prosecutions are handled in adult courts in a sampling of Wyoming counties.²² The information obtained and conclusions drawn in this paper are based on observations of proceedings in the municipal and circuit courts in the sample counties we visited, review of court records, and interviews of judges, probation officers, parents, youth and public defenders.

Far more information is needed, however, in order to truly understand the cost and effectiveness of Wyoming’s system of youth justice that relies so heavily on widespread criminal prosecutions of children. Many questions remain unanswered. How much do county and city municipalities spend to prosecute and lock up children for minor

misbehavior who present no risk to public safety? How effectively do adult prosecutions actually deter youth from committing future offenses? How much safer is the public as a result of such widespread punitive child prosecution practices? Do child prosecutions in Wyoming actually harm children, making it more likely that they will be criminally involved in the future?²³

Below are the authors' observations of select child prosecution practices in six of Wyoming's 23 counties:

Natrona County

In 2008, Natrona County had the second highest juvenile arrest rate in the state, second only to Carbon County.²⁴ There were 1,439 juvenile arrests made, or 79.91 arrests for every 1,000 residents under the age of 18. These arrests resulted in 328 charges filed against juveniles in adult circuit court, not including traffic offenses. Almost 13% of these filings resulted in juveniles being locked up for some amount of time.

As in most every county in Wyoming, children in Natrona County are prosecuted in both city municipal and county circuit courts. Children are cited for violations of Casper city ordinances in the city's municipal court, and face maximum penalties there of up to six months in jail and \$750 fines.²⁵ Children are prosecuted for misdemeanors, and tobacco and alcohol status offenses, in Natrona County Circuit Court. The maximum penalty that can be imposed in a county circuit court is up to one year in jail, \$1000 fines, or both.²⁶

One attorney estimated that in Natrona County 75% of all children prosecuted in circuit and municipal courts pled guilty at arraignment prior to any consultation with counsel.²⁷

On the day we observed Casper Municipal Court, a number of adolescents were present facing charges for underage drinking. No one was represented by counsel. Most pled guilty, apparently without the benefit of receiving an attorney's advice. Moreover, in every case in which alcohol was involved and a guilty plea entered, the judge ordered an alcohol evaluation at the youth's expense without inquiring about their ability to pay for it.

Among the courts observed, Casper Municipal Court was unique in that it advised youth that they could file to have their criminal record expunged after successfully completing their sentences and maintaining clear criminal records for one year thereafter. While this practice is commendable, Wyoming law nonetheless places the burden of obtaining expungement on the child,²⁸ and the fact that a criminal conviction may later be expunged is not an adequate justification for the costly criminal prosecution in the first place.

Natrona County has created a special court process for substance-involved youth. Supported with funding from the Natrona County School District and the Wyoming Department of Corrections, the county prosecutes many children in what is called "the

Natrona County Juvenile Probation Program” for misdemeanors and minor in possession (“MIP”) charges.

The Juvenile Probation Program court has a caseload of approximately 50 kids at any given time. It is modeled on Wyoming’s adult drug court system.²⁹ A child prosecuted in Natrona County Circuit Court is eligible for the Juvenile Probation Program if s/he has a prior conviction and is found guilty of, or pleads guilty to, a drug or alcohol related offense. Sanctions imposed for probation violations may include loss of privileges, home detention, curfew, orders regarding school attendance and performance, and detention.

If accepted into this court, a child is placed on intensive probation for a period ranging from six months to two years. Probation conditions include “remain in school in good standing,” “lead a worthy and law abiding life,” complete all ordered evaluations, testing, counseling and education, and refrain from consuming or possessing drugs or alcohol.

Children in the Juvenile Probation Program are required to regularly report to the circuit court at a hearing to determine whether they have complied with the terms of their probation.

The day we observed the Juvenile Probation Program court proceedings, the courtroom was packed with approximately 30 teens appearing for their weekly probation review hearing. Not one parent was present. No child appeared with counsel. There was one public defender present in court, but she did not have an attorney-client relationship with any of the children. Each child in the courtroom faced the possibility of having their probation revoked, being held in contempt, and being sentenced to serve time in the county juvenile detention facility.³⁰ Criminal penalties imposed for probation violations almost always included incarceration.³¹

In the cases we observed that day, several youth were found in contempt of court or had their probation revoked. However, we found no evidence in the children’s court files that they had been given prior formal notice of their alleged probation violations or alleged acts of contempt.³²

Whether a child’s probation was to be revoked at the review hearing and the criminal penalties to be imposed for violations of probation were discussed and apparently decided at a “case staffing” conducted prior to court.³³ At the pre-court case staffing we observed, neither the children, their attorneys (if any), nor their parents or legal guardians were present.

The cases discussed at case staffing had been divided prior to the meeting into two groups: the “naughty” kids and the “good” kids.

The weekly probation review hearing was conducted immediately following the case staffing in a courtroom open to the public. The presiding judge called the children, one by one, to the front of the courtroom and chastised or praised them for that week’s behavior in front of their peers and everyone present.

One of the “naughty” cases involved a boy who had missed school during the week. The judge imposed additional probation restrictions related to his contacts with other youth, increased his fine to \$500, and ordered him to remain in detention until his fine was paid.

Another “naughty” boy was ordered into immediate custody to spend the weekend in detention for missing school in violation of the terms of his probation.

A third “naughty” boy was sent to jail for using drugs. When the judge asked him why he did it, the boy answered, “Because I am addicted.”

Every child ordered to detention was required to sit for the rest of the proceedings in the jury box, which the judge referred to as “the naughty box.” Children who were not sent to detention were allowed to return to the regular courtroom seating.

In one case, the judge accepted a child’s guilty plea to two MIP charges without first orally advising him of the consequences of pleading guilty or of the rights he waived by entering the plea. Nor did we observe the child sign any written advisement of rights prior to pleading.

In another case involving a boy who had tested positive for marijuana, the boy admitted the probation violation allegations against him without advice from counsel or advisement of the consequences of doing so.

With the goal of compelling school attendance and better school performance, the judge chastised the children and threatened them with jail for being tardy, for not attending school, or for poor academic performance. The judge said to one child: “You will go to school or you will go to jail.” In another case, the judge warned: “I can give you two years in jail if you don’t go to school.”

The judge questioned each child in open court about their grades, how many days they had been clean and sober, and the good things that had happened to them that week.

When asked what his grades were, one child with his head bowed quietly said, “I don’t know,” to which the judge responded: “You don’t know? I know your grades and you don’t? Dude, you are flunking bowling.” Many in the courtroom laughed at the boy, who appeared shamed.

A review of court files related to the cases we observed revealed several instances where required plea colloquy information and advisement of rights boxes remained unchecked on pre-printed plea forms in cases in which the child’s probation had been revoked based on the plea.³⁴

One file revealed that a child had asked for appointed counsel and submitted an affidavit showing he was eligible for court-appointed counsel, but there was no indication in the file that counsel was ever appointed to represent him. He was nevertheless incarcerated

for a MIP conviction and a curfew violation after pleading guilty without counsel present at the hearing.

In a case in which the child was held in contempt for truancy and ordered to spend one night in detention, the file did not establish that legally required contempt procedures were followed.³⁵ These procedures include service of an order to show cause, notice of the alleged contempt, the opportunity to present a defense, and in some cases, the opportunity to have appointed counsel and right to a jury.³⁶

Finally, one file revealed that a child had been incarcerated for five days because he could not afford to pay the \$250 fine imposed for his probation violation. He wrote a letter to the judge pleading for his release:

Hi Judge, this is John [pseudonym] I have been in jail for five days now and I have missed two days of school. My dad doe [sic] not have the 250 dollars too [sic] get me out so can I get a PR bond or something cause I want out of here. I will prove to you that I will do good.

Park County

In 2008, 204 juveniles were arrested in Park County, or 35.23 out of every 1,000 children under the age of 18. Of these, 61 resulted in charges being filed in circuit court, excluding traffic offenses. In 12.5% of these cases, the child spent some time locked up as a result. There is no information as to how many arrests resulted in charges being filed in juvenile or municipal court.

As in other counties, the Park County prosecuting attorney determines in which court to file a child's case. He seeks advice from Department of Family Services ("DFS"), Park County Youth Services,³⁷ and law enforcement. The county attorney refused to disclose what criteria, if any, he uses to determine the court chosen.

In Park County, children as young as eight years old are prosecuted in adult courts for petty offenses. Many are required to pay fines as punishment for their childhood transgressions without regard for their age or ability to pay. One attorney told us: "I've seen an eight year old in municipal court counting out quarters from her change purse to pay a fine imposed on her for using chalk on the side of a barn."³⁸

The maximum penalty that may be imposed on a child prosecuted in municipal court is six months jail time, a \$750 fine, or both. Fines imposed by the Cody Municipal Court may be paid off by serving jail time instead—the fine is reduced at a rate of \$15 per day. On the day we observed municipal court, we saw children who were assessed stiff fines and ordered to detention for stealing cigarettes and skateboarding on the sidewalk.

The Park County Circuit Court is conducted in both Powell and Cody. Children charged with crimes and prosecuted in Park County Circuit Court are treated exactly the same as the adults throughout court proceedings.

All people arraigned on the day we observed court were advised by the judge in a group about the nature of the court proceedings and their constitutional rights, including the right to remain silent, to confront witnesses, to be represented by counsel and to have counsel appointed if they could not afford to pay for one. The judge raced rapidly through the recitation of rights in a manner that would have been difficult, if not impossible, for an adolescent to understand, especially in such an intimidating setting.

There is no separate juvenile detention facility in Park County; every child sentenced to a period of confinement is incarcerated in a 12-bed juvenile unit within the adult jail. On occasion, the juvenile detention facility in Fremont County is used to house youth adjudicated delinquent by the Park County Juvenile District Court or convicted of a crime in circuit or municipal court. At least one youth we are aware of was sentenced by the Park County Circuit Court to 60 days of incarceration at the juvenile detention center in Fremont County where detention beds rent for \$125 per day.

The Cody Municipal Court operates a diversion program run by the juvenile probation supervisor of Park County Youth Services. The total probation caseload for Park County Youth Services, which includes all children on diversion and those sentenced, averages 50 children per month. In contrast, the caseload in Park County for DFS probation staff, who oversee youth adjudicated delinquent in juvenile district court, is approximately 10-12 youth per month.³⁹ Youth Services provides supervised and unsupervised probation, diversion, and community service supervision.

The difference between the probation services offered by Park County Youth Services to children prosecuted in adult court and those provided through DFS juvenile probation boils down to state funding. DFS provides services, assessments, and treatment, including counseling, substance abuse treatment, and placements at treatment centers like the Cedar Mountain Center in Cody for youth on juvenile probation. These services are not available through Park County Youth Services to children placed on probation by the adult courts.

Children prosecuted in the circuit or municipal courts are generally required to pay for the costs of court-ordered assessments and court-mandated services; they are at risk of being revoked from probation if they are unable to pay. Children financially unable to pay for services ordered by municipal or circuit court in Park County have, in fact, been revoked off probation and incarcerated solely due to their inability to pay for the cost of treatment.

Laramie County

In 2008, there were 1,611 juvenile arrests in Laramie County. At 71.86 arrests for every 1000 juvenile residents, this was the third highest juvenile arrest rate in Wyoming (after

Carbon and Natrona Counties). These resulted in 196 charges filed in circuit court, not including traffic charges, of which 11.3% resulted in time locked up. Again, there is no data as to how many charges were filed in juvenile or municipal court, or on the outcomes of these charges.

Pursuant to city ordinance,⁴⁰ cases in Cheyenne Municipal Court—in which children are charged with violating municipal ordinances in Cheyenne—are confidential, as they are in Wyoming’s juvenile district courts. Laramie County Circuit Court matters are not confidential.

Children in both circuit and municipal courts in Laramie County are eligible to be supervised pre- and post-trial through a program called Youth Alternatives. Youth Alternatives is a Cheyenne city-funded program (with assistance from other entities, including state grants) that provides youth access to its probation officers, counselors, mentors, and other professionals. It is the primary service provider for youth in Laramie County. These services for kids referred by municipal and circuit courts are not available in many other counties throughout the state.

In Laramie County Circuit Court, children are typically scheduled to appear before one judge who is assigned to preside over the majority of children prosecuted as adults in circuit court. We believe that the judges who are rotated into this assignment are not given any special training in working with children before taking on this responsibility.

On the day we observed circuit court, a Youth Alternatives coordinator and a probation officer were present. The judge took time to explain the rights of a defendant to each child individually, highlighted the importance of their right to an attorney, and explained that the court could appoint an attorney if the child could not afford one. The judge did not mention that state law may require the child to reimburse the state for the cost of the attorney.

One teen who appeared in court had been housed in a juvenile facility for the past five and a half months and was expected to go to a group home in the near future. Based on his out-of-home placement and his statements made in open court, it was clear that he had matters pending in separate courts. It was not clear how the matters were being coordinated. One judge we interviewed explained Laramie County judges are often not informed of whether a child is under the supervision of other courts – even within Laramie County.

In a circuit court file we reviewed, a minor was charged with possession of alcohol after his parent found alcohol in his room. His parent was on probation and not permitted to have alcohol in the house, so the parent reported the youth to the police.

A completed affidavit of indigence and request for appointment of counsel was in this youth’s file. Based on a review of the file, however, it appears that no counsel was appointed.

After pleading guilty, the youth was sentenced to 45 days in jail, but his sentence was suspended. He was instead ordered to pay over \$200 in fines and costs and was placed on six months of probation. After failing to pay his fines on time, he was arrested at his high school and locked up in a juvenile detention facility. He was not to be released until he paid over \$200, after which he would spend six months on probation. There was no evidence that any inquiry was made into whether the youth had any ability to pay the fines.

Although Cheyenne Municipal Court cases involving children are closed by city ordinance,⁴¹ the court gave us permission to observe court proceedings. In addition to court staff, several representatives from Youth Alternatives were present during the court hearings, as were several probation officers.

The Municipal Court judge addressed all the children in the courtroom as a group, clearly reciting their constitutional rights. These rights were also listed on a form given to the children just before they entered the courtroom. The court requires the children to sign and the parents to read the form. A city ordinance unique in Wyoming requires a parent or guardian to be with each child in this court.⁴² In one instance where no parent was present, the judge postponed the hearing.

In one case we observed, a child was charged with battery as a result of fighting at school. The judge (who is a trained and obviously compassionate social worker, not a lawyer) accepted a guilty plea from the boy without first advising him of the consequences of pleading guilty, such as forgoing his rights to counsel, to a trial, to be presumed innocent, to confront accusers, and to remain silent. After the boy pled guilty, the judge asked him to describe the incident that gave rise to the charges. Following some discussion about the incident, the judge called the child to stand in front of the judge's bench. Employing a unique procedure commonly used in his courtroom the judge, acting on his own, withdrew the plea on the child's behalf and placed him on pre-trial supervision for six months. Upon successful completion of all of the conditions, the charges would be dismissed.

In another fighting case, a girl also pled guilty to battery without having been advised of the consequences of a guilty plea. She described what happened, and said that the other young woman involved in the school fight was still harassing her. The judge said he could impose a \$750 fine, but then called her, along with her parents, to stand in front of the bench. After a lengthy dialogue with the child and the parents, the judge withdrew her guilty plea, postponed her case, and required her to complete a fight program offered through Youth Alternatives, along with six months of pre-trial supervision.

This unique procedure, though novel, is problematic. If the children in either of these cases later elected to go to trial, we saw nothing that would prevent their description of the incident to be subsequently used against them, despite the fact that they had not been advised of their rights prior to their withdrawn guilty pleas.

Campbell County

In 2008, there were 559 juvenile arrests in Campbell County, or 49.35 arrests for every 1,000 juveniles in the county. These arrests resulted in 208 non-traffic charges being filed in Campbell County Circuit Court, of which more than 10% resulted in juveniles being locked up. There is no information available regarding charges or case outcomes in municipal or juvenile court.

Campbell County opened a new juvenile detention facility in August 2009 where youth are incarcerated if convicted and sentenced to a period of confinement.

The court records we reviewed at the Campbell County Circuit Court and Municipal Court in Gillette frequently contained identifying information about the children being prosecuted, including the children's social security numbers and sensitive information about pending child welfare cases alleging abuse and neglect, information that should be kept confidential.

We observed several child prosecutions in the Gillette Municipal Court. In one, a 16-year-old who was very involved in church, school activities and sports, and who had never before been in trouble with the law, pled guilty to shooting a paint gun on the side of a neighbor's house. The teen was not represented by counsel and had not received any advice from an attorney prior to entering his plea. His mother was in the courtroom but was not questioned or called by the judge to become involved in the proceedings. After accepting the boy's plea, the judge ordered him to perform 40 hours of community service within 60 days and to pay \$20 in court costs. Although Gillette's Municipal Court has a diversion program for youth without prior convictions, the boy could not enter the program because it was "full."

After the hearing, the boy's mom said that her son "was scared by the court process." Although she was resigned to the consequences imposed on her son, she did not feel that an adult criminal conviction was necessary to teach her son a lesson for his mistake.

Interviewed after court, the judge explained that his approach to children in his courtroom was to make them take responsibility for their acts, as he says, "like a man." He required all children appearing in his courtroom to stand up and talk at the podium alone without having their parents involved in the proceeding. He insisted that all court fines or costs he ordered be paid by the child, not the parent.

In another case we observed, a small eighth grade boy, approximately five feet tall, stood at the dais alone and pled not guilty to shoplifting charges for allegedly stealing a pack of gum from a dollar store in Gillette. The boy's father was in the courtroom but was not allowed to participate in the proceeding. The boy was not represented by counsel and had not received the advice of counsel before entering his plea.

After the hearing, the boy told us he had been afraid in the courtroom. He said he pled not guilty because he did not steal the gum. He said he was arrested by the cash register clerk

while inside the store upon reaching into his pocket for his ringing cell phone with the pack of gum he intended to buy in his hand. His dad said he had encouraged his son to tell the truth and stand up for himself if he was not guilty.

The boy had been offered diversion contingent upon his pleading guilty, which he declined to do. The father and son did not request appointed counsel, even though they were eligible for it, because it was their understanding of the court process that they would have to pay back the court if counsel was provided.

Later, the father and son returned to court for the son's scheduled trial. The shoplifting charges were then dismissed because no one appeared from the dollar store to testify.

In another case we observed, a low functioning 15-year-old boy pled guilty to shoplifting at WalMart. The boy was currently living in a local shelter having been placed there through an abuse and neglect dependency proceeding, facts that were apparent to all in the public courtroom. The judge announced in open court that the boy was failing English class. The boy pled guilty to his shoplifting charge apparently without the benefit of any advice from counsel, or even a responsible adult. He was placed on probation for six months. The conditions of his probation included, among other things, the requirement that he achieve a C or better grade in every one of his classes at school. No consideration was given to the child's special education status or current education plan before this term of probation was imposed.

In another case, we observed a 14-year-old girl prosecuted for being in possession of tobacco. The girl pled guilty, without legal advice or representation, although she denied having a cigarette as charged.

Sweetwater County

In 2008, 694 juvenile arrests were made in Sweetwater County, or 64.38 arrests for every 1,000 juveniles in the county. Of these, 113 charges for non-traffic offenses were filed in circuit court, of which slightly more than five percent resulted in some time locked up.

In Sweetwater County, children who have been charged with criminal offenses or delinquent conduct in the municipal, circuit, and juvenile district courts are eligible for services through the Sweetwater County Juvenile Probation Department. The county-run Juvenile Probation Department runs a number of different programs, including a 90-day pre-trial diversion program available to non-violent first-time offenders, truancy court, and supervised probation. Unlike most counties, children adjudicated delinquent by the juvenile district court are supervised by the Juvenile Probation Department rather than the Department of Family Services. The Juvenile Probation Officer currently maintains approximately 30 youth on her caseload.

Children who are placed outside the home may be held at the Sweetwater County Youth Crisis Center, among other juvenile facilities. In addition, a new 24-bed juvenile

detention center was built within the existing Sweetwater County Detention Center in 2005.

In Rock Springs Municipal Court, prior to hearing any cases, the judge first recites to everyone in the courtroom an explanation of the constitutional rights of defendants. Children's cases are typically heard first. The judge requires children both to have a parent or guardian with them, and to discuss the case with their parents or guardians prior to entering a plea. The judge told us that if he perceives significant conflict between the child and the parent, he appoints defense counsel for the child.

In one case we observed, a child was charged with shoplifting. In contrast to many of the other prosecutions we observed, the judge confirmed that a parent was present, and asked if the child or the parent had any questions about any of the rights he had explained to everyone in the courtroom. He outlined the maximum fines and penalties for shoplifting – up to \$750 and six months of incarceration – and asked if the child and his parent had taken time to discuss whether he intended to plead guilty or not. When the child said he had not, the judge required them to discuss this outside the courtroom, and later re-called the case. The child, after being advised of the consequences of pleading, pled guilty and explained the incident that had given rise to his charges. The judge ordered the child to pay \$210 in fines and costs that can be worked off at the rate of \$40 per day through a weekend work restitution program run by the city.

Albany County

In Albany County, the county and the city have an agreement that children charged with violations of municipal ordinances involving tobacco, curfew, and traffic offenses will be prosecuted in municipal court. Virtually all other children charged with criminal offenses are handled through the county circuit court.

The county attorney's office reviews cases involving children who have been charged with crimes for the first time for eligibility for a 12-month diversion program. Many children complete the program within six months. The diversion program is administered through a probation contract with Big Brother Big Sisters. According to county prosecutors, approximately 90% of children charged with crimes participate in the diversion program, and of those, somewhere around 90% of these children do not reoffend.

This diversion program contrasts significantly with other diversion programs across the state because children are not required to plead guilty in order to participate. Once a child elects to participate in diversion, the charges are dismissed without prejudice, but can be re-filed if the child fails to successfully complete the conditions of diversion or chooses to drop out. If a child re-offends after participating in the diversion program, the prosecuting attorney routinely files the charges in juvenile district court.

Arrest and filing practices in Albany County appeared to be among the best of the six counties we visited. With 129 juvenile arrests in 2008 and a juvenile arrest rate of 20.97

for every 1,000 juveniles, Albany County has one of the lowest juvenile arrest rates in Wyoming. These arrests did result in an unusually high 126 charges filed in circuit court, although 75% were dismissed, usually through diversion, and only 1.3% resulted in time locked up.⁴³

In Albany County Circuit Court, the judge recites the constitutional rights of defendants to everyone present in the courtroom as a group. Those facing criminal charges are also given a written statement of their constitutional rights that they must sign. The judge collects these after asking whether each individual understands the rights or has any questions.

In one case, a child was charged with use of a controlled substance within the city limits of the city of Laramie. The hearing was continued to allow the prosecuting attorney to determine whether the child could participate in a diversion program in Laramie County where the child resides. The child's guardian was present; the judge encourages children to have their parents or guardians come to court with them.

In another case, a child appeared in circuit court with an attorney. His parents were also present with their attorney, as were service providers. It was clear this child also had matters pending in juvenile district court in addition to this criminal case in circuit court.

All defendants in Albany County Circuit Court, including those under the age of 18, who are transported from a lock-up facility to court for pre-trial proceedings are brought to court in gray-striped jail garb and are shackled in waist chains with their hands cuffed in the front throughout the proceedings.

In the City of Laramie Municipal Court, there were no children in court the day we observed. The City of Laramie attorney declined to permit us to review any of the municipal court files of minors, as we had in other municipalities, because, we were told, the minors are eligible to have their records expunged at a later date. The court process in Laramie Municipal Court was thus not as public as in other cities throughout the state. But we did obtain data showing that between April 1, 2009 and March 31, 2010, there were 181 juvenile citations in Laramie Municipal Court, of which 166 were for traffic offenses and 15 were for non-traffic offenses. The non-traffic offenses included five citations for possession of alcohol and five citations for possession of tobacco, four citations for curfew violations, and one citation for misdemeanor property damage.

During one year the Laramie Municipal Court collected a total of approximately \$17,500 in fines from youth under the age of 18.

LEGAL CONCERNS ABOUT EXISTING PRACTICES

The widespread prosecution of children in adult courts in Wyoming raises significant legal issues. Indeed, during our site visits we observed several constitutionally suspect practices. The following are a few of the more troubling questions presented by

Wyoming's widespread practice of prosecuting children as adults for minor crimes and status offenses.

The Prosecution of Children for Acts Not Criminal if Committed by an Adult Arguably Violates the Eighth Amendment

Whether the practice of prosecuting children as adults for status offenses violates the United States Constitution's prohibition against cruel and unusual punishment is a significant and novel issue facing the state.

The Eighth Amendment to the United States Constitution prohibits "cruel and unusual punishment" and includes juveniles within its protection. *Roper v. Simmons*, 543 U.S. 551 (2005) (imposing the death penalty on juveniles under the age of 18 violates the Eighth Amendment). Under the cruel and unusual punishment standard, juveniles convicted of crimes may not be subject to "excessive sanctions." *Roper v. Simmons*, 543 U.S. at 560, citing *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (the Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions). Moreover, "[p]unishment for crime should be graduated and proportioned to [the] offense." *Atkins*, 536 U.S. at 311 (executions of mentally retarded criminals constitutes cruel and unusual punishment).

The United States Supreme Court recently reiterated the important principle established in *Roper* that children are different than adults, and that because of these differences they are entitled to greater protection under the Eighth Amendment in terms of the criminal process and penalties imposed. *Graham v. Florida*, No. 08-7412, 2010 WL 1946731, 560 U.S. __ (2010). Indeed, the Court in *Graham* went so far as to state "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham*, 2010 WL 1946731, at *19.

Applying these principles, it is quite possible that a federal court could reasonably determine that the infliction of criminal punishment on children for conduct that would not even be criminal if committed by an adult is constitutionally impermissible under the Eighth Amendment.

The Routine Shackling of Children in Court Is Unconstitutional

The practice of physically restraining detained defendants without any individualized showing of necessity is likely to be found by a court to violate the due process rights of children. See e.g., *In re Staley*, 364 N.E. 2d 72 (Ill. 1977); *In re R.W.S.*, 728 N.D. 326 (2007); *Tiffany A. v. The Superior Court of Los Angeles County*, 150 Cal. App. 4th 1344 (2nd Dist. 2007); *In re Deshaun M.*, 148 Cal. App. 4th 1384 (1st Dist. 2007).

Appointment of Counsel Procedures and Recoupment of Cost of Counsel

Based on our observations, we believe several counties and municipalities are also vulnerable to litigation for practices concerning the appointment of counsel in cases

where incarceration is a possible penalty. Questionable practices include failing to advise children of their right to counsel, failing to obtain knowing and voluntary waivers of counsel and attorney fee recoupment practices.

In Natrona County, for example, youth who were revoked from probation or held in contempt were not provided notice of their right to appointed counsel or the opportunity to request one at the revocation or contempt hearing.

Indeed, nearly all of the children who we saw enter guilty pleas during our site visits were not represented by counsel at this critical stage of the criminal process. *See In re Gault*, 387 U.S. 1 (1967) (holding that juveniles have right to notice of charges, *right to counsel*, privilege against self-incrimination, and right to confrontation and cross-examination even in juvenile court proceedings where the consequences of adjudication do not include a criminal conviction).

It was also apparent from our file reviews and court observations that adequate steps are not routinely taken to ensure that children being prosecuted in adult courts are, in truth, making a knowing, intelligent and voluntary waiver of their right to counsel.

Moreover, in several of the courtroom proceedings we observed, judges advise indigent children that if they could not afford counsel the court would appoint an attorney to represent them, but that doing so might delay the hearing, and/or that the children might—or would—have to pay back the cost of their defense. Many of the children we saw so advised were in court without an adult present with them. In no instance did the judge tell the child and/or the parents (if any were present) of any specific exceptions to this attorney fee recoupment rule.

The Wyoming statute authorizing the recoupment of public defender costs states:

In every case in which a person has received services under W.S. 7-6-104, the presiding judge shall determine whether the person or, in the case of an unemancipated minor, his custodial parent or any other person who has a legal obligation of support, is able to provide any funds towards payment of part or all of the cost associated with such services. If the person or, in the case of an unemancipated minor, his custodial parent or any other person who has a legal obligation of support, is not able to provide any funds towards payment of costs, the court shall enter a specific finding on the record. If the court determines the person or, in the case of an unemancipated minor, his custodial parent or any other person who has a legal obligation of support, is able to provide any amount as reimbursement, the court shall order the person or, in the case of an unemancipated minor, his custodial parent or any other person who has a legal obligation of support, to reimburse the state for all or part of the costs of the services provided or shall state on the record the reasons why an order for reimbursement was not entered. Where a

person is initially provided with counsel pursuant to W.S. 7-6-105(a), but subsequently retains private counsel, the court may order the person to reimburse the state for the services already provided. All reimbursements under this act shall be made through the clerk of court.

WYO. STAT. ANN. § 7-6-106(c) (2009).⁴⁴

In no case in which the court sought recoupment of public defender costs did we witness the judge inquire about ability of the child's parents to pay.

Wyoming's recoupment statute is indeed itself constitutionally suspect because it does not exempt children found not guilty from paying back the cost of their defense.⁴⁵

The United States Supreme Court has found that recoupment statutes are justified by important state interests, such as protecting the state from defendants who falsely claim indigence. *See James v. Strange*, 407 U.S. 128, 141 (1972). But because these statutes may unfairly burden or chill indigent defendants' inclination to exercise their right to counsel, courts have required that these statutes meet certain requirements to pass constitutional muster.

Specifically, recoupment statutes are constitutional only if: (1) the repayment obligation is imposed only on defendants who have been convicted, not those who have been acquitted or had their conviction reversed on appeal; (2) the court considers the defendant's financial resources and potential burdens repayment might cause, and determines the defendant is able to pay or will be able to pay in the future; (3) the defendant has the opportunity to petition the court to waive or reduce the amount of payment, and the court has the power to waive or reduce payment if full payment would impose hardship on the defendant or the defendant's immediate family; and (4) if the defendant shows non-payment did not result from his refusal to pay, but instead made a good faith attempt to pay, the court may not hold the defendant in contempt. *Olson v. James*, 603 F.2d 150, 155 (10th Cir. 1979) (describing the rule synthesized from *James v. Strange*, 407 U.S. 128 and *Fuller v. Oregon*, 417 U.S. 40 (1974)).

Under these standards, especially as applied to children in the criminal process who are entitled to heightened protections under Eighth Amendment jurisprudence, the Wyoming recoupment statute and some of the recoupment practices we observed are constitutionally suspect.

Arbitrary and Discriminatory Effect of Direct File Practices

The Wyoming legislature recently amended the Juvenile Justice Act's "direct-file" provision that grants county prosecuting attorneys the exclusive authority to determine whether children should be prosecuted in adult court or provided the rehabilitative opportunities available through a juvenile court process.⁴⁶ *See* W.S. § 14-6-203(f) (2009). This new provision mandates that each county attorney in all 23 Wyoming counties "shall establish objective criteria, screening and assessment procedures for

determining the court for appropriate disposition in cooperation and coordination with each municipality in the jurisdiction of the district court.” *Id.*

By establishing an intentional statutory scheme in which similarly situated juveniles are subjected to disparate filing criteria—and consequently disparate opportunities for state rehabilitative services—depending on the county in which they live, the recently enacted revision of Juvenile Justice Act raises anew equal protection and due process concerns once thought put to rest. *See Hansen v. State*, 904 P.2d 811, 820 (Wyo. 1995) (holding that “there is no constitutional right to be tried as a juvenile” and that, prior to the enactment of Section 14-6-203(f), Wyoming’s concurrent jurisdiction scheme does not violate equal protection or due process guarantees.)

There is simply no rational basis for the state to evaluate children’s worthiness of receiving the significant benefit of juvenile court jurisdiction by using district-specific, widely varying criteria. At a minimum, equal protection requires that standards governing the discretion to subject certain juveniles to adult criminal proceedings be applied uniformly across geographical boundaries within the state. *See, e.g., State v. Brimage*, 706 A.2d 1096, 1102-1107 (N.J. 1998) (“prosecutorial decision-making process must be guided by uniform standards that channel the exercise of discretion and reduce the danger of uneven application”).

A BETTER WAY

The state of Wyoming stands at the threshold of opportunity. It can revise its juvenile code to create a model system of youth justice, or it can continue down the time-worn path it has been on for decades, meting out adult convictions and costly sentences to children who really just need a stronger guiding hand. The authors, and many others in the state working with children in trouble, urge the public to demand a better system of justice for Wyoming’s children. We hope public officials will finally exercise the political will to truly reform the way it’s always been.

¹ “No other state restricts access to juvenile court and the services it can order in favor of prosecuting most juvenile offenders as adults.” Wyoming Survey & Analysis Center, Youth Case Processing in the State of Wyoming: An Analysis of Four Counties, Report to the Wyoming Department of Family Services, 12 (2004).

² For example, it costs almost one million dollars per year to run Laramie County’s 90-bed juvenile lock-up facility. Jodi Rogstad, *County to Build Juvenile Facility*, WYOMING TRIBUNE EAGLE, April 21, 2010, *available at* http://www.wyomingnews.com/articles/2010/04/21/news/19local_04-21-10.txt (last visited 5/24/10).

³ Chuck Kratz, Wyoming Disproportionate Minority Contact 2008 Plan Progress/2009 Plan Update: Prepared for the State Advisory Council on Juvenile Justice, 4 (Feb. 12, 2009).

⁴ Joshua Wolfson, *Wyoming Ranks No. 2 in US for Youth in Custody*, CASPER STAR TRIBUNE, June 12, 2008, *available at* http://trib.com/news/state-and-regional/article%20_3e2b39ac-c63c-5c45-9450-c74fc25d711a.html (last visited 5/24/2010). “The [Annie E. Casey Foundation’s] 2008 Kids Count report shows Wyoming’s rate of detained and committed youth in custody at 334/100,000 children. Nationally, that figure stood at 125. Only South Dakota had a higher rate of youth in custody.”

⁵ Crook, Goshen, Washakie, and Weston Counties’ circuit courts are omitted from the chart because they had no cases involving minors that resulted in incarceration in 2008 or 2009.

⁶ A person convicted as a minor in Wyoming in circuit or municipal court for criminal or status offenses may have their record expunged upon reaching age 18. WYO. STAT. ANN. § 16-4-241 (2009). But children are typically not given notice of or assistance with the expungement process, the burden is on the children to seek and establish grounds for expungement, and they must pay associated court costs. Although it is theoretically an option, as one attorney told us, “no one knows about it.”

⁷ Campaign for Youth Justice, *The Consequences Aren’t Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, 13 (Mar. 2007), *available at* http://www.campaignforyouthjustice.org/Downloads/NEWS/National_Report_consequences.pdf (last visited 5/24/10).

⁸ A few adult courts have put policies in place in an effort to operate more like a juvenile system than adult court. For example, in Cheyenne Municipal Court, procedures are in place to better preserve a child’s confidentiality.

⁹ This is estimated to be only 10-15% of all youth processed for law violations statewide.

¹⁰ Department of Family Services, Report to Joint Appropriations Interim Committee and Joint Judiciary Interim Committee, 11-13 (Jun. 2009) *available at* http://www.wyjuvenilejustice.com/_pdfs/Department%20of%20Family%20Services%20Final%20CJSB%20Report.pdf (last visited 5/24/10).

¹¹ Wyoming’s municipal and circuit courts are courts of limited jurisdiction over misdemeanor offenses. The district courts in Wyoming are courts of general jurisdiction. The district courts each have a juvenile division that hears delinquency matters.

¹² Thomas F. Geraghty & Steven A. Drizin, *The Debate Over the Future of Juvenile Courts: Can We Reach Consensus?*, 88 J. CRIM. L. & CRIMINOLOGY 1, 2 n.4 (1997).

¹³ Wyoming’s district juvenile courts only have exclusive jurisdiction over children under age 13 facing felony or misdemeanor charges that are punishable by more than six months in prison. WYO. STAT. ANN. § 14-6-203(d) (2009). All other children—those age 13 or older, and those under age 13 facing less serious penalties (*i.e.*, no detention sanction or imprisonment for six months or less)—fall under the concurrent jurisdiction of the state’s adult *and* juvenile courts.

¹⁴ John M. Burman, *Juvenile Injustice in Wyoming*, 4 WYO. L. REV. 673, 669-772 (2004); *see also*, Jeremy Kisling, *Wyoming’s “Outlaw” Juvenile Justice Act*, 8 WYO. L. REV. 103, 106 (2008) (“Juveniles are tried and convicted of non-violent misdemeanor crimes every day in Wyoming. Statistics show the vast majority of them ... are tried and adjudicated in an adult court, not subject to the rehabilitative nature of an almost non-existent juvenile justice system in Wyoming”).

¹⁵ For example, under Wyoming law, it is a jailable offense for anyone under age 21 to possess, consume or be under the influence of alcohol. WYO. STAT. ANN. § 12-6-101(b) and (c); WYO. STAT. ANN. § 7-1-707(b)(iii) (2009). Thus, behavior considered to be a status offense (illegal only due to status as a child) in every other jurisdiction in the country is deemed criminal in Wyoming. Children are also locked up for violations of probation and/or for contempt in adult criminal proceedings for status offenses, *i.e.* conduct like breaking curfew, drinking, or skipping school.

¹⁶ Bryan A. Skoric, Park County and Prosecuting Attorney, *Juvenile Justice* (Jan. 25, 2010) (unpublished document on file with authors).

¹⁷ WYO. STAT. ANN. § 14-6-201 *et. seq.* (2009). *But see* CHEYENNE, WYO. MUN. CODE § 2.44.010 *et. seq.* (city ordinance requires the Cheyenne Municipal Court to emulate juvenile court procedures).

¹⁸ The Wyoming Supreme Court electronically collects data from circuit and district courts in the states, but not from municipal courts.

¹⁹ The state legislature is beginning to take note of the absence of critical data related to juvenile justice practices and recently required the collection of some information. *See* H.B. 0012, 60th Legislature (2010), *available at* <http://legisweb.state.wy.us/2010/Engross/HB0012.pdf> (last visited 5/24/10).

²⁰ WYO. STAT. ANN. § 14-6-203 (f) (2009).

²¹ We requested the “single point of entry” criteria established by counties pursuant to the 2009 legislation. One county attorney refused to provide the criteria. Eight counties do not have written criteria, though two of the eight provided a written explanation of their procedures. We learned from the criteria produced that in some counties, but not all, the prosecuting attorney’s office reviews all citations and arrests. Violations of

municipal ordinances may be prosecuted in municipal court in some counties; but in some jurisdictions, the majority of offenses—with the exception of minor traffic offenses—are handled in circuit court. Thirteen counties have some form of a pre-trial diversion program, usually reserved for first-time offenders and misdemeanor offenses. Several counties have a pre-trial screening committee or team that reviews cases of minors and makes recommendations about how to proceed, but in a few, there are no screening committees and cases are left to the sole discretion of the prosecuting attorney. The remaining counties either have no diversion program, or did not provide any information. If a child is placed on supervised probation in municipal or circuit court, many counties have some form of youth services program using probation officers or counselors who work only with children processed in circuit and municipal courts. In nearly all counties, DFS provides probation supervision and services only to youth adjudicated in district juvenile courts.

²² We examined practices in six of Wyoming’s 23 counties, including Laramie, Natrona, Park, Sweetwater, Campbell, and Albany.

²³ Barry Holman and Jason Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (Nov. 2006), available at http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf (last visited 5/24/10); Maia Szalavitz, *Why Juvenile Detention Makes Teens Worse*, *TIME Online*, August 7, 2009.

²⁴ Cases filed in circuit and municipal courts may be the result of an “arrest” or a “citation.” The term “arrest” is loosely used herein to include citations.

²⁵ CASPER WYO. MUN. CODE § 1.28.010.

²⁶ Circuit courts have original jurisdiction in all misdemeanor criminal cases. WYO. STAT. ANN. § 5-9-129 (2009). While the maximum penalty and fine depends on the offense, certain high misdemeanors are punishable by significant penalties. *See, e.g.*, WYO. STAT. ANN. § 6-2-502(f)(1) (2009) (second offense of assault or battery punishable by up to \$1,000 fine and one year in jail); WYO. STAT. ANN. § 35-7-1031(c)(1) (2009) (second possession of controlled substance offense punishable by up to \$1,000 fine and one year in jail, third offense punishable by up to \$5,000 and five years in jail).

²⁷ This information is based on interviews conducted during our site visits.

²⁸ WYO. STAT. ANN. § 7-13-1601 *et. seq.* (2009).

²⁹ Although the Juvenile Probation Program court is based on a drug court model, it is not called a “drug court” because it does not meet the state statutory criteria for a drug court set forth at WYO. STAT. ANN. § 7-13-1601 *et. seq.* (2009).

³⁰ The Natrona County detention facility where kids are incarcerated for disobeying the orders of the court was previously used as an adult jail. It was shut down by federal court for unsafe and deplorable conditions and then resurrected to incarcerate juveniles. Mead Gruver, *Attorney: Close Casper Juvenile Jail ASAP*, CASPER STAR TRIBUNE, January 7, 2009, A-1, available at http://trib.com/news/local/article_c1f3421f-e0ce-57d5-99e4-8754448d7249.html (last visited 5/24/10); Mead Gruver, *No Fire Inspection at Juvenile Center*, CASPER STAR TRIBUNE, May 22, 2008, available at

http://trib.com/news/local/article_615ef31d-83b1-54b7-8cc9-e0d814fdf234.html (last visited 5/24/10); Joshua Wolfson, *Details Emerge in Detention Center Investigation*, CASPER STAR TRIBUNE, April 17, 2008, B-1, *available at* http://trib.com/news/local/article_830c42d4-fc05-56dd-818b-fba00bc39aa6.html (last visited 5/24/10).

³¹ Forty-seven randomly selected juvenile probation court files reviewed revealed that children spent anywhere from two to 40 days in detention for violations of probation or for being held in contempt of violating the court's probation orders. Almost half (48.15%) were found in violation or contempt at least once. One hundred percent of kids found in contempt were sentenced to at least one weekend in detention.

³² We reviewed 47 randomly selected juvenile probation court case files in addition to observing court process. Because juveniles with multiple charges often had their separate charges filed under different docket numbers but adjudicated together, the 47 randomly selected files actually turned out to be 32 cases. Twenty-two of the defendants were boys and nine were girls; we are missing information regarding the gender of one defendant. Most of the records contained incomplete information, making a comprehensive analysis of the court processes and outcomes impossible. This highlights the need for better data and record keeping. Despite data limitations, we were able to discern a number of key trends. Of the 32 cases, one was dismissed, 27 cases ended in a finding of guilt. We are missing information on the outcomes of the other five cases. *All 27 youth who were found guilty either pled guilty (25) or no contest (2)*. Other than the one defendant whose charges were dismissed at her first court hearing, no defendant pled not guilty or went to trial. Only six out of the 32 juvenile defendants had legal representation. Of these, two retained counsel on their own and four had counsel appointed by the court. There is no evidence that any of the youth were advised of their right to counsel and there is record of only one youth being advised of his right to trial. In addition, there is only evidence of two of the juveniles being advised of the consequences of pleading guilty. Six files had no colloquy form signed by the juvenile defendant and 18 files had no colloquy form signed the juvenile's parent(s) or guardian. Of the 27 youth who were convicted, 13 were found guilty of at least one probation violation or contempt of court. There was no evidence in the files that any defendants were given prior notice of their alleged probation violations or acts of contempt or that any of their parents or guardians were present at their revocation and/or contempt proceedings. Defense counsel was present at only two revocation or contempt hearings and, in the case of contempt hearings, there is no evidence that the defendants were advised of their right to a jury trial. In addition, there is record of only one probation violation or contempt hearing at which the defendant was present and was provided an opportunity to address the charges. Almost all probation violation or contempt charges resulted in the juvenile defendant spending anywhere from two to 40 days in detention, and 11 juveniles were sentenced to incarceration time for their first probation violation or act of contempt.

³³ The case staffing was attended by the judge, the prosecutor, detention staff, a school representative, probation staff, representatives from the local counseling center, and a public defender who was not representing any individual child, but rather the general interests of all the children.

³⁴ This shows, at best, the lack of an adequate record that constitutionally mandated information was provided to the defendant and, at worst, that the court did not provide the legally required colloquy of constitutional rights waived by entering a guilty plea.

³⁵ Children were sometimes held in contempt for violations of court orders and at other times violations resulted in the revocation of the child's probation. It was unclear from the file why one procedure was used instead of the other.

³⁶ *See* Rule 42, W.R.Cr.P. (2009).

³⁷ Park County Youth Services performs a monitoring and supervision function for youth in circuit and municipal courts.

³⁸ The perception that municipal courts are principally a "revenue source" for cities was stated by a variety of different people we interviewed in all the counties we visited.

³⁹ The probation staff employed by the Department of Family Services is responsible for supervising all youth on probation who are processed through juvenile district courts throughout the state.

⁴⁰ CHEYENNE, WYO. MUN. CODE § 2.44.010 *et. seq.*

⁴¹ *Id.*

⁴² *Id.* § 2.44.150.B.

⁴³ We reviewed 14 randomly selected court files involving ten different children being prosecuted in circuit court. All but one of these kids had their cases dismissed through successful completion of the diversion program.

⁴⁴ The price of a public defender and manner in which recoupment amounts were assessed varied from county to county. In Albany County, public defender costs were assessed at \$60 an hour and the defender representing the child was required to assess the amount he or she was due from their indigent client.

⁴⁵ In our interviews we learned that children found not guilty have been required to repay the cost of a public defender even though they were acquitted of all criminal charges.

⁴⁶ Section 14-6-203(f) applies to juveniles who are: (1) age twelve and younger charged with a municipal ordinance violation or a misdemeanor punishable by imprisonment for up to six months; (2) age thirteen charged with a municipal ordinance violation or *any* misdemeanor (regardless of potential length of prison sentence); ages fourteen through sixteen charged with a municipal ordinance violation, any misdemeanor, or a felony that is either violent or 'recurrent;' and (4) age seventeen. *See* WYO. STAT. ANN. § 14-6-203(f) (2009). Importantly, misdemeanors within this statute include minor in possession of alcohol and minor in possession of tobacco. *See id.* § 4-16-201(a)(xxiii). Furthermore, a violent felony means "murder, manslaughter, kidnapping, sexual assault in the first or second degree, robbery, aggravated assault, aircraft hijacking, arson in the first or second degree or aggravated burglary or a violation of W.S. 6-2-314(a)(i) [for the crime of sexual abuse of a minor in the first degree] or 6-2-315(a)(ii) [for the crime of sexual abuse of a minor in the second degree]." *Id.* § 6-1-104(a)(xii). Finally, a felony is 'recurrent' if the juvenile "has previously been adjudicated as a delinquent under two (2)

separately filed juvenile petitions for acts which if committed by an adult constitute felonies.” *Id.* § 14-6-203(f)(v).