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To: Governor's Commission on Reducing Racial Disparities

From: Wendy Henderson, Policy Analyst

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Thank you for the opportunity to address the important issue of racial disparities in the justice system. I am here representing the Wisconsin Council on Children and Families, a 125 year old child advocacy organization working to ensure that all children in Wisconsin grow up in a just and nurturing home and community. Over the course of the past several months, the Council has been actively following this Commission's work, as we are deeply concerned with the overrepresentation of minority children in adult jails and prisons.

The cumulative effect of racial disparities has been touched on by the Commission. That is the way in which a higher likelihood of arrest for African Americans then feeds into a higher likelihood of convictions, jail sentences, prison time and so forth. As a person of color gets deeper into our justice system, the likelihood of harsher treatment grows exponentially due to previous criminal justice contacts. I urge the Commission to think of the law which requires us to treat all 17-year-olds as adults in Wisconsin in the context of cumulative disadvantage.

In January of this year, the National Council on Crime and Delinquency (NCCD) released a report which uncovered an alarming statistic: Wisconsin leads the nation in the rate of overrepresentation of youth under 18 committed to adult prisons. Upon further investigation, we found that of the 176 17-year-olds who were sentenced to prison in 2005, the racial breakdown was **61 percent minority**:

- 68 Caucasian
- 91 African American
- 4 Hispanic
- 3 American Indian
- 5 Asian / Pacific Islander
- 5 Other / Unclear

For that same year, the overall population of 17-year-olds was **almost 90 percent Caucasian**. It is important to look back further in the system to see the contributing factors to these disparities.

One of the contributing factors to Wisconsin's high rate of youth incarceration overall (according to the same NCCD report we are third in the nation in overall incarceration of youth in adult prisons) is the blanket exclusion of all 17-year-olds from juvenile court. While 17-year-olds are treated as juveniles in all but thirteen states, Wisconsin treats all 17-year-olds as adults. The systematic exclusion of all 17-year-olds from juvenile court has myriad effects on those 17-year-olds who are in trouble with the law. While they might have had access to treatment and services in the juvenile system, the adult system is ill-equipped to meet the needs of these young offenders. For example, if a 17-year-old is kicked out of her home, she can neither go to a homeless shelter nor rent an apartment (both require the individual

to be 18 years old). This provides unique challenges for the community corrections workers in the adult system that must then help the young person find housing.

Entering the adult criminal system a year prior to turning 18 can have significant life-long effects. A person without a previous adult criminal conviction may have opportunities in a first-time offender program or a deferred prosecution which will be unavailable to an 18-year-old with a previous arrest at 17 because that is considered an adult arrest.

There is little research on the cumulative effect of an adult criminal record prior to the age of majority. There is, however, significant research on the detrimental effect of adult incarceration on youth. Research suggests that kids under 18 who are tried in adult courts will recidivate more quickly and more seriously than matched counterparts of kids processed through the juvenile court.

In short, by processing 17-year-olds in adult court we can anticipate that more of these children will return to the system with new crimes. Given the racial disparities of who is arrested and who is sent to prison, it is not hard to see how this seemingly race-neutral policy has a disparate impact on kids of color in Wisconsin.

The Commission has a large task in making recommendations to reduce racial disparities in the criminal justice system in Wisconsin. The solution to this problem will, no doubt, be multi-faceted and will stretch across systems. In the deliberations about which recommendations will be adopted by the Commission, I urge you to think about both ways to make it easier to track racial disparities at different points in the system, and the systemic changes which will have the largest impact on the most kids of color.

The Wisconsin Council on Children and Families respectfully submits the following two recommendations to the committee:

1. **Return 17-year-olds to the juvenile justice system.** By recommending this legislative change, the Commission will lend support to a legislative solution which can help keep young people out of the system all together. The vast majority of kids who commit crimes will not go on to a life of crime, but by trying them as adults we impede their ability to gain further education and employment.
2. **Require data collection by race and age at all points in the justice system.** Current criminal justice data collection is inconsistent across the state, particularly at the local and jail levels. For example, under current data collection it is all but impossible to reliably document how many 17-year-olds are in adult jails, and then disaggregate that data by race. Inconsistencies in data collection lead to an inability to assess weak points in the system and then address them. The counties which are a part of the Disparate Minority Contact effort through the Office of Justice Assistance are now collecting the type of data that should be collected statewide, for juveniles and adults. This type of data collection should be extended to all counties for juveniles and adults, disaggregated by age and race.