



THE CITY OF NEW YORK  
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BOROUGH OF MANHATTAN

**SCOTT M. STRINGER**  
BOROUGH PRESIDENT

**Testimony of Manhattan Borough President  
Scott M. Stringer**

**Before the New York City Council Committee on Juvenile Justice**  
Regarding Council Resolution 1067-2011, Calling on the State Legislature to Pass  
Legislation Raising the age of Criminal Responsibility for Nonviolent Offenses to 18 and  
Permitting the cases of 16 and 17 year-olds charged with such offenses to be adjudicated in Family Court

November 1, 2011

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Good afternoon Chair Gonzalez and members of the Juvenile Justice Committee. Thank you for holding this important hearing on Council Resolution 1067, which calls on the State Legislature to pass legislation raising the age of criminal responsibility for nonviolent offenses to 18 and permitting the cases of 16- and 17-year-olds charged with such offenses to be adjudicated in Family Court. New York is now one of only two states where a 16-year-old misdemeanor is an adult in the eyes of the law. I am proud to support bringing New York's juvenile justice system in line with those of our sister states and I urge the Council to adopt this Resolution.

Recent advancements in psychology have confirmed what parents have long known: teenagers take longer to judge something to be a bad idea and have significant differences in cognitive processing that affect their ability to make sound judgments. This research has spurred a national consensus that youth are less culpable than adults because they do not fully comprehend the consequences of their actions and thus require a different response from the justice system.

While advancements in the science of adolescent psychology have added additional support for treating minors differently than adults, we have long been aware of the deleterious effects that the criminal justice system imposes on our young people and the State as a whole.

The numbers are startling:

- New York spends roughly \$266,000 per child per year to house young offenders in detention facilities. Thus, while the number of youths incarcerated in New York has dropped from more than 2,200 to fewer than 700 over the past few years, that level of incarceration is still costing the State millions of dollars every year.
- The return on that investment is an 89% recidivism rate for boys and an 81% recidivism rate for girls over a 10-year period, numbers that lend credence to research suggesting that youth who have been confined in adult facilities are more likely to re-offend than those who have spent time in juvenile institutions.

- While the absolute number of teens incarcerated in state detention facilities remains low, the number of teens being processed in the criminal justice system is high. According to the Chief Judge, up to 50,000 16- and 17-year-olds are arrested annually in New York, mainly for minor crimes, and prosecuted as adults in criminal courts.

As shocking as the numbers are, they fail to tell the whole story. New York's juvenile justice system has been broken for decades. In December, the state's Juvenile Justice Advisory Group issued a scathing report concluding that New York's juvenile justice system is ineffective, overpriced and "fosters brutal results."

In recent years, the collateral consequences of criminal convictions have soared, even for low-level, non-violent offenses. These consequences include restrictions on educational opportunities, military service, employment, and government benefits.

These consequences are not equally shared. Rather, Black and Hispanic youth in urban environments like New York City are disproportionately affected. Last year, according to the Urban Justice Center, Black and Hispanic youth accounted for 91% of all juvenile arrests in New York City. Moreover, studies by the civil rights organization Advancement Project show that African-American students are far more likely than their white peers to be suspended, expelled, or arrested for the *same kind* of conduct at school.

The policy change proposed by Chief Judge Lippman will keep thousands of NYC teenagers—the majority Black and Hispanic—out of the criminal justice system and on the right track toward higher education and a productive future. It will also dramatically reduce the cost of processing thousands of low-level cases through the criminal system every year and all but eliminate the tens of millions spent incarcerating minors who commit non-violent crime.

I have said repeatedly that to be tough on crime we must be smart on crime. I have said this in the context of calls for reforming the NYPD's stop and frisk system, which brings thousands of young people into the criminal justice system on low-level charges every year.

Chief Judge Lippman's plan is tough and smart. The plan is grounded in a modern understanding of child psychology and offers an empathetic approach to juvenile justice that promises to promote the best interests of at-risk youth, not shuttle them down the well-worn path to criminality.

The proposed reform is a necessary and progressive step in transforming New York's juvenile justice system and I urge the City Council to pass Resolution 1067.

**Center for Court Innovation Testimony**

**New York City Council**

**Juvenile Justice Committee**

**November 1, 2011**

Good morning Chairperson Gonzalez, Chairperson Palma and members of the City Council. Thank you for giving me this opportunity to speak with you today regarding Chief Judge Lippman's proposal to raise the age of legal responsibility in New York and to support his proposal to create specialized "Adolescent Intervention Parts" in the criminal courts. These court parts would link 16 and 17 year-olds to age-appropriate services, seeking to steer them away from further criminal activity, while helping them avoid life-altering collateral consequences that often accompany a criminal conviction.

My name is Raye Barbieri and I am the Director of Implementation at the Center for Court Innovation. As many of you know, the Center is a public/private partnership that is devoted to improving public confidence in the justice system. We do that through research, technical assistance, and, of course, through our demonstration projects, many of which focus on juvenile justice. We operate juvenile justice projects in each of the city's five boroughs. Among the Center's youth programs are alternatives to detention; alternatives to placement; teen courts which serve as diversion from the justice system for young people cited and arrested by the police; a unique juvenile mental health program in Queens and the Bronx; an anti-gun violence program in Crown Heights; a special respite program in Staten Island that keeps young people in their schools and out of detention while their cases proceed through court; and community courts

in Red Hook, Harlem, and Midtown and, in the not-too-distant future, in Brownsville, Brooklyn. Our extensive work with young people caught up in and at risk of involvement with the justice system has given us a unique perspective on the need for comprehensive reform and strategies that have proven effective in working with young people.

As the Chief Judge noted, New York will likely soon be the only state in the nation where 16 and 17 year olds are treated regularly as adults by the justice system. Other states are well ahead of New York in their approach to adolescents. While there is much that we can learn from other parts of the country, there is also much that we can borrow from the many innovative programs now operating in the city and state family courts. These programs have demonstrated that we can reduce reliance on confinement while simultaneously reducing offending. Later in my remarks I will speak about some of these programs.

As you know, young people who are under 16 at the time of an offense are processed through the juvenile justice system where the Department of Probation is the initial gatekeeper. Probation conducts an intake interview in each case, contacts complaining witnesses, and determines if diversion, or “adjustment” from the court system through the provision of individualized social services and monitoring, might be an appropriate option in the case. In cases where complaining witnesses consent, and where parents or guardians are willing and able to provide supervision and support, Probation may elect to adjust the case while linking the young person to age-appropriate services in the community. If the youth successfully completes the required services, the case is concluded and the record sealed. In this way, each year, thousands of low risk young people in the city are successfully diverted from the system while



being linked with precisely the social services they need to avoid further contact with the justice system.

Unfortunately, the criminal justice system offers no such off-ramp for youngsters ages 16-17. Regardless of the severity of the offense, once arrested and a decision to prosecute is made, the young person's case goes through the gauntlet of the criminal system's process. Thousands of these cases are processed through the criminal court every year. In 2010, 23,974 cases of 16 and 17 year olds were filed in criminal court in New York City. Of those, 19,478 cases – roughly 84% - were misdemeanors. While some of these matters may be appropriate for the criminal system, many of these cases would benefit much more from an approach that mirrors the juvenile adjustment process, with diversion from court through linkages to services. Beyond reducing the burden on the court system -- quite frankly many of the cases don't need to be in court in first place -- diversion will help young people avoid criminal records and the potentially devastating consequences that flow from a negative criminal case outcome.

Judge Lippman's Adolescent Intervention Initiative would emphasize court outcomes designed to help teenage defendants avoid legal and collateral consequences associated with criminal prosecution and put in place links to services to help young people pursue law-abiding, productive futures. Specially trained judges – with training in adolescent brain development, youth skill building techniques, mental health issues, substance abuse, as well as educational issues -- would oversee these parts and would have access to enhanced sentencing options that include short-term social service interventions -- including assessments, sessions devoted to conflict resolution, civic responsibility, mental health and vocational and education goal setting -

- as well as community service. In general, the program would seek to use short-term interventions as a springboard to voluntary engagement in longer-term services. In many instances, adolescents will be referred to teen-led youth courts where they will appear in front of a true jury of their peers and receive sanctions that are restorative and designed to engage young people in services. The utilization of youth court in Staten Island has already proven to be a highly effective criminal court disposition option.

The goal of the Adolescent Intervention Initiative is to bring some of the benefits of Family Court to Criminal Court. Given the absence of diversion options in the adult system, these new parts would create a “de facto” adjustment for cases involving young adults. By satisfying the conditions imposed by the court – attending mandated social service sessions and/or performing community service – participating defendants would be able to earn an outright dismissal of the charges or reduction in the charges to non-criminal violations.

The problem-solving approach to the delivery of justice, successfully implemented throughout the state in community courts, drugs courts and domestic violence courts, has clearly demonstrated that courts can play a significant role in changing behavior, reducing offending and helping individuals down the road to productive futures. Together with the Family Court, the original problem-solving court, New York State and City have made tremendous strides on the path to juvenile justice reform, efforts that have dramatically reduced the numbers of young people who are removed from their schools, their families and their communities. Indeed, New York City has successfully created a wide continuum of community-based care and supervision in every borough, including programs run by the Center for Court Innovation -- QUEST in

Queens and Project READY in Staten Island. These programs help teenagers charged with delinquency get back on track by providing supervision, support and services while they remain in their schools and communities. The new alternative-to-detention programming has been extremely successful. Citywide, 81% of youth in alternative-to-detention programs remain compliant with program conditions including school attendance and curfew, appear for court as directed and are not re-arrested. And additional efforts by the city and the state have reduced out of home residential placement of delinquent youth by nearly two thirds!

Judge Lippman's proposal seeks to bring those same problem-solving approaches to 16-17 year old children in the adult system. By holding young people accountable while offering targeted services and programming, the Adolescent Intervention Initiative will build upon the lessons learned through the wide-ranging reforms implemented in the city's juvenile justice system and apply those benefits to young people caught up in the adult system. Judge Lippman's Adolescent Intervention Initiative does not require legislative reform. It will provide ample opportunity to test the effectiveness of the family court model on an older adolescent population. Where family courts seek to achieve outcomes that are in the best interests of the child, the criminal court's approach has always been more retributive. These new pilots will adapt the strategies and approaches that work well in family court to 16 and 17 year olds. In New York City, the Probation Department now successfully adjusts approximately 40% of delinquency cases that come into intake. Many of these youth face the very same charges that clog the criminal courts, marijuana possession, graffiti, trespass, fare evasion and petty larceny.

There is much the criminal system can learn from the juvenile system when it comes to handling adolescents. Research in the field has consistently found that consigning adolescents to

the adult criminal justice system is a recipe for failure – it fails to improve behavior and increases the likelihood of future criminality. The time is ripe – beyond ripe – to do what 48, and soon 49 other states have chosen to do – to treat adolescents as adolescents and not pretend that they are adults. Implementing the Chief Judge’s recommendations will benefit public safety and improve the prospects for safe and productive futures for scores young people.

Thank you very much for this opportunity to speak. I would be happy to answer any questions you may have.



Testimony of

Stephanie Gendell  
Associate Executive Director  
Citizens' Committee for Children

*Re: Resolution No. 1067: Supporting New York State Chief Judge Lippman's Call to  
Raise the Age of Criminal Responsibility for Non-Violent Offenses to 18*

Before the  
New York City Council  
Juvenile Justice Committee

November 1, 2011

Good morning. I am Stephanie Gendell, the Associate Executive Director for Policy and Public Affairs at Citizens' Committee for Children of New York, Inc. (CCC). CCC is a 68-year old independent, multi-issue child advocacy organization dedicated to ensuring that every New York child is healthy, housed, educated and safe.

I would like to thank Chair Gonzalez and Members of the Juvenile Justice Committee for holding this hearing today. In addition, I would like to thank Chair Gonzalez, along with Council Members Crowley, Barron, Brewer, Cabrera, Chin, Dickens, Dromm, Ferreras, Foster, Jackson, James, Lander, Mark-Viverito, Mendez, Nelson, Palma, Recchia, Jr., Rose, Seabrook, Vann and Williams for sponsoring Resolution Number 1067, supporting New York State Chief Judge Jonathan Lippman's call on the New York State Legislature to pass and the Governor to sign legislation raising the age of criminal responsibility for nonviolent offenses to 18 and permit the cases of 16 and 17 year-olds charged with such offenses to be adjudicated in the Family Court rather than the adult criminal justice system.

CCC has long supported the principle that children must be treated like children in the justice system, and thus all children should have the opportunity to have their cases heard in Family Court pursuant to the juvenile laws of the Family Court Act rather than in the adult criminal court system. The purpose of the juvenile justice system is very different from the purpose of the adult criminal justice system. Specifically, the juvenile justice system has two purposes: to protect public safety and to meet the rehabilitative or service needs of the youth who enter the system. Notably, unlike in the criminal justice system, punishment is not one of the principles of juvenile justice.

In New York, the juvenile justice and family court systems are only serving youth who have been alleged to commit acts that would constitute crimes if they were adults between the ages of 7 and 15. Youth who are alleged to have committed such acts at ages 16 and 17 are treated as adults and are processed through the adult court and probation systems. Furthermore, youth ages 13, 14 and 15 who have committed crimes considered to be serious and violent (such as murder or rape) also have their cases heard in the adult system (unless the Supreme Court judge chooses to waive the case down to Family Court.)

New York is one of only two states in the entire country that treat 16 and 17 year olds as adults. Yet anyone who has ever interacted with a 16 or 17 year old is well aware that these youth are not adults. This is not just perception—it has been proven by the science of brain development.

Numerous brain studies have now proven that the adolescent brain is not fully developed. Specifically, the frontal lobe, which is the part of the brain that supports reasoning, advanced thought, and impulse control develops last, leaving the adolescent brain to rely heavily on its emotional center. This is why youth often have less self-control, are drawn to higher levels of risk and stimulation, have undeveloped decision-making abilities, and are bad predictors of consequences.

In many ways, the laws of New York already recognize that adolescents are not able to make the same sound judgments and decisions as adults. In New York, you need to be 21 to drink alcohol, 18 to marry without parental permission, 18 to vote and 18 to join the military.

The United State Supreme Court has recently been very deliberate in recognizing that children are different from adults, particularly with regard to the justice system. In 2005, the United State Supreme Court ruled in *Roper v. Simmons* that the juvenile death penalty was unconstitutional. Justice Kennedy wrote, "Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." Then, in 2010 the Supreme Court ruled in the case of *Graham v. Florida*, that juveniles convicted of crimes in which no one is killed may not be sentenced to life in prison without the possibility of parole. Justice Kennedy wrote, "By denying the defendant the right to reenter the community, the state makes an irrevocable judgment about that person's value and place in society. This judgment is not appropriate in light of a juvenile nonhomicide offender's capacity for change and limited moral culpability."

The Court, in part, relied upon brain science in making these rulings. "No recent data provide reason to reconsider the Courts observations in *Roper* about the nature of juveniles. As petitioners amici point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. ... Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults," the Court wrote in *Graham*.

It is now time for New York to fall in line with what has been proven by science, adopted by 48 states and recognized by the United States Supreme Court—children are different from adults and should be treated as such in the justice system. CCC applauds Judge Lippman for so publicly recognizing this and for pushing the Legislature and the Governor to make this change now. Judge Lippman is correct that children ages 16 and 17 should be having their cases heard in Family Court by Family Court Judges pursuant to the laws created for juveniles, which focus on rehabilitation, enable records to be sealed, and would enable many of the misdemeanor cases to be adjusted by the Probation Department so that they were never needlessly wasting precious court time and resources.

While CCC wholeheartedly supports Judge Lippman's proposal to raise the age of criminal responsibility for nonviolent offenses to 18, CCC is also in full support of making this proposal broader so that all youth, including those ages 13-17 charged with more serious crimes, can also have their cases heard in Family Court. This would require changing the Juvenile Offender law to a model where cases could be heard in Family Court (and perhaps waived up contrary to our current waive down model.)

Finally, CCC understands that there are a significant number of logistics, resource needs, and costs that would need to be resolved. The juvenile system would need to have enough capacity to serve these young people in alternative to detention, alternative to placement, detention facilities and placement facilities. In addition, the court system would need to have enough Family Court Judges, lawyers and space. Changing the age of criminal responsibility may require a phasing in process (e.g. first 16 year olds, then 17 year olds, then JOs) and may at first require flexibility in terms of Family Court space. While these logistics may seem daunting, we urge the City Council, State Legislature and the Governor not to let this stand in our way of doing the right thing for children. The children of New York have been waiting for 50 years to be treated like children. We must embrace the opportunity Judge Lippman's proposal has given us and work together to ensure raising the age of criminal responsibility becomes a reality.

CCC looks forward to working with the City Council, advocates, stakeholders, Judge Lippman, State legislators and the Governor to accomplish these legislative changes in the upcoming session. Thank you for this opportunity to testify.



**New York City Council Hearing**

Re: Resolution 1067-2011 supporting New York State Chief Judge Jonathan Lippman's call on the New York State Legislature to pass and the Governor to sign legislation raising the age of criminal responsibility for nonviolent offenses to 18 and permit the cases of 16 and 17 year-olds charged with such offenses to be adjudicated in the Family Court rather than the adult criminal justice system.

**November 1, 2011**

**Testimony of Gabrielle Prisco, Esq.  
Director, Juvenile Justice Project  
The Correctional Association of New York**

My name is Gabrielle Prisco. I am the Director of the Juvenile Justice Project of the Correctional Association of New York and an attorney who previously represented children in New York City's Family Court. The Correctional Association of New York is an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the New York State Legislature to inspect prisons and to report its findings and recommendations to the legislature, the public and the press. The Juvenile Justice Project is committed to reorienting New York's youth justice system away from its current largely punitive approach toward an approach in which children are treated as children, the legal remedies applied to children match relevant risk levels, racial inequalities are eliminated, and evidence-informed best practices become the norm. The Project works toward a youth justice system that is transparent and accountable to children and their families and to communities, legislators, policy-makers and the public. The youth justice system we envision is one in which no child is abused or harmed and where all children are given the tools and skills they need to succeed. I thank the Council for the opportunity to testify on the crucially important issue of raising the age of criminal responsibility in New York State.

New York is one of only two states in the nation (the other is North Carolina) that automatically prosecutes every single 16 and 17 year-old as an adult.<sup>1</sup> In addition, New York State treats children ages 13, 14 and 15 accused of committing certain serious crimes as "juvenile offenders." A child charged with one or more juvenile offenses is automatically prosecuted in adult criminal court unless their case is transferred for determination in Family Court.<sup>2</sup> 13, 14, and 15 year-olds prosecuted in adult court may be subject to lifelong criminal records. If such a juvenile offense case is waived to Family Court, the child will be charged with a Designated Felony petition (also known as an "E" petition), and will be subject to more stringent dispositional outcomes than if they were charged with an act of juvenile delinquency.<sup>3</sup>

In a recent speech, Judge Jonathan Lippman, Chief Judge of the State of New York and Chief Judge of the Court of Appeals, called for New York State to raise the age of criminal

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<sup>1</sup> New York State and North Carolina are the two states in the country where the age of criminal responsibility is 16. All 16 and 17 year-olds in New York and North Carolina are prosecuted as adults; if a young person is arrested on or after their 16<sup>th</sup> birthday in these states, any legal case attached to that arrest is heard in adult court, they can be detained or serve time in local adult jails and, if sentenced to longer than one year, can be incarcerated in state-operated adult prisons. "Thirty-eight states and the District of Columbia treat 17 year olds as juveniles. Less than 10 states continue to treat 17 year olds as adults. Illinois has recently amended its age of criminal responsibility to treat 17 year olds who commit misdemeanors as juveniles. Connecticut raised its age of criminal responsibility to 17 effective January 2010. By 2012, Connecticut will raise its age of criminal responsibility to 18." *Advancing a Fair and Just Age of Criminal Responsibility for Youth in New York State*, January 2011, Prepared by the Governor's Children's Advisory Cabinet Board. Available at:

[http://www.campaignforyouthjustice.org/documents/Advancing\\_a\\_Fair\\_and\\_Just\\_Age\\_of\\_Criminal\\_Responsibility\\_for\\_Youth\\_in\\_NYS.pdf](http://www.campaignforyouthjustice.org/documents/Advancing_a_Fair_and_Just_Age_of_Criminal_Responsibility_for_Youth_in_NYS.pdf) (last accessed 07/11/2011) citing *OJJDP Statistical Briefing Book* available at: [http://ojjdp.ncjrs.gov/ojstatbb/structure\\_process/qa04101.asp?qaDate=2007](http://ojjdp.ncjrs.gov/ojstatbb/structure_process/qa04101.asp?qaDate=2007) (released on October 31, 2009); and Illinois Public Act 95-10310 effective January 1, 2010; and Connecticut General Statutes section 46b-121.

<sup>2</sup> See Criminal Procedure Law §§ 180.75, 190.71, 210.43, 220.10, 310.85, 330.25, 725.10; and the Fund for Modern Courts. *From Arrest to Appeal: A Guide to Criminal Cases in the New York State Courts* (2005). Available at: [www.reentry.net/ny/library/attachment.79819](http://www.reentry.net/ny/library/attachment.79819) (last accessed 11/1/11).

<sup>3</sup> [http://www.nycourts.gov/courts/7jd/courts/family/case\\_types/designated\\_felony\\_act.shtml](http://www.nycourts.gov/courts/7jd/courts/family/case_types/designated_felony_act.shtml) (last accessed 11/1/11); and *Id.* (the Fund for Modern Courts).

responsibility for those young people accused of committing non-violent crimes in New York State. In his speech, Chief Judge Lippman presented a series of compelling arguments about the differences between the brain development of children and adults. Judge Lippman also articulated a number of key differences between New York State's Family Court and adult criminal court systems, highlighting the ways in which Family Court is better equipped to deal with the needs adolescents.

The Correctional Association of New York applauds Judge Lippman's courageous speech and strongly believes in the scientific research and analysis cited by the Judge as grounds for his proposal. We further believe that this body of scientific research and analysis supports raising the age of criminal responsibility for all children to the age of 18 regardless of charge severity.

A robust body of developmental research has shown that the brains of children, even in late adolescence, are not fully formed. As the American Psychological Association and the Missouri Psychological Association stated in an *Amicus Curiae* brief to the Supreme Court, adolescents lack the critical decision making and risk assessment capabilities of adults while simultaneously being more susceptible to peer pressure.<sup>4</sup> Furthermore, adolescents have not yet developed the ability to understand consequences and are less in control of impulses and aggression.<sup>5</sup> As Dr. Ruben C. Gur, neuropsychologist and Director of the Brain Behavior Laboratory at the University of Pennsylvania, states: "the evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.... Indeed, age 21 or 22 would be closer to the 'biological' age of maturity."<sup>6</sup>

"The region of the brain that is the last to develop is the one that controls many of the abilities that govern goal-oriented, "rational" decision-making, such as long-term planning, impulse control, insight, and judgment."<sup>7</sup> In addition, during adolescence, the brain is undergoing profound changes that impact the ways in which adolescents process and react to information.<sup>8</sup>

The Supreme Court recognized the growing science of adolescent psycho-social and brain development in both *Roper v. Simmons*, outlawing the death penalty for crimes committed by

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<sup>4</sup> Brief for the American Psychological Association, and the Missouri Psychological Association as Amicus Curae. *Roper v. Simmons*, 543 U.S. 551 (2005). Available at: [http://www.americanbar.org/content/dam/aba/publishing/criminal\\_justice\\_section\\_newsletter/crimjust\\_juvjus\\_simmons\\_apa\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_simmons_apa_authcheckdam.pdf)

<sup>5</sup> *Id.* (APA brief); Ortiz, Adam. *Adolescence, Brain Development and Legal Culpability*. Juvenile Justice Center of American Bar Association, Jan. 2004.

<sup>6</sup> *Id.* (Ortiz, Adam).

<sup>7</sup> Arya, Neelum. *State Trends: Legislative Changes from 2005 to 2010 Removing Youth from the Adult Criminal Justice System*, Campaign for Youth Justice (2011). Available at: <http://www.campaignforyouthjustice.org/key-research/national-reports.html#statetrends> (last accessed 11/1/11).

<sup>8</sup> *Id.* (Arya, Neelum).

persons under 18, and *Graham v. Florida*, holding that children cannot be sentenced to life without parole in non-homicide cases.<sup>9</sup>

In addition to this significant body of rigorous scientific research developed and substantiated over the course of multiple decades, ample anecdotal research exists that demonstrates teenagers make bad decisions. This anecdotal proof is easily attested to by any person who was at one time a teenager and cares to remember the experience or by anyone who has parented a teenager or knows one. Similar substantial anecdotal evidence also exists to demonstrate that teenagers are uniquely susceptible to peer pressure and make even worse decisions when acting in groups, as they tend to do.

The scientific research on adolescent brain development does not make a distinction between non-violent and violent adolescent acts. For example, the research does not distinguish between impulse control relating to the commission of a relatively minor act and impulse control relating to the commission of a more serious act. In general, the research instead supports an overarching distinction between the brain development of children and adults.

We as a society recognize this type of categorical and bright line distinction between children and adults in a myriad of legal and social situations. For example, as a society we do not allow any child under the age of 18 to vote, serve in the military, get married without parental permission, drop out of school, or, in most situations, consent to medical care. As a society, we also categorically state that all children under the age of 18 lack the sufficient maturity to make any legal contract, including a cell phone contract, view "adult" content, or attend R-rated movies without a parent. As a society, we even say that 18, 19 and 20 year-olds lack the sufficient emotional and cognitive development to legally drink alcohol or gamble.

We as a society do not draw behaviorally based distinctions in any of these myriad situations. We do not, for example, say that some children have demonstrated through their actions, an adult-like tendency, and so should be able to serve in the military, vote, or enter into a contract with AT & T. New York State, however, routinely judges a group of 13, 14, and 15 year-olds and all 16 and 17 year-olds as adults.

The Correctional Association believes that the same categorical distinction between children and adults that almost all of us instinctually recognize and can articulate (namely that all children are not adults) should form the basis of the legal framework by which all children are judged. In other words, we believe that all children, regardless of charge severity, should be judged as children and should not be subject to the same legal consequences as adults and should be housed only with other children.

Treating children as children within the legal system does not mean that children will be immune from the consequences of their actions nor does it mean that they will be immune to serious interventions designed to promote social and behavioral change. In contradistinction, treating

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<sup>9</sup> *Advancing a Fair and Just Age of Criminal Responsibility for Youth in New York State*, Prepared by the Governor's Children's Cabinet Advisory Board, January 2011 (the author of this testimony signed this publication as an advocate in support).

children as children within the legal system makes it more likely that children will receive the kinds of interventions, such as educational services and mental health and substance abuse treatment, that make re-offending less likely.

Treating children as children does not ignore the needs and voices of victims and communities. Instead and quite the opposite, it helps ensure that public safety needs of communities are met. Raising the age of criminal responsibility in New York State can reasonably be expected to lower future crime rates as opposed to increase them.<sup>10</sup> It is well documented that prosecuting children as adults does not serve as a crime deterrent. As the New York State Governor's Children's Cabinet Advisory Board states:

Strong evidence from a series of studies demonstrates that prosecuting children as adults is not a deterrent to juvenile crime, as states where it is more common to try adolescents as adults do not have lower rates of juvenile offending. This research also shows that after trial and sentencing as adults, juveniles are *more likely to re-offend sooner and for more serious offenses* than juveniles who have remained in the juvenile justice system (emphasis added).<sup>11</sup>

In his speech, Judge Lippman similarly pointed to a body of research demonstrating that children prosecuted in adult courts recidivate at higher rates, re-offend sooner, and go on to commit a greater number of serious crimes including violent crimes and felony property crimes as compared to those youth whose cases are heard in family court.<sup>12</sup>

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<sup>10</sup> A cost-benefit analysis done by the Vera Institute of Justice with regard to raising the age of criminal responsibility in North Carolina for 16 and 17 year-olds charged with non-violent crime assumed that "the recidivism rates for rearrest, reconviction, and reincarceration among 16- and 17-year-olds handled by the juvenile justice system will be 10 percent lower than the recidivism rates of 16- and 17-year-olds currently handled by the criminal justice system." The authors of the analysis stated that, "(t)his conservative assumption is based on recent literature showing that recidivism rates are lower in the juvenile system than in the adult system." The authors cite a literature review, discussed later in this testimony, by the Centers for Disease Control finding "strong evidence" that juveniles tried in adult courts have higher recidivism rates than those tried in juvenile court, with a median difference of 34 percent. Herichson, Christian and Levshin, Valerie. *Cost-Benefit Analysis of Raising the Age of Juvenile Jurisdiction in North Carolina*. Vera Institute of Justice. January 10, 2011. Available at: <http://www.vera.org/content/cost-benefit-analysis-raising-age-juvenile-jurisdiction-north-carolina> (last accessed 11/1/11) citing Centers for Disease Control and Prevention, Task Force on Community Preventive Services, "Effects on Violence of Laws and Policy Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System," *American Journal of Preventive Medicine* (April 2007): p.S14, available at <http://www.cdc.gov/mmwr/pdf/r/r5609.pdf>.

<sup>11</sup> *Id.* (Children's Cabinet) citing Fagan, Jeffrey. "Juvenile crime and criminal justice: Resolving border disputes." *The Future of Children* 18(2): 11-48; and citing Fagan, Jeffrey. 1996. "The comparative advantage of juvenile versus criminal court sanctions of recidivism among adolescent felony offenders." *Law & Policy*, 18: 77-112; and citing MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. *The changing borders of juvenile justice: Transfer of adolescents to the adult criminal court*, Issue Brief 5 available at: <http://www.macfound.org/atf/cf/%7BB0386CE3-8B29-4162-8098-E466FB856794%7D/ADJJTRANSFER.PDF> (last accessed 11/1/11).

<sup>12</sup> Judge Jonathan Lippman, speech to the Citizen's Crime Commission, September 21, 2011 available at: <http://www.nycrimecommission.org> (last accessed 11/1/11).

It is the Correctional Association's position that this body of research supports Judge Lippman's proposal as a first step and also supports a series of additional steps, including reform of New York State's current juvenile offender laws and raising the age of criminal responsibility for all 16 and 17 year-olds, regardless of charge severity.

According to the national report *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, incarcerating young people in adult facilities, which happens to 16 and 17 year-olds as a matter of law in New York State, may lead to increased violence and recidivism. "By exposing juveniles to a criminal culture where inmates commit crimes against each other, adult institutions may socialize juveniles into becoming chronic offenders when they otherwise would not have. Researchers have found that young inmates find ways to fit into the adult culture which often involves adopting an identity that hides their youthful status and forces them to accept violence as a routine part of institutional life."

The Centers for Disease Control and Prevention conducted a literature review, finding "strong evidence" that juveniles tried in adult courts have higher recidivism rates than those tried in juvenile court, with a median difference of 34 percent.<sup>13</sup>

A study compared the recidivism rates of youth in New York (where 16 and 17 year-olds are prosecuted as adults) and New Jersey (where 16 and 17 year-olds are prosecuted in family court). "The study compared youth who had committed the same serious crimes with similar backgrounds and circumstances and found that youth prosecuted in the adult courts in New York were 85 percent more likely to be re-arrested for violent crimes and 44 percent more likely to be re-arrested for felony property crimes than those prosecuted in the New Jersey juvenile courts (emphasis added)."<sup>14</sup>

Youth transferred from the juvenile justice system to the adult system are 34% more likely to be arrested for violent or other crimes,<sup>15</sup> thereby reversing the intended deterrent quality of these waiver laws.<sup>16</sup> In *Treating Juveniles as Adult Criminals: An Iatrogenic Violence Prevention Strategy if Ever There Was One*, Michael Tonry reviews the findings of the Task Force on Community Preventive Services, presenting its recommendations relating to the transfer of juveniles to the adult criminal justice system in a supplement to the American Journal of Preventive Medicine. The Task Force's key finding was that the "transfer of juvenile offenders to adult courts is harmful as a matter of public health because it increases rather than decreases

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<sup>13</sup> *Supra* 9 (Herichson, Christian and Levshin, Valerie).

<sup>14</sup> *Supra* 9 (Children's Cabinet) citing Fagan, Jeffrey. 1996. "The comparative advantage of juvenile versus criminal court sanctions of recidivism among adolescent felony offenders."

<sup>15</sup> Arya, Neelum (2011). *State Trends: Legislative Changes from 2005 to 2010 Removing Youth from the Adult Criminal Justice System*, Washington, DC: Campaign for Youth Justice.

<sup>16</sup> "The practice of transferring juveniles for trial and sentencing in adult criminal court has, however, produced the unintended effect of increasing recidivism, particularly in violent offenders, and thereby of promoting life-course ... But if it was indeed true that transfer laws had a deterrent effect on juvenile crime, then some of these offenders would not have offended in the first place." Redding, Richard E., *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, U.S. Department of Justice Office of Justice Programs Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin. June 2010. Available at: <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>

levels of criminal violence.”<sup>17</sup>

In addition to the increased risk to public safety when children are prosecuted as adults, research demonstrates that youth housed in adult facilities face great physical and mental danger. According to national expert, Professor Michele Deitch, children housed in adult prisons are fifty percent more likely to face an armed attack from another inmate and twice as likely as adult inmates to face physical assault by prison staff.<sup>18</sup> According to the federal Prison Rape Elimination Act, youth housed in adult prisons are five times more likely to be sexually abused or raped than their counterparts in youth centers.<sup>19</sup>

According to the national report, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, youth are also thirty-six times more likely to commit suicide in an adult jail than they would in a youth facility.<sup>20</sup> Jonathan McClard is one such young person. Jonathan McClard hung himself in his jail cell inside an adult prison in Missouri three days after his 17<sup>th</sup> birthday, very soon after he was denied the opportunity to participate in a locked program with a rehabilitative approach and was instead sentenced to 30 years in an adult prison for shooting another teenager.<sup>21</sup> Jonathan had already endured physical abuse while detained in an adult jail and had witnessed the abuse of others. During a visit, “Jonathan told his mother he once saw an inmate dragged by some other inmates completely out of his view and after a series of loud screams, that inmate returned with a face so bloodied and beaten it was unrecognizable.”<sup>22</sup>

Tracy McClard, Jonathan’s mother, has since quit her job as a schoolteacher to devote herself to changing the kinds of laws that led to her son’s suicide and to ensure that no other parent has to bear her kind of loss. Unfortunately, Jonathan is only one of a number of this country’s children who have committed suicide while in an adult jail or prison. Although children like Jonathan who have committed serious and violent crimes are in need of serious interventions, services and supervision, prosecuting these children as if they were adults and incarcerating them alongside full-grown adults is poor public policy.

In addition, in New York State, only some children prosecuted as adults are eligible to have their records sealed. With a criminal record, youth see many of their life chances drastically compromised.<sup>23</sup> Children who receive criminal convictions can have difficulty securing employment for their entire lives, face voting restrictions, be denied federal loans including student loans, and become ineligible for housing assistance. Children who are non-citizens may

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<sup>17</sup> Tonry, Michael. *Treating Juveniles as Adult Criminals: An Iatrogenic Violence Prevention Strategy if Ever There Was One*, American Journal of Preventative Medicine, 32, 4S, 2007.

<sup>18</sup> Deitch, Michele, et.al. (2009). *From Time Out to Hard Time: Young Children in the Adult Criminal Justice System*, Austin, TX: The University of Texas at Austin, LBJ School of Public Affairs

<sup>19</sup> Prison Rape Elimination Act of 2003, PL 108-79, 117 Stat. 972 (2003)

<sup>20</sup> Arya, Neelum. *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America. The Campaign for Youth Justice* Nov. 2007, 7-8.

<sup>21</sup> Campbell, Orlando. *A Son's Suicide Inspires Mother To Fight For Juvenile Justice*, Youth Radio International/Huffington Post, April 26th, 2010.

<sup>22</sup> *Id.* (Youth Radio/Huffington Post)

<sup>23</sup> Allard, Patricia and Young, Malcolm. “*Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners.*” *Journal of Forensic Psychology Practice*, vol. 65, no. 73, (2002).

be deported. In addition to all of the individual harms to children caused by these far-reaching and often lifelong collateral consequences, these kinds of secondary consequences can lead to increased recidivism.

The consequences and harms of New York State's current age of criminal responsibility are disproportionately borne by children of color. Both the current youth justice system and the adult criminal justice system are characterized by deep and longstanding racial and ethnic inequities. Although the term "disproportionate minority contact" or "DMC" for short is often used to describe this situation, the truth is that, in many jurisdictions throughout the nation including many in New York State, children of color almost exclusively populate the youth justice system. In youth facilities operated by New York State's Office of Children and Family Services ("OCFS") during a select period in 2010, over 83% of youth identified as African American or Hispanic.<sup>24</sup> At the city level, 91% of New York City youth admitted to OCFS youth facilities between July 2010 and September 2010 identified as African-American.

In addition to being disproportionately represented in the system, children of color receive unequal justice: white children who are system involved generally receive better outcomes, such as a reduced likelihood of detention or incarceration, even when arrested and prosecuted for the same category of offense.<sup>25</sup> Youth of color are discriminatorily treated at all points of the system. Youth of color have a higher case rate, are more frequently detained, are more likely to have their case petitioned in court, and are consistently waived into the adult system at higher rates than white youth.<sup>26</sup> *African-American youth represent only seventeen percent of the overall youth population, they make up thirty percent of those arrested and sixty-two percent of those prosecuted in the adult criminal system.* African-American youth are also nine times more likely than white youth to receive an adult prison sentence.<sup>27</sup> The disadvantages that attach to children in the system simply because they are black or Latino/a have been demonstrated to increase the deeper into the system they move.<sup>28</sup> These disadvantages may attach to discretionary decisions to prosecute children as adults.

This unequal racial breakdown of arrest, detention, and incarceration rates does not reflect the racial breakdown of crime rates. Studies demonstrate that youth of color are punished more harshly than white youth even when arrested and prosecuted for the same category of offense. For example, research clearly demonstrates that white youth use drugs at a slightly higher rate

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<sup>24</sup> *Youth in Care Report; Selected Characteristics of Youth Entering and Leaving OCFS Custody Jul 10-Sep10 or in Custody on Sept 30, 2010 and the Same Periods Last Year.* New York State Office of Children and Family Services.

<sup>25</sup> Sickmund, Melissa, and Puzanchera, Charles. *Juvenile Court Statistics 2005.* Report. National Center for Juvenile Justice. July 2008. Accessible at: <https://www.ncjrs.gov/pdffiles1/ojdp/224619.pdf>. (Last accessed 7/25/11).

<sup>26</sup> *Id.* (Sickmund and Puzanchera)

<sup>27</sup> The Campaign for Youth Justice, *Youth of Color Are Disproportionately Impacted by These Policies*, last accessed October 19, 2011, at <http://www.campaignforyouthjustice.org/documents/Disproportionate-Impact-on-Youth-of-Color.pdf>

<sup>28</sup> The National Council on Crime and Delinquency. (2007). *And Justice for Some: Differential Treatment of Youth of Color in the Justice System.* Available at: [http://www.nccdcrc.org/nccd/pubs/2007jan\\_justice\\_for\\_some.pdf](http://www.nccdcrc.org/nccd/pubs/2007jan_justice_for_some.pdf). Last accessed, October 17, 2011.



than African American youth, and are more than thirty-three percent (a third) more likely to sell drugs than African American youth.<sup>29</sup> Despite the clear fact that white youth use and sell drugs more frequently than youth of color, African American youth are arrested for drug offenses at approximately twice the rate of white youth and represent nearly half (forty-eight percent) of all the youth incarcerated nationally for a drug offense in the youth justice system.”<sup>30</sup> In addition, black youth are more likely to be processed, detained, *waived to criminal court* and sentenced to out-of-home placement for drug offenses than white youth.<sup>31</sup>

This research makes a number of points very clear. The first is that the issue of racial and ethnic disparities must be part of all systemic youth and criminal justice reform efforts. The second is that any consideration of a transfer or waiver system by which judges will have the discretion to move the cases of some children to adult court (or, in the alternative, the discretion to move the cases of some children to family court as can currently happen with juvenile offenders), must include specific mechanisms to ensure that this discretion is equally available and applied to all children.

Based on the extensive scientific and social scientific research demonstrating that both children and the public fare better when children are treated as children, the Correctional Association of New York supports the following policy recommendations:

1. *New York State should raise the age of criminal responsibility to 18 years of age for all youth, regardless of charge severity.*
2. *All applicable laws should be reformed to ensure that no child under the age of 18 can be held in an adult jail or prison, regardless of the severity of the act of delinquency or crime that child may have committed.*
3. *Any system handling the case of a child should operate as a child-serving system.* There is a profound need to shift the philosophical, operational and programmatic orientation of New York’s justice system so that it recognizes and is responsive to the unique behavioral and developmental needs of children. Every aspect of the system including its policing practices, courts, community-based programs, and residential facilities should reflect the distinct social, emotional, and developmental needs of

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<sup>29</sup> Results from the 2004 National Survey on Drug Use and Health: National Findings. (2005; Substance Abuse and Mental Health Services Administration, NSDUH Series H-28, DHHS Publication No. SMA 05-4062). Accessible at <http://oas.samhsa.gov/nsduh/2k4nsduh/2k4results/2k4results.htm#2.7>. (Last accessed 7/26/11) and National Household Survey on Drug Abuse, 1999. D.C.: Substance Abuse and Mental Health Services Administration, Table G. 71, 2000. “Rates of current illicit drug use... were 8.1 percent for whites, 7.2 percent for Hispanics, and 8.7 percent for blacks. Asians had the lowest rate at 3.1 percent.”

<sup>30</sup> Crime in the United States, 2001. (2002) Washington, DC: U.S. Justice Department, FBI. Puzanchera, C., Finnegan, T. and Kang, W. (2005); Easy Access to Juvenile Populations, Available at: <http://www.ojjdp.ncjrs.org/ojstatbb/eza>

pop/; Sickmund, Melissa, Sladky, T.J., and Kang, Wei. (2004) Census of Juveniles in Residential Placement Data book. Available at: <http://www.ojjdp.ncjrs.org/ojstatbb/cjrp/>

<sup>31</sup> Sickmund, Melissa, and Puzanchera, Charles. Juvenile Court Statistics 2005. Report. National Center for Juvenile Justice. July 2008. Available at: <https://www.ncjrs.gov/pdffiles1/ojjdp/224619.pdf>. (Last accessed 7/25/11).

children, including those children who have engaged in serious acts of delinquency or crime. All jurisdictions within the state should create and fund a robust continuum of preventive, supervision and treatment services developed specifically for children, including children accused and convicted of more serious acts of delinquency or crime. Police precincts, courts, youth justice agencies, and other stakeholders should be given the training, tools and resources to effectively assess and serve youth in ways that match both their need and risk level, while simultaneously ensuring that a child's need for help does not become a proxy for their risk to society.

4. *Clear diversion mechanisms from the justice system should be developed, regularly analyzed and, if necessary, modified.*

The youth justice system has become a frequent stand-in for services that children and their families should be receiving in other systems. Children should not enter or remain in the youth justice system simply because they or their families are in need of mental health, educational, substance abuse or child welfare services or they have committed a low-level misdemeanor. Clear and effective methods for diverting these children from the youth justice system should be in place. If New York State raises the age of criminal responsibility, as we very much believe it should, it is important that clear diversion mechanisms be explicitly developed and that their efficacy be regularly analyzed, with modifications made as necessary.

5. *The collection and public release of arrest and court-related data should be legally mandated. If the age of criminal responsibility is raised and a transfer or waiver provision is implemented, data related to the race, ethnicity, sex, geography, offense, and (when available) LGBTQ status of children who are discretionally transferred or waived must be routinely analyzed and publicly released.*

In conclusion, the Correctional Association respectfully submits that the needs of both children and the public would be far better served if all children were legally judged and treated as children. As a substantial body of research clearly demonstrates, New York State's current practice of prosecuting and incarcerating large numbers of children as adults leads to poor individual outcomes for those children and increased violence and crime for society as a whole. It is not enough, however, to simply shift the prosecution of children from adult to family court or to change the laws that govern the treatment of juvenile offenders and 16 and 17 year-olds. As this body and other stakeholders consider proposals to raise New York's age of criminal responsibility, it is crucial that these proposed changes be viewed in the context of broader systemic reforms. Successful outcomes for children and for society depend on a long-term and sustained investment in services and interventions that have been proven to work, on effectively matching children to the appropriate services and interventions, on eliminating racial and ethnic disparities, and on changing the underlying culture of the justice system so that children are seen as possibilities, not problems.

# Testimony of the Children's Defense Fund – New York

Avery Irons

Director of Youth Justice Programs

Juvenile Justice Committee Oversight Hearing

New York City Council

November 1, 2011

15 Maiden Lane, Suite 1200  
New York, NY 10038  
(212) 697-2323  
[www.cdfny.org](http://www.cdfny.org)

Good morning. My name is Avery Irons and I am the Director of Youth Justice Programs at the Children's Defense Fund- New York (CDF-NY). The Children's Defense Fund's Leave No Child Behind® mission is to ensure every child a *Healthy Start*, a *Head Start*, a *Fair Start*, a *Safe Start* and a *Moral Start* in life and successful passage to adulthood with the help of caring families and communities. I would like to thank Chair Gonzalez for calling this hearing on raising New York's age of criminal responsibility.

CDF-NY appreciates Chief Judge Jonathan Lippman's willingness to take such a visible stance on such a highly charged and complicated justice reform issue. His September 21<sup>st</sup>, 2011 announcement has added fuel to raise the age discussions taking place in the halls of government and in communities. Last year over 45,000 16 and 17 year-olds were charged as adults in New York State. Raising the age for 16- and 17-year-olds charged with misdemeanors and non-violent felonies would keep scores of thousands of adolescents out of New York's adult criminal justice system. CDF-NY agrees with the Chief Judge's urgency and goals, however, we also believe that any legislation to raise the age of criminal responsibility should also include 13, 14, and 15 year-olds charged as juvenile offenders, and 16 and 17 year-old charged with violent felonies.

We firmly believe in accountability for young people who commit crimes, however, we also know that all children, even those with violent charges, are capable of redemption. We must be nuanced in our discussion of youth charged with violent crimes. According to the New York State Division of Criminal Justice Service, 598 youth were charged as juvenile offenders in New York City in 2010. Of those 598 young people:

77 percent were charged with robbery (463)

13 percent were charged with assault (75)

3 percent had a weapons charge (15)

1 percent was charged with homicide (8)<sup>1</sup>

CDF-NY urges elected officials to design and implement a meaningful and thorough raise the age planning process that includes system official, community members, and advocates. Doing so would give the state and localities the opportunity to determine appropriate juvenile justice system responses and processes for all youth- including those convicted of violent crimes. Over the years, the city and state have increasingly realized the complex life situations and varying levels of risk and need that many court-involved youth present. Both the city and state have invested heavily in the creation of pre- and post-dispositional opportunities that allow courts and programs to treat young people as individuals and utilize the programs and services that are responsive to their individual needs and actually address the issues underlying a youth's behavior. Automatically prosecuting youth as adults based on charge, does not allow for the individual attention that has been recognized as necessary and effective in reducing youth crime and recidivism.

### **Collateral Consequences that Last**

Court designated consequences are expected when young people are adjudicated delinquent or convicted of a crime. The court has the power to order an alternative program, prison, probation, parole, community service, and etc. System and community stakeholders alike tend to think that the consequences will be fair, just and help young people get back on a path to success. However, there are many consequences that are not necessarily in the contemplation of the system or communities when a young person is convicted as an adult.

### **Conditions of Confinement**

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<sup>1</sup>Division of Criminal Justice Services. "Juvenile Justice Annual Update for 2010." Available at <http://www.dpca.state.ny.us/pdfs/jjagpresentation16jun11.pdf>

There are serious, documented dangers associated with detaining and incarcerating youth with adults. In 2007, the Campaign for Youth Justice (CYJ) released a national report detailing the risks of incarcerating youth in adult jails. Youth in New York's system face the same risks.

*Disproportionate rates of sexual victimization*

A national study found that in 2005 and 2006, juveniles constituted just one percent of jail populations. However, in 2005 they were 21 percent of those subject to inmate-on-inmate sexual violence. In 2006, 13 percent were victims of sexual abuse.<sup>2</sup>

*Increased incidence of suicide*

When compared to their counterparts in the general population, adolescents in jail are 19 times more likely to commit suicide. Comparisons between youth in juvenile facilities and youth in adult jails show that the latter are 36 times more likely to commit suicide. A ten-year survey of suicides in NYS DOCS custody found that 14 of the 121 (almost 12 percent) successful suicides were committed by people between the ages of 16 and 24.<sup>3</sup>

*Increased criminal sophistication*

Holding youth with adults provides more opportunities for youth to pattern themselves after adults who have more sophisticated criminal skills. It also forces them to adapt to environments with heightened rates of violence. The rates of violence in the Robert N. Davoren Center (RNDC) pre-trial adolescent unit on Rikers Island are well documented. Quarterly incident reports issued by the NYC Department of Correction (NYC DOC) reveal consistent and pervasive rates of violence in the RNDC. In the first quarter of Fiscal Year 2012, there were 323 fight infractions written in the RNDC specifically. During this same time period seven (7) youth had serious injuries resulting from adolescent fights, and there were 42 incidences in which NYC DOC staff utilized chemical agents.<sup>4</sup> These numbers force us to

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<sup>2</sup> The Campaign for Youth Justice. "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America." Available at [http://www.campaignforyouthjustice.org/documents/CFYJNR\\_JailingJuveniles.pdf](http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf). November 2007.

<sup>3</sup> NYS Department of Corrections. "Inmate Suicide Report: 2000-2009." Available at [http://www.docs.state.ny.us/Research/Reports/2010/Inmate\\_Suicide\\_Report\\_2000-2009.pdf](http://www.docs.state.ny.us/Research/Reports/2010/Inmate_Suicide_Report_2000-2009.pdf)

<sup>4</sup> NYC Department of Corrections. FY 2011 1<sup>st</sup> Quarter Statistics. Available at [http://www.nyc.gov/html/doc/downloads/pdf/1st\\_QTR\\_ADOL\\_FY2012.pdf](http://www.nyc.gov/html/doc/downloads/pdf/1st_QTR_ADOL_FY2012.pdf)

consider our assumptions about the adolescents on Rikers Island. Either we think that the current system is justified because they are out-of-control, irredeemable threats to public safety; or the system is an abomination that forces young people to adapt and survive inhumane conditions of confinement with few support services and little hope for their prospects once they return to their communities.

### Long-term consequences

The consequences of charging youth as adults don't end when they exit a jail or prison, or even when they are completely out of the system.

#### *Employment Opportunities*

Unlike their counterparts processed in the juvenile system, youth with unsealed adult arrests and convictions must disclose this information on job applications, possibly for the rest of their lives. Youth convicted as adults in New York, will have to report this conviction even if they move to a state that has a higher age of adult criminal responsibility.

#### *Education*

A young person's eligibility for financial aid can be revoked (temporarily or permanently), if while receiving federal financial aid, a young person is convicted of possessing or selling a controlled substance (including marijuana).<sup>5</sup> In addition, public and private colleges across the US have varying policies on disclosure of convictions and how arrests and convictions can affect a student's application. For example, the State University of New York application requires that students with an *adult* felony conviction supply additional information that convinces the school that they are not a threat to public safety.

#### *Immigration*

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<sup>5</sup>Reentry.net/NY. "People's Guide to the Consequences of Criminal Proceedings." Available at <http://www.reentry.net/ny/help/>

Unlike juvenile convictions, adult convictions count for immigration purposes. An unsealed conviction can hinder a youth's chances to gain asylum, or Lawful Permanent Resident status and/or US citizenship.

### *Housing*

Adults convicted of committing a felony drug offense "on or adjacent to NYCHA building and grounds" can be banned from public housing facilities. NYCHA can also subject adults with multiple misdemeanors and violations to a five year ban<sup>6</sup>. These policies also apply to adolescents tried as adults. Such policies can for a parent to choose between stable housing and bringing their child home for care and support and supervision from the family unit.

### **Racial and Ethnic Disparities**

In New York City, the consequences of charging youth as adults fall almost exclusively on youth and communities of color. There is little publicly available information on racial disparities for adolescents prosecuted in the adult system; however, it is reasonable to expect that the disparities do not differ significantly from those seen in the juvenile justice system.

In 2010, youth of color comprised over 95 percent of the youth admitted to the New York City Division of Youth and Family Justice. However, youth of color account for only 64 percent of the City's youth population. Nearly half of the youth entering New York's juvenile justice system come from just 15 of the city's community districts.

Across New York State, youth of color are 1.98 times more likely to be arrested than white youth. They are 4.77 times more likely to be detained, and 4.47 times more likely to be incarcerated than their white counterparts.<sup>7</sup> In 2010, 49.2 percent of people released for the first time from the New York State Department of Corrections (NYS DOCS) originally came from New York City.<sup>8</sup> Over 75 percent

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<sup>6</sup> New York City Housing Authority. Frequently Asked Questions from Public Housing Residents. Available at [www.nyc.gov/html/nycha/html/residents/](http://www.nyc.gov/html/nycha/html/residents/)

<sup>7</sup> Courtney E. Ramirez, New York State Division of Criminal Justice Services. "Disproportionate Minority Contact." Powerpoint Presentation. Available at <http://www.nysjjag.org/our-work/disproportionate-minority-contact/masca-conference-dmc-presentation.pdf>

<sup>8</sup> NYS Department of Corrections, "Statistical Overview: Year 2010 Discharges." Available at [http://www.docs.state.ny.us/Research/Reports/2011/Statistical\\_Overview\\_Discharges.pdf](http://www.docs.state.ny.us/Research/Reports/2011/Statistical_Overview_Discharges.pdf)



of the people in NYS DOCS custody are Black and Latino.<sup>9</sup>

It currently costs \$266,000 per year per bed in youth prisons operated by the New York State Office of Children and Family Services. It costs \$44,000 to per year per bed in adult prisons.<sup>10</sup> Urgently needed dollars are diverted from a handful of New York City communities into the juvenile and criminal justice systems and upstate economies. In return these New York City communities must absorb, support and reintegrate hundreds of returning people in a dismal fiscal climate where jobs are scarce and programs and services are cut more and more each year.

### Opportunity and Process

The prospect of bringing tens of thousands of young people into the juvenile justice system is daunting. However, it presents opportunities to make much needed reforms at all points in the juvenile justice system. CDF-NY supports a raise the age process that provides for a thoughtful and community inclusive mechanism to ascertain the necessary reforms, statutory, and policy changes.

Such a process would ensure that the juvenile justice system does not inappropriately widen the “net” and “catch” thousands of 16 and 17 year-olds with low-level charges. It would also ensure the opportunity to meaningfully reform the Family Court system so that we can ensure that no youth linger in detention or unnecessarily penetrate the deep end of the system. States around the country have used various processes to raise their age. For instance, Connecticut passed legislation raising its age of criminal jurisdiction by a certain date, allocated time for state agencies to negotiate statutory and policy changes, and staggered the entry of 16 and 17 year-olds into its juvenile justice system.<sup>11</sup> North Carolina, the only other state that automatically charges 16 year-olds as adults, legislatively commissioned a body to study raising its age of criminal responsibility. Legislation to raise the age is pending.

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<sup>9</sup>NYS Department of Corrections, “Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2011.” Available at [http://www.docs.state.ny.us/Research/Reports/2011/UnderCustody\\_Report.pdf](http://www.docs.state.ny.us/Research/Reports/2011/UnderCustody_Report.pdf)

<sup>10</sup> Drop the Rock. “The Campaign to Repeal the Rockefeller Drug Laws.” Available at <http://droptherock.ipower.com/wp-content/uploads/2009/04/dtr-fact-sheet-2009.pdf>

<sup>11</sup> The Connecticut Juvenile Justice Alliance. “Powerpoint on Raise the Age Implementation.” Available at <http://www.ctjja.org/legislative.html>. Sixteen year-olds entered Connecticut’s juvenile justice system in January 2010. Seventeen year-olds will be integrated into the juvenile justice system in July 2012.

New York stands on the brink of momentous change. We have the opportunity to right decades of wrong, and end the legal process by which the futures of thousands of young people are thrown away each year. We must be thoughtful, unwavering and we must be brave. We must be everything that we ask young people with adult convictions to be when they return to society traumatized and stigmatized.

Thank you for the opportunity to present this testimony.

### Recommendations

- 1) Support raising the age for all of New York's children. Just and effective accountability can only be gained through an understanding of the individual needs and circumstances underlying a young person's actions.
- 2) Urge the state to design and utilize a thoughtful study and planning process by which the necessary statutory reforms and policy changes can be ascertained and implemented. Participants in this planning process should include youth, family members, community stakeholders, and advocates.
- 3) Require all New York City juvenile justice related agencies to report data by race, ethnicity, gender, geography and offense at all decision-making points.
- 4) Support increased development of local community-based programs that can successfully supervise youth charged as juvenile offenders and 16 and 17 year-olds with violent charges, when appropriate.

CAMPAIGN FOR  
**YOUTH JUSTICE**

BECAUSE THE CONSEQUENCES AREN'T MINOR

**TESTIMONY**

**LIZ RYAN**  
**CAMPAIGN FOR YOUTH JUSTICE**  
**BEFORE THE NEW YORK CITY JUVENILE JUSTICE COMMITTEE**

**NOVEMBER 1, 2011**

Thank you for providing me the opportunity to testify today on behalf of the Campaign for Youth Justice. My name is Liz Ryan and I am the President and CEO of the Campaign for Youth Justice, a national organization working to reduce the number of youth prosecuted in adult court and to promote more effective approaches in the juvenile justice system as an alternative. The youth who are tried, sentenced or incarcerated in adult jails and prisons are a population that “falls through the cracks.” These young people are not considered part of the juvenile justice system. To date, there unfortunately has been very limited advocacy on behalf of this population. Our organization was founded seven years ago to address this need.

Today I would like to share with you our organization's perspectives on Judge Lippman's proposal in light of the latest research findings on youth in the adult criminal justice system, legislative and policy trends from across the states, and public opinion research as you explore ways to address the critical needs of children in New York.

According to the latest research, here is what we know:

There is no national data on the prosecution of youth in adult criminal court. The U.S. Department of Justice's Bureau of Justice Statistics (BJS) has launched a national data collection effort that is designed to get at this but it is a few years away from completion. Currently very few states (slightly more than a dozen) collect data on this population. A recent Office of Juvenile Justice and Delinquency Prevention (OJJDP) analysis shows that only 13 states collect data on youth in adult criminal court. This report is attached to my testimony and is available online on OJJDP's website at [www.ojjdp.gov](http://www.ojjdp.gov). These data gaps make it challenging to assess trends as well as to adequately compare across states.

Of the data that has been collected in other states, both those cited in the OJJDP study and several other states where researchers have begun to collect and analyze this data, there are some important points to note:

Researchers estimate that roughly 250,000 youth are prosecuted in the adult criminal justice system every year and on any given day, approximately 10,000 youth are held in adult jails and prisons. In New York state alone, over 47,000 16 and 17 year olds are automatically prosecuted in adult criminal court every year and nearly 1,000 youth ages 13 to 15 are prosecuted in adult criminal court for certain crimes.

Youth of color are most disparately impacted by policies that require the prosecution of youth in adult court and placement in adult jails and prisons.

In 2008, CFYJ launched a "Race & Ethnicity" policy brief series to document the disparate impact of prosecuting youth of color in the criminal justice system. The results are devastating and show overwhelming and growing disparities at

every stage in the juvenile justice system, with the most disparate impact at the point of transfer to adult court.

In CFYJ's report, "Critical Condition: African – American Youth in the Justice System" released in September, 2008 with the NAACP at the Congressional Black Caucus Foundation's annual meeting, key findings show that:

- African-American youth overwhelmingly receive harsher treatment than white youth in the juvenile justice system at most stages of case processing;
- Although the overall juvenile arrest rate has remained near a 25-year low, the disparities between white and black arrest rates in 2006 were at the highest point in a decade;
- According to self-report surveys, African-American youth do not engage in more delinquent behavior overall than white youth;
- Although there is no national data system on youth tried in the adult system, all available evidence suggests that African-American youth are disproportionately impacted by transfer policies; and
- If present trends continue, one out of every three African-American males born today can expect to spend time in prison.

Further, in CFYJ's report "America's Invisible Children: Latino Youth and the Failure of Justice" released with the National Council of La Raza at a national briefing with the Congressional Hispanic Caucus in May, 2009, key findings show that:

- On any given day, close to 18,000 Latino youth are incarcerated in America;

- One out of every four (24%) incarcerated Latino children is held in an adult prison or jail even though youth in adult facilities are in significant danger of suicide and rape;
- Latino youth are overrepresented in the U.S. justice system and receive harsher treatment than white youth;
- Nine out of ten (90%) Latino youth ages 10 to 17 live in states that permit the pre-trial detention in adult jails for youth prosecuted in the adult system.

The consequences of an adult conviction for a youth are serious, negative and life-long. Youth tried as adults face the same punishments as adults. Unfortunately in the majority of states across the country, including here in New York, youth can be placed in adult jails pre- and post-trial, sentenced to serve time in adult prisons, or be placed on adult probation with few to no rehabilitative services. Youth also are subject to the same sentencing guidelines as adults and may receive mandatory minimum sentences or life without parole. The only consequence that youth cannot receive is the death penalty. When youth leave jail or prison, are on probation, or have completed their adult sentences, they carry the identical stigma as adults of an adult criminal conviction. They often have difficulty finishing school or gaining access to a college education as they may be denied scholarship funding or admissions to universities.

Contrary to popular perceptions, the overwhelming majority of youth who enter adult court, and even those who are ultimately convicted, are not there for the serious, violent crimes. The national data show that as many as half of the youth

transferred to adult court will be sent back to the juvenile justice system or not convicted at all.

Yet most of these youth will have spent at least one month in an adult jail, and one in five will have spent over six months in an adult jail. An important finding is that many youth incarcerated in adult facilities serve no longer than the maximum time they would have served in a juvenile facility. In fact, nearly 80% of youth were released from adult prison before their 21<sup>st</sup> birthday, and 95% of youth were released before their 25<sup>th</sup> birthday. So while 5% of the young people who are convicted as adults are serving long sentences, 95% of youth convicted in the adult system are serving sentences comparable to those of youth adjudicated in the juvenile court system. In fact, the average sentence length nationwide is 2 years and 8 months for youth convicted as adults.

While facing similar circumstances as adults, youth are among the most vulnerable populations in adult jails and prisons. According to the Bureau of Justice Statistics (BJS), 21% and 13% of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005 and 2006 respectively, were youth under the age of 18 (surprisingly high since only 1% of jail inmates are juveniles). And youth have the highest suicide rates of all inmates in jails. Youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility, and 20 times more likely to commit suicide in an adult jail than youth in the general population. In the past six months, we know of 3 teen suicides in adult jails alone.

To underscore this point, on June 23, 2009, the National Prison Rape Elimination Commission (NPREC) issued its final report to Congress and the

Administration highlighting the fact that youth (under 18) are at the greatest risk of sexual assault in adult jails and prisons. With some 10,000 youth in adult jails or prisons on any given day, one remedy, the NPREC report cites is to “at a minimum” separate youth from adults. But the NPREC report also cites strong concerns that correctional administrators, in order to protect youth, might place youth in isolation or in solitary confinement, which could be detrimental to youths’ mental health. As an alternative, the NPREC recommends instead that correctional administrators consider placing youth in facilities more suited to their needs, such as juvenile detention or juvenile correctional facilities.

In several of the state studies we looked at, a number of youth prosecuted in adult court are charged with one offense which gets them into adult court, and are convicted of an offense for which they would not have been in adult court in the first place.

Additionally, in several states, for example, Maryland, where a 'reverse waiver' provision gives adult criminal court judges the authority to review cases and send youth back to juvenile court in some instances, we are seeing the majority of youth sent back to juvenile court.

A number of these youth, for example in Texas, are first-time offenders. In other words, these youth have not even had the opportunity to obtain services in the juvenile justice system. They have taken the direct route to adult criminal court.

And a vast majority of these youth are placed on adult probation where they will receive few to no youth appropriate services and therefore, more likely to re-



offend. If so many youth are placed on adult probation that calls into question prosecuting them in adult criminal court in the first place.

An overwhelming body of research shows that prosecuting youth as adults does not work. This research has been conducted all over the country, including in New York state by Dr. Jeffrey Fagan of Columbia University. Over the past several years, we have witnessed a steady stream of research demonstrating unequivocally that trying and sentencing children in adult court does not reduce crime; in fact, it does just the opposite. Trying youth as adults has both a detrimental impact on the youth tried as adults and harms public safety.

In 2007, the Centers for Disease Control and Prevention (CDC) Task Force on Community Preventive Services examined every study on transfer policies that was in a published journal or had been conducted by a government agency, and the task force checked to make sure each study compared the same kind of youth charged with comparable offenses, recognizing that youth who are transferred to the adult court may be charged with more serious offenses, or may have more serious backgrounds that make them different from youth in the juvenile system. The CDC review made sure that those factors were taken into consideration when it was doing its analysis.

After assessing all the research, the CDC task force recommended “against laws or policies facilitating the transfer of juveniles from the juvenile to the adult judicial system.” Among the key findings of the report were the following conclusions:

- Transferring juveniles to the criminal justice system jeopardizes public safety because youth are more likely to commit additional crimes if prosecuted in the adult system. The task force found that juveniles transferred from the juvenile court system to the criminal system are approximately 34 percent more likely than youth retained in the juvenile court system to be rearrested for violent or other crime.
- Widening use of transfer policies puts youth directly in danger because juveniles are often victimized in adult facilities, and are at a much higher risk for suicide. The review found that youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.
- The CDC review found insufficient evidence to support the “deterrence theory” used as a common rationale for expanded transfer policies. The “deterrence theory” suggests that expanded transfer methods act as a general deterrent to prevent youth from committing crimes in the first place. The review found this not to be true, as well as finding no evidence to support a specific deterrence effect on youth who are tried in the adult system.

The task force thus concluded that “to the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good,” and “the use of transfer laws and strengthened transfer policies is counterproductive to reducing juvenile violence and enhancing public safety.”

The following year, the Department of Justice's Office of Juvenile Justice and Delinquency Prevention released a research bulletin and the findings mirrored those in the CDC report also finding that laws that make it easier to transfer youth to the adult criminal court system have little or no general deterrent effect, meaning they do not prevent youth from engaging in criminal behavior.

Youth transferred to the adult system are more likely to be rearrested and to reoffend than youth who committed similar crimes, but were retained in the juvenile justice system. In addition, the report explored why youth have higher recidivism rates. Higher recidivism rates are due to a number of factors including:

- Stigma and negative labeling effects of being labeled as a convicted felon
- A sense of resentment and injustice about being tried as an adult
- Learning more criminal behaviors from incarceration with adults
- Decreased access to rehabilitation and family support in the adult system
- Decreased employment and community integration opportunities due to a felony conviction.

After reviewing the research, OJJDP also concluded, "To best achieve reductions in recidivism, the overall number of juvenile offenders transferred to the criminal justice system should be minimized. Moreover, those who are transferred should be chronic repeat offenders – rather than first-time offenders – particularly in cases where the first-time offense is a violent offense."

The Brookings Institution and The Woodrow Wilson School of Public and International Affairs at Princeton University, also released a policy brief entitled

“Keeping Adolescents Out of Prison.” This brief discussed the history and purpose of the juvenile justice system which is to recognize the differences between youth and adults. These differences have been highlighted in recent years through research that has found major disparities between how youth and adults brains functions. On the topic of trying youth as adults, the report stated that “at a minimum the practice of harsh sentences for adolescents does not work; it may even be counterproductive.” Indeed the report recommends that “[a]bove all, youth should be kept out of the adult criminal system unless they have committed repeat violent offenses. This course of action is especially recommended because most youth who commit criminal offenses will abandon illegal behavior at roughly the same age as they exit adolescence.”

In light of the research, particularly the data showing that youth prosecuted in adult criminal court are much more likely to re-offend than similarly situated youth in the juvenile justice system, a number of states have begun to re-examine their states policies and several states have changed their policies. States across the country have passed legislation that help youth in the adult system over the past five years and we will be issuing a report in the fall about these trends.

In April, we released *State Trends: Legislative Changes from 2005 to 2010 Removing Youth from the Adult Criminal Justice System* documenting state policy reforms in fifteen states over the past five years. Since the report was released, four more states (AZ, OH, OR, and TX) passed legislation as well. Altogether, thirty individual pieces of legislation were passed and became law in 17 states:

Trend 1: Colorado, Maine, Virginia, Pennsylvania, Texas and Oregon have passed laws limiting the ability to house youth in adult jails and prisons.

Trend 2: Connecticut, Illinois and Mississippi have expanded their juvenile court jurisdiction so that older youth who previously would be automatically tried as adults are not prosecuted in adult criminal court.

Trend 3: Arizona, Colorado, Delaware, Illinois, Indiana, Nevada, Utah, Virginia, Ohio and Washington have changed their transfer laws making it more likely that youth will stay in the juvenile justice system.

Trend 4: Colorado, Georgia, Texas and Washington have changed their mandatory minimum sentencing laws to take into account the developmental differences between youth and adults.

Copies of this report are attached to my testimony and copies are available online at: <http://www.campaignforyouthjustice.org/key-research/national-reports.html#statetrends>.

We have documented several of these reform efforts and posted actual copies of the state legislation on our website at:

<http://www.campaignforyouthjustice.org/advocacy-resource-center/state-legislative-options.html>.

National polling shows overwhelming public support for treatment and rehabilitation of youth, over incarceration and automatic prosecution in adult criminal court. On October 13, GBA Strategies released a poll that we commissioned, surveying a sample of 1,000 American voters, including New Yorkers showing that the:

- Public strongly favors rehabilitation and treatment approaches, such as counseling, education, treatment, restitution, and community service (89%);
- Public strongly favors involving the youth's family in treatment; keeping youth close to home; and ensuring youth are connected with their families (77%-86%);
- Public strongly favors individualized determinations on a case by case basis by juvenile court judges in the juvenile justice system over automatic prosecution in adult criminal court (76%);
- Public support requiring the juvenile justice system to reduce racial and ethnic disparities (66%);
- Public support increasing funds to provide more public defenders to represent youth in court (71%);
- Public support independent oversight to ensure youth are protected from abuse while in state or local custody (84%); and
- Public rejects placement of youth in adult jails and prisons (69%).

This public opinion research demonstrates the public's strong support for rehabilitation and treatment for court-involved youth, over incarceration and the automatic prosecution in adult criminal court. This research underscores the need to accelerate juvenile justice reforms to reduce the incarceration of youth and prosecution in adult criminal court, such as those you are considering here in New York city.

Given the overwhelming research on how ineffective prosecuting youth in adult court is, the state trends moving away from the prosecution of youth in adult criminal court and placement in adult jails and prisons, and the strong public opinion research in favor of change, I offer the following perspectives and recommendations:

First, New York is to be commended for the substantial downsizing and shuttering of juvenile prisons here in the state and given the cost savings associated with these changes, New York should seriously consider Judge Lippman's proposal and beyond, factoring youth prosecuted as adults into the reform efforts.

Second, the recidivism research and the state data that we do have in a number of states is so compelling that the prosecution of any youth in adult court should be re-evaluated. Judge Lippman's proposal would go a long way towards removing the vast majority of youth in New York state from automatic prosecution in adult court. Given the research, there is a compelling argument to expand this proposal to include more children such as the 13 to 15 year old "Juvenile Offender" youth.

Finally, the public opinion polling shows overwhelming support for principles embodied in Judge Lippman's proposal and demonstrate that a thorough re-evaluation of prosecuting any youth in adult criminal court is necessary.

We applaud this committee for considering these issues and are pleased to be a resource to this committee as you consider these issues and potential policy reforms in the state. Thank you for your time and consideration.

# **New York City Council Committee on Juvenile Justice -- November 1, 2011**

**Hon. Jonathan Lippman**

Good morning. I want to start by recognizing Speaker Christine Quinn, whose testimony just a few weeks ago at the Judiciary's Hearing on Civil Legal Services was so insightful and persuasive with regard to ensuring that there is equal justice for every New Yorker who comes to our courthouses seeking justice. She represents the City Council with great distinction and I am so grateful to her for her proactive and eloquent support of civil legal representation for the poor in our City and State. I want to thank Councilmember Sara Gonzalez and the members of the Committee on Juvenile Justice for inviting me to testify this morning on an issue of critical importance to our City and the well being of its residents.

I come here today to discuss what remains a glaring problem for all of us in New York -- the age of criminal responsibility.

Every year, about 45,000 to 50,000 youths aged 16 and 17 are arrested in New York and prosecuted as adults in our criminal courts -- overwhelmingly for minor crimes. In 37 other states and the District of Columbia, the age of criminal responsibility starts at 18. Eleven states have set the age at 17. New York and North Carolina, alone in the nation, continue to prosecute 16-year olds as adult criminals. And, based on recent developments in the North Carolina legislature, New York may soon be the last state to do so.



Before going on, I want to clarify that the focus of my remarks today is on the less serious crimes committed by adolescents. As you know, the age of criminal responsibility for murder starts at 13 in New York, and at 14 for major felonies. Those juveniles who commit serious offenses of this nature can and should be prosecuted in the criminal courts. However, the fact is that only a very small fraction of juvenile cases in New York involve serious crimes like murder, rape, aggravated assault or robbery.

So the question of the day for us in New York is this: Are 16 and 17 year olds arrested for minor drug offenses, shoplifting, vandalism, trespassing, fare-beating, and the like, better served by going to criminal court or family court? Do we in New York City and in our State want to see adolescents processed in an adult criminal justice system focused on punishment and incarceration? . . . where rehabilitative options are limited . . . where they may be jailed . . . where they may be victimized . . . and from where they may emerge with a criminal record that bars them from future employment and educational opportunities?

Or do we want to see these young people in family court, which is focused on rehabilitation and equipped to get kids back on the right track, which offers supervision, mental health treatment, remedial education and other services and programs . . . a system where judges are obligated by law to act in the "best interests" of the children who come before them – a mandate that does not exist in criminal court. The answer, to me, is obvious.

Teenagers do stupid, impulsive, irrational things that leave you shaking your head and pulling your hair out. Scientific research has made clear that adolescents are different than adults and that teenage brains are not fully matured, which limits their ability to make

reasoned judgments and engage in the kind of thinking that weighs risks and consequences. That's why teens have difficulty with impulse control, and with resisting outside influences and peer pressure. That's why the United States Supreme Court has stated that although young offenders should not to be absolved of responsibility for their actions, they need to be treated differently because their transgressions are not as "morally reprehensible as that of an adult."

There is also plenty of research confirming that older adolescents tried and sentenced in criminal courts have higher recidivism rates, re-offend sooner, and go on to commit violent crimes and felony property crimes at a higher rate than youths who go through family court.

This should not be surprising. The whole culture and philosophy of family court is to focus on the problems specific to children and young people, and to promote rehabilitation whenever possible. In family court, there are off-ramps at nearly every stage of the process, from arrest to adjudication to sentencing. In fact, many juvenile cases never even make it to court but are instead "adjusted" by probation. If the young person complies with whatever conditions probation imposes – anything from curfews, to letters of apology, to links to services – then the case is closed and sealed and no further action is taken.

Teenagers in family court are technically charged with delinquency and not crimes -- a distinction with far-reaching implications. Someone charged with delinquency does not receive a criminal record, which means that he or she can honestly state on applications for employment, financial aid and housing that they have never been convicted of a crime. This can often be the difference between someone who goes on to be a gainfully employed

productive citizen and the person who becomes dependent on social services or gets caught in the revolving door of the criminal justice system.

If we as a City and State want to achieve better outcomes for juveniles that change their behavior and promote public safety, then the right approach could not be any clearer: better outcomes would be achieved for everyone concerned by adjudicating these cases in family court. The bottom line is that the family court system gives us a much better ability to intervene meaningfully in the lives of troubled young people – before minor problems escalate into major problems – and without subjecting them to a criminal record.

So why haven't lawmakers raised the age of criminal responsibility in New York? It starts with just plain inertia. When the current Family Court Act was adopted in 1962, the Legislature could not agree on the age of criminal responsibility, and so age 16 was chosen as a temporary expedient, until public hearings could be held and additional research could be presented. Unfortunately, the issue was never revisited, and the "temporary fix" of 16, which even in 1962 was already out of step with most of the country, has remained frozen in time

Of course, there are obvious fiscal and logistical challenges that come with shifting many thousands of cases a year from criminal court to an already overburdened family court and juvenile justice system. We may need additional judges, certainly many more community service options, and a stronger juvenile probation system.

Creating more alternatives to incarceration also requires greater up-front investment. However, the long-term benefits and cost savings to the state will greatly outweigh the initial outlays. In this regard, the VERA Institute of Justice recently completed a detailed cost-benefit analysis of North Carolina's efforts to raise the age of criminal jurisdiction to

age 18, which found that the short- and long-term economic benefits to the state would far exceed the costs.

Clearly, many legitimate and complex issues have to be addressed before we raise the age of criminal responsibility -- the financial costs and benefits; the legal, public safety, service delivery, and demographic implications; and, the inter-agency collaboration that will be required among the courts, probation, corrections, prosecutors, defense providers, and the state agencies dealing with families and children and criminal justice.

In order to work through these issues and draft legislation for introduction during the 2012 state legislative session, I have asked the New York State Permanent Sentencing Commission, Co-chaired by District Attorney Cy Vance and Judge Barry Kamins, to combine its expertise and resources with that of Michael Corriero, the Executive Director and Founder of the New York Center for Juvenile Justice. With the support of our partners in government, including the New York City Council, and by reaching out to the many affected constituencies, and to the many organizations that have already done such terrific work in this area, I believe we will produce a blueprint for a modern, effective juvenile justice system that we can all be proud of. In this regard, I want to thank Councilmembers Sara Gonzalez and Elizabeth Crowley for co-sponsoring Resolution 1067, which calls on the Legislature and the Governor to enact legislation raising the age of criminal responsibility for nonviolent offenses to 18 and permitting the cases of 16 and 17-year olds charged with such offenses to be adjudicated in family court.

But even while we work together to revise the law in New York, I believe we cannot simply stand by and accept the status quo -- not when there are steps we can take now to improve the way we handle older teenagers in our criminal courts. That is why, beginning

in January 2012, we will establish new adolescent diversion criminal court parts under the direction of Judge Judy Harris Kluger, the Chief of Policy and Planning for the Courts, in consultation with our Center for Court Innovation. We will establish these pilot parts in every borough of the City, in Nassau and Westchester Counties, and in Syracuse and Buffalo.

Young people ages 16 and 17 charged with misdemeanors and certain Class D and E non-violent felonies will be assigned to specially-trained criminal court judges with access to age-appropriate services for troubled adolescents. In these new court parts, judges will be specially trained in adolescent brain development, trauma, substance abuse, mental health, educational and family issues, and will have access to new sentencing options -- including community service and age-appropriate social services options that promote personal accountability and build life skills. The goal is to bring most of the benefits of Family Court to Criminal Court, particularly the ability to divert cases from the formal court system through linkage to appropriate services. By complying with the conditions imposed by the court, participating youths would be able to have their charges dismissed or reduced to non-criminal violations.

New York has a proud history of being at the cutting edge when it comes to juvenile justice reform. In the 1800s, this was the first state to construct special facilities that enabled children to be removed from adult penitentiaries. As is so often the case, New York set the bar back then, and other states followed. With this kind of history and tradition, I just cannot fathom how New York has allowed itself to get so out of step with the rest of the country. It really says something when avowedly tough-on-crime states like Texas, Georgia and Mississippi, to name just a few, have all seen the wisdom of

prosecuting troubled young people in family court, while New York continues to expose teenagers to an adult criminal justice system that so often serves as a breeding ground for career criminals. Let us not be the last place in the entire country that prosecutes 16-year olds as adult criminals. This cannot be what any of us wants for our City and State, or for the future of our young people. It is time for our state to once again take our place at the national forefront of juvenile justice reform.



October 31, 2011

Sara M. Gonzalez  
Chair, Juvenile Justice Committee  
New York City Council  
City Hall  
New York, NY 10007

**Chief Executive  
Officer/President**  
Joel Copperman

**Chief Financial  
Officer/Treasurer**  
Rebecca Asbury

**Legal Director/Secretary**  
Jamaal Thomas

**Director, Youth Programs**  
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Dear Chairperson Gonzalez:

I write in support of City Council Resolution 1067-2011 supporting New York State Chief Judge Jonathan Lippman's call on the New York State Legislature to pass and the Governor to sign legislation raising the age of criminal responsibility for nonviolent offenses to 18 years of age and to permit the cases of 16 and 17 year olds charged with such offenses to be adjudicated in the Family Court rather than the adult criminal justice system. I also write to note for the public record that there are operational and political realities that need to be addressed in order to make this change.

Judge Lippmann rightfully acknowledges some of the challenges in raising the age threshold for criminal responsibility for non-violent crimes from 16 to 18 years old. Some are highlighted in the council resolution, but it bears mentioning other potential impacts this significant change will have. The financial and logistical issues surrounding shifting tens of thousands of arrests from the adult criminal justice system to the juvenile justice system are quite complex.

For example, a concerted effort must be made to have the New York Police Department shift their practices for this cohort. This shift in practices must be consistent and sustained in order for police officers to understand and modify their procedures going forward. Also the number of cases that will be diverted to the Family Court system is significant and the pressure it will place on the Family Court system can not be underestimated. For the most part, Family Court is not designed to handle this volume of crimes. The juvenile court system must be adequately staffed, trained and resourced to properly process this influx. In the adult system, arraignment-to-arrest must happen within 24 hours; not so in the juvenile system.

*YOUTH* Court Employment Project | GirlRising | Choices | Learning To Work/ GED Program

*ADULT BEHAVIORAL HEALTH* Nathaniel ACT Team | Nathaniel Supported Housing | Transitional Case Management Program  
Day Custody Program | Parole Restoration Project | Treatment Readiness Program

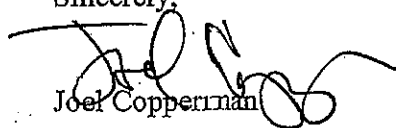
*STATEN ISLAND COMMUNITY SERVICE PROJECT*



These are but a few possible impacts. This shift will have far-reaching consequences that are not all known at this time therefore, this change must be made carefully. Resources must be put in place to absorb the change without having a deleterious effect on this fragile population.

This is the right policy but it must be done in the right way. I applaud the City Council for taking action to support this change.

Sincerely,



Joel Copperman



## TESTIMONY

The Council of the City of New York

Committee on Juvenile Justice  
Sara M. Gonzalez, Chair

**Res. No. 1067 - Resolution supporting New York State Chief Judge Jonathan Lippman's call on the New York State Legislature to pass and the Governor to sign legislation raising the age of criminal responsibility for nonviolent offenses to 18 and permit the cases of 16 and 17 year-olds charged with such offenses to be adjudicated in the Family Court rather than the adult criminal justice system.**

November 1, 2011  
New York, New York

Submitted by:

The Legal Aid Society  
Juvenile Rights Practice &  
Criminal Practice  
199 Water Street  
New York, NY 10038

Presented by:

Steven Banks  
Attorney-in-Chief  
The Legal Aid Society

Good morning. I am Steven Banks, Attorney-in-Chief of the Legal Aid Society. I submit this testimony on behalf of the Legal Aid Society, and thank Chairwoman Gonzalez as well as the Committee on Juvenile Justice for inviting our comments on the proposed resolution supporting Chief Judge Jonathan Lippman's call to treat teenagers as teenagers and therefore raise the age of criminal responsibility in New York to 18. We appreciate your attention to this area of vital concern to our City's teenagers and their families.

The Legal Aid Society is the nation's largest and oldest provider of legal services to low-income families and individuals. As you know, from offices in all five boroughs, the Society annually provides legal assistance to low-income families and individuals in some 300,000 legal matters involving civil, criminal and juvenile rights problems. Our Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our Juvenile Rights staff represented more than 34,000 children, including approximately 4,000 who were charged in Family Court with juvenile delinquency. During the last year, our Criminal Practice handled nearly 240,000 cases for clients accused of criminal conduct. Many thousands of our clients with criminal cases in Criminal Court and Supreme Court are teenagers. In addition to representing these children each year in trial and appellate courts as well as school suspension hearings, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

Our perspective comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service providers, and City agencies, including the New York Police Department, the

Department of Education, the Department of Youth and Family Justice, the Department of Correction, and the Department of Probation as well as the Administration for Children's Services.

Because of the breadth of Legal Aid's representation, we are uniquely positioned to address this issue. We currently represent the vast majority of teenagers prosecuted in the Family, Criminal and Supreme Courts in New York City. We have close to 50 years of experience assessing the cases of teenagers, identifying diversion programs and advocating for alternatives to incarceration. We have developed strong advocacy relationships in the courts, with prosecutors and with City and State agencies which have resulted in connecting our teenage clients with the services that best meet their needs, as well as those of the community. Our experience indicates that community safety is best protected when appropriate services are identified and accessed for the vast majority of court-involved teenagers, so that they become less likely to be entangled again in the criminal or juvenile justice systems. The Legal Aid Society strongly supports Chief Judge Lippman's call to raise the age of criminal responsibility to 18, as it will provide an effective mechanism to create pathways to necessary services for 16 and 17 year olds which currently do not exist in the Criminal Court system.

#### A Brief Historical Perspective Of The Prosecution Of Teenagers

New York State first grouped 16 and 17 year olds with adults for purposes of criminal prosecution in the late 1800s. During the first 25 years of the twentieth century, great reform took place throughout the country. Embracing social work and child psychology findings, States recognized that children were different than adults, and juvenile courts were established to address the needs of children and teenagers. Despite the fact that almost every State set the age of adult criminal

prosecution at 18, New York maintained that 16 and 17 year olds were adults for purposes of criminal prosecution. A 1931 report of the New York State Crime Commission criticized the jurisdictional cutoff at 16, but no action was taken. Again, this issue was discussed in detail at the 1961 Constitutional Convention which established the New York State Family Court. The Convention deferred a decision to raise the age from 16, but no further action was ever taken.<sup>1</sup> As a result, for over 100 years New York State has set its jurisdictional age as low as 16. There is no evidence whatsoever that this outdated policy has led to lower rates of crime or recidivism by adolescents. Given recent social science and neuroscience findings, the time is ripe for reconsideration of this issue.

#### Recent Developments Addressing The Culpability Of Adolescent Offenders

Historically in New York State, sentencing policies viewed teenage offenders aged 16 - 17 in the same category as the adult offenders without individualized attention to their specific needs. Notably, almost all of the social science, neuroscience, psychiatric findings supporting the conclusion that teenagers should be evaluated for criminal culpability differently than adults have been published in the last fifteen years. In 1995, the phrase "superpredator" was coined by John Dilulio, who was at that time a professor at Princeton, to describe the then preadolescents who he predicted would be part of a huge and ruthless juvenile crime wave.

Soon after the peak of criminal activity in the mid-1990s, the juvenile crime rates fell for the next 10 years and several studies showed that Dilulio and others had gotten the issue wrong. Just two years after making that prediction, after receiving criticism from many academics including those who had previously supported him, he wrote several pieces distancing himself from his prediction. He began working with churches in inner-city communities, claimed that he never

intended for young people to be incarcerated with adults and urged a stop to prison growth.

Since the year 2000, brain researchers and psychologists began to publish scientific studies demonstrating that the brain continues to develop during the adolescent years and is not fully formed until the early 20s, with some studies placing the age of complete development at 25. The neuroscience research, made possible by new technologies such as magnetic resonance imaging (MRI) that allow scientists to study brain images, demonstrates that the last areas of the brain to develop are the frontal lobes, specifically the pre-frontal cortex, which govern decision-making, judgment, and impulse control. As this area of the brain develops, young adults become more reflective and deliberate decision makers.<sup>2</sup>

These studies were recognized by the United States Supreme Court in its findings that age can be considered a mitigating factor in Roper v. Simmons (disallowing the death penalty for offenders under the age of 18); Graham v. Florida (prohibiting life without parole on non-homicide offenses for youth under the age of 18) and just four months ago in J.D.B. v. North Carolina<sup>3</sup> (holding that a child's age is a relevant factor to consider in determining whether a child is "in custody" for the purposes of Miranda warnings).

In these decisions, the United States Supreme Court has recognized that social science research confirms that *"a lack of maturity and an underdeveloped sense of responsibility are found in youth more than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions."*<sup>4</sup> The Court also noted that youth have less control over their own environment.<sup>5</sup> The Court further acknowledged that *"almost every state prohibits those under 18 years of age from voting, serving on*

*juries, or marrying without parental consent.*<sup>6</sup> In fact, New York sets the age of majority for most civil purposes at age 18.<sup>7</sup>

Further, the United States Supreme Court has recognized that adolescents are less blameworthy for the offenses they commit because they are less capable of evaluating the possible outcomes of different courses of actions and they are more vulnerable to external pressures. For example, the Court has found that *“adolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long range terms than adults.”*<sup>8</sup>

Culpability concerns the degree to which a defendant in court can be held accountable for his actions. Immature judgment is considered as a possible mitigating circumstance, which would render the defendant less blameworthy for transgressions committed.<sup>9</sup> Developmental psychologists who have examined the issue of youth and delinquency propose that adolescents, as a class, may warrant characterization as less mature than adults, not because of cognitive immaturity, but because of deficiencies in maturity of judgment.<sup>10</sup>

These “psychosocial factors” include the ability to control one’s impulses, to manage one’s behavior in the face of pressure from others to violate the law, or to extricate oneself from a potentially dangerous situation.<sup>11</sup> Interestingly, corporate entities have also embraced the research recognized by the Supreme Court. In 2005, Allstate Insurance Company released a study through the Allstate Foundation examining the root causes of teen deaths as a result of driving. This

study, entitled "*Chronic: A Report on the State of Teen Driving*", includes reports by two of the experts recognized by the Supreme Court in the above decisions: Laurence Steinberg, Ph.D, a professor of psychology at Temple University and Jay Giedd, M.D., chief of brain imaging in the Child Psychiatry Branch of the National Institute of Mental Health.<sup>12</sup>

Dr. Steinberg describes in the report how the intellectual, emotional, and social dimensions of brain function develop at different rates from one another, and according to different timetables. That fact, combined with the social pressures all teens experience, renders teens more prone than adults to risk-taking behavior. Through studies, they found that "*[b]y the age of 15 or 16, for example, most teenagers' logical reasoning abilities are the same as adults'. Their emotional and social development at this age, however, is still relatively immature. That's why an adolescent who is "book-smart" and who appears to have good reasoning abilities may actually demonstrate surprisingly poor judgment and decision-making in the real world, where a combination and variety of intellectual and psychosocial factors are at work. Immaturity in any of them can compromise a young person's judgment.*"

Dr. Steinberg worked with three age groups—adolescents, young adults (college undergraduates) and adults in their late 20s and 30s. He designed a battery of computer-driven tasks, or games to measure things like risk-taking, planning ahead, impulse control, and the way in which individuals balance risks and rewards when making decisions. Steinberg described his findings as follows: "*[I]nstead of looking at behavior only when the individuals were alone, we asked participants to bring along two friends, then we randomly assigned them to play the games alone or with their friends looking over their shoulder and giving advice... The results were fascinating. When playing a video game simulating*

*driving alone, levels of risk-taking were similar across the three age groups. So, like other researchers working in a lab, we found that the risk behavior of adults and teens is nearly identical. But with friends alongside, risk-taking increased significantly among adolescents and college students (average ages 14 and 19, respectively) but not among adults (average age 37). In other words, the presence of peers increased risk-taking in the two younger groups but had no influence on the older group."*

The report noted that this finding has important implications:

- When assessing adolescent judgment and risk-taking, the social context has a marked impact on the outcome.
- In the presence of peers, even college students—young adults in their late teens and early 20s—exhibit behavior similar to that of adolescents. This finding is consistent with the findings of studies of brain maturation.
- In order to understand and address adolescent risk-taking, the role of the peer group must be considered. *"For reasons that are not yet clear, the presence of peers may actually sharpen an adolescent's natural appetite for risk-taking. Most of the dangerous things adolescents do are done in groups...One need only consider the following fact: nearly all juvenile crime is committed in groups, whereas most adult crime is committed by individuals acting alone."*<sup>13</sup>

#### Most Adolescent Offenders Do Not Continue Their Behaviors Into Adulthood

The United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention published a recent report which analyzed the most comprehensive data set currently available about serious adolescent offenders and their lives in late adolescence and early adulthood. The most significant finding of the study is that *"[m]ost youth who commit felonies greatly reduce their offending over time, regardless of the intervention. Approximately 91.5 percent of youth in the study [aged 14-18] reported decreased or limited illegal activity during the first 3 years following their court involvement."*<sup>14</sup> Additionally, the study found that "longer stays in juvenile facilities did not reduce reoffending;



institutional placement even raised offending levels in those with the lowest level of offending. These findings of desistance in offending by adolescents as they age are consistent with the findings of brain maturation as teens enter adulthood.

### Collateral Consequences of Criminal Convictions

One of the most significant effects of prosecuting 16 and 17 year olds in the adult courts is the exposure to the collateral consequences of criminal convictions. Aside from the exposure to adult sentences and detention or imprisonment with adults, the collateral consequences of a criminal conviction can permanently remove an adolescent from the path to becoming a contributing member of society. A criminal conviction interferes with or bars an individual from access to many of the systems necessary to becoming a successful adult. Criminal convictions create barriers to employment, lead to eviction and homelessness, create barriers to college admission and/or financial aid, and have significant immigration consequences.

Given the well-documented issue of disproportionate minority contact in the criminal justice system, it is important for us, collectively, to decrease the obstacles to success for minority youth. Creating lifelong barriers for behavior that has been shown, for the most part, to be time-limited is an incredibly harsh consequence that can be remedied by raising the age of criminal jurisdiction to 18.

### Conclusion

In the concurring opinion of Graham v. Florida, Justice Stevens used language that carries great meaning for the dialogue in New York about raising the age of criminal responsibility to 18. He noted that *"knowledge accumulates. We learn, sometimes, from our mistakes. Punishments that did not seem cruel and unusual at one time may, in light of reason and experience, be found to be*

*cruel and unusual at a later time.*" Similarly, the time has come in New York to reassess what is the appropriate response to adolescent offending in light of the advances in society's understanding of adolescent development. Social science and brain science and the highest court in the United States have all recognized that adolescents are different than adults and should be treated that way by the law. The time has come for New York to come into line with the 48 other States in this country that set the age of majority for purposes of criminal prosecution at age 18.

We join with the community of parents, teenagers, and advocates in supporting the City Council's resolution to support Chief Judge Lippman's call to raise the age of criminal responsibility in New York State.

Thank you for the opportunity to speak about this important issue.

Contacts: Tamara Steckler, Attorney-in-Charge, Juvenile Rights Practice  
Phone: 212-577-3502; [tasteckler@legal-aid.org](mailto:tasteckler@legal-aid.org)

Nancy Ginsburg, Director, Adolescent Intervention and Diversion Project, Criminal Practice  
Phone: 212-298-5190; [nginsburg@legal-aid.org](mailto:nginsburg@legal-aid.org)

**OR**

Steven Banks, Attorney-in-Chief, The Legal Aid Society  
Phone: 212-577-3277; [sbanks@legal-aid.org](mailto:sbanks@legal-aid.org)

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<sup>1</sup> Merrill Sobie, *Pity the Child: The Age of Delinquency in New York*, 30 Pace L. Rev. 1061 (2010).

<sup>2</sup>Elizabeth S. Scott and Laurence Steinberg, *Blaming Youth*, 81 Tex. L. Rev. 799, 816 (2003) (citing Patricia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 Neuroscience & Behavioral Reviews 417, 421-23 (2000); National Institute of Mental Health,

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*Teenage Brain: A Work In Progress* (NIH Publication No. 01-4929, January 2001)(available at <http://www.nimh.nih.gov/publicat/teenbrain.pdf>).

<sup>3</sup> 131 S.Ct. 2394.

<sup>4</sup> *Roper v. Simmons*, 543 US 551, at 569 (2005) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)); cf. *Graham v. Florida*, 130 S.Ct. 2011 (2010)

<sup>5</sup> *Id.* at 569 (citing Laurence Steinberg and Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003).

<sup>6</sup> *Id.*

<sup>7</sup> CPLR 105, D.R.L 2, NY Gen. Oblig. Law 1-202; New York State restricts the rights of 18 year olds in the following areas: Alcohol possession/sale NY Alco. Bev. Cont. 65c; Possession/purchase of cigarettes NY Pub. Health Law 1399-cc; Contract rights UCC Law 3-305, CPLR 105; Driving VTL 502; Firearms PL 265.16; Gambling NY Tax Law 1610, Gen. Mun. Law 486, Rac. Pari-Mut Wag. & Breed. Law 104; Jury Duty Jud. Law 510; Working hours D.R.L. 7; Pawnbrokers Gen. Bus. Law 47-a; Pornography PL 235.21; Tatoos PL 260.21, Voting NY Elec. Law 5-102, Wills EPTL 3-1.1.

<sup>8</sup> *Eddings v. Oklahoma*, 455 US 104, 115 n. 11 (1982) (citing to 1978 Report of the Twentieth Century Task Force on Sentencing Policy Toward Young Offenders); see also, *Roper* 543 US at 569.

<sup>9</sup> E. Cauffman, J. Woolard and N.D. Reppucci, Justice for Juveniles: New Perspectives on Adolescents' Competence and Culpability, 18 QLR 403 (1999).

<sup>10</sup> *Id.*

<sup>11</sup> L. Steinberg and E. Cauffman, The Elephant in the Courtroom: A Developmental Perspective on the Adjudication of Youthful Offenders, 6 Va. J. Soc. Pol'y & L 389 (1999).

<sup>12</sup> <http://www.allstatefoundation.org/sites/all/themes/allstate2/pdf/chronic.pdf>

<sup>13</sup> *Id.*, at pp.23-25.

<sup>14</sup> Edward P. Mulvey, *Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, March 2011.

To: Interested Parties

From: GBA Strategies

Date: October 11, 2011

### Campaign for Youth Justice Youth Justice System Survey

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An estimated 250,000 youth are tried, sentenced, or incarcerated as adults every year across the United States, most of whom are charged with non-violent offenses. Meanwhile, research shows that young people who are placed in the youth justice system are less likely to re-offend than young people who are placed in the adult system.

Amid the ongoing public debate over the effectiveness and consequences of this current approach to youth crime, a new national survey<sup>1</sup> conducted on behalf of the Campaign for Youth Justice reveals that Americans are squarely on the side of reforming our youth justice system—with a greater focus on rigorous rehabilitation over incarceration, and against placing youth in adult jails and prisons.

#### Key Survey Findings

- **By a margin of 78 – 15 percent, the public overwhelming wants the focus of the juvenile justice system to be on *prevention and rehabilitation*, rather than incarceration and punishment.** Americans believe that prevention and rehabilitation will prevent youth recidivism, and that young people who have committed crimes are able to change and the system should give them the opportunity to do so.
- **A majority of U.S. adults (56 percent) think that youth facilities are more appropriate to hold juveniles convicted of crimes than adult prisons (favored by only 12 percent).** A similar majority also think that incarcerating young people in adult prisons will hurt their chances for rehabilitation, and ultimately make it more likely that they commit future crimes.
- **People overwhelmingly trust judges (81 percent), not prosecutors (12 percent), to determine if and when a juvenile should be tried as an adult.** This is not the reality in many states, where prosecutors are given wide discretion—in opposition to public opinion.
- **Nearly two-thirds of the public favors setting a minimum age at which a young person can be prosecuted in adult court.** And rather than automatically trying young people in

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<sup>1</sup> GBA Strategies administered this survey of 1,000 adults nationwide between September 27<sup>th</sup> and October 2<sup>nd</sup>, 2011. The results are subject to a margin of error of +/-3.1 percent.

adult courts for certain crimes, an overwhelming majority of Americans favor judges taking a case-by-case approach.

- **Americans strongly support a multitude of reforms to the juvenile justice system.** These include removing young people from adult jails and prisons, ensuring youth remain connected with their families, having independent oversight to ensure youth are protected from abuse while in custody, increasing funds to provide more public defenders to represent youth in court, and reducing racial and ethnic disparities in the juvenile justice system.

Furthermore, unlike most of the polarizing debates taking place in the political arena, Americans are in broad agreement on youth justice issues. Liberals, moderates, and conservatives alike agree that we should change focus to make the system work better for youth as well as society.

**Public Wants Focus on Rehabilitation and Youth Out of Adult Jails and Prisons**

Americans overwhelmingly want the focus of the juvenile justice system to be on prevention and rehabilitation (78 percent), rather than incarceration and punishment (only 15 percent). Over 80 percent of self-identified moderates (83 percent) and liberals (86 percent) agree, while 72 percent of conservatives agree.

This broad agreement is due to the fact that the vast majority of Americans believe that most youth who commit crimes are capable of positive growth and have the potential to change for the better (76 percent agree), and that rehabilitation programs will help prevent future crimes (71 percent agree). Furthermore, a large majority, 64 percent, also recognize that rehabilitation programs will save tax dollars in the long run.

<b>Beliefs About Youth Crime and the Juvenile Justice System</b>	
<b>Which statement do you agree with more?</b>	<b>1st Statement – 2nd Statement</b>
When it comes to youth who have committed crimes, the best thing for society is to rehabilitate them so they can become productive members of society.   OR: When it comes to youth who commit crimes, the best thing for society is to incarcerate them so that our streets are safer.	77 – 17
Most youth who commit crimes are capable of positive growth, and they have the potential to change for the better.   OR: Most youth who commit crimes are unlikely to change for the better, and they will likely continue a life of illegal behavior.	76 – 18
The juvenile justice system should provide youth with more opportunity to better themselves.   OR: The juvenile justice system should focus on punishing youth who have committed crimes.	75 – 20
Rehabilitation programs like counseling and education for youth who have committed crimes helps prevent future crimes.   OR: Rehabilitation programs like counseling and education do little to prevent youth who have committed crimes from committing future crimes.	71 – 23
Rehabilitation programs like counseling and education for youth who have committed crimes will save tax dollars in the long run.   OR: Rehabilitation programs like counseling and education for youth who have committed crimes will cost tax dollars in the long run.	64 – 27

As a consequence, a majority of Americans (56 percent), including majorities of conservatives, moderates, and liberals, think that youth facilities are more appropriate to hold juveniles convicted of crimes than adult jails prisons. Only 12 percent think that adult jails and prisons are more appropriate. A majority sees that incarcerating young people in adult prisons will hurt their chances for rehabilitation and ultimately make it more likely that they commit future crimes.

<b>Youth Facilities vs. Adult Jails</b>				
<b>Which statement do you agree with more?</b>	<b>1st Statement – 2nd Statement</b>			
	<b>Total</b>	<b>Liberals</b>	<b>Moderates</b>	<b>Conservatives</b>
Putting youth under the age of 18, who are charged with or convicted of crimes, in adult jails and prisons makes them <b>MORE</b> likely to commit future crimes than if they were placed in a youth facility.   OR				
Putting youth under the age of 18, who are charged with or convicted of crimes, in adult correctional facilities makes them <b>LESS</b> likely to commit future crimes than if they were placed in a youth facility.	57 – 27	64 – 24	62 – 23	51 – 33

**Public Favors Minimum Age to Try Youths in Adult Courts; Decisions Made by Judges**

The current structure of the juvenile justice system in America is a patchwork of federal, state and local laws. In some states there is no minimum age at which a young person can be tried as an adult, and prosecutors can decide to try youth under the age of 18 in adult court, or in some cases are forced to automatically into adult court depending on the alleged crime.

The majority of Americans reject this approach. First, a large majority, 64 percent, favors setting a minimum age at which a young person can be prosecuted in adult court, while 30 percent oppose.

Secondly, while in some states prosecutors make the decision on whether someone under age of 18 is to be tried in juvenile courts or adult courts, Americans overwhelmingly trust *judges* to make the ultimate decision instead of prosecutors (82 – 12 percent). Furthermore, for states in which prosecutors do make the decision, over 70 percent of people favor allowing judges to overrule that decision and send the case back to juvenile court (71 – 20 percent).

And rather than automatically trying some youths in adult courts, an overwhelming majority of Americans favors judges a taking a case-by-case approach that takes into account a variety of facts and circumstances (76 – 20 percent).

<b>Adult vs. Juvenile Court Decided on Case-by-Case Basis</b>		
<b>Which statement do you agree with more?</b>	<b>1<sup>st</sup> Statement Much More</b>	<b>1<sup>st</sup> Statement Total More</b>
Instead of a rigid policy for determining when youth are tried in adult courts, judges should make the decision on a case-by-case basis after a hearing, and take into account the seriousness of the offense and circumstances of the individual child.   OR  When a youth is charged with a serious offense, the decision to try a youth in adult court should not be discretionary. For some crimes, youth should automatically be charged as adults and tried in adult courts with no exceptions.	51	76

**Public Strongly Favors Key Reforms the Juvenile Justice System**

Finally, Americans strongly support a multitude of reforms improve the juvenile justice system in America, to benefit both children and their families, as well for society as a whole.

In keeping with their belief that the juvenile justice system should focus on rehabilitation and that adult jails and prisons are inappropriate for youth offenders, an overwhelming number of Americans (89 percent) favor increasing the use of mandatory rehabilitation, education, drug treatment, and job counseling programs, and 69 percent favor removing youth under age 18 from adult jails and prisons and placing them in youth facilities. Eighty percent also favor keeping youth *awaiting* trial to be held in youth facilities instead of adult jails.

Likewise, there is strong support for increased funding to provide more public defenders who represent children in court, creating an independent commission of community leaders tasked with ensuring that youth are protected from abuse while in custody, and taking steps to reduce racial and ethnic disparities in the system.

<b>Proposals to Reform the Juvenile Justice System</b>		
<b>Do you favor or oppose the proposal?</b>	<b>Strongly Favor</b>	<b>Total Favor</b>
Increase the use of mandatory rehabilitation, education, drug treatment, and job counseling programs for youth who commit crimes.	62	89
Require youth awaiting trial to be held in youth facilities instead of adult jails.	54	80
Increase funding to provide more public defenders who represent children in court.	42	71
Remove youth under age 18 from adult jails and prisons and place them in youth facilities.	42	69
Require the juvenile justice system to reduce racial and ethnic disparities in the system.	43	66

In terms of family and community involvement, there is also strong support for requiring that incarcerated youth are placed in facilities close to their families and communities, and letting

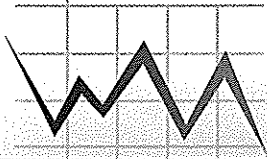
youth offenders see their families at least once a week, as well as designing treatment and rehabilitation plans that include a youth's family in planning and services.

<b>Proposals to Reform the Way Parents and Communities are Involved</b>		
<b>Do you favor or oppose the proposal?</b>	<b>Strongly Favor</b>	<b>Total Favor</b>
Require facilities that incarcerate youth to let youth offenders see their families at least once a week.	65	86
Design treatment and rehabilitation plans that include a youth's family in planning and services.	59	86
Create an independent commission of community leaders tasked with ensuring that youth are protected from abuse while in state or local custody.	62	84
Require that incarcerated youth are placed in facilities close to their families and communities.	50	77





Juvenile Offenders and Victims:



# National Report Series

Bulletin

September 2011

*This bulletin is part of the Juvenile Offenders and Victims National Report Series. The National Report offers a comprehensive statistical overview of the problems of juvenile crime, violence, and victimization and the response of the juvenile justice system. During each interim year, the bulletins in the National Report Series provide access to the latest information on juvenile arrests, court cases, juveniles in custody, and other topics of interest. Each bulletin in the series highlights selected topics at the forefront of juvenile justice policymaking, giving readers focused access to statistics on some of the most critical issues. Together, the National Report and this series provide a baseline of facts for juvenile justice professionals, policymakers, the media, and concerned citizens.*



## Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting

Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone

### A Message From OJJDP

In the 1980s and 1990s, legislatures in nearly every state expanded transfer laws that allowed or required the prosecution of juveniles in adult criminal courts. The impact of these historic changes is difficult to assess inasmuch as there are no national data sets that track youth who have been tried and sentenced in the criminal justice system. Moreover, state data are hard to find and even more difficult to assess accurately.

In addition to providing the latest overview of state transfer laws and practices, this bulletin comprehensively examines available state-level data on juveniles adjudicated in the criminal justice system. In documenting state reporting practices regarding the criminal processing of youth and identifying critical information gaps, it represents an important step forward in understanding the impact of state transfer laws.

Currently, only 13 states publicly report the total number of their transfers, and even fewer report offense profiles, demographic characteristics, or details regarding processing and sentencing. Although nearly 14,000 transfers can be derived from available 2007 sources, data from 29 states are missing from that total.

To obtain the critical information that policymakers, planners, and other concerned citizens need to assess the impact of expanded transfer laws, we must extend our knowledge of the prosecution of juveniles in criminal courts. The information provided in these pages and the processes used to attain it will help inform the focus and design of additional federally sponsored research to that end.

Jeff Slowikowski  
Acting Administrator

Access OJJDP publications online at [ojjdp.gov](http://ojjdp.gov)

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# All states set boundaries where childhood ends and adult criminal responsibility begins

## Transfer laws alter the usual jurisdictional age boundaries for exceptional cases

State juvenile courts with delinquency jurisdiction handle cases in which “juveniles” are accused of acts that would be crimes if “adults” committed them. Generally, these terms are defined solely by age. In most states, youth accused of violating the law before turning 18 years old come under the original jurisdiction of the juvenile courts, whereas those accused of violating the law on or after their 18th birthdays have their cases processed in criminal courts. Some states draw the juvenile/adult line at the 17th birthday, and a few draw it at the 16th birthday.

However, all states have transfer laws that allow or require criminal prosecution of some young offenders, even though they fall on the juvenile side of the jurisdictional age line.

Transfer laws are not new, but legislative changes in recent decades have greatly expanded their scope. As a result, the transfer “exception” has become a far more prominent feature of the nation’s response to youthful offending.

## Most states have multiple transfer mechanisms

Transfer laws vary considerably from state to state, particularly in terms of flexibility and breadth of coverage, but all fall into three basic categories:

- **Judicial waiver laws** allow juvenile courts to waive jurisdiction on a case-by-case basis, opening the way for criminal prosecution. A case that is subject to waiver is filed originally in juvenile court but may be transferred

with a judge’s approval, based on articulated standards, following a formal hearing. Even though all states set minimum thresholds and prescribe standards for waiver, the waiver decision is usually at the discretion of the judge. However, some states make waiver presumptive in certain classes of cases, and some even specify circumstances under which waiver is mandatory.

- **Prosecutorial discretion or concurrent jurisdiction laws** define a class of cases that may be brought in either juvenile or criminal court. No hearing is held to determine which court is appropriate, and there may be no formal standards for deciding between them. The decision is entrusted entirely to the prosecutor.

- **Statutory exclusion laws** grant criminal courts exclusive jurisdiction over certain classes of cases involving juvenile-age offenders. If a case falls within a statutory exclusion category, it must be filed originally in criminal court.

All states have at least one of the above kinds of transfer law. In addition, many have one or more of the following:

- **“Once adult/always adult” laws** are a special form of exclusion requiring criminal prosecution of any juvenile who has been criminally prosecuted in the past—usually without regard to the seriousness of the current offense.

- **Reverse waiver laws** allow juveniles whose cases are in criminal court to petition to have them transferred to juvenile court.

- **Blended sentencing laws** may either provide juvenile courts with criminal sentencing options (juvenile blended sentencing) or allow criminal courts to

impose juvenile dispositions (criminal blended sentencing).

## Nearly all states give courts discretion to waive jurisdiction over individual cases

A total of 45 states have laws designating some category of cases in which waiver of jurisdiction may be considered, generally on the prosecutor’s motion, and granted on a discretionary basis. This is the oldest and still the most common form of transfer law, although most states have other, less traditional forms as well.

Discretionary waiver statutes prescribe broad standards to be applied, factors to be considered, and procedures to be followed in waiver decisionmaking and require that prosecutors bear the burden of proving that waiver is appropriate. Although waiver standards and evidentiary factors vary from state to state, most take into account both the nature of the alleged crime and the individual youth’s age, maturity, history, and rehabilitative prospects.

In addition, most states set a minimum threshold for waiver eligibility: generally a minimum age and a specified type or level of offense, and sometimes a sufficiently serious record of previous delinquency. Waiver thresholds are often quite low, however. In a few states—such as Alaska, Kansas, and Washington—prosecutors may ask the court to waive virtually any juvenile delinquency case. As a practical matter, however, even in these states, waivers are likely to be relatively rare. Nationally, the proportion of juvenile cases in which prosecutors seek waiver is not known, but waiver is granted in less than 1% of petitioned delinquency cases.

## Most states have multiple ways to impose adult sanctions on offenders of juvenile age

State	Judicial waiver			Prosecutorial discretion	Statutory exclusion	Reverse waiver	Once an adult always an adult	Blended sentencing	
	Discretionary	Presumptive	Mandatory					Juvenile	Criminal
Number of states	45	15	15	15	29	24	34	14	18
Alabama	■				■		■		
Alaska	■	■			■			■	
Arizona	■			■	■	■	■		
Arkansas	■			■		■		■	■
California	■	■		■	■	■	■		■
Colorado	■	■		■		■		■	■
Connecticut			■			■		■	
Delaware	■		■		■	■	■		
Dist. Of Columbia	■	■		■			■		
Florida	■			■	■		■		■
Georgia	■		■	■	■	■			
Hawaii	■						■		
Idaho	■				■		■		■
Illinois	■	■	■		■		■	■	■
Indiana	■		■		■		■		
Iowa	■				■	■	■		■
Kansas	■	■					■	■	
Kentucky	■		■			■			■
Louisiana	■		■	■	■				
Maine	■	■					■		
Maryland	■				■	■	■		
Massachusetts					■			■	■
Michigan	■			■			■	■	■
Minnesota	■	■			■		■	■	
Mississippi	■				■	■	■		
Missouri	■						■		■
Montana				■	■	■		■	
Nebraska				■		■			■
Nevada	■	■			■	■	■		
New Hampshire	■	■					■		
New Jersey	■	■	■						
New Mexico					■			■	■
New York					■	■			
North Carolina	■		■				■		
North Dakota	■	■	■				■		
Ohio	■		■				■	■	
Oklahoma	■			■	■	■	■		■
Oregon	■				■	■	■		
Pennsylvania	■	■			■	■	■		
Rhode Island	■	■	■				■	■	
South Carolina	■		■		■				
South Dakota	■				■	■	■		
Tennessee	■					■	■		
Texas	■						■	■	
Utah	■	■			■		■		
Vermont	■			■	■	■			■
Virginia	■		■	■		■	■		■
Washington	■				■		■		
West Virginia	■		■						■
Wisconsin	■				■	■	■		■
Wyoming	■			■		■			

Note: Table information is as of the end of the 2009 legislative session.

## Most states allow juvenile court judges to waive jurisdiction over certain cases and transfer them to criminal court

State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alabama	14							
Alaska	NS							
Arizona		NS						
Arkansas		14	14	14	14			14
California	16							
Colorado		12		12	12			
Delaware	NS							
Dist. of Columbia	16	15						NS
Florida	14							
Georgia	15		13		13			
Hawaii		14		NS				
Idaho	14	NS		NS	NS	NS	NS	
Illinois	13							
Indiana		14		10			16	
Iowa	14							
Kansas	10							
Kentucky		14	14					
Louisiana				14	14			
Maine		NS						
Maryland	15		NS					
Michigan		14						
Minnesota		14						
Mississippi	13							
Missouri		12						
Nevada	14	14						
New Hampshire		15		13	13			
New Jersey	14			14	14	14	14	14
North Carolina		13						
North Dakota	16				14			
Ohio		14						
Oklahoma		NS						
Oregon		15		NS	NS	15		
Pennsylvania		14						
Rhode Island	NS	16	NS					
South Carolina	16	14		NS	NS		14	14
South Dakota		NS						
Tennessee	16			NS	NS			
Texas		14	14				14	
Utah		14						
Vermont				10	10	10		
Virginia		14						
Washington	NS							
West Virginia		NS		NS	NS	NS	NS	
Wisconsin	15	14		14	14	14	14	
Wyoming	13							

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which a juvenile may be waived from juvenile court to criminal court. The number indicates the youngest possible age at which a juvenile accused of an offense in that category may be waived. "NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2009 legislative session.

## In presumptive waiver cases, the burden of proof shifts to the juvenile

In 15 states, presumptive waiver laws define a category of cases in which waiver from juvenile to criminal court is presumed appropriate. Statutes in these states leave the decision in the hands of a judge but weight it in favor of transfer. A juvenile who meets age, offense, or other statutory thresholds for presumptive waiver must present evidence rebutting the presumption, or the court will grant waiver and the case will be tried in criminal court.

## State laws may require juvenile court judges to waive jurisdiction in certain cases

Fifteen states require juvenile courts to waive jurisdiction over cases that meet specified age/offense or prior record criteria. Cases subject to mandatory waiver are initiated in juvenile court, but the court has no other role than to confirm that the statutory requirements for mandatory waiver are met.

Functionally, a mandatory waiver law resembles a statutory exclusion, removing a designated category of cases from juvenile court jurisdiction. However, the juvenile court may retain power to make necessary orders relating to appointment of counsel, detention, and other preliminary matters.

## Nonjudicial transfer cases bypass juvenile courts altogether

Only 15 states now rely solely on traditional hearing-based, judicially controlled forms of transfer: Connecticut, Hawaii, Kansas, Kentucky, Maine, Missouri, New Hampshire, New Jersey, North Carolina,

North Dakota, Ohio, Rhode Island, Tennessee, Texas, and West Virginia. In these states, all cases against juvenile-age offenders (except those who have already been criminally prosecuted once) begin in juvenile court and must be literally transferred, by individual court order, to courts with criminal jurisdiction.

In all other states, cases against some accused juveniles are filed directly in criminal court. Youth subject to direct criminal filing in these states may nevertheless be entitled to make an individualized case for juvenile handling at "reverse waiver" hearings before criminal court judges. Not all states allow this, however, and others do not allow it in some categories of cases.

### Prosecutors' discretion to opt for criminal handling is often unfettered

Laws in 15 states designate some category of cases in which both juvenile and criminal courts have jurisdiction, so prosecutors may choose to file in either one court or the other. The choice is considered to be within the prosecutor's executive discretion, comparable with the charging decision.

In fact, prosecutorial discretion laws are usually silent regarding standards, protocols, or appropriate considerations for decisionmaking. Even in those few states where statutes provide some general guidance to prosecutors, or at least require them to develop their own decision-making guidelines, there is no hearing, no evidentiary record, and no opportunity for defendants to test (or even to know) the basis for a prosecutor's decision to proceed in criminal court. As a result, it is possible that prosecutorial discretion laws in some places operate like statutory exclusions, sweeping whole categories into criminal court with little or no individualized consideration.

### Some states designate circumstances in which the burden of proof in a waiver hearing is shifted to the juvenile

State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alaska					NS			
California		14		14	14	14	14	
Colorado*		12		12	12			
Dist. Of Columbia†	15			15	15	15		
Illinois		15					15	
Kansas†	14	14			14		14	
Maine				NS	NS			
Minnesota		16						
Nevada†	14				14			
New Hampshire		15		15	15		15	
New Jersey		14		14	14	14	14	14
North Dakota		14		14	14		14	
Pennsylvania					14	14		
Rhode Island*	NS							
Utah		16		16	16	16		16

\* In Colorado and Rhode Island, the presumption is applied against juveniles with certain kinds of histories.

† In the District of Columbia, Kansas, and Nevada, the presumption applies to any offense committed with a firearm.

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which a juvenile is presumed to be an appropriate candidate for waiver to criminal court. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to the presumption. "NS" means no age restriction is attached to the presumption for an offense in that category. Table information is as of the end of the 2009 legislative session.

### In some states, waiver is mandatory once the juvenile court judge determines that certain statutory criteria have been met

State	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Connecticut	14	14	14				
Delaware	15		NS	NS	16	16	
Georgia			14	14	15		
Illinois	15						
Indiana	NS					16	
Kentucky	14						
Louisiana			15	15			
New Jersey	16		16	16	16	16	16
North Carolina		13					
North Dakota			14	14		14	
Ohio	14		14	16	16		
Rhode Island			17	17			
South Carolina	14						
Virginia			14	14			
West Virginia	14		14	14	14		

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which waiver to criminal court is mandatory. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to mandatory waiver. "NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2009 legislative session.

## Statutory exclusion laws restrict juvenile courts' delinquency jurisdiction

A total of 29 states have statutes that simply exclude some juvenile-age offenders from the jurisdiction of their juvenile courts, generally by defining the term "child" for delinquency purposes to leave out youth who meet certain age/offense or prior record criteria. Because such youth cannot by definition be "delinquent children," their cases are handled entirely in criminal court.

Many states make no distinction between minors and adults in enforcing traffic, boating, hunting, fishing and similar laws and ordinances—and may process all violations in criminal courts. Statutory exclusion laws are different, however, in that they make special exceptions for offending behavior that would otherwise be the responsibility of juvenile delinquency courts.

Murder is the offense most commonly singled out by statutory exclusion laws. In Massachusetts, Minnesota, and New Mexico, exclusion laws apply only to accused murderers. In all other states with exclusion statutes, murder is included along with other serious or violent felonies.

Some states exclude less serious offenses, especially where older juveniles or those with serious delinquency histories are involved. Montana law excludes 17-year-olds accused of a wide range of offenses, including attempted burglary, attempted arson, and attempted drug possession. Mississippi excludes all felonies that 17-year-olds commit as well as armed felonies that juveniles 13 or older commit. Utah excludes all felonies committed by 16-year-olds who have already been securely confined once, and Arizona excludes all felonies committed by those as young as 15, provided they have previously been disposed as juveniles more than once for felony-level offenses.

## Some states allow prosecutors to file certain categories of cases in juvenile or criminal court

State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Arizona		14						
Arkansas		16	14	14	14			
California		14	14	14	14	14	14	
Colorado		14		14	14	14		
Dist. of Columbia				16	16	16		
Florida	16	16	NS	14	14	14		14
Georgia			NS					
Louisiana				15	15	15	15	
Michigan		14		14	14	14	14	
Montana				12	12	16	16	16
Nebraska	16	NS						
Oklahoma		16		15	15	15	16	15
Vermont	16							
Virginia				14	14			
Wyoming	13	14		14	14	14		

Notes: An entry in the column below an offense category means that there is at least one offense in that category that is subject to criminal prosecution at the option of the prosecutor. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to criminal prosecution. "NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2009 legislative session.

## Many states exclude certain serious offenses from juvenile court jurisdiction

State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alabama		16	16				16	
Alaska					16	16		
Arizona		15		15	15			
California				14	14			
Delaware		15						
Florida				16	NS	16	16	
Georgia				13	13			
Idaho				14	14	14	14	
Illinois		15		13	15			15
Indiana		16		16	16		16	16
Iowa		16					16	16
Louisiana				15	15			
Maryland			14	16	16			16
Massachusetts				14				
Minnesota				16				
Mississippi		13	13					
Montana				17	17	17	17	17
Nevada	16*	NS		NS	16			
New Mexico				15				
New York				13	13	14		14
Oklahoma				13				
Oregon				15	15			
Pennsylvania				NS	15			
South Carolina		16						
South Dakota		16						
Utah		16		16				
Vermont				14	14	14		
Washington				16	16	16		
Wisconsin				10	10			

\* In Nevada, the exclusion applies to any juvenile with a previous felony adjudication, regardless of the current offense charged, if the current offense involves the use or threatened use of a firearm.

Notes: An entry in the column below an offense category means that there is at least one offense in that category that is excluded from juvenile court jurisdiction. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to exclusion. "NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2009 legislative session.

## In most states, criminal prosecution renders a juvenile an “adult” forever

There is a special form of “automatic” transfer in 34 states for juveniles who have previously been prosecuted as adults. Most of these “once adult/always adult” laws are comprehensive, mandating criminal handling of all posttransfer offenses. However, Maryland, Michigan, Minnesota, and Texas have laws that apply only to posttransfer felonies, whereas Iowa, California, and Oregon require that the juveniles involved be at least 16.

Generally, once adult/always adult laws apply only to juveniles who were convicted of the offenses for which they were originally transferred. However, this is not necessary in all states, at least if the original transfer was based on an individualized judicial determination.

## Many states give courts special flexibility in handling youth subject to transfer

Even states with automatic or prosecutor-controlled transfer laws often have compensating mechanisms that introduce some form of individualized judicial consideration into the process.

The most straightforward of these corrective mechanisms is the reverse waiver. A total of 24 states have reverse waiver laws, which allow juveniles whose cases are filed in criminal court to petition to have them removed to juvenile court, either for trial or disposition. Criminal court judges deciding reverse waiver motions usually consult the same kinds of standards and weigh the same factors as their juvenile court counterparts in discretionary waiver proceedings—but the burden of proof may be shifted to the juvenile as

the moving party. Moreover, even in states that have a reverse waiver option, it is not necessarily afforded to all transferred youth: 10 states with reverse waiver laws explicitly limit its availability.

Blended sentencing laws are also designed to provide a measure of individualization and flexibility in cases subject to transfer.

Laws in 18 states authorize their criminal courts, in sentencing juveniles who have been tried and convicted as adults, to impose juvenile dispositions rather than criminal ones under some circumstances. Such “criminal blended sentencing” statutes can function somewhat like reverse waiver laws, returning transferred juveniles on an individual basis to the juvenile correctional system for treatment and rehabilitation. However, they often require that a transferred juvenile receive a suspended criminal sentence, over and above any juvenile disposition. In any case, here again, criminal blended sentencing is commonly authorized only for a subset of those youth who are criminally convicted.

Juvenile blended sentencing laws in 14 states are sometimes seen as providing a “last chance” alternative for youth who would otherwise be transferred. A youth subject to the most common form of juvenile blended sentencing is tried in juvenile court and given a juvenile disposition—but in combination with a suspended criminal sentence. Although this may be preferable to straight criminal handling, the practical effects of juvenile blended sentencing statutes are not well understood. Because juvenile blended sentencing thresholds are actually lower than transfer thresholds in most states, there is a possibility that such laws, instead of providing a mitigating alternative to transfer, are instead being used for an “in-between” category of cases that would not otherwise have been transferred at all.

### Some states give juvenile courts power to impose criminal sanctions in certain categories of cases

State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alaska					16			
Arkansas		14		NS	14			14
Colorado		NS			NS			
Connecticut		14			NS			
Illinois		13						
Kansas	10							
Massachusetts		14			14			14
Michigan		NS		NS	NS	NS	NS	
Minnesota		14						
Montana		12		NS	NS	NS	NS	NS
New Mexico		14		14	14	14		
Ohio		10		10				
Rhode Island		NS						
Texas		NS		NS	NS		NS	

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which a juvenile may receive a blended sentence in juvenile court. The number indicates the youngest possible age at which a juvenile committing an offense in that category is subject to blended sentencing. “NS” indicates that, in at least one of the offense restrictions indicated, no minimum age is specified. Table information is as of the end of the 2009 legislative session.



# State transfer laws changed radically in the closing decades of the 20th century

Before 1970, transfer in most states was court-ordered on a case-by-case basis

Laws allowing juvenile courts to waive jurisdiction over individual youth, sending "hard cases" to criminal courts for adult prosecution, could be found in some of the earliest juvenile codes and have always been relatively common. Most states had enacted such judicial waiver laws by the 1950s, and they had become nearly universal by the 1970s.

For the most part, these laws left transfer decisions to the discretion of juvenile court judges. Laws that made transfer "automatic" for certain categories—either by mandating waiver or by requiring that some charges be filed initially in criminal court—were rare and tended to apply only to rare offenses such as murder or capital crimes. Before 1970, only eight states had such laws.

Laws giving prosecutors the option to charge some juveniles in criminal court were even rarer. Only two states—Florida and Georgia—had prosecutorial discretion laws before 1970.

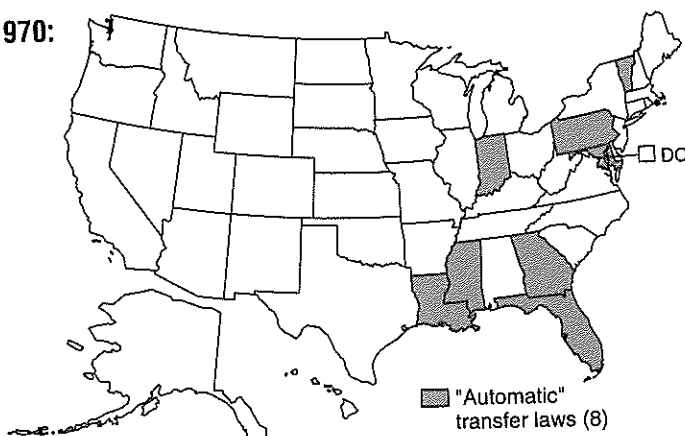
## States adopted new transfer mechanisms in the 1970s and 1980s

During the next two decades, automatic and prosecutor-controlled forms of transfer proliferated steadily. In the 1970s alone, five states enacted new prosecutorial discretion laws, and seven more states adopted some form of automatic transfer.

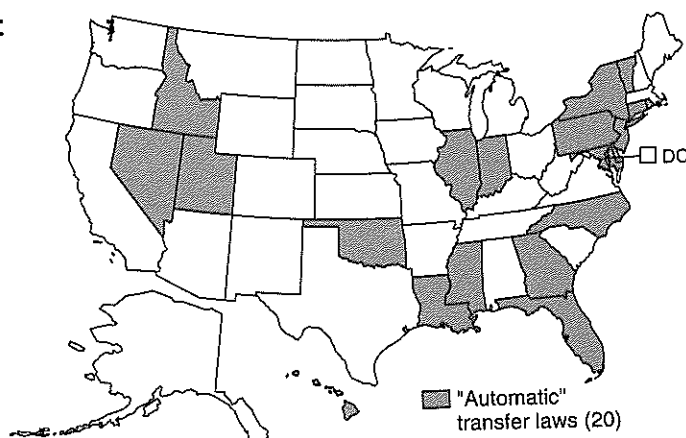
By the mid-1980s, nearly all states had judicial waiver laws, 20 states had automatic transfer laws, and 7 states had prosecutorial discretion laws.

"Automatic" transfer laws proliferated in the decades after 1970 ...

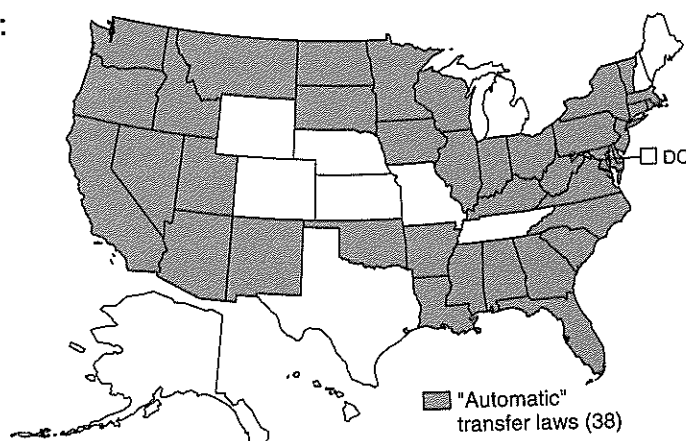
Pre-1970:



1985:



2000:



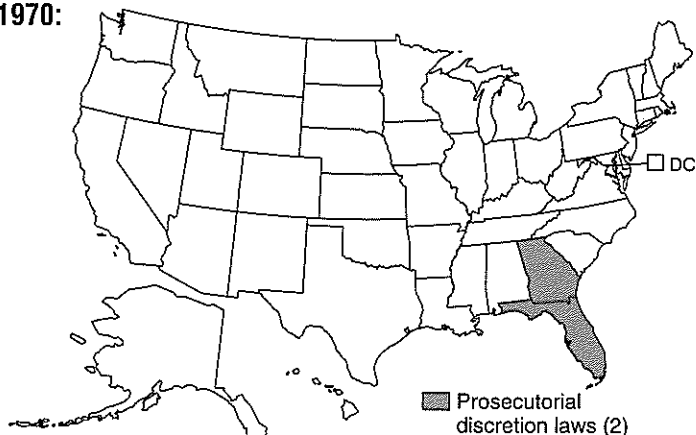
Sources: Pre-1970 and 1985 maps adapted from Feld's *The Juvenile Court Meets the Principle of the Offense: Legislative Changes to Juvenile Waiver Statutes* and Hutzler's *Juveniles as Criminals: 1980 Statutes Analysis*.



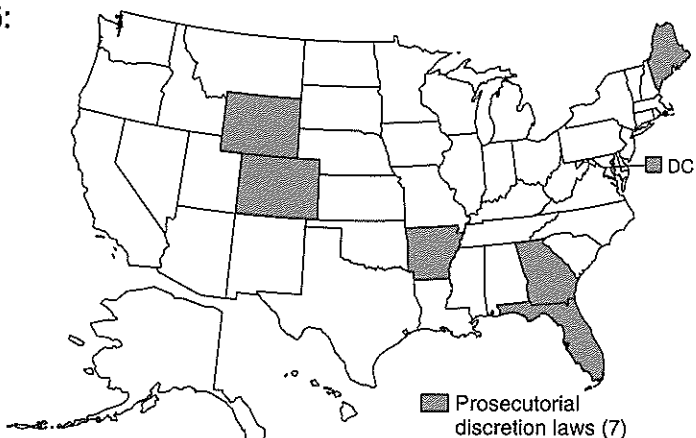
## The surge in youth violence that peaked in 1994 helped shape current transfer laws

... as did prosecutorial discretion laws

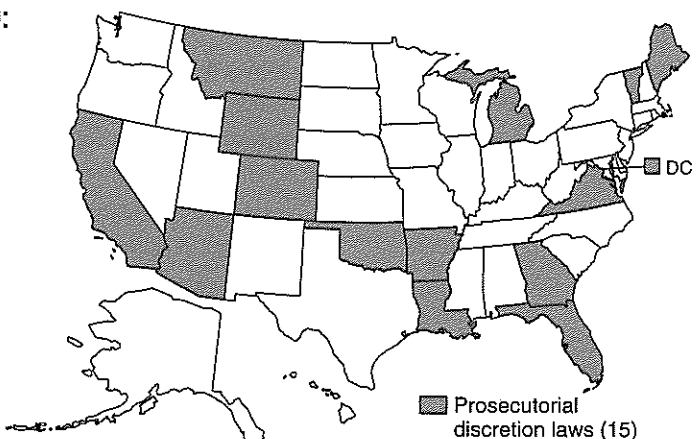
Pre-1970:



1985:



2000:



State transfer laws in their current form are largely the product of a period of intense legislative activity that began in the latter half of the 1980s and continued through the end of the 1990s. Prompted in part by public concern and media focus on the rise in violent youth crime that began in 1987 and peaked in 1994, legislatures in nearly every state revised or rewrote their laws to lower thresholds and broaden eligibility for transfer, shift transfer decisionmaking authority from judges to prosecutors, and replace individualized discretion with automatic and categorical mechanisms.

Between 1986 and the end of the 1990s, the number of states with automatic transfer laws jumped from 20 to 38, and the number with prosecutorial discretion laws rose from 7 to 15. Moreover, many states that had automatic or prosecutor-controlled transfer statutes expanded their coverage in such a way as to change their essential character. In Pennsylvania, for example, an exclusion law had been on the books since 1933—but had applied only to cases of murder. Amendments that took effect in 1996 transformed what had been a narrow and rarely used safety valve into a broad exclusion covering a long list of violent offenses.

### In recent years, transfer laws have changed little

Transfer law changes since 2000 have been minor by comparison. No major new expansion has occurred. On the other hand, states have shown little tendency to reverse or even reconsider the expanded transfer laws already in place. Despite the steady decline in juvenile crime and violence rates since 1994, there has as yet been no discernible pendulum swing away from transfer.

Sources: Pre-1970 and 1985 maps adapted from Feld's *The Juvenile Court Meets the Principle of the Offense: Legislative Changes to Juvenile Waiver Statutes* and Hutzler's *Juveniles as Criminals: 1980 Statutes Analysis*.

# For every 1,000 petitioned delinquency cases, about 9 are judicially waived to criminal court

## Juvenile court data provide a detailed picture of waiver in the U.S.

Each year juvenile courts provide detailed delinquency case processing data to the National Juvenile Court Data Archive that the National Center for Juvenile Justice maintains. Using this information, NCJJ generates annual estimates of the number and characteristics of cases that juvenile court judges waive to criminal court in the nation as a whole. In 2007, using data contributed by more than 2,200 juvenile courts with jurisdiction over 81% of the nation's juvenile population, juvenile courts are estimated to have waived jurisdiction in about 8,500 cases—less than 1% of the total petitioned delinquency caseload.

Nearly half of all cases judicially waived to criminal court in 2007 involved a person offense as the most serious charge. Youth whose cases were waived were overwhelmingly males and tended to be older teens. Although a substantial proportion (37%) of waivers involved black youth, racial disparity in the use of judicial waiver has diminished. In 1994, juvenile courts waived cases involving black youth at 1.5 times the rate at which cases involving white youth were waived. By 2007, the disparity was reduced to 1.1 times the white rate.

## The use of judicial waiver has declined steeply since 1994

The number of judicially waived cases hit a historic peak in 1994—when about 13,100 cases were waived—and has fallen 35% since that year. There are two sets of causes that might account for this trend:

### The likelihood of judicial waiver among petitioned delinquency cases was lower in 2007 than in 1994 for all offense categories and demographic groups

Offense/demographic	Profile of judicially waived delinquency cases		Percentage of petitioned cases judicially waived to criminal court	
	1994	2007	1994	2007
Total cases waived	13,100	8,500	13,100	8,500
<b>Most serious offense</b>	100%	100%		
Person	42	48	2.6%	1.7%
Property	37	27	1.1	0.7
Drugs	12	13	2.1	1.0
Public order	9	11	0.6	0.3
<b>Gender</b>	100%	100%		
Male	95	90	1.7	1.1
Female	5	10	0.4	0.4
<b>Age at referral</b>	100%	100%		
15 or younger	13	12	0.3	0.2
16 or older	87	88	3.0	1.7
<b>Race/ethnicity</b>	100%	100%		
White	53	59	1.2	0.9
Black	44	37	1.8	1.0

Note: These data on cases judicially waived from juvenile court to criminal court do not include cases filed directly in criminal court via other transfer mechanisms.

Source: Authors' analysis of Puzanchara et al.'s *Juvenile Court Statistics 2007*.

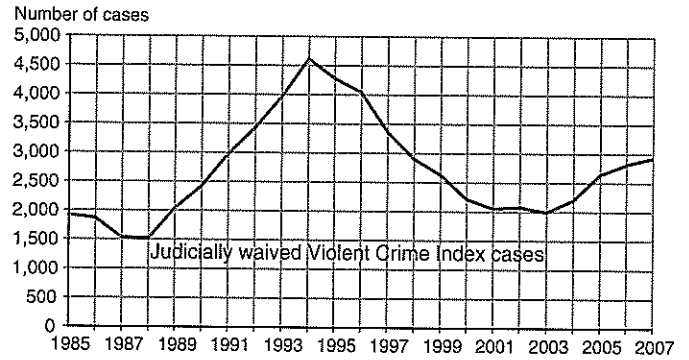
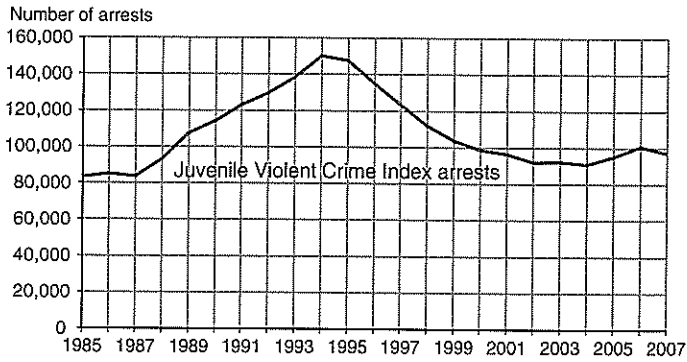
■ **Decreases in juvenile violent crime reduced the need for waiver.** Juvenile arrests for most crimes, and particularly for Violent Index offenses, have fallen almost every year since 1994. Because judicial waiver has historically served as a mechanism for removing serious and violent offenders from a juvenile system that was seen as ill-equipped to accommodate them, a reduction in serious and violent crime should naturally result in some reduction in the volume of waivers.

■ **New transfer mechanisms displaced waiver.** The nationwide proliferation and expansion of nontraditional transfer mechanisms also may have contributed to the reduction in waivers. In states with prosecutorial discretion or statutory exclusion laws, cases

involving juvenile-age offenders can originate in criminal courts, bypassing the juvenile courts altogether. During the 1990s, law revisions in most states exposed more youth to these forms of transfer. Because these new laws were generally operating already by the mid-1990s, many juveniles who would previously have been candidates for waiver were subject to nonwaiver transfer instead. Overall transfer volume after 1994 could have stayed the same—or even continued to rise—even as waiver volume declined.

It is probable that both of these causes were at work and that declining waiver numbers reflect both overall juvenile crime trends and the diminished importance of judicial waiver relative to other transfer mechanisms.

## Juvenile arrest and judicial waiver trends for serious violent offenses had similar patterns over the past two decades



\* The Violent Crime Index includes the offenses of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault.

- From the mid-1980s to the peak in 1994, the number of juvenile arrests for Violent Crime Index offenses nearly doubled and then declined substantially through 2004 (down 39%). This decade-long decline was followed by an 11% increase over the next 2 years, and then a 4% decline between 2006 and 2007.
- Similarly, the number of cases judicially waived for Violent Crime Index offenses tripled between 1988 and 1994 and then declined 57% through 2003. Between 2003 and 2007, the number of cases waived increased 47%.

Sources: Authors' analyses of FBI unpublished reports for 1980 through 1997, the FBI's *Crime in the United States* reports for 1998 through 2007, and Sickmund et al.'s *Easy Access to Juvenile Court Statistics 2007*.

# National information on juvenile cases filed directly in criminal court is fragmentary

## No national data set tracks cases that bypass juvenile courts

No data source exists that is comparable to the National Juvenile Court Data Archive for nonwaiver cases—those in which juveniles are processed in criminal court as a result of statutory exclusions or prosecutors' discretionary choices. Because they are filed in criminal court like other cases, involve defendants who are "adults" at least for criminal handling purposes, and represent an insignificant proportion of the criminal justice system's overall caseload, juvenile cases originating in criminal court can be very difficult to isolate statistically. Legal, definitional, and reporting variations from state to state also make it hard to aggregate what information is available. Although several federally sponsored criminal processing data collection efforts have shed some light on cases involving juvenile-age offenders, to date none has been designed to yield reliable national estimates of the overall volume and characteristics of these cases. As a result, at the national level, a big part of the picture of transfer is missing.

## BJS research provides glimpses of transfer case characteristics

Available national statistics on criminal processing of juveniles come primarily from a handful of large-scale data gathering efforts that the federal Bureau of Justice Statistics (BJS) sponsors. Both the State Court Processing Statistics (SCPS) program and the National Judicial Reporting Program (NJRP) periodically collect detailed information on felony cases in state criminal courts. Special analyses of data from both programs have yielded information on the relatively small subset of

felony cases that involve youth. The BJS-sponsored National Survey of Prosecutors (NSP) has likewise been used to collect basic information on criminal prosecution of juveniles in the states.

The SCPS collects demographic, offense, processing, and sentencing information on felony defendants from a sample of 40 large urban jurisdictions that are representative of the nation's 75 largest counties. For the 1998 SCPS, BJS used an oversampling technique to capture sufficient information on criminally processed juveniles to support a special analysis of this subgroup. Although it did not produce a sample that was representative of the nation as a whole—and so cannot tell us about juveniles charged in criminal court with misdemeanors rather than felonies, or those processed outside the nation's 75 largest counties—the study did provide useful insight into urban transfer cases in which serious offenses are alleged:

- **Volume.** About 7,100 juveniles were criminally processed for felonies in the 40 sampled counties during 1998.
- **Transfer mechanism.** Less than a quarter of the cases reached criminal court via judicial waiver. More common were exclusion cases (42%) and prosecutorial direct files (35%).
- **Charges.** The most serious charge at arrest in about half of the cases was either robbery (31%) or assault (21%). The next most common charges were drug trafficking (11%) and burglary (8%).
- **Demographics.** Defendants were overwhelmingly male (96%) and predominantly black (62%).

The NJRP collects information on felony sentences in state courts. The 1996 NJRP

collected data from 344 counties, generating a subsample of juvenile-age felony cases that, while not statistically representative of all transferred juveniles, was large enough to enable researchers to explore ways in which juvenile cases differed from those of other convicted felons.

Compared with adult felons, the special analysis found, transferred juveniles were more likely than their adult counterparts to be male (96% versus 84%) and black (55% versus 45%). Juveniles were more likely than adults to have a person offense as their most serious offense at conviction (53% versus 17%) and far less likely to have a drug offense (11% versus 37%).

### The majority of juvenile felony defendants in the 75 largest counties reached criminal court through nonjudicial transfer

Demographic	Percentage of juvenile felony defendants
Volume	7,100
<b>Transfer mechanism</b>	100.0%
Judicial waiver	23.7
Prosecutor direct file	34.7
Statutory exclusion	41.6
<b>Most serious charge</b>	100.0%
Violent offense	63.5
Property offense	17.7
Drug offense	15.1
Public order offense	3.5
<b>Gender</b>	100.0%
Male	95.8
Female	4.2
<b>Race</b>	100.0%
White	19.9
Black	62.2
Other	1.8
Hispanic	16.2

Source: Authors' adaptation of Rainville and Smith's *Juvenile Felony Defendants in Criminal Courts: Survey of 40 Counties, 1998*.

## Most prosecutors' offices report trying juveniles as adults

The NSP is a regular BJS-sponsored survey of chief prosecutors who try felony cases in state courts of general jurisdiction. Its primary purpose is to collect basic information on office staffing, funding, caseloads, etc., but several recent surveys have asked respondents whether their offices proceeded against juveniles in criminal court and, if so, how many such cases were prosecuted in the 12 months preceding the survey. The 2005 NSP, which was a survey of a nationally representative sample of 310 prosecutors, found that about two-thirds of prosecutors' offices tried juveniles in criminal court. On the basis of the 2005 responses, it was estimated that about 23,000 juvenile cases had been criminally prosecuted nationwide during the 12 months preceding the survey.

Although the NSP information is useful as a starting point in assessing the criminal processing of youth, it must be handled with a certain amount of caution. Respondents were asked to give either the actual number of criminally prosecuted juvenile cases over the preceding 12-month period or their best estimates, but there is no way of knowing the basis for any estimates provided. In any case, the information elicited gives only an aggregate case total and does not contribute to understanding the characteristics or processing of those cases.

## Transferred juvenile felons were far more likely than adult felons to be convicted of violent offenses

Demographic	Transferred juvenile felons	Adult felons
<b>Most serious felony charge</b>	100%	100%
Violent offense	53	17
Property offense	27	30
Drug offense	11	37
Weapons offense	3	3
Other offense	6	14
<b>Gender</b>	100%	100%
Male	96	84
Female	4	16
<b>Race</b>	100%	100%
White	43	53%
Black	55	45
Other	2	2

Source: Authors' adaptation of Levin, Langan, and Brown's *State Court Sentencing of Convicted Felons, 1996*.

## A new BJS survey will help fill information gaps on criminal processing of juveniles nationally

BJS recently awarded a new national survey effort to Westat and subcontractor, the National Center for Juvenile Justice, with the goal of generating accurate and reliable case processing statistics for juveniles charged as adults. The Survey of Juveniles Charged as Adults in Criminal Courts will be the first effort of its kind that focuses solely on generating national data on youth in criminal court; it is likely to contribute substantially to the knowledge regarding the criminal processing of

youth. Drawing from a sample of felony and misdemeanor cases filed against youth in criminal courts who were younger than 18—including both transfer cases and cases involving youth who are considered adults under their states' jurisdictional age laws—the survey will gather information on offender demographics and offense histories, arrest and arraignment charges, transfer mechanisms, and case processing and disposition.

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# Most states do not track and account for all of their juvenile transfer cases

## The Transfer Data Project documented state transfer reporting practices

In the absence of any one data source that would make it possible to arrive at an accurate estimate of the number of juvenile-age offenders prosecuted in criminal courts nationwide, it is necessary to look instead to a variety of state sources. Unfortunately, information from these scattered sources is fragmentary, hard to find, and harder to analyze.

In an effort to document reliable sources of state-level data on juvenile transfers, identify crucial gaps in available information on transferred youth and, if possible, fill in the national data picture on transfer, NCJJ conducted a Transfer Data Project in 2009. The project, a component of the OJJDP-funded National Juvenile Justice Data Analysis Project, began with a structured search for any published or online reports that official sources regularly issued within the 1995–2009 time frame and containing any state-level statistics on criminal prosecution of juveniles. Following this initial search, project staff conducted a snowball survey of likely data keepers in individual states, including contributors to the National Juvenile Court Data Archive, asking for further information, clarification, and leads. In all, 63 officials were contacted via e-mail and telephone followups, including representatives of state juvenile justice agencies, state judicial administrative offices, state prosecutors' agencies, and state statistical analysis centers. Most state respondents referred NCJJ staff to published reports containing pertinent statistics, redirected queries to other state officials, or confirmed that the information sought was not collected at the state level. However, officials in nine states were able to supply

NCJJ directly with transfer numbers that resided in state information systems or had otherwise been collected at the state level but were not made available in public reports.

These data were analyzed along with state-published statistics on transfer, yielding the most complete picture currently available of juvenile transfer and transfer-reporting practice in the states. In addition to being summarized in this report, project findings regarding state transfer and reporting practice will be incorporated into the online summary of state transfer laws found on OJJDP's Statistical Briefing Book Web site, [http://ojjdp.gov/ojstatbb/structure\\_process/faqs.asp](http://ojjdp.gov/ojstatbb/structure_process/faqs.asp).

## Only 13 states publicly report all transfers

From the information that the Transfer Data Project assembled, it appears that only a small minority of states currently track and report comprehensive information regarding criminal prosecutions of juveniles. Indeed, only 13 states were identified as publicly reporting even the total number of their transfers, including cases of juveniles who reach criminal courts as a result of statutory exclusions or prosecutors' discretionary choices as well as judicial waiver decisions. States that publish information on the offense profiles or demographic characteristics of these youth, or provide details regarding their processing or sentencing, are even rarer.

With respect to their reporting of the *number* of transfers only, states fall into four categories:

- **Publicly report all transfers (13 states).** A few of these states report only a bare annual total—the number

of criminally prosecuted youth, the number of criminal cases involving youth, or both—but most report something more, such as age, race, or gender information on transferred youth, how they reached criminal court, what their offenses were, or how their cases were resolved.

- **Publicly report some but not all transfers (10 states).** Commonly, these states report the number of cases that are sent to criminal court, following waiver proceedings in juvenile court, but not the number that are filed directly in criminal court.
- **Contribute data to the National Juvenile Court Data Archive but do not otherwise report transfers (14 states).** States that contribute annual juvenile case processing data to the Archive that NCJJ maintains are, in effect, reporting information on judicially waived cases, although not to the public. NCJJ uses these data to prepare national waiver estimates but does not publish individual state waiver totals. Accordingly, Archive reporting does not help the field and members of the public understand how individual states' waiver laws are operating in practice.
- **Do not report transfers at all (14 states).** These states do not contribute data on waived cases to the Archive, and NCJJ was unable to locate any other official reports containing their waiver and/or transfer totals. However, officials in five of these states responded to NCJJ's information requests by sharing recent data on transfer cases—which suggests that they already collect the pertinent information at the state level or, at least, are capable of collecting it.

## About half of the states publicly report at least some information regarding criminal prosecutions of juveniles

State	Publicly report all transfers	Publicly report some but not all transfers	Contribute to the National Juvenile Court Data Archive but do not otherwise report transfers	Do not report transfers at all
Number of states	13	10	14	14
Alabama			■	
Alaska			■	
Arizona	■			
Arkansas				■
California	■			
Colorado				■
Connecticut			■	
Delaware				■
District of Columbia			■	
Florida	■			
Georgia			■	
Hawaii			■	
Idaho				■
Illinois		■		
Indiana				■
Iowa		■		
Kansas	■			
Kentucky				■
Louisiana		■		
Maine				■
Maryland		■		
Massachusetts				■
Michigan	■			
Minnesota		■		
Mississippi		■		
Missouri	■			
Montana	■			
Nebraska				■
Nevada			■	
New Hampshire				■
New Jersey			■	
New Mexico		■		
New York			■	
North Carolina	■			
North Dakota				■
Ohio	■			
Oklahoma		■		
Oregon	■			
Pennsylvania		■		
Rhode Island			■	
South Carolina		■		
South Dakota				■
Tennessee	■			
Texas	■			
Utah			■	
Vermont				■
Virginia			■	
Washington	■			
West Virginia			■	
Wisconsin			■	
Wyoming				■

Note: Table information is as of 2009.

## States are more likely to track judicial waiver cases than other kinds of transfers

Relatively speaking, states do a better job of tracking cases that originate in juvenile court and are transferred to criminal court on an individualized basis. Transfer cases that bypass juvenile courts altogether are more commonly “lost” in states’ general criminal processing statistics:

- Of the 46 states that have judicial waiver laws, 20 publicly report annual waiver totals and 13 more report waivers to the National Juvenile Court Data Archive.
- By contrast, of the 29 states with statutory exclusion laws requiring criminal prosecution of some juveniles, only 2 publicly report the total number of excluded cases, and 5 others report a combined total of all criminally prosecuted cases, without specifying the transfer mechanism employed.
- Of the 15 states that have prosecutorial discretion laws, only 1 publicly reports the total number of cases filed in criminal court at prosecutors’ discretion, and 4 others report an undifferentiated total of all criminally prosecuted cases.

The scarcity of information on cases involving youth prosecuted under exclusion and prosecutorial discretion laws presents a serious problem for those wishing to assess the workings, effectiveness, and overall impact of these laws. Even the few states that provide a count of excluded or direct-filed cases seldom report the kind of demographic, offense, sentencing, and other detail that is needed to inform judgments about whether laws entrusting transfer decisions to prosecutors rather than judges are being applied fairly and consistently. It is not clear whether these laws are targeting the most serious offenders and resulting in the kinds of sanctions lawmakers intended. And if these

laws are operating as intended in one state, are they doing so in all the states that rely on such provisions?

The absence of information on cases transferred at prosecutors' discretion is particularly troubling. Some prosecutorial discretion laws are very broadly written. For example, in Nebraska and Vermont—neither of which currently publish annual transfer statistics—any youth who is at least 16 may be prosecuted as an adult at the prosecutor's option, regardless of the offense alleged. However, even states that limit prosecutors' discretionary authority to cases involving serious offenses do not thereby eliminate the possibility of unfair or inappropriate use of the authority.

Because statutory exclusion laws apply automatically to all juveniles who come within their provisions, they present less danger of inconsistent, unfair, or inappropriate enforcement. However, even apparently neutral laws may, in practice, fall more heavily on certain groups. Again, many exclusion laws apply to very broadly defined categories—all felony-grade offenses, for example, or all offenses in high-volume categories like assaults, robberies, burglaries, and drug offenses—that may, in practice, cover a variety of actual crime scenarios, from the very serious to the relatively trivial. Whether or not exclusion laws are working as intended—increasing the likelihood of prosecution, conviction, incarceration, and long sentences, and serving as a deterrent—is a question of fact that cannot be answered without more information than is generally available at present. Additional data are also needed to determine whether exclusion laws (1) impact certain groups more than others, (2) impact large numbers of youth whose offense profiles may be less serious than those originally envisioned, or (3) work differently from one state to another.

### Few states publicly report data on cases transferred by statutory exclusion or prosecutorial discretion

State	Has judicial waiver	Reports judicial waiver to public	Reports judicial waiver to Archive	Has prosecutorial discretion	Reports prosecutorial discretion to public	Has statutory exclusion	Reports statutory exclusion to public
Number of states	46	20	28	15	5	29	7
Alabama	■		■			■	
Alaska	■		■			■	
Arizona	■	■	■	■	*	■	*
Arkansas	■			■			
California	■	■	■	■	*	■	*
Colorado	■			■			
Connecticut	■		■				
Delaware	■					■	
District of Columbia	■			■			
Florida	■	■	■	■	*	■	*
Georgia	■		■	■		■	
Hawaii	■		■				
Idaho	■					■	
Illinois	■	●				■	●
Indiana	■					■	
Iowa	■	■				■	
Kansas	■	■					
Kentucky	■						
Louisiana	■			■		■	
Maine	■						
Maryland	■	■	■			■	
Massachusetts	■					■	
Michigan	■	■	■	■	■		
Minnesota	■	■				■	
Mississippi	■	■				■	
Missouri	■	■	■				
Montana				■	*	■	*
Nebraska				■			
Nevada	■		■			■	
New Hampshire	■						
New Jersey	■		■				
New Mexico						■	
New York						■	
North Carolina	■		■				
North Dakota	■						
Ohio	■	■	■				
Oklahoma	■	■	■	■			
Oregon	■	*	■			■	*
Pennsylvania	■	■	■			■	
Rhode Island	■						
South Carolina	■	■	■			■	
South Dakota	■					■	
Tennessee	■	■	■				
Texas	■	■	■				
Utah	■		■			■	
Vermont	■			■		■	
Virginia	■			■			
Washington	■	■	■			■	■
West Virginia	■	■	■			■	
Wisconsin	■		■				
Wyoming	■			■			

● Partial reporting (not all jurisdictions).

\* Combined total of transfer mechanisms (not separated out).

Note: Table information is as of 2009.



# There are wide variations in the ways states document juvenile transfers

## Only a few states report significant details about transfer cases

The Transfer Data Project's search for official state data on youth prosecuted as adults uncovered a broad range of approaches to reporting on transfers, particularly in terms of the completeness and level of detail of the information reported.

Arizona, California, and Florida can be regarded as exemplary states when it comes to collecting and regularly reporting detailed statistics on juveniles tried as adults. Although they do not report exactly the same things in the same ways, they do provide the field and the public with most of the basic information needed to assess the workings and impact of their juvenile transfer laws. Most other states—even among those that regularly track and report their annual juvenile transfer totals—report far fewer details regarding those cases.

Although there is no one "right" way to report information on juvenile transfer cases, reasonably complete documentation could be expected to cover each of the following general categories:

- **Total volume.** As noted previously, only 13 states report the total number of cases in which juvenile-age offenders are prosecuted in criminal court, the total number of juveniles prosecuted, or both.
- **Pathways.** Of these 13 states, 5 provide information showing how transfer cases reached the criminal system—whether by way of judicial waiver, prosecutors' discretionary decisions, or as a result of statutory exclusions. In six others, judicial waiver was the only transfer mechanism available.

- **Demographics.** Eight of the 13 states provide age, race/ethnicity, gender, or other demographic information on criminally prosecuted youth.

- **Offenses.** Only three of these states provide information on the offenses for which youth were transferred.

- **Processing outcomes.** Only one of these states—California—reports information on criminal court handling and disposition of transfer cases.

## Available data show dramatic differences in states' transfer rates

Although the national picture is far from complete, rough comparisons among the subset of states that do track total transfers make it clear that there are striking variations in individual states' propensity to try juveniles as adults, even when differences in juvenile population sizes are taken into account.

Some state-to-state differences in per capita transfer rates are undoubtedly linked to differences in jurisdictional age boundaries. The lowest transfer rates among the 13 full-reporting states tend to be found in the states that set lower age boundaries for criminal court jurisdiction (Michigan, Missouri, North Carolina, and Texas). In these states, 17-year-olds (or in the case of North Carolina, 16- and 17-year-olds) must be taken out of the mix: They cannot be "transferred" for criminal prosecution because they are already within the original jurisdiction of the criminal courts. That leaves a transfer-eligible population that is younger and statistically less likely to be involved in serious offending. (Of course, if one were simply measuring the extent to which states criminally prosecute youth who are younger than 18, these states' rates would be among the highest.)

Differences in state transfer rates may also be explained, in part, by broad differences in the way transfer mechanisms

### Offense and processing information on transfers is rarely reported

State	Total volume	Pathways	Demographics	Offenses	Processing outcomes
Number of states	13	11	8	3	1
Arizona	■	■	■	■	
California	■	■	■	■	■
Florida	■	■	■	■	
Kansas	■	*			
Michigan	■	■			
Missouri	■	*	■		
Montana	■		■		
North Carolina	■	*			
Ohio	■	*	■		
Oregon	■		■		
Tennessee	■	*	■		
Texas	■	*			
Washington	■	■			

\* Waiver-only states.

Note: Table information is as of 2009.

work. In the six reporting states (Kansas, Missouri, North Carolina, Ohio, Tennessee, and Texas) that have only judicial waiver laws—even including those in which some waivers are mandated—average transfer rates are generally lower than those in the remaining seven states, which have statutory exclusion laws, prosecutorial discretion laws, or both.

However, it can be difficult to account for state transfer rate variations on the basis of legal structures alone. For instance, Tennessee appears to transfer juveniles far more often than Kansas (although both are waiver-only states) and, if anything, Tennessee law imposes more restrictions on the juvenile court's power to waive jurisdiction.

**Average annual transfer rate,\* 2003–2008:**

Florida	164.7
Oregon	95.6
Arizona	83.7
Tennessee	42.6
Montana	41.6
Kansas	25.3
Washington	21.2
Missouri	20.9
California	20.6
Ohio	20.4
Michigan	12.4
Texas	8.6
North Carolina	7.1

\*Cases per 100,000 juveniles ages 10 to upper age of juvenile court jurisdiction.

Notes: Table is intended for rough comparison only. Unit of count varies from state to state. Some states report by fiscal year, some by calendar year. Transfer volume was unavailable for Montana in 2005, 2006, and 2008 and for Washington in 2008.

**Detailed transfer reporting in some states makes indepth comparison possible**

Because they document their juvenile transfers more thoroughly than other states, data from Arizona, California, and Florida provide a considerably more nuanced picture of transfer in practice. Even though all three are populous “sunbelt”

states with large urban centers, significant crime, and a broadly similar array of transfer laws, official reports from the three states make clear that they have markedly different approaches to transfer.

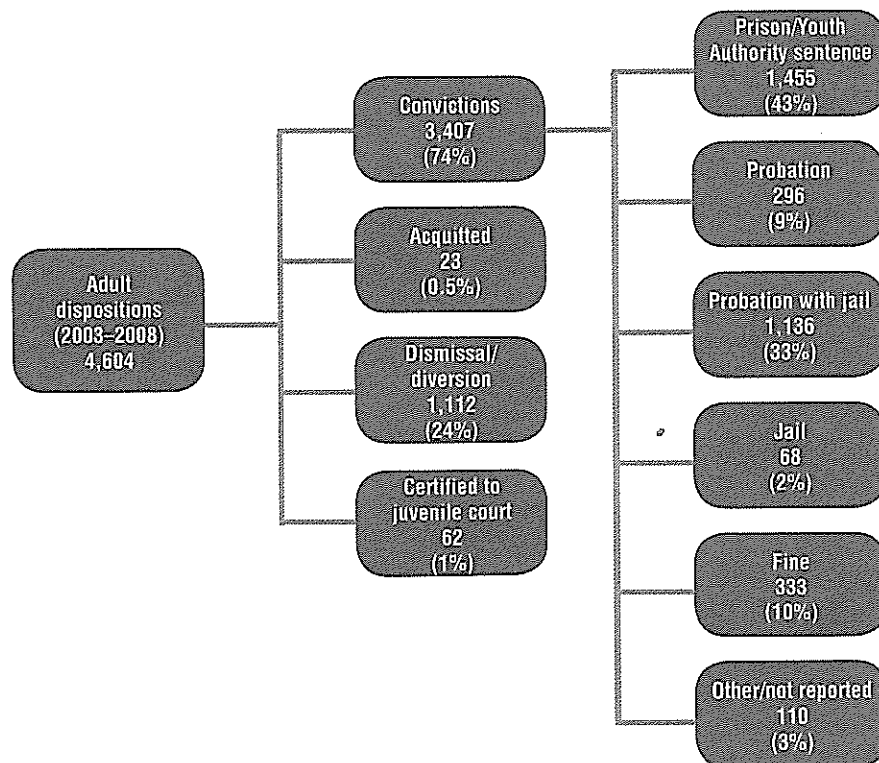
**Overall rates.** The three states differ dramatically in their per capita transfer rates—with Florida being the clear outlier. Over the period from 2003 through 2008, Florida transferred youth at about twice the rate of Arizona and about eight times the rate of California. (In fact, Florida's rate was about five times the average transfer rate in the other 12 states that publicly reported total transfers during this period.) One part of the explanation is undoubtedly Florida's expansive prosecutorial discretion law, which permits prosecutors to opt for criminal handling of, among others, all 16- and 17-year-olds accused of felonies. (Only Nebraska and Vermont give prosecutors more

discretionary authority.) However, both Arizona and California prosecutors also have broad prosecutorial discretion provisions, suggesting that aggressive use of prosecutorial discretion in Florida may be a factor as well.

**Transfer pathways.** Although Florida has an extremely broad and flexible judicial waiver provision—authorizing waiver for any offense, providing the juvenile was at least 14 at the time of commission—judicial waiver is a relatively insignificant transfer mechanism there, accounting for only about 4% of total transfers from 2003 to 2008. In Arizona, 14% of transfers came by way of waiver, but waivers steadily declined over that period, both in absolute terms and as a proportion of total transfers.

In California, by contrast, about 40% of transfers from 2003 to 2008 were

**California reports detailed case-processing outcomes for transferred youth**



Source: Authors' analyses of California Office of the Attorney General reports available online.

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waivers. California prosecutors may make a motion for “fitness hearings” for any 16- or 17-year-old, regardless of the offense alleged, and for younger offenders accused of more serious offenses. Moreover, where youth are accused of serious offenses or have serious prior records, they may be presumed to be unfit for juvenile court handling and must affirmatively prove otherwise. Perhaps because this shifting of the burden of proof makes the fitness hearing route easier for prosecutors, it is frequently used and is frequently successful: 71% of all fitness hearings from 2003 to 2008 resulted in remand to criminal court.

**Demographics.** In 2008, a majority of transfers involved youth who were at least age 17 in Florida (65%), Arizona (55%), and California (56%), but the racial and

ethnic mix was quite different. In Florida, most transferred youth in 2008 were black (54%), whereas whites (29%) and Hispanics (12%) were considerably underrepresented. By contrast, transfers were predominantly Hispanic in Arizona (57%) and California (56%).

**Offenses.** In all three states, the vast majority of transfers involved felonies rather than misdemeanors. In 2008, 98% of reported transfers in Arizona, 89% in California, and 94% in Florida involved felonies, but transfer offenses in the three states differed substantially. In Florida, only 44% of reported 2008 transfers involved person offenses, whereas 31% involved property offenses and 11% involved drug offenses. Transfers were far more likely to involve person offenses in Arizona (60%) and California (65%).

Transfers for property offenses were less common in those states (25% in Arizona, 15% in California), as were transfers for drug offenses (6% in Arizona, 4% in California).

**Case outcomes.** As noted above, no comparison is possible among the three states with regard to the crucial issue of what happens to transferred youth—only California reports processing outcomes in transfer cases. However, because processing outcome information on transfer cases is so rare, it is worth noting that, over the period from 2003 through 2008, about three-quarters of cases involving juveniles disposed in California’s criminal courts resulted in convictions. Following conviction, youth were sentenced to some form of incarceration (in a prison, jail, or California Youth Authority facility) in almost 8 of 10 cases.

# Nearly 14,000 transfers can be accounted for in 2007—but most states are missing from that total

## The size of the gaps in available transfer data can be broadly estimated

On the basis of juvenile court case processing data reported to the National Juvenile Court Data Archive, 8,500 judicial waivers are estimated to have occurred nationwide in 2007. The six states that track and report all of their nonjudicial transfers as well—Arizona, California, Florida, Michigan, Oregon, and Washington—reported an additional 5,096 nonjudicial transfer cases in 2007. Unpublished state-level information that Idaho provided to the Transfer Data Project contributed some 20 additional nonjudicial transfers to the 2007 total of 13,616.

A great deal is missing from this total, however—including nonjudicial transfers in the 29 other states that have statutory exclusion or prosecutorial discretion laws but do not publish statistics on criminal prosecution of juveniles and were not able to provide the Transfer Data Project with data from which 2007 totals could be derived. These 29 states fall into three basic groups.

**States with extremely narrow nonjudicial transfer laws.** In five of these states, transfer by means other than judicial waiver must be a very rare event. Massachusetts, Minnesota, and New Mexico have statutory exclusion provisions, but they apply only to juveniles accused of homicide. Utah has an exclusion law that, apart from homicide cases, covers only felonies that inmates in secure custody commit. Wisconsin's exclusion applies only to homicides and cases involving assaults committed against corrections, probation, and parole personnel. Even without knowing more, the authors can predict that the contribution to the nation's nonjudicial transfer total from these five states would be insignificant.

**States with extremely broad nonjudicial transfer laws.** At the other extreme, laws in two states—Nebraska and Vermont—authorize criminal prosecution of any 16- or 17-year-old youth, at the prosecutor's option, regardless of the offense alleged. In a third state—Wyoming—prosecutors have discretion to prosecute all misdemeanants in criminal court, as long as they are at least 13 years old. Laws of this exceptionally broad type are likely to generate large numbers of transfer cases, even though the states involved are not populous ones. In fact, criminal court data from Vermont, analyzed by NCJJ as part of a one-time study for that state's Agency for Human Services, found nearly 1,000 cases in which 16- and 17-year-old Vermont youth were handled as adults in a single year—a contribution to the nation's

transfer total that would be comparable to California's published total in a typical year.

**Other states.** In the remaining 21 states, nonjudicial transfer provisions are much broader in scope than those in the first group but not so broad as those in the second. Youth are subject to nonjudicial transfer in these states for a range of offenses or offense types, all far more common than homicide. Nevertheless, they must meet some minimum threshold of offense seriousness. Some states within this middle group list specific offenses qualifying for nonjudicial transfer. In others, nonjudicial transfer laws do not merely apply to named offenses but also to felony offenses generally, or at least to felonies of a particular grade or grades.

## Among states that do not track and report nonjudicial transfers, the number unaccounted for depends on the scope of each state's laws

State	Nonjudicial transfer only for extremely rare offenses	Nonjudicial transfer for listed offenses	Nonjudicial transfer for all felonies or range of felonies	Prosecutorial discretion limited solely by age
Number of states	5	16	5	3
Alabama		■		
Alaska		■		
Arkansas			■	
Colorado		■		
Delaware		■		
Dist. Of Columbia		■		
Georgia		■		
Illinois		■		
Indiana			■	
Iowa		■		
Louisiana		■		
Maryland		■		
Massachusetts	■			
Minnesota	■			
Mississippi			■	
Montana		■		
Nebraska				■
Nevada		■		
New Mexico	■			
New York		■		
Oklahoma		■		
Pennsylvania		■		
South Carolina			■	
South Dakota			■	
Utah	■			
Vermont		■		
Virginia				■
Wisconsin	■			
Wyoming				■

Note: Table information is as of the end of the 2009 legislative session.

# Jurisdictional age laws may “transfer” as many as 175,000 additional youth to criminal court

## In 13 states, youth become criminally responsible before their 18th birthdays

Although it is important to have an idea of the number and characteristics of juveniles who are prosecuted as adults under state transfer laws, it should be remembered that most criminal prosecutions involving youth younger than 18 occur in states that limit the delinquency jurisdiction of their juvenile courts so as to exclude all 17-year-olds—or even all 16-year-olds—accused of crimes. States have always been free to define the respective jurisdictions of their juvenile and criminal courts. Nothing compels them to draw the line between “juvenile” and “adult” at the 18th birthday; in fact, there are 13 states that hold youth criminally responsible beginning with the 16th or

17th birthday. The number of youth younger than 18 prosecuted as adults in these states—not as exceptions, but as a matter of routine—can only be estimated. But it almost certainly dwarfs the number that reach criminal courts as a result of transfer laws in the nation as a whole.

## A total of 2.2 million youth younger than 18 are subject to routine criminal processing

The authors do not know the number of youth prosecuted as adults in states that set the age of adult responsibility for crime at 16 or 17 for many of the same reasons that they do not know the number of youth prosecuted as adults under transfer laws. However, rough estimates are possible, based on population data and what is known about the offending behavior of 16- and 17-year-old youth.

In 2007, there were a total of 2.2 million 16- and 17-year-olds who were considered criminally responsible “adults” under the jurisdictional age laws of the states in which they resided. If one applies age-specific national delinquency case rates (the number of delinquency referrals per 1,000 juveniles) to this population group—and assume that they would have been referred to criminal court at the same rates that 16- and 17-year-olds are referred to juvenile courts in other states—then as many as 247,000 offenders younger than age 18 would have been referred to the criminal courts in 2007.

To determine the number of youth who are actually criminally prosecuted in the 13 states, delinquency case rates may be less pertinent than delinquency petition rates—that is, the age-specific rates at which youth are formally processed in (rather than merely referred to) juvenile

court. On the basis of age-specific delinquency petition rates, one would expect about 145,000 youth younger than 18 to have been criminally prosecuted in the 13 states in 2007.

It is possible to refine this rough estimate somewhat further. To account for the fact that different groups are formally processed in court at different rates, one can control not only for age but also for sex and race. If one applies age-, sex-, and race-specific petition rates to the population involved, an estimated 159,000 youth who were younger than 18 were prosecuted in criminal courts in the 13 states in 2007.

One can also take population density into account. The estimation procedure that NCJJ used to produce national data on juvenile court processing characteristics uses the county as the unit of aggregation. As part of the multiple-imputation and weighting process, all U.S. counties are placed into one of four strata on the basis of the size of their youth population, and specific rates are developed for age/race groups within each of the strata. If we apply similar age-, race-, and strata-specific petition rates to this population, we arrive at an estimate of 175,000 cases involving 16- or 17-year-olds tried in criminal court in the 13 states in 2007.

It should be noted again, however, that all of these estimates are based on an assumption that is at least questionable: that juvenile and criminal courts would respond in the same way to similar offending behavior. In fact, it is possible that some conduct that would be considered serious enough to merit referral to and formal processing in juvenile court—such as vandalism, trespassing, minor thefts, and low-level public order offenses—would not receive similar handling in criminal court.

## Upper age of original juvenile court jurisdiction, 2007

Age	State
15	Connecticut,* New York, North Carolina
16	Georgia, Illinois,** Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, Wisconsin
17	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming

\* Upper age of original jurisdiction is being raised from 15 to 17; the transition will be complete by 2012.

\*\* Upper age rose from 16 to 17 for those accused of misdemeanors only, effective 2010.

# Juveniles in most states can be jailed while awaiting trial in criminal court

## Contact with adult inmates is sometimes but not always restricted

Depending on state law, local practice, and such factors as the age of the accused, juveniles who are confined while awaiting criminal trial may be held in juvenile detention facilities or adult jails.

A total of 48 states authorize jailing of juveniles who are awaiting trial in criminal court. In 14 of these states, use of adult jails rather than juvenile detention facilities for pretrial holding of transferred juveniles is mandated, at least in some circumstances; in the rest, the use of jails is allowed but not required. Sometimes a special court order or finding is required for jail holding, and sometimes a minimum age. For example, California requires a finding that a youth's pretrial detention in an ordinary juvenile facility would endanger the public or other juvenile detainees. In Illinois, a juvenile must be at least 15 to be held in jail, and a court must specifically order it. New Jersey requires a special hearing, comparable to a transfer hearing, before jail holding may be ordered. On the other hand, some states, such as Idaho and Tennessee, generally mandate use of jails for pretrial confinement when juveniles are processed as adults but empower courts to order the use of juvenile detention centers in individual cases.

Laws in 18 of the states that allow jail holding of juveniles specify that they must be kept from contact with adult jail inmates. Transferred youth in most states may also be held in juvenile detention facilities, either routinely or pursuant to court orders in individual cases.

### Most states allow but do not require transferred youth to be held pretrial in adult jails rather than juvenile detention centers

State	Jailing of transferred youth allowed pending criminal trial	Minimum age, special condition, or court order required	Use of jails mandated under some circumstances	Youth-adult separation required
Number of states	48	15	14	18
Alabama	■		■	
Alaska	■			
Arizona	■			■
Arkansas	■			
California	■	■		■
Colorado	■	■		■
Connecticut	■		■	
Delaware	■	■	■	
District of Columbia	■			
Florida	■		■	■
Georgia	■	■		■
Hawaii	■		■	
Idaho	■		■	■
Illinois	■	■		■
Indiana	■			■
Iowa	■	■		■
Kansas	■			■
Kentucky	■			■
Louisiana	■		■	
Maine	■	■		
Maryland	■		■	■
Massachusetts	■	■		
Michigan	■	■		■
Minnesota	■			
Mississippi	■		■	
Missouri	■			
Montana	■			■
Nebraska	■	■		
Nevada	■			
New Hampshire	■		■	
New Jersey	■	■		
New Mexico	■		■	
New York	■	■		
North Carolina	■			
North Dakota	■			
Ohio	■			■
Oklahoma	■		■	■
Oregon	■	■		
Pennsylvania	■			
Rhode Island	■			
South Carolina	■	■		
South Dakota	■			■
Tennessee	■		■	■
Texas	■			
Utah	■			■
Vermont	■	■		
Virginia	■			
Washington	■			
West Virginia	■			
Wisconsin	■		■	
Wyoming	■			

Note: New Mexico and Washington provisions apply only to previously convicted juveniles. Table information is as of the end of the 2009 legislative session.

# Juveniles in most states can be jailed while awaiting trial in criminal court

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State	Jailing of transferred youth allowed pending criminal trial	Minimum age, special condition, or court order required	Use of jails mandated under some circumstances	Youth-adult separation required
Number of states	48	15	14	18
Alabama	■		■	
Alaska	■			
Arizona	■			■
Arkansas	■			
California	■	■		■
Colorado	■	■		■
Connecticut	■		■	
Delaware	■	■	■	
District of Columbia	■			
Florida	■		■	■
Georgia	■	■		■
Hawaii	■		■	
Idaho	■		■	■
Illinois	■	■		■
Indiana	■			
Iowa	■	■		■
Kansas	■			■
Kentucky	■			■
Louisiana	■		■	
Maine	■	■		
Maryland	■		■	■
Massachusetts	■			
Michigan	■	■		■
Minnesota	■			
Mississippi	■			
Missouri	■		■	
Montana	■			■
Nebraska	■	■		
Nevada	■			
New Hampshire	■		■	
New Jersey	■	■		
New Mexico	■		■	
New York	■	■		
North Carolina	■			
North Dakota	■			
Ohio	■			■
Oklahoma	■		■	■
Oregon	■	■		
Pennsylvania	■			
Rhode Island	■			
South Carolina	■	■		
South Dakota	■			■
Tennessee	■		■	■
Texas	■			
Utah	■			■
Vermont	■	■		
Virginia	■			
Washington	■			
West Virginia	■			
Wisconsin	■		■	
Wyoming	■			

Note: New Mexico and Washington provisions apply only to previously convicted juveniles. Table information is as of the end of the 2009 legislative session.

## A 2009 survey found that more than 7,000 youth who were younger than 18 were in jails

Federal data collections shed some light on state approaches to pretrial holding of transferred youth. The BJS-sponsored Annual Survey of Jails (ASJ) provides a one-day snapshot of the population confined in jails nationwide. According to the most recent ASJ, at midyear 2009 the nation's jails held a total of 7,220 inmates who were younger than 18, including 5,847 who had been tried or were awaiting trial as adults—less than 1% of the total jail population.

However, this cannot be considered an exact count of “transferred juveniles” in jail because many of these inmates who were younger than 18 were held in states

where ordinary criminal court jurisdiction begins at age 16 or 17. Moreover, the total does not take account of inmates who were accused of offenses committed while younger than 18 but were already older than 18 by the time of the survey.

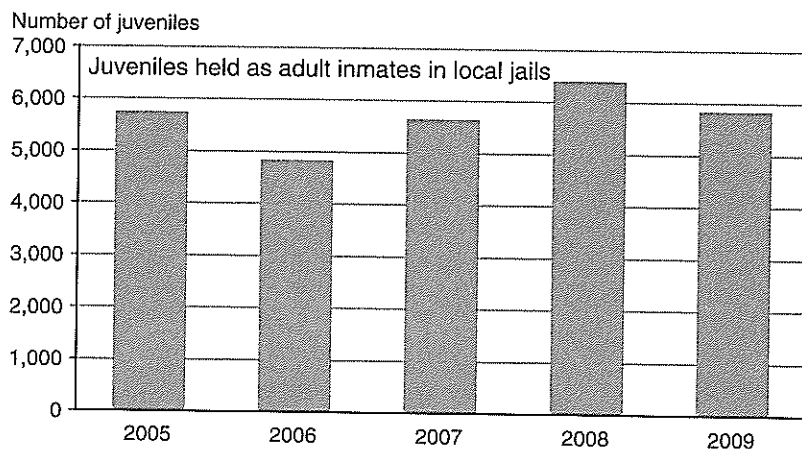
The Census of Juveniles in Residential Placement (CJRP) provides a one-day population count of the nation's juvenile facilities, including those normally used for detaining youth pending trial in the juvenile system. The most recent CJRP found that, as of the 2007 census date, a total of 1,101 individuals being held in juvenile residential facilities nationwide were awaiting proceedings in criminal court, in addition to 303 who were awaiting transfer hearings. Taken together, these youth made up about 1.6% of the residents of the nation's juvenile facilities.

## Federal law prohibiting holding of juveniles with adults does not apply to transferred juveniles

The Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, generally requires, as a condition of federal funding for state juvenile justice systems, that juvenile delinquents and status offenders not be confined in jails or other facilities in which they have contact with incarcerated adults who have been convicted or are awaiting trial on criminal charges. However, regulations interpreting the JJDP Act provide that juveniles who are being tried as adults for felonies or have been criminally convicted of felonies may be held in adult facilities without violating this “sight and sound separation” mandate. Juveniles who have been transferred to the jurisdiction of a criminal court may also be confined with other juveniles in juvenile facilities without running afoul of the JJDP Act mandate. However, once these youth reach the state's maximum age of extended juvenile jurisdiction, they must be separated from the juvenile population.

The proposed Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009, currently pending before Congress, would eliminate the special exception that permits jail holding of transferred juveniles while they await proceedings in criminal court. Effective 3 years from the enactment of the Reauthorization Act, the sight and sound separation mandate would apply to such youth. They could not be jailed with adults unless a court of competent jurisdiction, after considering a number of individualized factors, had determined that the interests of justice required it.

## Between 2005 and 2009, an average of 5,700 juveniles were held as adults in local jails—less than 1% of all inmates



Note: Authors' adaptation of Minton's Jail Inmates at Midyear 2009—Statistical Tables, *Prison and Jail Inmates at Midyear*.



# Convicted juveniles do not always receive harsher sanctions in the adult system

## Sentencing and correctional handling of transferred youth vary from state to state

There are few national sources of information regarding what happens to youth once they are transferred to criminal courts. Even the most basic question—whether convicted youth are sanctioned more severely in the adult system than they would have been in the juvenile system—is difficult to answer, as various studies focusing on individual jurisdictions have yielded inconsistent results. On the one hand, most studies have concluded that criminal processing of these youth is more likely to result in incarceration and that periods of incarceration that criminal courts impose tend to be longer. However, a few have found no such differences in sentencing severity. In any case, it is likely that juvenile-criminal sentencing differences are largest in states that criminally prosecute only the most serious juvenile offenders. In states with transfer laws that apply to a broader range of less serious offenses, one would expect the adult system to regard transferred youth more lightly—and perhaps more lightly than the juvenile system would.

Special analyses of data from the State Court Processing Statistics Program (SCPS) and the National Judicial Reporting Program (NJRP) have shed some light on the ways in which criminal sentencing of transferred juvenile felons compares with dispositions of nontransferred youth on the one hand, and with sentencing of adult criminals on the other. In the first comparison, data on juvenile felony defendants from the 1990, 1992, and 1994 SCPS sample were contrasted with data on youth formally processed in the juvenile courts of the same large urban jurisdictions. Overall, 68% of the transferred

youth received sentences involving incarceration in jail or prison, whereas only 40% of the nontransferred youth received dispositions involving placement in juvenile correctional facilities. Of those convicted in criminal court of violent offenses, 79% were sentenced to incarceration, whereas only 44% of those adjudicated delinquent for violent offenses received juvenile dispositions involving placement. Similar criminal-juvenile differences were found in sanctions received by property offenders (57% incarcerated in the criminal system versus 35% in the juvenile system), drug offenders (50% versus 41%), and public order offenders (60% versus 46%).

A separate issue is whether, by reason of their age, juveniles in criminal court receive more lenient sentencing treatment than adult defendants. Analyses of 1996

NJRP data and 1998 SCPS data, comparing sentences that transferred juvenile felons received with sentences that adult felony defendants received, found no such consistent pattern of age-based leniency. Both studies found that transferred juveniles convicted of violent felonies were about as likely as adults to be sentenced to some form of incarceration. At least in the NJRP sample, juveniles convicted of property and weapons offenses were considerably more likely to be incarcerated than adult property and weapons offenders. Moreover, even though the NJRP analysis showed that transferred juveniles were sentenced to shorter maximum prison terms than were adults for sexual assault, burglary, and drug offense convictions, they received longer prison terms than adults did for murder and weapons offense convictions.

### Among felony defendants convicted of property and weapons offenses, transferred juveniles were far more likely than adults to be sentenced to prison terms

Offense/ defendant	Profile of felony sentence imposed				Mean maximum sentence length (in months)		
	Total	Prison	Jail	Probation	Prison	Jail	Probation
<b>All offenses</b>							
Transferred juveniles	100%	60%	19%	21%	91	6	44
Adults	100	37	23	40	59	6	38
<b>Violent offenses</b>							
Transferred juveniles	100	75	9	15	118	8	55
Adults	100	78	5	17	101	7	46
<b>Property offenses</b>							
Transferred juveniles	100	46	27	27	39	6	43
Adults	100	18	28	54	46	6	38
<b>Drug offenses</b>							
Transferred juveniles	100	31	36	33	30	6	29
Adults	100	34	28	38	47	6	39
<b>Weapons offenses</b>							
Transferred juveniles	100	55	20	25	48	6	26
Adults	100	39	17	44	42	5	31
<b>Other offenses</b>							
Transferred juveniles	100	37	43	20	48	6	33
Adults	100	22	37	41	41	6	36

Source: Authors' adaptation of Levin, Langan, and Brown's *State Court Sentencing of Convicted Felons, 1996*.

## Convicted youth may sometimes serve part of their sentences in juvenile facilities

States take a variety of correctional approaches with criminally convicted youth who receive sentences of incarceration, including straight incarceration in adult facilities with no distinction between minor and adult inmates, segregated incarceration in special facilities for underage offenders, and graduated incarceration that begins in juvenile facilities and is followed by later transfer to adult ones. According to juvenile correctional agencies responding to a 2008 survey that the Council of Juvenile Correctional Administrators conducted, in about two-thirds of states, juveniles who have been convicted and sentenced to incarceration by criminal courts may serve some portion of their sentences in juvenile correctional facilities.

Several states set a statutory minimum age—typically 16—for commitment to an adult correctional facility. In Delaware, for example, a youth younger than 16 who has been sentenced to a term of imprisonment must be held initially by the state's Division of Youth Rehabilitation Services and then transferred to the state's Department of Corrections upon reaching his or her 16th birthday.

The 2007 Census of Juveniles in Residential Placement counted a total of 761 inmates in juvenile residential facilities who had been convicted in criminal court and, presumably, were either serving their sentences or awaiting transfer to adult facilities.

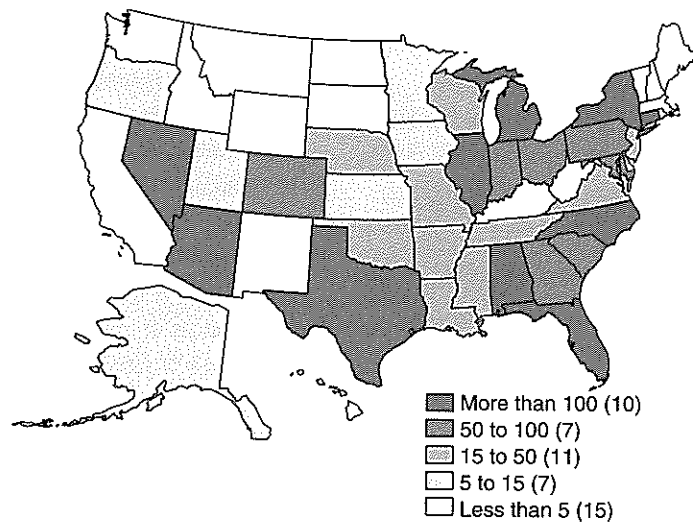
## State prisons, the bulk of them in the South, held more than 2,700 juveniles in 2009

At mid-year 2009, the National Prisoner Statistics Program, which collects one-day snapshot information on state prison inmates, counted a total of 2,778 inmates younger than age 18 in state prisons

nationwide. About 46% of these inmates were held in prisons in southern states.

Although many of these youth were undoubtedly convicted following prosecution under state transfer laws, more than half were held in states where ordinary criminal court jurisdiction begins at age 16 or 17 rather than 18.

## Half of inmates younger than 18 held in state prisons come from states with a younger age of criminal responsibility



State	Inmates*	State	Inmates*	State	Inmates*
U.S. total	2,778	<b>Upper age 17</b>	<b>1,368</b>	Montana	1
<b>Upper age 15</b>	<b>737</b>	Alabama	118	Nebraska	21
Connecticut	332	Alaska	7	Nevada	118
New York	190	Arizona	157	New Jersey	21
North Carolina	215	Arkansas	17	New Mexico	3
<b>Upper age 16</b>	<b>673</b>	California	0	North Dakota	0
Georgia	99	Colorado	79	Ohio	86
Illinois	106	Delaware	28	Oklahoma	19
Louisiana	15	Florida	393	Oregon	13
Massachusetts	8	Hawaii	2	Pennsylvania	61
Michigan	132	Idaho	0	Rhode Island	1
Missouri	31	Indiana	54	South Dakota	1
New Hampshire	0	Iowa	13	Tennessee	22
South Carolina	89	Kansas	5	Utah	6
Texas	156	Kentucky	0	Vermont	4
Wisconsin	37	Maine	0	Virginia	16
		Maryland	58	Washington	2
		Minnesota	13	West Virginia	0
		Mississippi	28	Wyoming	1

\* Reported number of inmates younger than age 18 held in custody in state prisons, 2009.

Source: Authors' adaptation of West's Prison Inmates at Midyear 2009—Statistical Tables, *Prison and Jail Inmates at Midyear*.

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# Transfer laws generally have not been shown to deter crime

## Some research suggests that transfer may increase subsequent offending

Given the many practical ways in which state transfer laws vary in their scope and operation, blanket statements about their effects should be read with caution. However, insofar as these laws are intended to deter youth crime generally, or to deter or reduce further criminal behavior on the part of youth subjected to transfer, research over several decades has generally failed to establish their effectiveness.

Research on the general deterrence effects of transfer laws—their tendency to discourage the commission of offenses subject to transfer and criminal prosecution—has not produced entirely consistent results. Most studies have not found reductions in juvenile crime rates that can be linked to transfer laws. One multistate analysis by Levitt concluded that there could be a moderate general deterrent effect, and studies based on interviews with juveniles, conducted by Redding and Fuller and by Glassner and others, suggest the possibility that transfer laws could deter crime if sufficiently publicized. However, the weight of the evidence suggests that state transfer laws have little or no tendency to deter would-be juvenile criminals. Possible explanations include juveniles' general ignorance of transfer laws, tendency to discount or ignore risks in decisionmaking, and lack of impulse control.

A separate body of research, comparing postprocessing outcomes for criminally

prosecuted youth with those of youth handled in the juvenile system, has uncovered what appear to be counter-deterrent effects of transfer laws. Six large-scale studies summarized by Redding—employing a range of different methodologies and measures of offending, and focusing on a variety of jurisdictions, populations, and types of transfer laws—have all found greater overall recidivism rates among juveniles who were prosecuted as adults than among matched youth who were retained in the juvenile system. Criminally prosecuted youth were also generally found to have recidivated sooner and more frequently. Poor outcomes like these could be attributable to a variety of causes, including the direct and indirect effects of criminal conviction on the life chances of transferred youth, the lack of access to rehabilitative resources in the adult corrections system, and the hazards of association with older criminal “mentors.”

However, some critics have raised the possibility that the observed greater reoffending on the part of transferred youth is simply a consequence of group differences between transferred and nontransferred youth—not an effect of transfer but a “selection bias” that could not be corrected for, given the limited information and statistical controls available to researchers. (See, for example, Meyers' study “The Recidivism of Violent Youths in Juvenile and Adult Court: A Consideration of Selection Bias.”)

The studies finding that transfer had counterdeterrent effects did not all agree

in finding these effects for all offense types—leaving open the possibility that criminal prosecution may work for some kinds of young offenders and not work for others. In fact, a 2010 comparison, by Schubert and others, of rearrest outcomes for transferred and nontransferred youth found that, whereas transfer appeared to have no effect on rearrest rates for the sample as a whole, transferred persons of offenders had lower rearrest rates than their nontransferred counterparts.

Although transfer laws in general have not been shown to work (that is, improve public safety by reducing serious crime through specific or general deterrence), it is not clear whether this conclusion applies to all transfer laws equally because the key studies have been conducted in only a handful of states. Again, it should be remembered that transfer laws vary considerably, and their effects are unlikely to be uniform. It may be that some transfer provisions—targeting certain offenses or resulting in certain sanctions—are more effective in deterring crime than others.

The data gathered under BJS's new Survey of Juveniles Charged in Adult Criminal Courts should significantly contribute to our understanding of the national impact of state transfer mechanisms but is unlikely to support state-level analyses. Better state-level data are necessary to support the state-specific research that is clearly needed to shed light on the impact and workings of each state's transfer laws.

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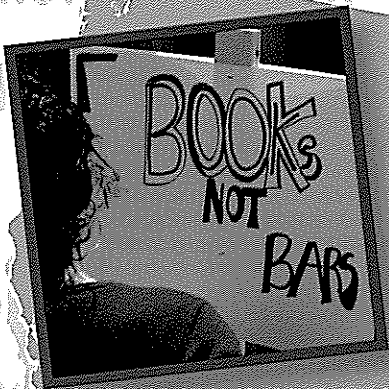
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# STATE TRENDS



Legislative Victories from 2005 to 2010

Removing Youth from the Adult Criminal Justice System



CAMPAIGN FOR

# YOUTH JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR

The Campaign for Youth Justice (CFYJ) is a national organization dedicated to ending the practice of prosecuting, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system. CFYJ dedicates this report to the thousands of young people and their families across the country who have been harmed by laws and policies of the criminal justice system; the Governors, State Legislators, State Officials, and Local Officials who championed these reforms; and the continuing efforts of individuals and organizations who are leading efforts to return youth to the juvenile justice system, including:

Action for Children North Carolina  
Baltimore Algebra Project  
Children's Action Alliance  
Citizens for Juvenile Justice  
Colorado Criminal Defense Bar  
Colorado Juvenile Defenders Coalition  
Columbia Legal Services  
Connecticut Juvenile Justice Alliance  
Delaware Center for Justice  
Delaware Collaboration for Youth  
Families and Allies of Virginia's Youth (FAVY)  
Families and Friends of Louisiana's Incarcerated Children  
Illinois Juvenile Justice Initiative  
Indiana Juvenile Justice Task Force, Inc.  
Injustice Project  
Just Kids Partnership  
JustChildren  
Juvenile Justice Project of Louisiana  
Mississippi Coalition for the Prevention of Schoolhouse to Jailhouse

Mississippi Youth Justice Project  
MS-ACLU  
NAACP  
Nebraska Coalition for the Fair Sentencing of Youth  
Nevada ACLU  
New York Governor's Children's Cabinet Advisory Board  
New York Center for Juvenile Justice  
Partnership for Safety and Justice  
Raise the Bar campaign  
Rhode Island Kids Count  
Rhode Island ACLU  
Southern Poverty Law Center  
Team Child  
The Embracing Project  
Voices for Children in Nebraska  
Washington Coalition for the Just Treatment of Youth  
Wisconsin Council on Children & Families  
Wyoming Kids Count  
Youth Justice Project

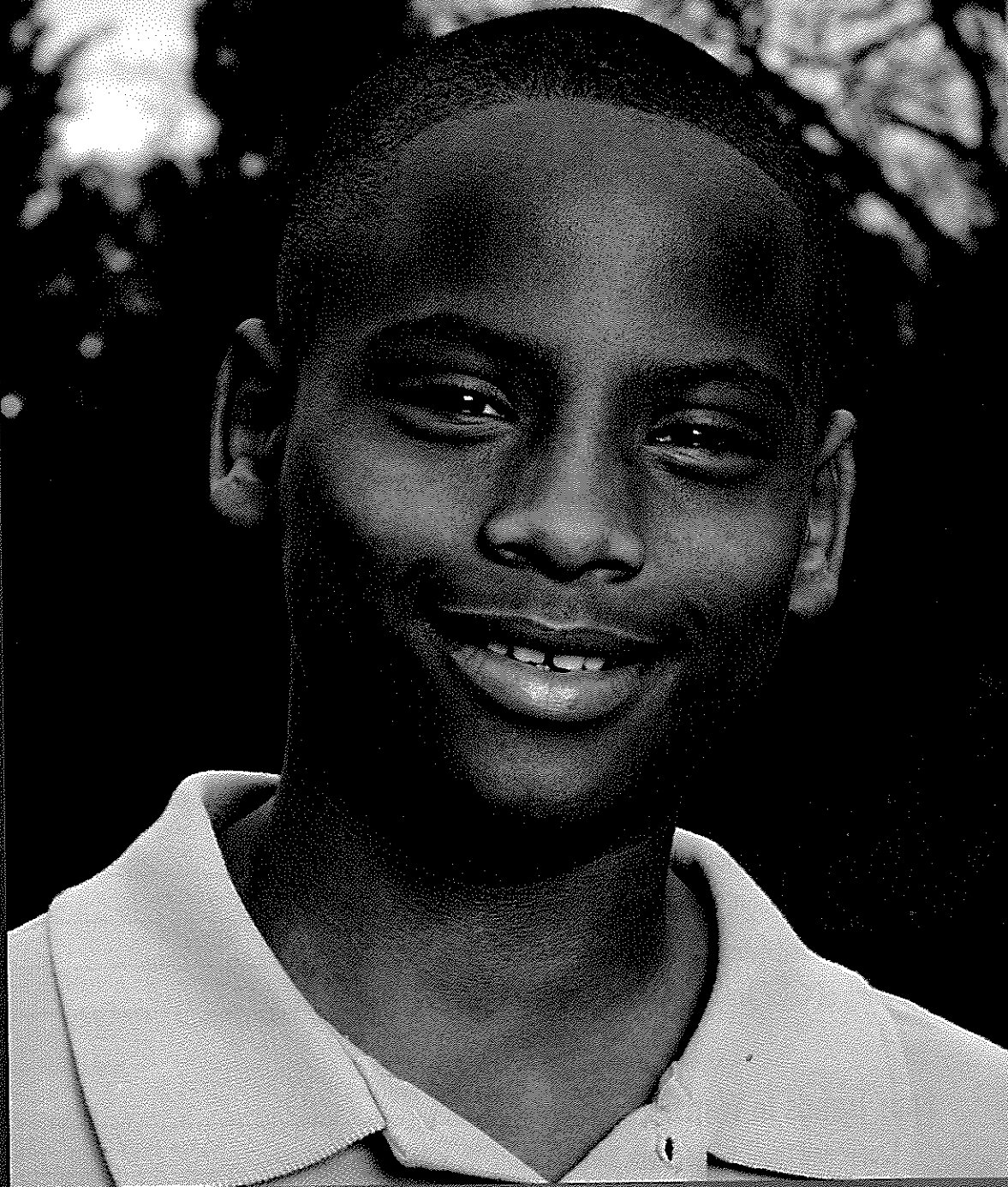


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# A LETTER FROM LIZ RYAN



*"Children have an extraordinary  
capacity for rehabilitation."*  
- California State Senator Leland Yee

Stemming from one family's individual case, we launched the Campaign for Youth Justice (CFYJ) five years ago to respond to a crisis throughout the country: an estimated 250,000 youth under 18 are prosecuted in the adult criminal justice system every year.

A spike in youth crime during the 1980s and 1990s prompted state policymakers to expand laws to put more children in adult court, implement mandatory sentencing policies for certain crimes, and lower the age at which a child could be prosecuted as an adult. State policymakers believed their efforts would improve public safety and deter future crime. However, studies across the nation have consistently concluded that state laws prosecuting youth in adult court are ineffective at deterring crime and reducing recidivism.

Four years ago we issued our first national report, *The Consequences Aren't Minor*, documenting the multiple unintended consequences of these laws. With the help of the National Council on Crime and Delinquency and the Justice Policy Institute, we analyzed all of the available research and conducted interviews with dozens of incarcerated youth in adult jails and prisons in states all over the country.

We found that youth tried as adults face the same punishments as adults. They can be placed in adult jails pre- and post-trial, sentenced to serve time in adult prisons, or be placed on adult probation with few to no rehabilitative services. Youth also are subject to the same sentencing guidelines as adults and may receive mandatory minimum sentences including life without parole. The only consequence that youth cannot receive is the death penalty.

When youth leave jail or prison, are on probation, or have completed their adult sentences, they carry

the stigma of an adult criminal conviction. They may have difficulty finding a job or getting a college degree to help them turn their lives around. We also know these laws have had a disproportionate impact on youth of color.

The consequences of an adult conviction aren't minor; they are serious, long-term, life-threatening, and in some cases, deadly. However, awareness of the problem is not enough. Policymakers and the public must have viable alternative solutions. This report, *State Trends: Legislative Changes from 2005-2010 Removing Youth from the Adult Criminal Justice System*, provides some initial answers by examining innovative strategies states are using to remove and protect youth in the adult criminal justice system.

## State Trends demonstrates a "turning tide" in how our country handles youth.

*State Trends* demonstrates a "turning tide" in how our country handles youth. In the not-so-distant past, politicians have had their careers ruined by a "soft on crime" image. Fortunately, the politics around

youth crime are changing. State policymakers appear less wedded to "tough on crime" policies, choosing to substitute them with policies that are "smart on crime." Given the breadth and scope of the changes, these trends are not short-term anomalies but evidence of a long-term restructuring of the juvenile justice system.

In the past five years, 15 states have changed their state laws, with at least nine additional states with active policy reform efforts underway. These changes are occurring in all regions of the country spearheaded by state and local officials of both major parties and supported by a bipartisan group of governors.

As a society, we still have a long way to go to meet the original promise of the juvenile court which



was founded in Chicago over 100 years ago. Our legal system recognizes a mandate to rehabilitate youth with an approach that is different than adults, but we have never fully lived up to it. Today, all 50 states and the District of Columbia, as well as the federal government have two distinct systems for dealing with adults and youth. While the majority of youth arrested for criminal acts are prosecuted in state juvenile justice systems, far too many youth are still handled by the adult criminal justice system – to the detriment of public safety, these youth and our society.

We hope that policymakers will greatly expand upon the reforms profiled in this report, especially as they have broad public support and make fiscal sense in these challenging economic times. These policy reforms draw on the public's support of investment in rehabilitation and treatment of youth,

rather than approaches that harm youth and decrease public safety. These reforms draw a higher “return on investment,” reduce wasteful spending, and cost less over the long term. According to a senior researcher at the Urban Institute, returning youth to juvenile court jurisdiction will result in a \$3 savings benefit for every \$1 spent.

We applaud these efforts to “turn the tide,” and we challenge federal, state and local policymakers to transform this tide into a wave of reform across the country.

*Liz Ryan*

CEO of the Campaign For Youth Justice





# How a Youth Ends Up in the Adult Justice System

## Age of Juvenile Court Jurisdiction

These laws determine the age of adulthood for criminal justice purposes. They effectively remove certain age groups from the juvenile court control for all infractions, whether violent or nonviolent, and place them within the adult court jurisdiction. Thirteen states have defined the age of juvenile court jurisdiction as below the generally accepted age of 18 years old.

## Transfer and Waiver Provisions

These laws allow young people to be prosecuted in adult courts if they are accused of committing certain crimes. A variety of mechanisms exist by which a youth can be transferred to adult court. Most states have transfer provisions, but they vary in how much authority they allow judges and prosecutors to exercise.

## Judicial Waiver

Almost all states have judicial waiver provisions which is the most traditional and common transfer and waiver provision. Under judicial waiver laws, the case originates in juvenile court. Under certain circumstances, the juvenile court judge has the authority to waive juvenile court jurisdiction and transfer the case to criminal court. State statutes vary in how much guidance they provide judges on the criteria used in determining if a youth's case should be transferred. Some states call the process "certification," "remand," or "bind over for criminal prosecution." Others "transfer" or "decline jurisdiction."

## Prosecutorial Waiver

These laws grant prosecutors discretion to file cases against young people in either juvenile or adult court. Such provisions are also known as "concurrent jurisdiction," "prosecutorial discretion," or "direct file." Fifteen states have concurrent jurisdiction provisions.

## Reverse Waiver

This is a mechanism to allow youth whose cases are being prosecuted in adult court to be transferred back down to the juvenile court system under certain circumstances. Half of the states have reverse waiver provisions.

## Statutory or Legislative Exclusion

These laws exclude certain youth from juvenile court jurisdiction entirely by requiring particular types of cases to originate in criminal rather than juvenile court. More than half of the states have statutory exclusion laws on the books.

## "Once an Adult, Always an Adult"

These laws require youth who have been tried as adults to be prosecuted automatically in adult courts for any subsequent offenses. Two-thirds of the states have such provisions, but most require the youth to have been convicted in the initial criminal prosecution.

## Blended Sentencing

These laws allow juvenile or adult courts to choose between juvenile and adult correctional sanctions in sentencing certain youth. Courts often will combine a juvenile sentence with a suspended adult sentence, which allows the youth to remain in the juvenile justice system as long as he or she is well-behaved. Half of the states have laws allowing blended sentencing in some cases.

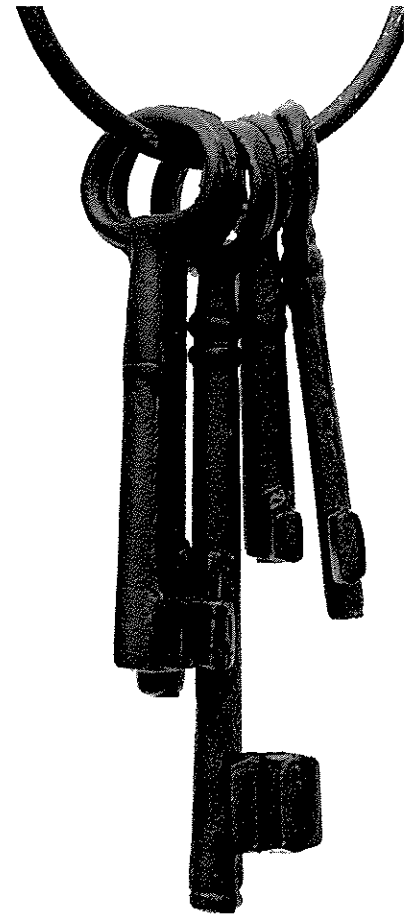




# OVERVIEW

*"Without question, youth must be held accountable for their actions, but justice should not be driven by fads or politics."*

- Congressman George Miller



In the rush to crack down on youth crime in the 1980s and 1990s, many states enacted harsh laws making it easier for youth to be prosecuted in adult criminal courts. Every state allows youth to be prosecuted as adults by one of several mechanisms such that an estimated 250,000 children are prosecuted, sentenced, or incarcerated as adults each year in the United States.<sup>1</sup> In more than half of the states, there is no lower age limit on who can be prosecuted as an adult. This means that in these states very young children, even a 7-year-old, can be prosecuted as adults.<sup>2</sup>

When youth are tried in adult courts, they often face the same sentencing guidelines as adult offenders. In the majority of cases a juvenile court judge has not had an opportunity to evaluate the circumstances of the case before a youth is prosecuted as an adult, and adult criminal court judges often have very little discretion in the type of sentence they can impose on a youth convicted in the adult system. Incarcerating children in the adult system puts them at higher risk of abuse, injury, and death while they are in the system, and makes it more likely that they will reoffend once they get out.

At the time the laws were passed, few policymakers understood these consequences. Now they do. Politics has caught up with public opinion and now seems to reflect what 90% of Americans believe – that rehabilitative services and treatment for incarcerated youth can prevent future crimes.<sup>3</sup>

*State Trends: Legislative Changes from 2005 to 2010 Removing Youth from the Adult Criminal Justice System* provides state policymakers, the media, the public, and advocates for reform with the latest information about youth in the adult criminal justice system. The first half of this report explains the dangers to youth, public safety, and the overall prosperity of our economy and future generations. The second half of the report looks at legislative reforms aimed at removing youth from the criminal justice system by examining state juvenile justice legislation compiled by the National Juvenile

Defender Center and the National Conference of State Legislatures.<sup>4</sup> The legislative scan identified 15 states that have changed their state laws, in four categories.

### **Trend 1**

Four states (Colorado, Maine, Virginia and Pennsylvania) have passed laws limiting the ability to house youth in adult jails and prisons.

### **Trend 2**

Three states (Connecticut, Illinois, and Mississippi) have expanded their juvenile court jurisdiction so that older youth who previously would be automatically tried as adults are not prosecuted in adult criminal court.

### **Trend 3**

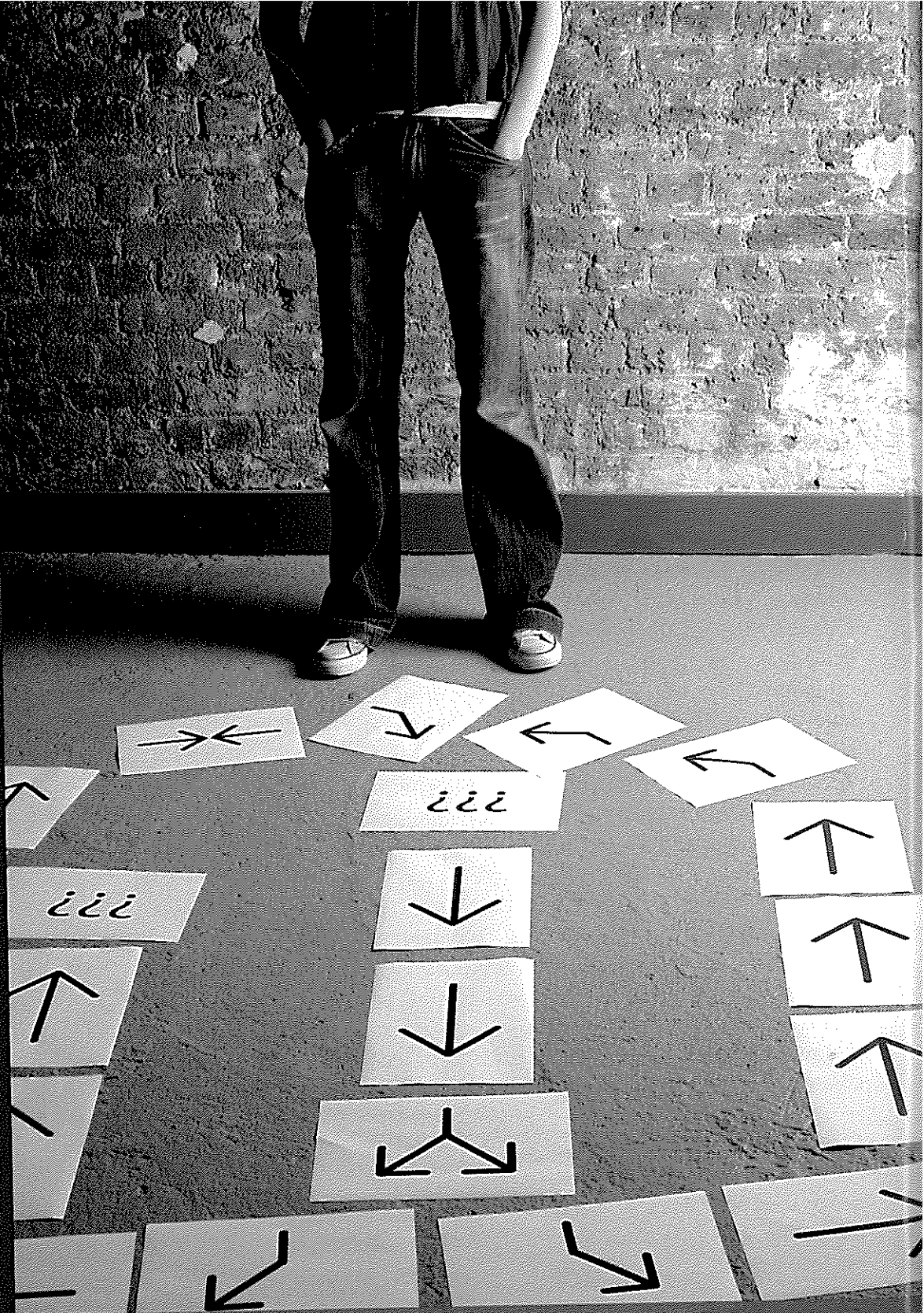
Ten states (Arizona, Colorado, Connecticut, Delaware, Illinois, Indiana, Nevada, Utah, Virginia and Washington) have changed their transfer laws making it more likely that youth will stay in the juvenile justice system.

### **Trend 4**

Four states (Colorado, Georgia, Texas, and Washington) have all changed their mandatory minimum sentencing laws to take into account the developmental differences between youth and adults.



...  
UNDERSTANDING THE CONSEQUENCES  
OF TRYING YOUTH AS ADULTS



*"When a kid commits a crime, society shouldn't give up on that kid."*

- Congressman Chris Murphy

# Teen Brains Are Not Fully Developed

As any parent knows, teenagers are works in progress. They do not have the same abilities as adults to make sound judgments in complex situations, to control their impulses, or to plan effectively for the long term. Recent brain science has been able to demonstrate why it is that adolescents act the way they do.

What science tells us is that the brain architecture is constructed through a process that starts before birth and continues into adulthood. During adolescence, the brain undergoes dramatic changes to the structure and function of the brain impacting the way youth process and react to information. The region of the brain that is the last to develop is the one that controls many of the abilities that govern goal-oriented, “rational” decision-making, such as long-term planning, impulse control, insight, and judgment.

The downside to these brain changes is that this means that youth are particularly vulnerable to making the kinds of poor decisions that get them involved in the justice system. By examining age-

specific arrest rates we can see that youth is a time characterized by delinquency that then sharply drops off. In fact, engaging in delinquent activities is a normal part of the adolescent experience. Almost all of the readers of this report will likely be able to recall participating in an activity during their adolescence that violates at least one criminal law today. It is also true that for the vast majority of readers, these activities were temporary and did not indicate that they would become lifelong offenders.

The upside of this brain research is that the rapid growth and development happening in adolescent brains make them highly elastic and malleable to change. The relationships made and behaviors learned during this crucial developmental stage are hard-wired into the brain architecture and help determine long-term life outcomes. When young people hit a rough patch, guidance from responsible adults and developmentally appropriate programs, services, and punishment can get them back on track.

The juvenile justice system is based on this science and provides troubled adolescents with mentors, education, and the guidance to help most of them mature into responsible adults. In contrast, warehousing minors in the adult system ensures that they will *not* have guidance from responsible adults or have access to age-appropriate programs, services and punishment to help build positive change into their brains during this crucial developmental period. Instead, they will face the reality of having a permanent criminal record and the increased likelihood of becoming career criminals. This is not the outcome we want for America’s children.







## Moving Youth into the Adult System Costs States Millions: Lessons from Rhode Island

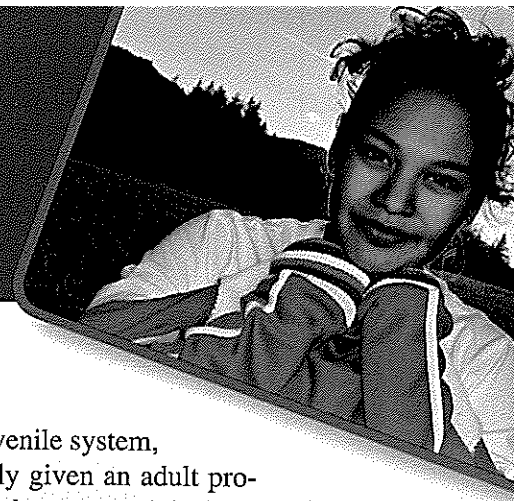
With the current financial crisis, states across the country are exploring ways to decrease the costs of the justice system. According to the Pew Center on the States, state correctional costs quadrupled over the past two decades and now top \$50 billion a year, consuming one in every 15 general fund dollars.<sup>5</sup> When state policymakers have conversations about reforms to either the juvenile or adult criminal justice system, an issue that often gets forgotten is youth in the adult system. Some states see the juvenile and adult systems as interchangeable and seek to consolidate the two systems in an effort to save money. This is a very costly mistake for states as each high-risk youth diverted from a life of crime saves society nearly \$5.7 million in costs over a lifetime.<sup>6</sup>

Children are not little adults, and a criminal justice system that is designed for adults does not work for youth.

Rhode Island is a state that recently experimented with moving 17-year-olds into their adult system as a way to close a budget shortfall in 2007.<sup>7</sup> It took only a couple of months for the state to realize that it would cost much more to keep youth safe in the adult system, and the legislature quickly repealed the law.<sup>8</sup> Rhode Island now stands as a powerful example to other states that consolidating or otherwise moving more youth into the adult system is a bad idea.



# The Juvenile Justice System Demands More Than the Adult Justice System

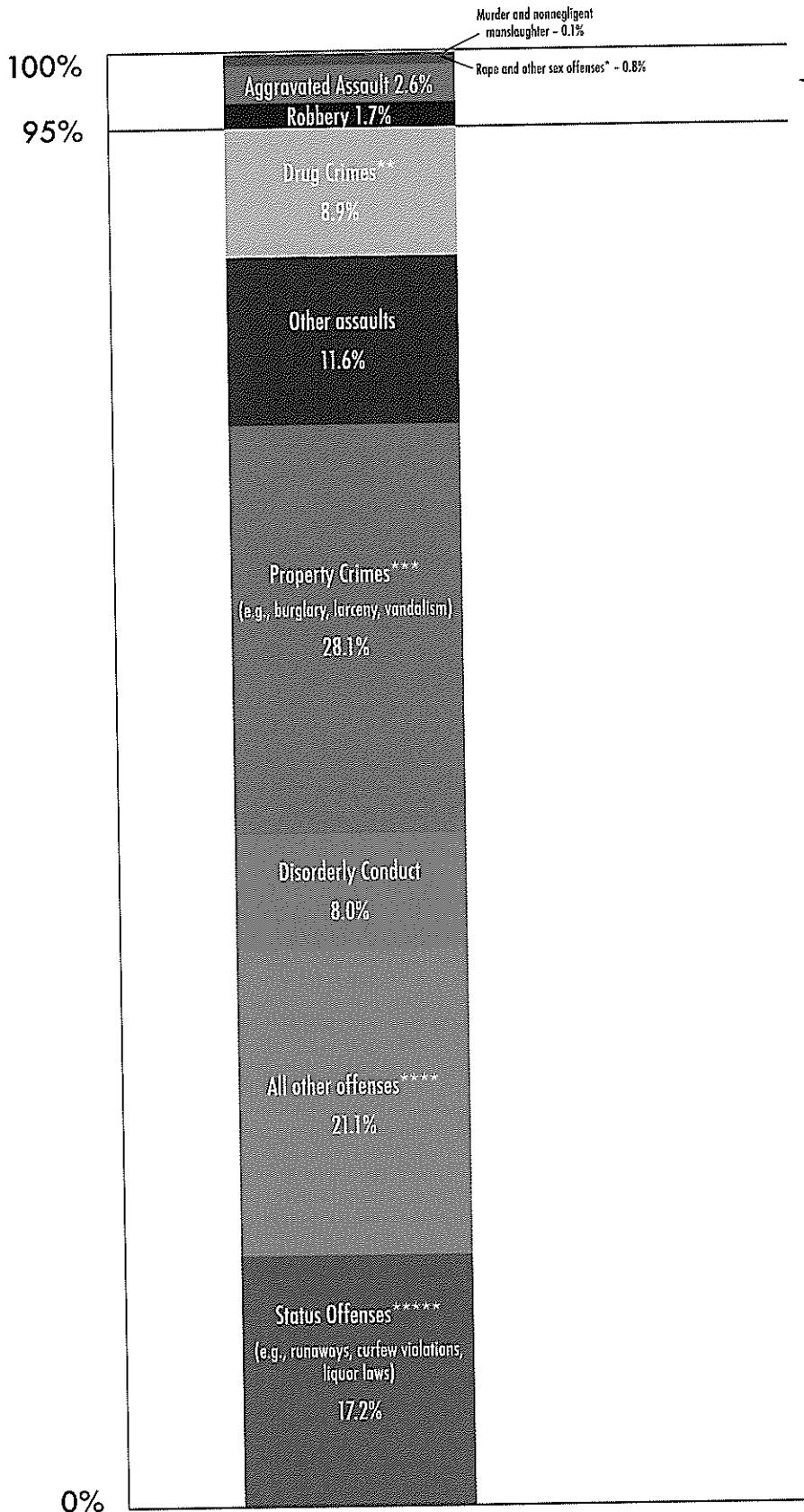


The adult system is typically thought to be more punishment-oriented than the juvenile system, but the minor crimes that youth commit mean that the majority of youth are only given an adult probation sentence as well as a lifelong adult criminal record that makes it hard for them to get jobs in the future. In contrast, the juvenile justice system holds youth accountable for their crimes by placing more requirements on youth and their families. The juvenile justice system often requires that youth attend school, pay community and victim restitution, and receive the counseling, mentoring, and training they need to turn their lives around. The adult justice system completely fails those youth who would benefit from the services of the juvenile system by letting them “slip through the cracks.”

## Comparison of Requirements between the Adult and Juvenile System in North Carolina

	In the Juvenile System	In the Adult System
<b>Parent Involvement</b>	<ul style="list-style-type: none"> <li>• Parent/guardian must be involved.</li> <li>• Youth released from detention center <i>only</i> to parent/guardian. Youth have no right to pretrial release, no right to bond.</li> </ul>	<ul style="list-style-type: none"> <li>• Parent/guardian need not be notified.</li> <li>• Youth can make bail and leave county jail on own recognizance.</li> </ul>
<b>Education</b>	<ul style="list-style-type: none"> <li>• Youth must attend school or get a GED.</li> </ul>	<ul style="list-style-type: none"> <li>• No education requirement.</li> </ul>
<b>Age-Appropriate Services, Treatment, and Punishment</b>	<ul style="list-style-type: none"> <li>• Youth receive assessments, have frequent contact with court counselors, and report regularly for rehabilitative services.</li> <li>• Youth and families often receive court-ordered evidence-based therapies: counseling, training, mentoring, tutoring, and parenting skills.</li> <li>• Youth with mental health and substance abuse issues receive intensive services.</li> <li>• Regular contact with court counselors.</li> </ul>	<ul style="list-style-type: none"> <li>• Services not required or, often, never even offered.</li> <li>• Those offered are intended for adults and therefore are not developmentally appropriate for youth.</li> </ul>

# Youth Arrests, 2009



Only 5% of youth are arrested for the crimes of homicide, rape, robbery, or aggravated assault.

\* Includes Forcible rape and other sex offenses except prostitution  
 \*\* Drug Abuse Violations  
 \*\*\* Property crimes are offenses of burglary, larceny-theft, motor vehicle theft, arson, vandalism, stolen property (buying, receiving, possessing)  
 \*\*\*\* Also includes forgery and counterfeiting, fraud, embezzlement, gambling, suspicion, offenses against the family and children, prostitution and commercialized vice, driving under the influence, drunkenness, and vagrancy, weapons offenses but does not include traffic offenses  
 \*\*\*\*\* Status offenses include runaways, curfew and loitering law violations, liquor laws

Source: Federal Bureau of Investigation, *Crime in the United States, 2009*



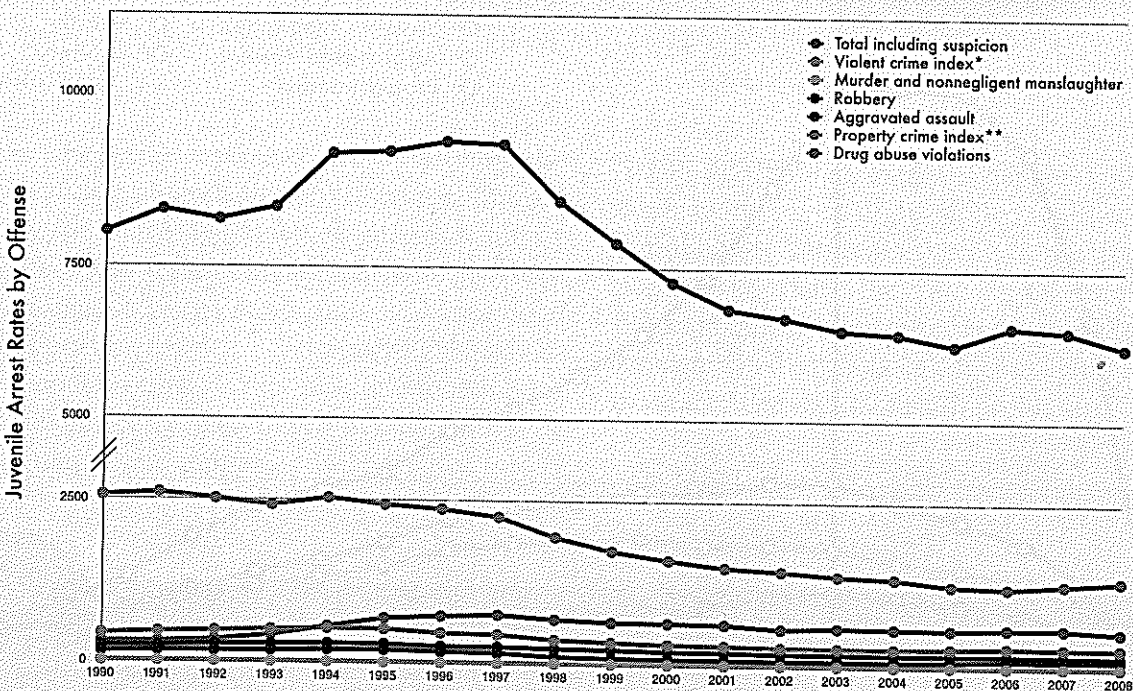
# Most Youth in the Adult System Are Convicted of Minor Crimes

Any mention of juvenile crime tends to evoke images that perpetuate three specific myths about youth. First, newspaper and television coverage of youth crime tends to involve stories focused on gangs or murder leading to a distorted view of the nature of juvenile crime. Youth who have been arrested for violent crimes are rare and only account for about 5% of all juveniles arrested each year.<sup>9</sup> Drugs, burglary, theft, and other property crimes are among the more common reasons teens are prosecuted in adult courts.

Second, there is a perception that juvenile crime is on the rise. In reality, youth crime has been going down for many years and is now at historic lows. The number of adults arrested between 1999 and 2008 increased 3.4%, whereas the number of juveniles arrested dropped a staggering 15.7% during that same time frame.<sup>10</sup>

Third, there is a perception that youth commit the majority of crime in the nation. The truth is that adults commit the majority of crime in America. In 2008,

## Juvenile Crime Has Been Declining for Years



\* Violent crime index includes murder & nonnegligent manslaughter, forcible rape, robbery, and aggravated assault.

\*\* Property crime index includes burglary, larceny-theft, motor vehicle theft, and arson.

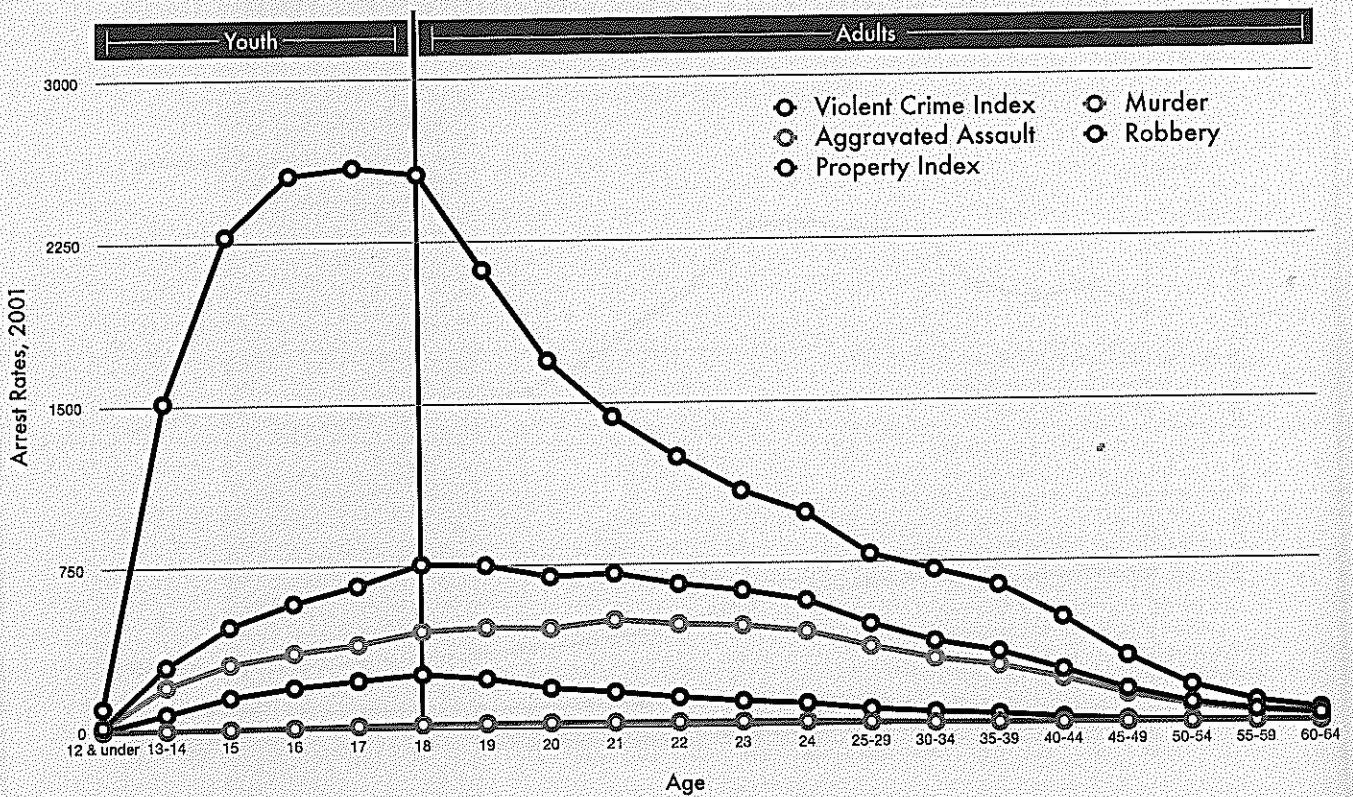
Source: National Center for Juvenile Justice; OJJDP Statistical Briefing Book

only 12% of violent crime and 18% of property crime nationwide were attributed to youth.<sup>11</sup> According to the FBI, youth under age 18 accounted for 15% of all arrests.<sup>12</sup>

These three misperceptions apply equally to youth in the adult justice system. The overwhelming majority of youth who enter the adult court are not there for serious, violent crimes. Despite the fact that many of the state laws were intended to prosecute the most serious offenders, most youth who are tried in adult courts are there for nonviolent offenses.<sup>13</sup> A significant proportion of youth, in some states the majority, only receive a sentence of probation. However,

even youth who receive the most serious sanction – a sentence of imprisonment in an adult prison – are not the serious offenders that one may imagine. The majority of youth held in adult prisons are not given extreme sentences such as life without parole, and 95% of youth will be released back to their communities before their 25th birthday.<sup>14</sup> Unfortunately, by virtue of being prosecuted in the adult system these youth are less likely to get an education or skills training, and their adult conviction will make it harder for them to get jobs.

## Age-Specific Arrest Rates Rise Sharply During Youth Then Drop Off



Source: Adapted from OJJDP Statistical Briefing Book

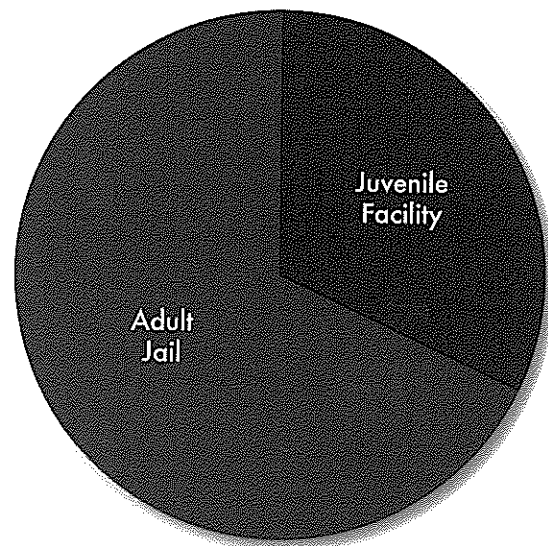
# Youth Are Often Housed in Adult Jails and Prisons

One of the most serious consequences of adult court prosecution is that youth can be housed in adult jails and prisons. On any given night in America, 10,000 children are held in adult jails and prisons.<sup>15</sup> State laws vary widely as to whether youth can be housed in adult facilities.

Although federal law requires that youth in the juvenile justice system be removed from adult jails or be sight-and-sound separated from other adults, these protections do not apply to youth prosecuted in the adult criminal justice system.<sup>16</sup> In fact, many youth who are held in adult jails have not even been convicted. Research shows that many never will. As many as one-half of these youth will be sent back to the juvenile justice system or will not be convicted. Yet, most of these youth will have spent *at least one month* in an adult jail, and one in five of these youth will have spent *over six months* in an adult jail.<sup>17</sup>

While in adult jails or prisons, most youth are denied educational and rehabilitative services that are necessary for their stage in development. A survey of adult facilities found that 40% of jails provided no educational services at all, only 11% provided special education services, and a mere 7% provided vocational training.<sup>18</sup> This lack of education increases the difficulty that youth will have once they return to their communities.

If detained pre-trial, two-thirds of youth prosecuted as adults are held in adult jails.



Source: *Jailing Juveniles*, Campaign for Youth Justice

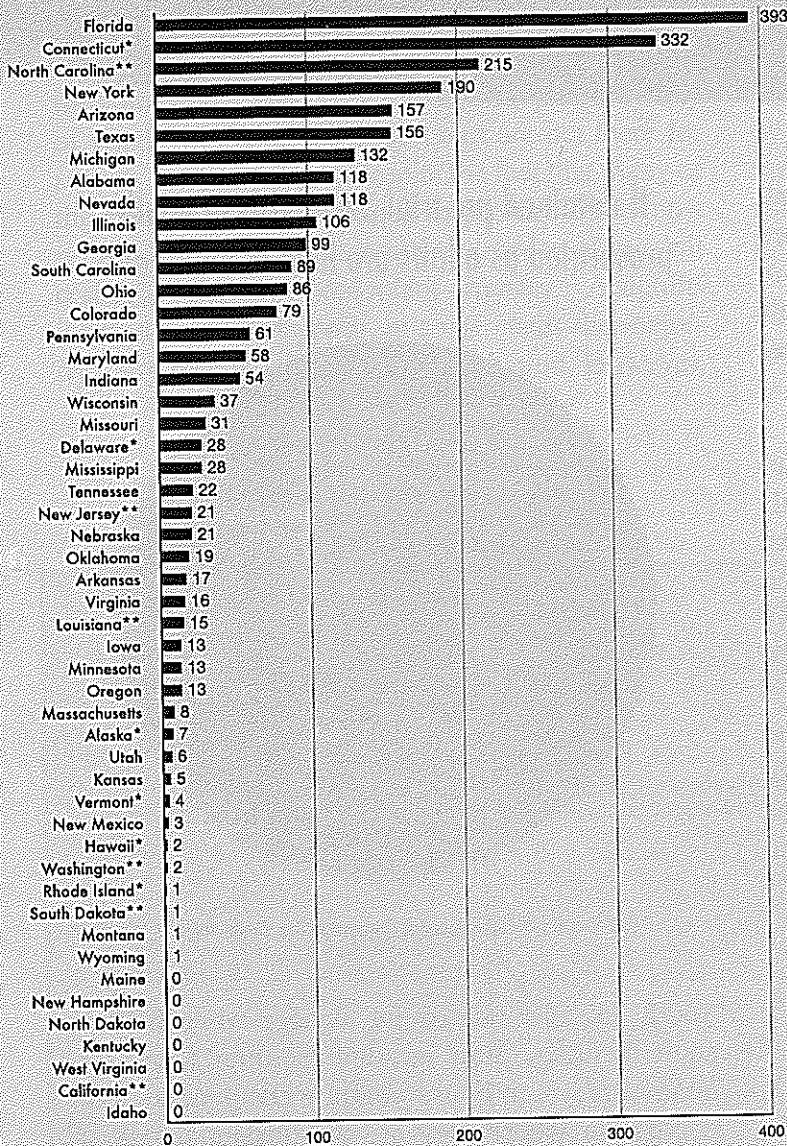
Youth are also in extreme danger when held in adult facilities. Staff in adult facilities face a dilemma: they can house youth in the general adult population where they are at substantial risk of physical and sexual abuse, or they can house youth in segregated settings in which isolation can cause or exacerbate mental health problems.

*"When you take juveniles and put them in adult jails, they learn to be better adult criminals."*

– New Hampshire State Representative Mary Walz



# Youth Under 18 in Adult Prisons, 2009



\* Prisons and jails form one integrated system. Data include total jail and prison populations.  
 \*\* Counts include those held in privately-operated facilities.

Source: Bureau of Justice Statistics

According to Sheriff Gabe Morgan of Newport News, Virginia:

The average 14-year-old is a “guppy in the ocean” of an adult facility. The law does not protect the juveniles; it says they are adults and treats them as such. Often they are placed in isolation for their protection, usually 23 ½ hours alone. Around age 17, we put [the youth] in the young head population, a special unit where all the youth are put together, and the 13- and 14-year-olds normally fall prey there as well.<sup>19</sup>

Youth who are held in adult facilities are at the greatest risk of sexual victimization. The National Prison Rape Elimination Commission found that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”<sup>20</sup>

Keeping youth away from other adult inmates is no solution either. Isolation has devastating consequences for youth – these conditions can cause anxiety, paranoia, and exacerbate existing mental disorders and put youth at risk of suicide. In fact, youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities.<sup>21</sup>





# Prosecuting Youth in the Adult System Leads to More Crime, Not Less

All Americans have a stake in whether the juvenile and criminal justice system helps youth turn away from crime and build a productive future where they become an asset, rather than a liability, to their communities. Early interventions that prevent high-risk youth from engaging in repeat criminal offenses can save the public nearly \$5.7 million in costs over a lifetime.<sup>22</sup>

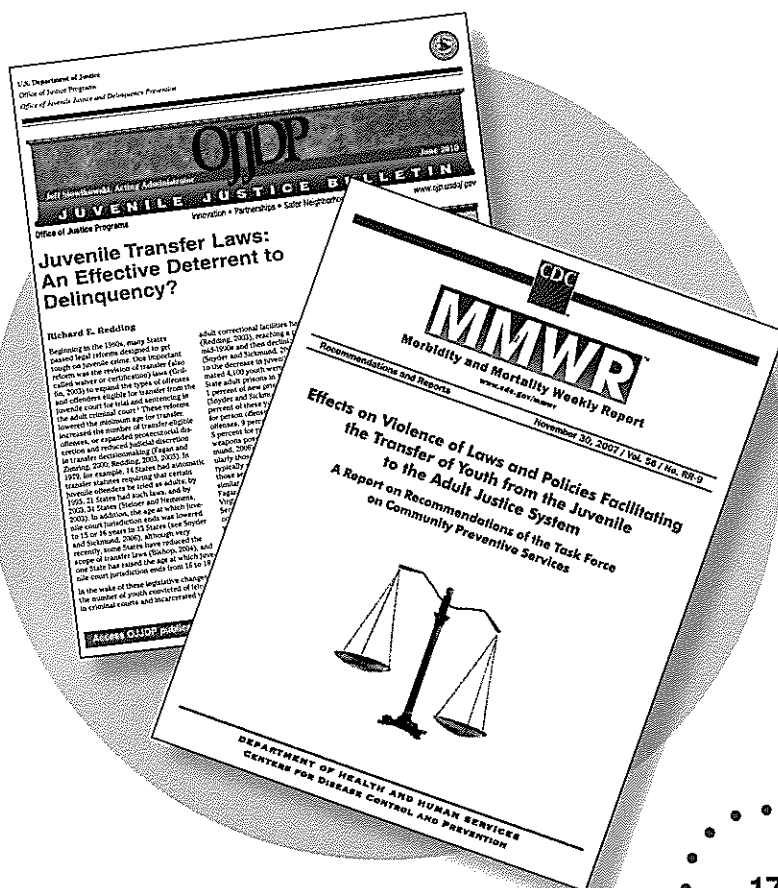
Both conservatives and liberals agree that government services should be evaluated on whether they produce the best possible results at the lowest possible cost, but historically these cost-effective calculations have not been applied to criminal justice policies. Many states have begun to follow the lead of the Washington State Institute for Public Policy and examine the degree to which they are investing in juvenile programs with a proven track record. While states are starting to invest more in evidence-based programs, states have not always stopped using policies or programs that have demonstrated negative results. States should end practices that have the unintended consequence of hardening youth and making them a greater risk to the public than when they entered the system.

Trying youth as adults is an example of such a flawed policy. According to Shay Bilchik, a former Florida prosecutor who currently heads the Center for Juvenile Justice Reform at Georgetown University, trying youth as adults is “bad criminal justice policy. People didn’t know that at the time the changes were made. Now we do, and we have to learn from it.”<sup>23</sup>

Research shows that young people who are kept in the juvenile justice system are less likely to reoffend than young people who are transferred into the adult system. According to both the U.S.

Centers for Disease Control and Prevention and the Office of Juvenile Justice and Delinquency Prevention, youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime.<sup>24</sup>

These findings are not surprising. Youth in the adult system receive limited services and often become socialized into a culture where their role models are adult criminals and violence is a “routine part of institutional life.”<sup>25</sup> Returning youth to juvenile court jurisdiction would save money for state correctional and judicial systems in the long run by decreasing reoffending and increasing the possibility that youth offenders could become productive members of society.<sup>26</sup>





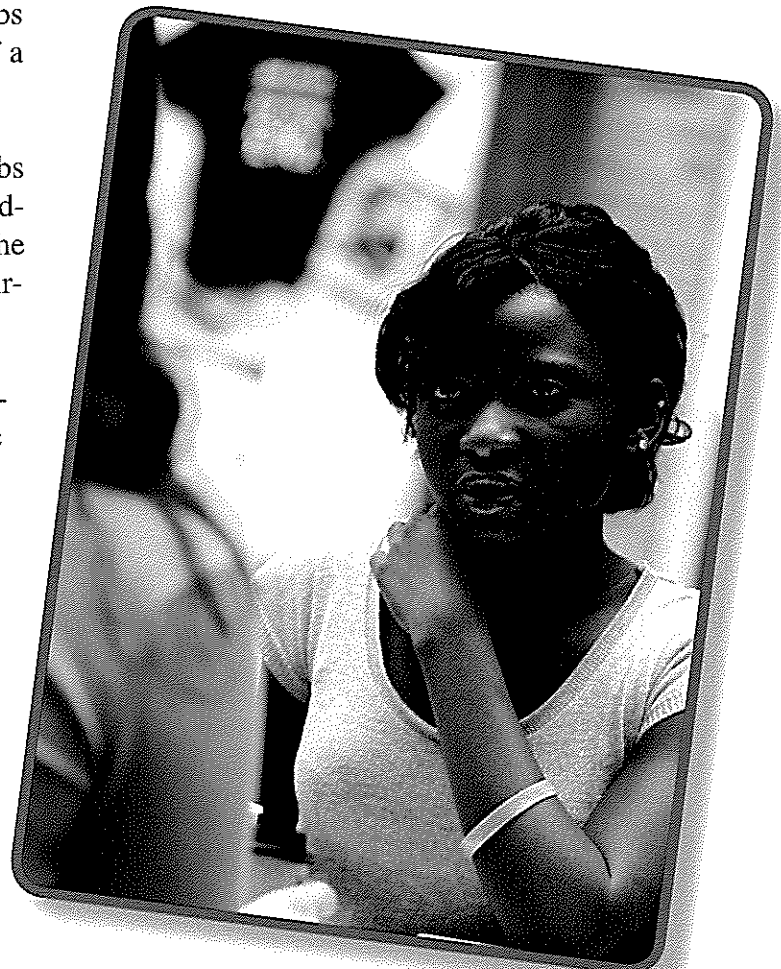
# Youth Have Lifelong Barriers to Employment

The negative consequences of prosecuting and sentencing youth in the adult system do not end when a youth avoids, or is released from, incarceration. An adult conviction can limit a youth's opportunities for the rest of his or her life. While most juvenile records are sealed, adult convictions become public record and, depending on the state and the crime, can limit a youth's job prospects for a lifetime. The Legal Action Center report, *After Prison: Roadblocks to Reentry: A Report on State Legal Barriers Facing People with Criminal Records*, has revealed several facts about legal barriers for people with criminal records:

- Most states allow employers to deny jobs to people arrested but never convicted of a crime;
- Most states allow employers to deny jobs to anyone with a criminal record, regardless of how old or minor the record or the individual's work history and personal circumstances;
- Most states make criminal history information accessible to the general public through the Internet, making it extremely easy for employers and others to discriminate against people on the basis of old or minor convictions, for example to deny employment or housing; and
- All but two states restrict in some way the right to vote for people with criminal convictions.<sup>27</sup>

When states make it difficult for youth to get jobs, states hamper their own economic growth. Given the diversity of state transfer

laws, for many states it may also mean they are putting their own residents at a disadvantage when competing for jobs with youth from other states. For example, consider two 16-year-olds who are arrested for shoplifting. One is from North Carolina, the other from Tennessee. In Tennessee, a youth arrested for shoplifting is likely to be prosecuted in the juvenile system and probably would not have to report his or her youthful indiscretion. However, a youth arrested for the same crime in North Carolina will be charged as an adult and will have an adult criminal conviction for life.



# Youth of Color Are Disproportionately Impacted by These Policies

Trying youth as adults has negative consequences for all youth, but communities of color are particularly harmed by these policies. To document the ways that these laws impact different communities, the Campaign wrote a series of policy briefs examining racial and ethnic disparities and found that while youth of color are over-represented at all stages in the juvenile justice system, the disparities are most severe for youth tried as adults.

- While African-American youth represent only 17% of the overall youth population, they make up 30% of those arrested and an astounding 62% of those prosecuted in the adult criminal system. They are also nine times more likely than white youth to receive an adult prison sentence.<sup>28</sup>
- Latino children are 43% more likely than white youth to be waived to the adult system and 40% more likely to be admitted to adult prison.<sup>29</sup>
- Native youth are 1.5 times more likely than white youth to be waived to the adult criminal system and 1.84 times more likely to be committed to an adult prison.<sup>30</sup>

All policymakers should be concerned that our system of justice is not being applied fairly.



# FOUR TRENDS TO WATCH





As a society, we still have a long way to go to keep children out of the adult system. However, recent events indicate that we are finally on the right track. The past few years have seen a growing recognition by citizens, researchers, juvenile justice professionals, and policymakers that **children do not belong in the adult system**. Between 2005 and 2010, nearly half of the states have considered or passed legislation designed to help youth in the adult system. The four trends of change are:



### Trend 1

States and Local Jurisdictions Remove Youth from Adult Jails and Prisons



### Trend 2

States Raise the Age of Juvenile Court Jurisdiction



### Trend 3

States Change Transfer Laws to Keep More Youth in Juvenile Court

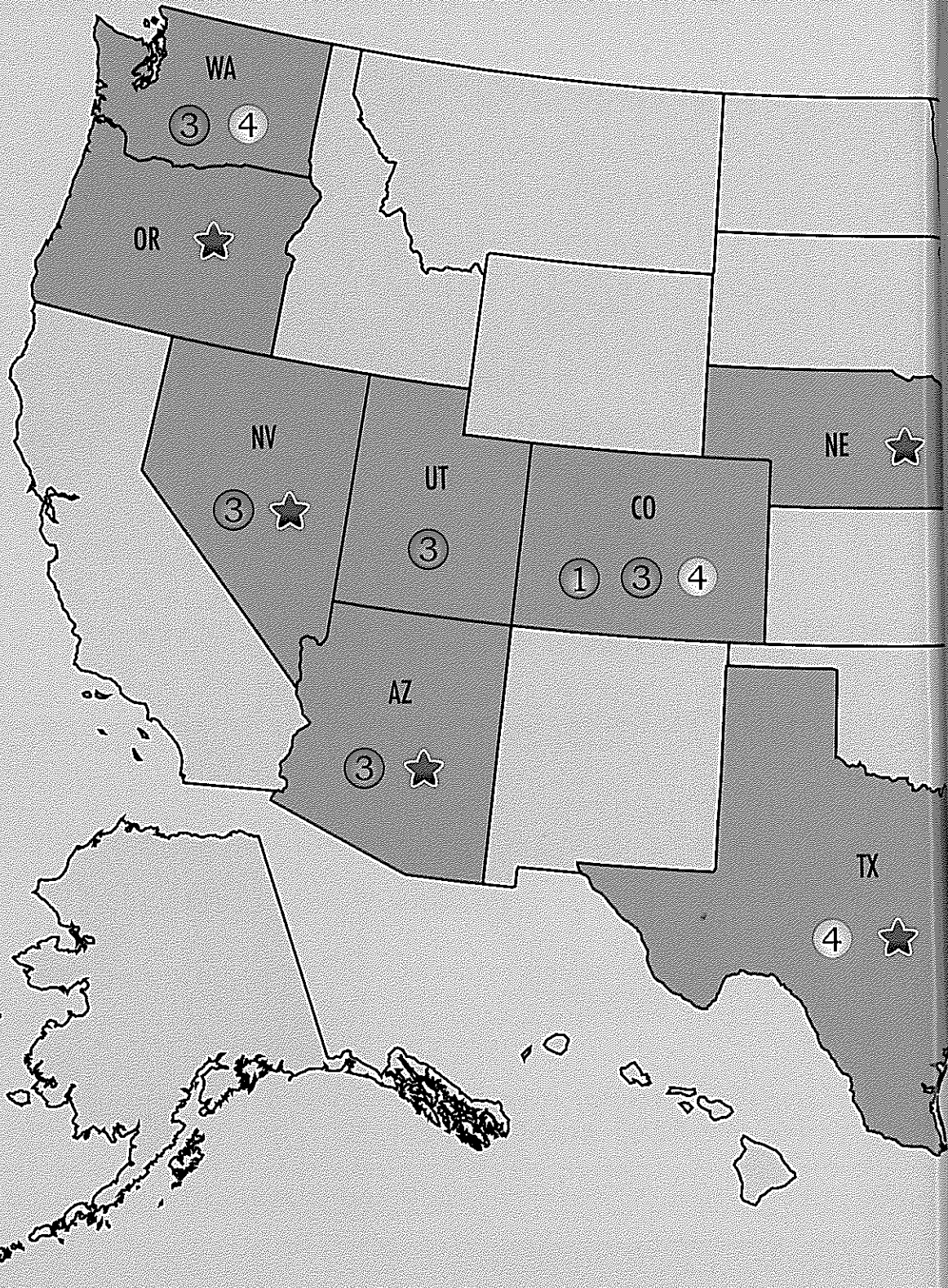


### Trend 4

States Rethink Sentencing Laws for Youth

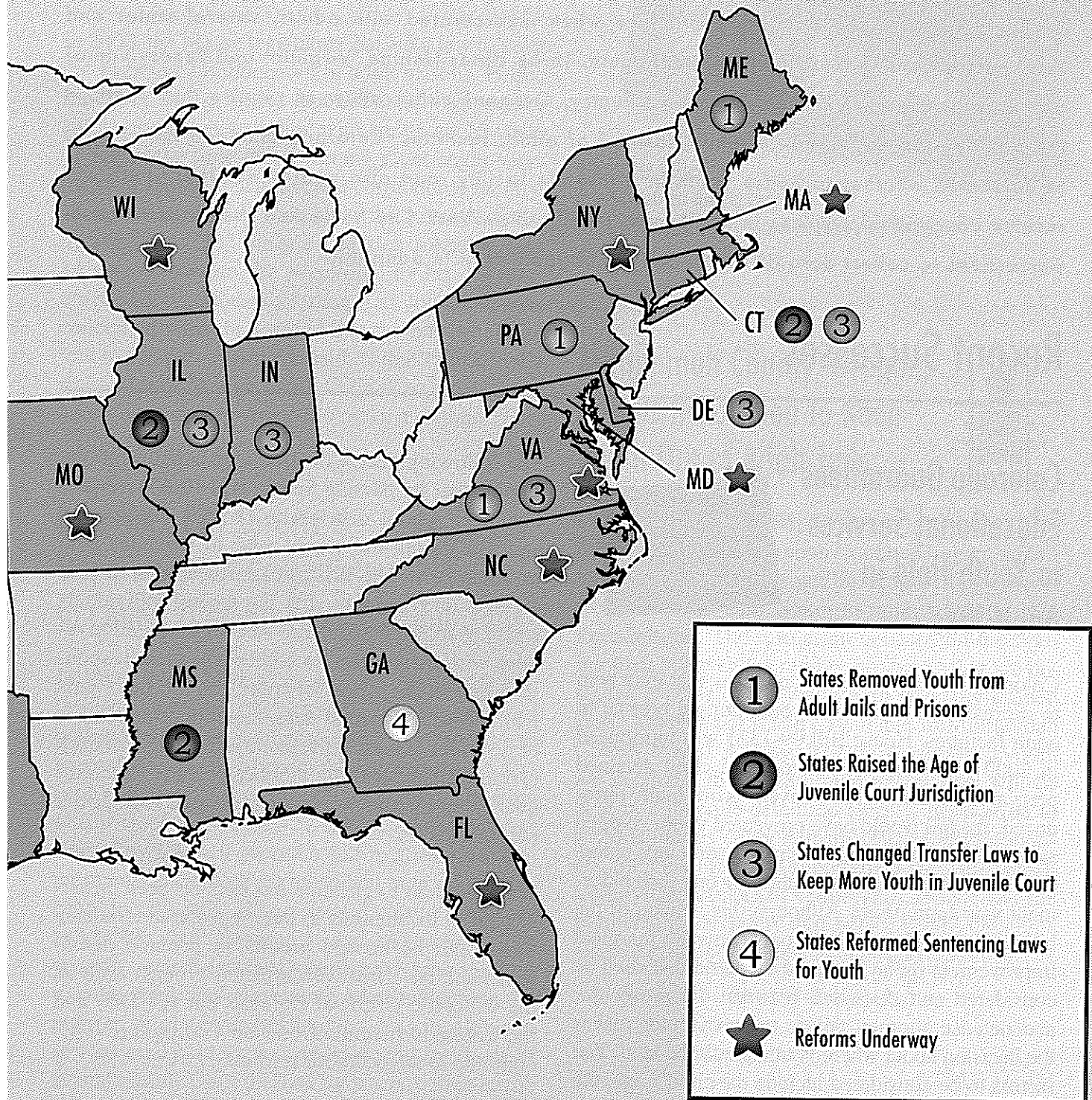


# State Trends from 2005 to 2010: Remo





# g Youth from the Adult Justice System



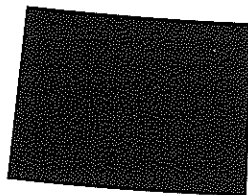
# States and Local Jurisdictions Remove Youth from Adult Jails and Prisons

Recognizing the many dangers youth face when incarcerated with adults, several states and local jurisdictions took action to protect youth. Three states (Maine, Virginia, and Pennsylvania) and one local jurisdiction (Multnomah County, Oregon) either allow or require that youth in the adult system be held in juvenile, instead of adult, facilities. Colorado changed the criteria to determine whether to house youth in a juvenile facility, and also guarantees that youth will receive educational services in adult jails. Finally, New York City has asked the Department of Corrections to collect data on the dangers that youth face in adult jails.

## Recent Successes

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### Colorado Guarantees Educational Services to Youth Held in Adult Jails



Colorado recently enacted a new law that may help to decrease the number of youth housed pretrial in adult facilities. House Bill 09-1321 was introduced in 2009 following the suicide of a child detained pretrial in an adult jail in Denver. As originally introduced, the bill would have prevented youth charged as adults from being held pretrial in adult jails unless the court held a hearing to determine that such placement was appropriate. Although this version of the bill did not pass, the bill that passed made a marginal improvement by laying out the criteria that shall be considered and discussed between the prosecutor and defense attorney before the prosecutor makes the decision about where youth should be held. The factors to be considered include the child's age, the nature of the offense, and the child's prior acts.<sup>31</sup>

The following year, Colorado legislators went one step further by passing Senate Bill 10-054, requiring local school districts to provide educational services during the school year to juveniles held in adult jails. The bill also provides that school districts must comply with the federal Individuals with Disabilities Education Act for all jailed juveniles with disabilities. In addition to these responsibilities on the school districts, the bill tasks jails with collecting annual data, including the number of juveniles housed at the facility, the length of each juvenile's stay, and the number of those juveniles qualifying for and receiving traditional and special educational services.<sup>32</sup>

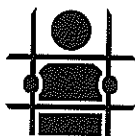
The Colorado Legislature has thus far been unsuccessful in its attempts to pass legislation requiring that youth be housed pretrial in juvenile detention facilities. However, affected groups, such as the Colorado Criminal Defense Bar (CCDB) and the Colorado Juvenile Defender Coalition (CJDC) continue to advocate for reforms.

## Maine Passes "Marlee's Law" Requiring All Youth Under 16 Sentenced to Incarceration Begin Their Sentence in a Juvenile Facility



In 2008, the Maine legislature passed a law to keep the youngest offenders out of adult prisons. Public Law No. 686 provides that children who receive adult prison sentences and who are under 16 years of age at the time of sentencing must begin serving their sentence in a juvenile correctional facility. These children may remain in the juvenile facility until their 18<sup>th</sup> birthday. Marlee Johnston was 14 years old when she was killed by her 14-year-old neighbor. Marlee's father, Ted Johnston, was concerned when he learned that the boy would be sent to an adult prison and said, "I don't think that's right. I know Marlee wouldn't think so either, so to honor her memory we had to make a change."<sup>33</sup>

## New York City Directs Department of Corrections to Collect Data on Youth in Adult Jails



In 2009, New York City took an important step toward combating the harmful consequences of housing youth in adult facilities. In response to several allegations of criminal acts against adolescent inmates that arose following the fatal beating of Christopher Robinson on Rikers Island, the New York City Council passed a bill requiring the Department of Corrections to collect data on adolescents in city jails. Rikers Island currently houses nearly 900 youth between 16 and 18 years old. The security-related data the Department is now required to collect will include, among other indicators: the number of stabbings/slashings, fights resulting in serious injury, attempted suicides, and incidents of sexual assault. Once the data have been collected the city council will have an increased awareness of the



dangers faced by youth in adult facilities and can move to reduce the harms to youth housed there.<sup>34</sup>

## Multnomah County, Oregon, Adopts Resolution to Keep Youth Out of Adult Jails



On December 18, 2008, the Board of County Commissioners for Multnomah County, Oregon, unanimously approved a resolution, proposed by former Commissioner Lisa Naito, to remove youth from the adult jail. The resolution is based on the finding that, "[j]uveniles require programs that are designed especially for youth with specially trained staff, services not readily available in Multnomah County's jails." As a result of the resolution, if youth are detained, the presumption is that they will be held in a juvenile detention facility. In addition to the unanimous support from county commissioners, the measure was supported by the Multnomah County Department of Community Justice and the Partnership for Safety and Justice (PSJ), Oregon's leading criminal justice reform organization.<sup>35</sup>

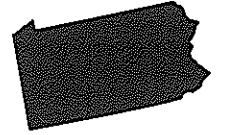


## Virginia Allows Youth Tried as Adults to Be Housed in Juvenile Facilities Pretrial

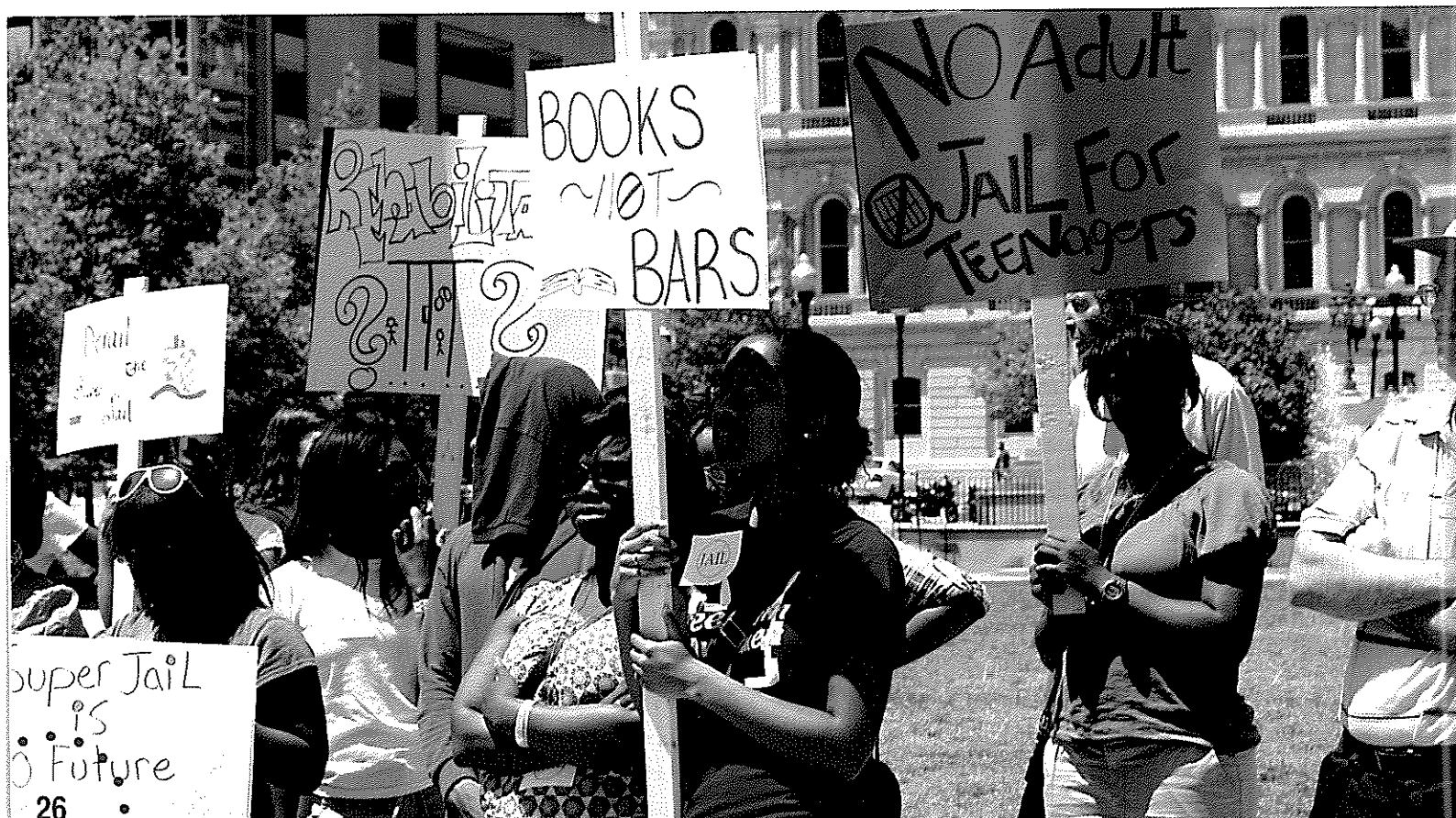


On April 13, 2010, a unanimous Virginia legislature passed a new measure that will help keep Virginia youth out of adult jails. Championed by Senator Louise Lucas, Senate Bill 259 creates a presumption that youth who are being tried as adults are held in juvenile detention centers pretrial. Youth will only be placed in an adult jail if they are found by a judge to be a security or safety threat. Prior to this law, some transferred and certified youth as young as 14 were being detained pretrial with the general population in adult jails. While in the general population, the youth are placed at increased risk of being victimized and many receive no education or support services. Numerous families and youth and a wide range of organizations were instrumental in supporting the passage of SB 259 as part of the “Don’t Throw Away the Key Campaign.” The law went into effect on July 1, 2010.<sup>36</sup>

## Pennsylvania Allows for Youth Prosecuted as Adults to Be Detained in Juvenile Facilities



Pennsylvania Senate Bill 1169 was signed into law on October 27, 2010 amending Title 42 – a subsection of which deals with the “detention of a child.” Senate Bill 1169 allows for a youth prosecuted in the adult system to be “de-certified” and held in a juvenile facility as opposed to an adult facility. While the adult charges will remain in place, a judge may allow for the youth to be held at an age-appropriate juvenile facility instead of an adult facility so that the juvenile will have access to rehabilitative services.<sup>37</sup>



# On the Horizon

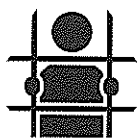
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## Partnership for Safety & Justice Campaigns Against Youth in Adult Jails in Oregon



PSJ's ongoing youth justice campaign seeks to combat laws that automatically try, sentence, and imprison youth in Oregon's adult system. PSJ has launched its Safe Kids, Safer Communities campaign and is specifically advocating for passage of House Bill 2707 which would make juvenile detention rather than adult jail the default holding facility for youth charged as adults in Oregon. This campaign will address a glaring contradiction in Oregon's statute whereby youth who are charged as adults are held in adult jails pretrial even though they are held in a juvenile facility if they are eventually convicted. By making juvenile facilities the default detention site by statute, youth will be provided with age-appropriate services such as education in a safe and secure setting.

## Baltimore "Anti-Jail" Campaign Launched to Halt Jail Construction and End Placement of Youth Charged as Adults in Adult Jail



In May, 2010, young people, families and allies launched a citywide campaign in Baltimore, Maryland to halt the construction of a new \$104 million jail to house youth charged as adults. As public pressure and media coverage mounted during this campaign, Maryland Governor O'Malley has not moved forward with signing contracts for the construction of the facility and proposed to delay the construction for at least a year in the budget he released in January, 2011. The "Stop the Youth

Jail Alliance," led by the Baltimore Algebra Project and other Baltimore groups is advocating not to build this new jail, and also to remove youth who are currently detained in Baltimore's adult jail pending trial and instead to place them in juvenile detention facilities.

Two efforts are currently pending at the federal level which may have substantial bearing on whether youth will continue to be allowed to be housed in adult jails and prisons.

## The Pending Reauthorization of the Juvenile Justice and Delinquency Prevention Act



Hundreds of national, state and local organizations throughout the country are working together as part of the ACT 4 Juvenile Justice (ACT4JJ) Campaign to ask Congress to reauthorize the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) and close the loophole allowing youth to be held in adult jails.

The JJDPA sets out federal standards for the custody and care of youth in the juvenile justice system. For 35 years, the JJDPA has provided direction and support for juvenile justice system improvements and has significantly contributed to the reduction of juvenile crime and delinquency. Although Congress recognized the dangers of housing youth in jails when passing the Act, the language of the JJDPA unfortunately created a loophole that allows children charged as adults to be housed with adults.<sup>38</sup> This loophole is particularly devastating because many children detained pretrial in adult facilities are not actually convicted in adult court.

Currently, the JJDPA is four years overdue for reauthorization. There have been several hearings and



bills introduced in the U.S. Senate during previous Congresses. To date, however, no action has been taken on the JJDPJA in the 112<sup>th</sup> Congress.

## U.S. Department of Justice Proposes Regulations to Implement the Prison Rape Elimination Act



The Prison Rape Elimination Act (PREA) was approved with overwhelming bipartisan support in Congress and signed into law by President Bush in 2003. It is the first federal civil law to address sexual violence behind bars and the requirements apply to all detention facilities, including federal and state prisons, jails, police lock-ups, and private facilities. A key component of the law was the creation of the National Prison Rape Elimination Commission (NPREC), a bipartisan federal commission charged with developing national standards addressing prisoner rape. The NPREC held public hearings, had expert committees to draft a set of recommended standards, and released a re-

port in June 2009 that found that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”<sup>39</sup>

On March 10, 2010, the Attorney General asked for input on the standards proposed by the NPREC. In response, several advocacy organizations including the Campaign for Youth Justice, the Center for Children’s Law and Policy, the Children’s Defense Fund, First Focus, the Juvenile Law Center, the Youth Law Center, and The Equity Project asked for a prohibition on the placement of youth in adult jails and prisons. In response, the most current draft of the standards released by the Department of Justice specifically request additional public comment on how best to protect youth from sexual abuse in adult facilities. Comments are due on April 4, 2011, and advocates are actively working to answer the Attorney General’s questions and urge removal of youth from adult facilities.

## Trend 2

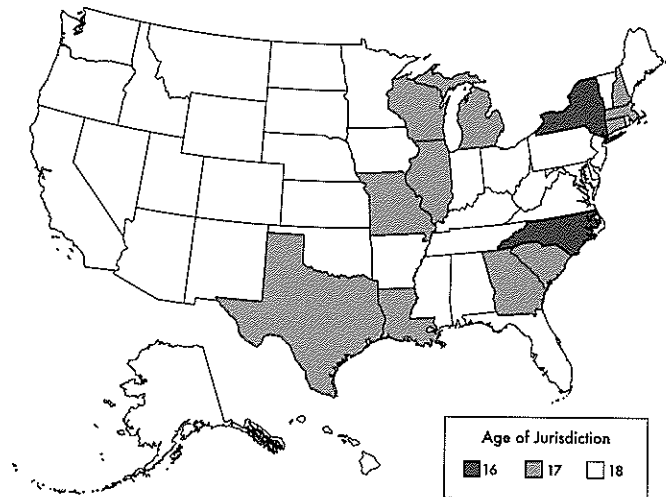
# States Raise the Age of Juvenile Court Jurisdiction

While the majority of states have drawn the line at age 18 for their juvenile justice systems, 13 states in the U.S. have set the line at a younger age. Currently, New York and North Carolina both end juvenile court jurisdiction at age 16. Eleven other states end jurisdiction at 17: Connecticut, Georgia, Illinois (felonies only), Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin. As a result of these laws, more than two million 16- and 17-year-olds residing in these

13 states would automatically be prosecuted in the adult system if charged with any offense,<sup>40</sup> regardless of the seriousness of the offense or any extenuating circumstances.

Three states (Connecticut, Illinois, and Mississippi) have raised the age of juvenile court jurisdiction and four additional states (North Carolina, Massachusetts, New York, and Wisconsin) seem poised to do so in the future.

Oldest Age for Original Juvenile Court Jurisdiction, 2011



## Recent Successes

### Connecticut Returns 16- and 17-Year-Olds to Juvenile Court Jurisdiction



In June 2007, the Connecticut legislature approved a bill raising the age of juvenile court jurisdiction from 16 to 18. The legislation is being implemented

in phases, with a focus on bringing 16-year-olds back into the juvenile system first. As of January 2010, 16-year-olds were officially part of the juvenile justice system. This success was the result of the combined efforts of legislators, specifically Representative Toni Walker and Senator Toni Harp, state agencies, law enforcement officials, judicial officers, advocacy and grassroots organizations, parents, and family members. These various stake-

holders were brought together in large part by the “Raise the Age CT” campaign coordinated by the Connecticut Juvenile Justice Alliance (CTJJA) and the Juvenile Jurisdiction Planning and Implementation Coordinating Council (JJPICC). Representative Walker expressed the sentiment behind the campaign, saying, “There are still penalties in place for kids who commit crimes. But we will hold them accountable in a setting that’s designed to improve their behavior rather than exacerbate it. Sending kids to adult prisons is a great way to create adult criminals. Connecticut is now out of that business.”

Connecticut has set a powerful example for other states that it is possible to help youth without compromising public safety. The results of the first year of implementation are promising. According to Abby Anderson, Executive Director of CTJJA, “the implementation has proceeded smoothly.” A recent report by CTJJA, *Safe and Sound*, has found that keeping the 16-year-olds out of the adult system has not overloaded the juvenile justice system – nor has it led to more juvenile crime. Seventeen-year-olds are expected to be added to the juvenile system on July 1, 2012.<sup>41</sup>

## Illinois Removes 17-Year-Old Misdemeanants from the Adult System



As of January 1, 2010, 17-year-old misdemeanants in Illinois are no longer being filtered automatically into the adult justice system. Under Public Act 95-1031, 17-year-olds charged with misdemeanors will now have access to the juvenile court’s balanced and restorative justice approach to juvenile justice, such as mental health and drug treatment and community-based services, rather than being subjected to the punitive adult system. The success in Illinois is a terrific example of the importance of education in juvenile justice reform movements. When the bill was first introduced in the House in 2003, its benefits were not understood by most legislators, and it was quickly defeated. However, after this initial setback, education efforts were

mounted, led by advocacy groups and other reform organizations, and the bill gained more support in both houses from year to year until the final passage in 2009.

The reform movement did not stop with the success of this Public Act 95-1031. On July 22, 2010, the legislature took its reform efforts one step further and enacted S.B. 3085. This new law provides that the Illinois Juvenile Justice Commission should study the impact of, develop timelines for, and propose a funding structure to accommodate the expansion of the juvenile court’s jurisdiction to youths age 17 charged with felonies. The Commission will be required to submit a final report to the Illinois General Assembly by December 31, 2011.<sup>42</sup>

## Mississippi Sends the Majority of 17-Year-Olds Back to the Juvenile System



In 2010, Mississippi enacted a new law removing most 17-year-olds from the adult criminal court. Prior to Senate Bill 2969, all 17-year-olds charged with felonies were automatically tried in adult criminal court. Under the new law, which goes into effect on July 1, 2011, juveniles charged with felonies including arson, drug offenses, robbery, and child abuse will remain under the original jurisdiction of the juvenile justice system. The new law was written and sponsored by Senator Gray Tollison and Representative Earl Banks, who have led numerous legislative efforts to protect the safety of youth in the juvenile justice system and limit the transfer of youth to the adult criminal justice system. The law is a major victory for the people of Mississippi and for the numerous community organizations that supported its enactment, including the Mississippi Coalition for the Prevention of Schoolhouse to Jailhouse, the NAACP, the MS-ACLU, and the Southern Poverty Law Center.<sup>43</sup>

# On the Horizon

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## North Carolina Is on the Verge of Bringing 16- and 17-Year-Olds Back to the Juvenile System



While North Carolina remains one of two states that still ends juvenile court jurisdiction at age 16, that may be changing soon. The North Carolina legislature passed a bill in 2009 creating a task force to determine whether the jurisdiction of the state Department of Juvenile Justice and Delinquency Prevention should be expanded to include 16- and 17-year-olds. This task force was created in response to a recommendation from the North Carolina Sentencing and Policy Advisory Commission that the age of juvenile jurisdiction be raised from 16 to 18. The task force is charged with determining the feasibility of providing “appropriate sanctions, services, and treatment” for 16- and 17-year-old offenders through the juvenile justice system and with developing an implementation plan for the expansion of the juvenile justice department. On January 15, 2011, the North Carolina Youth Accountability Planning Task Force issued its report to the North Carolina legislature recommending placing 16- and 17-year-olds who commit minor crimes under the original jurisdiction of the juvenile court. The Task Force noted that the juvenile system is actually tougher on young offenders and better able to put them on the right track. Co-chaired by Representative Alice Bordsen and Senator Eleanor Kinaird, the task force includes state legislators, law enforcement, district attorneys, defense attorneys, judges, and executive branch officials. A cost-benefit analysis of the change commissioned by the Task Force found that, although the change would have some upfront costs, “based on an anticipated reduction in recidivism” and “a reduction in the number of crimes that will be avoided” North Carolina can expect recurring savings of around \$50 million annually. Governor Beverly Perdue issued an ex-

ecutive order to continue the task force for the next two years. Brandy Bynum, Director of Policy and Outreach for Action for Children North Carolina, the advocacy organization spearheading the “Raise the Age” campaign in North Carolina, said “We applaud not only Gov. Perdue’s decision to continue the work of the Youth Accountability Planning Task Force, but the bipartisan team of legislators who have carried monumental work forward.”<sup>44</sup>

## Massachusetts Is Considering Adding 17-Year-Olds to Juvenile System



Currently in Massachusetts, all 17-year-olds charged with a crime are automatically tried and sentenced in the adult system. In 2010, Citizens for Juvenile Justice began undertaking a research project to examine the impact of treating 17-year-olds in the adult system and the potential consequences of shifting that population into the juvenile system. In January 2011, Massachusetts Representative Kay Khan and Senator Karen Spilka introduced legislation that would raise the age of juvenile court jurisdiction to 18.

## New York Organization Wages “Raise the Age” Campaign



Like North Carolina, New York is one of two states where youth ages 16 and 17 are automatically tried as adults. The Institute for Juvenile Justice Reform and Alternatives has launched the Raise the Age, Raise the Bar, and Raise the Youth campaign with the goal of raising the age of juvenile court jurisdiction from 16 to 18. A similar effort has been launched by former Judge Michael Corriero. Judge



Corriero formed the New York Center for Juvenile Justice in September 2010 to transform the way children under 18 years of age are judged and treated in New York courts.

The activities of these symbiotic efforts have already generated significant support. In January 2011, the New York Governor's Children's Cabinet Advisory Board, co-chaired by Geoffrey Canada and Michael Weiner, released the policy paper, "Advancing a Fair and Just Age of Criminal Responsibility for Youth in New York State." The Board recommends that New York establish a task force to examine increasing the age of criminal responsibility, the Juvenile Offender laws, and adequate funding for community-based juvenile justice programs stating that, "We believe the time has come to gather the input and research necessary to address New York's age of criminal responsibility." And on January 26, 2011, Judge Corriero testified before the New York City Council stating:

There cannot be true systemic reform of New York's Juvenile Justice System unless New York sets a fair, rational, and just age of criminal responsibility. This is a fundamental issue impacting, last year alone, a staggering 46,129 young New Yorkers (including 977 thirteen, fourteen, and fifteen year olds). 46,129 missed opportunities to intervene effectively—46,129 youth who could have benefited from developmentally sensitive alternative programs solely available in the family court.<sup>45</sup>

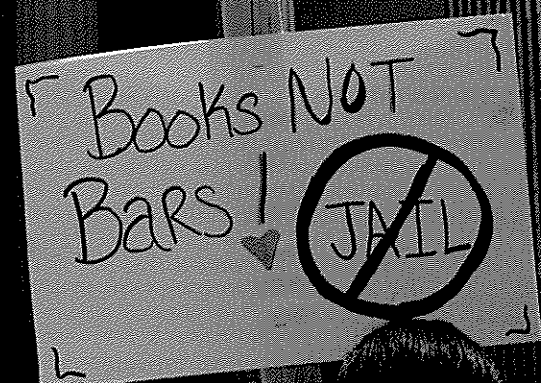
## Wisconsin "Raise the Age" Movement Gaining Broad Support



Over the past several years, there has been a growing movement in Wisconsin to amend the current transfer law that automatically sends 17-year-olds to the adult system. In 2009, the Wisconsin Governor's Juvenile Justice Committee unanimously endorsed raising the age of juvenile court jurisdiction to 18. The Board of Governors of the State Bar of Wisconsin also adopted an official position that 17-year-olds should be under the jurisdiction of the juvenile court. On February 11, 2010, Representative Frederick Kessler introduced Assembly Bill 732 to raise the age of juvenile court jurisdiction to include 17-year-olds. Although the bill did not pass, the cause is continuing to gain support from a wide range of stakeholders and other organizations. The Wisconsin Council on Children & Families (WCCF) has been a major force behind the reform movement. Their statewide campaign, Justice for Wisconsin Youth, has an initial goal of returning all 17-year-olds to the juvenile justice system.<sup>46</sup>

**"Sending kids to adult prisons is a great way to create adult criminals. Connecticut is now out of that business."**

**— Connecticut State Representative Toni Walker**



## Trend 3

# States Change Transfer Laws to Keep More Youth in Juvenile Court

States have a variety of mechanisms for transferring children to the adult system. Some states exclude youth charged with certain offenses from the juvenile court. In other states, prosecutors make the decision whether to try a youth as a juvenile or adult. In most instances, juvenile court judges do not make the decision about whether a youth should be prosecuted in adult court, despite the fact that a juvenile court judge is a neutral player who is in the best position to investigate the facts and make the decision.

In the past five years, 10 states made changes to their transfer laws. Two states (Arizona and Utah) made it easier for youth who were tried as adults to get reverse waiver hearings to allow them to return to the juvenile court. Three states (Arizona, Colorado, and Nevada) changed the age requirements before youth can be tried as adults. Three states (Indiana, Virginia, and Washington) made changes to "once an adult, always an adult" laws. Four states (Connecticut, Delaware, Illinois, and Indiana) limited the types of offenses that required adult court prosecution or changed the presumptions for adult court prosecution. Several additional other states (Arizona, Maryland, Nevada, Texas, Virginia, and Washington) are currently contemplating changes to their state laws.

## Recent Successes

### Arizona Grants Special Treatment for Youth Sex Offenders and Refines Age of Eligibility for Adult Prosecution



Bipartisan legislation, sponsored by 10 members of the state legislature and signed by Governor Napolitano in May 2007, recognized that children charged with sex offenses are different from adult

sex offenders. Senate Bill 1628 allows youth sex offenders prosecuted as adults for certain offenses at the sole discretion of the prosecutor to get a "reverse remand" hearing to determine whether public safety and the youth's rehabilitation would be better served by transferring the youth back to juvenile court. If youth sex offenders are placed in a treatment program, the law requires that the program be one with other offenders of a similar age and maturity level to the youth. Further, the law allows for annual court reviews of youth on adult

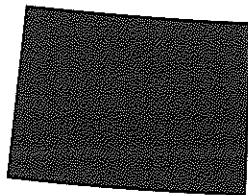




probation and permits the court to remove youth from adult probation, community notification, and registry requirements for sex offenders. This legislation arose in response to complaints by parents and grandparents of youth who had been prosecuted as adults and to research indicating that children who engage in sexually inappropriate behavior respond extremely well to child-specific treatment and are unlikely to become adult sex offenders.

Three years later, in 2010, Arizona passed another bill affecting transfer laws more generally. Senate Bill 1009, sponsored by Senator Linda Gray, Chair of the Public Safety and Human Services Committee, clarified that if a case involving a youth is direct filed in adult court, it must be based on the child's age at the time of his alleged offense, not on his age at the time charges are filed. In Arizona, prosecutors have the ability to file discretionary charges for youth aged 14 and above for a large number of crimes. Those under 14 can only be prosecuted as adults through a judicial waiver hearing. Without this clarification, prosecutors have delayed filing charges until a youth reached age 14 solely for the purpose of moving the case to adult criminal court without judicial oversight. This bill was a critical measure to prevent the unintended consequence associated with youth in the adult system.<sup>47</sup>

## Colorado Enacts Series of Reforms to Keep More Youth in the Juvenile System



Over the past three years, the Colorado legislature has stepped up to become a leader in reform efforts on behalf of youth in the adult system by enacting a series of important improvements to their transfer laws. In 2008, the legislature passed S.B. 08-066 which enabled judges to sentence juveniles convicted of felony murder to the Youthful Offender System (YOS) if the juvenile is charged with a Class 1 felony and pleads guilty to a Class

2 felony, and the underlying crime is eligible for YOS placement. Prior to the passage of this bill, Colorado prohibited juveniles convicted of Class 1 first-degree murder and certain Class 2 felonies from being sentenced in the YOS. Under this law, a youth facing charges for these offenses is eligible to plead to a Class 2 felony and serve time in or be sentenced to YOS.

While S.B. 08-066 was an important first step, the legislature did not stop there. In 2009, Colorado passed House Bill 09-1122 which allows certain young adult offenders (ages 18 to 21) to be sentenced in the Youthful Offender System rather than the adult system. The bill applies to young adults who were 18 or 19 at the time the offense was committed so long as they are sentenced before they reach age 21. The bill requires the warden of the YOS facility, upon the request of the prosecution or the defense, to determine whether a young adult offender may be sentenced to the YOS for the presentence report. The warden must consider the nature and circumstances of the crime, the criminal history of the offender, the available bed space in the system, and any other appropriate factors.

In 2010, the Colorado legislature went further still with the passage of its most comprehensive transfer reform bill yet. House Bill 10-1413, enacted with bipartisan support, raises the minimum age of a youth against whom a prosecutor may directly file charges in adult court from 14 years to 16 years, except in the case of first-degree murder, second-degree murder, or a sex offense. Children under 16 who have not been accused of one of the enumerated offenses can now only be moved to adult court using a judicial waiver. This bill also increases the number of offenses for which convicted juveniles are eligible for sentencing to the YOS. Lastly, the bill includes two changes directly related to prosecutors. First, it creates guidelines prosecutors must follow prior to directly filing charges against a juvenile in adult court and requires prosecutors to submit a written statement listing the criteria relied upon in deciding to direct file. Second, it provides that prosecutors must file a notice of consideration of direct file with the juvenile court at least 14 days

prior to filing the charges in district court and the juvenile must be given a chance to provide new information for the prosecutor's consideration.<sup>48</sup>

## Connecticut Returns 16- and 17-Year-Olds to Juvenile Court Jurisdiction



Prior to passing legislation that would raise the age of juvenile court jurisdiction from 16 to 18 in 2007, Connecticut passed H.B. 5215 making more children and 16- and 17-year-old youth eligible for youthful offender (YO) status. The law presumes that all 16- and 17-year-old youth and children whose cases have been transferred to the adult criminal docket are eligible for YO status unless they are charged with a serious felony or had previously been convicted of a felony or adjudicated a serious juvenile offender. While the raise-the-age legislation that passed in Connecticut substantially limits the application of this law, the presumption of YO status remains beneficial for youth transferred to the adult system.<sup>49</sup>

## Delaware Reduces Number of Youth Sent to Adult Court on Robbery Charges



In 2005, the Delaware General Assembly unanimously approved a bill limiting the number of juveniles automatically transferred to adult court for robbery charges. Senate Bill 200 responded to two years of data collection and analysis which found that the majority of youth charged in adult court for robbery charges were eventually transferred back to the juvenile court, but only after spending long periods of time in detention. Robert Valihura, a Republican legislator formerly in the Delaware Assembly, led the charge for reform by bringing together fellow lawmakers, advocates, judges, prosecutors, public defenders, and other juvenile justice professionals in an effort to correct the in-

justice. Under the old law, all youth charged with first-degree robbery were under the original jurisdiction of the adult court. The 2005 bill changed this so that youth charged with first-degree robbery are only under the original jurisdiction of the adult court if the robbery involved the display of a deadly weapon or a serious injury was inflicted as part of the crime. This small statutory adjustment has had a significant impact on affected youth in the system and has saved taxpayers money by reducing the time those youth spend in pretrial detention.<sup>50</sup>

## Illinois Removes Youth Drug Offenders from the Original Jurisdiction of the Adult Court



On August 12, 2005, Governor Blagojevich signed PA-94-0574 into law, substantially amending what had been deemed "the most racially biased drug transfer law in the Nation." The most notable element of this amended law is its repeal of the policy of automatically transferring youth charged with drug offenses to the adult court. In the first two years after the passage of this bill, automatic transfers in Cook County were reduced by more than two-thirds, from 361 automatically transferred youth in 2003 to 103 in 2006. Over this same period of time, Cook County juvenile courts experienced no increase in juvenile prosecutions or in petitions to transfer youth to the adult court. These statistics indicate that the juvenile system was able to appropriately deal with minor drug offenders without having to resort to sending youth to the adult system. This victory is a result of legislators collaborating with juvenile justice advocates and stakeholders and educating themselves about the issues. Many of the reforms enacted with this bill were recommendations that came out of a 2004 Task Force charged with finding potential improvements to the Illinois transfer laws.<sup>51</sup>

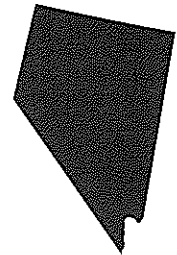
## Indiana Enacts Comprehensive Reform Legislation Limiting the Number of Youth Transferred to the Adult System



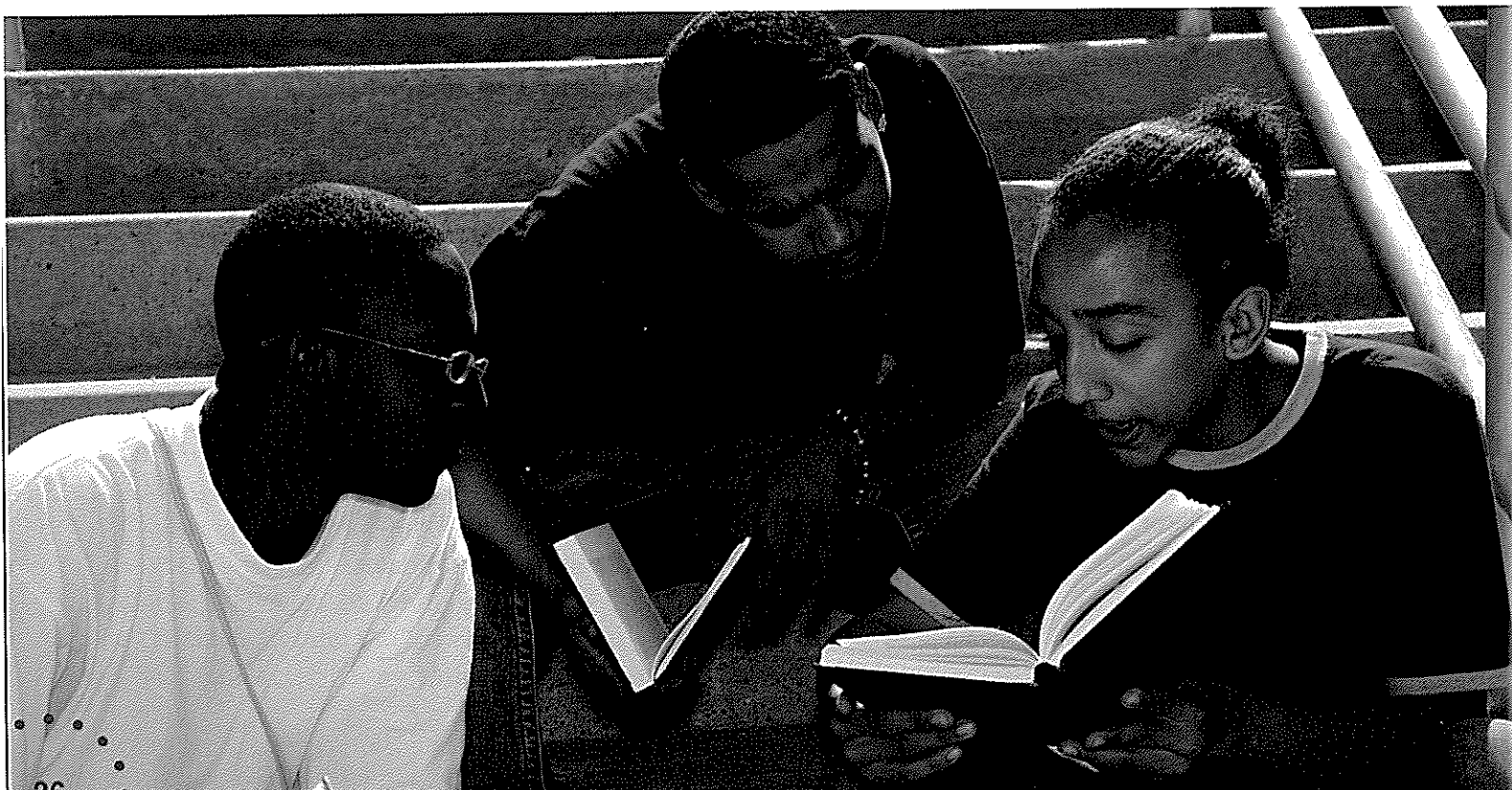
In 2008, the Indiana General Assembly enacted major reform with the passage of House Bill 1122, which eliminated a number of different pathways for transferring juveniles charged with misdemeanors into the adult system. First, it limits the juvenile court's ability to waive jurisdiction to cases where the child is charged with certain acts that are felonies (the previous law allowed waiver for some misdemeanors). Second, it limits the "once waived, always waived" provision to children who were first waived for felony charges and whose subsequent offense is also a felony charge. The bill also narrowed the list of offenses for which juveniles may be direct filed into adult court and moved juvenile traffic violations from the jurisdiction of the adult court to the juvenile court. Finally, the bill provides that any facility that is used or has been used to house or hold juveniles shall give the Indiana criminal justice institute access to inspect and

monitor the facility. This bill is an important step in protecting youth charged with minor offenses from the dangers of the adult system.<sup>52</sup>

## Nevada Raises Age at Which Child May Be Presumptively Certified as an Adult

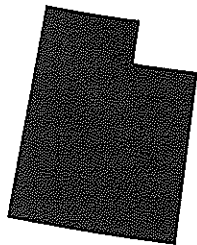


Nevada Assembly Bill 237, enacted May 11, 2009, raises the threshold age at which a child may be certified as an adult under presumptive certification from 14 years of age to 16 years of age. Prior to the passage of this bill, the juvenile court was required to certify for adult court any juvenile 14 years of age or older who had committed certain enumerated offenses, unless the child proved that the crime was committed as a *result of* substance abuse or emotional or behavioral problems. The Nevada Supreme Court found that this exception was unconstitutional under the Fifth Amendment privilege against self-incrimination because it required the child to admit to the crime in order for the exception to apply.



Assembly Bill 237 modifies the exception to presumptive certification that was found unconstitutional by the Nevada Supreme Court. The bill also went one step further and raised the presumptive age of certification to 16 and allows the juvenile court to consider age as a mitigating factor. A new exception, approved in Assembly Bill 237, provides that the juvenile court is not required to certify the child as an adult if the child has substance abuse or emotional or behavioral problems that may be appropriately treated through the jurisdiction of the juvenile court – whether or not those problems directly caused the child to commit a crime.<sup>53</sup>

## Utah Authorizes Adult Court Judges to Transfer Youth Back to Juvenile Court



Utah House Bill 14, enacted March 22, 2010, allows an adult court judge with jurisdiction over a child to transfer the matter to the juvenile court “if the justice court judge determines and the juvenile court concurs that the best interests of the child would be served by the continuing jurisdiction of the juvenile court.” Prior to the enactment of this bill, the adult court was only allowed to send youth back to the juvenile court after judgment in the adult court. Allowing a reverse waiver at the beginning of the process prevents children from being unnecessarily exposed to the harsh consequences of the adult system. This bill encourages adult court judges to make individualized determinations as to whether the adult system is really appropriate for each youth who comes before them.<sup>54</sup>

## Virginia Narrows “Once an Adult, Always an Adult” Law to Apply Only to Convicted Youth



On March 1, 2007, a unanimous Virginia legislature passed a bill amending Virginia’s “once an adult, always an adult” law so that it is applied more fairly to youth. Previously, a one-time transfer of a child to adult court was enough to trigger the “once an adult, always an adult” law, regardless of the ultimate outcome of the transferred case. This meant that a child prosecuted in the adult system on any charge would be treated as an adult in all future proceedings, even if the child was acquitted or the charges were dismissed in the first trial. The amended law requires that youth be convicted of the offense in adult court in order to be tried in adult court for all subsequent offenses. If not convicted of the charges for which he or she was transferred, a youth regains juvenile status for potential subsequent charges. This change was championed by Delegate Dave Marsden, a legislator who has gained a reputation for his expertise in juvenile justice.<sup>55</sup>

## Washington Narrows Transfer Law and Allows Return to Juvenile Court



In 2009 the Washington Legislature amended the juvenile code to restrict one aspect of the state’s automatic transfer law. Prior to the amendment, youth who had previously been transferred to adult court were automatically treated as adults for any future charges (known as the “once an adult, always an adult rule”). This included cases in which the youth was found not guilty of the original charge. The 2009 amendment eliminated the “once an adult” rule where the youth was found not guilty. In the same year, the legislature also amended the automatic transfer provision to allow a youth to be transferred back to juvenile court upon agreement of the defense and prosecution without requiring a reduction of the charge.<sup>56</sup>

# On the Horizon

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## Arizona Poised to Extend Reverse Remand Law



Building upon the success of Senate Bill 1628 which passed in 2007, the Arizona legislature is currently considering extending the “reverse remand hearings” to cover more youth. On February 2, 2011, the Senate Public Safety and Human Services Committee passed SB 1191 unanimously. SB 1191 would extend the possibility of a reverse remand hearing request to other offenses when prosecutors have the sole discretion to bring charges in adult court. This latest activity can be attributed in part to the leadership of Children’s Action Alliance which released a report, *Improving Public Safety by Keeping Youth Out of the Adult Criminal Justice System*, in November 2010. The report had several recommendations to bring Arizona’s laws in line with current research, to recognize that youth are different from adults, and to improve public safety by minimizing the unintended consequences of prosecuting youth in the adult system.

youth to the adult criminal justice system should be deemed unnecessary and impractical.

The Just Kids Partnership followed 135 individual cases of youth charged as adults in Baltimore city and found that: (a) nearly 68% of the youth awaiting trial in Baltimore’s adult criminal justice system had their cases either sent to the juvenile court system or dismissed. Despite the high percentage of reverse transfer, on average, youth spend almost 5 months in adult jail before a hearing to consider whether the youth should be returned to the juvenile system; (b) only 10% of the youth actually tried in the adult system received sentences of time in adult prisons; and (c) only 13 of the 135 cases in the study that began between January and June of 2009 had been resolved by August of 2010, and therefore, 90% of the youth spent 16 months in adult facilities with no conviction and no mandatory rehabilitative services.

## Maryland Advocacy Groups Lead Campaign to End the Practice of Transferring Youth



In Maryland, the Just Kids Partnership – an alliance between the Community Law in Action, the Public Justice Center, and the United Parents of Incarcerated Children and Youth – seeks to reduce and eventually end the transfer of youth to the adult criminal justice system. The Partnership’s efforts include the recent release of a data-driven report entitled, *Just Kids: Baltimore’s Youth in the Adult Criminal Justice System: A Report of the Just Kids Partnership to End the Automatic Prosecution of Youth as Adults*. The report suggests that the practice of transferring

The report also presents “smart on crime” recommendations to remedy Maryland’s failing “tough on crime” strategy of automatically charging youth as adults. They suggest that the State reduce the inappropriate and unnecessary prosecution of youth in adult court, end the placement of youth in adult jails while awaiting trial, limit court hearing and trial delays, ensure reliability of information presented to the judge during waiver and transfer hearing, guarantee treatment opportunities for older teens, safeguard the safety of youth convicted in adult system, and strengthen data collection.<sup>57</sup>

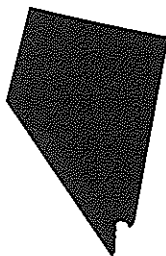
## Mother Launches Reform Group in Missouri



After years of advocating for reform to the country’s juvenile justice system, Tracy McClard recently formed Families and Friends Organizing

for Reform for Juvenile Justice (FORJ-MO) in September 2010. Tracy's son, Jonathan, committed suicide while incarcerated in an adult facility in January 2008 at the age of 17. Since that time Tracy has been speaking out about the dangers of prosecuting youth as adults. She has even testified before Congress. Missouri is known nationwide for having model juvenile justice facilities. FORJ-MO will be advocating for several changes to Missouri's juvenile justice system so that all children have the benefit of those model programs.

## Nevada Examining Options to Help Youth Prosecuted as Adults



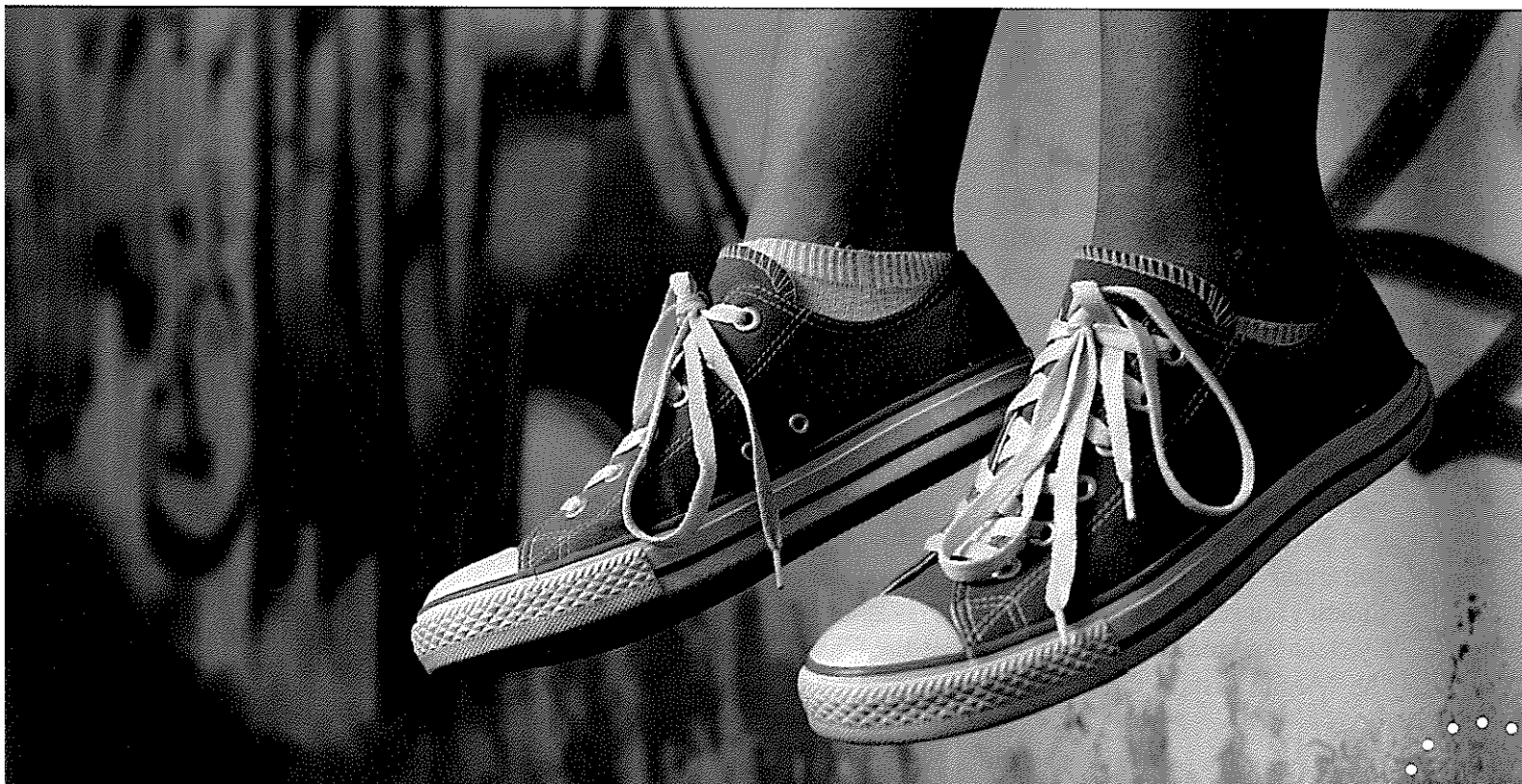
Nevada passed Assembly Bill 237 on May 11, 2009, raising the threshold age at which a child may be certified as an adult under presumptive certification from 14 years of age to 16 years of age. However, Nevada is not going to stop there. Lawmakers continue to examine opportunities to help youth prosecuted in the adult criminal justice system. On April 14, 2010, the Nevada Legislative

Committee on Child Welfare and Juvenile Justice held a hearing to learn more about the dangers of prosecuting youth as adults. Several advocacy organizations, including the ACLU of Nevada and the Embracing Project, have been working with lawmakers to identify proposals to move forward this legislative session.

## Texas Legislators Become Educated About Certified Youth



Texas' juvenile justice system has been the target of several substantial reform efforts over the last three legislative sessions. In 2007, following an abuse scandal at the Texas Youth Commission (TYC) facilities and a subsequent investigation, the Legislature enacted SB 103. One of the many important changes in SB 103 reduced the maximum age of TYC control and supervision from 21 to 19 years, in the belief that reducing the overall population of TYC facilities, and keeping the focus to younger





residents, would help address the safety concerns. Prison expert and professor at the University of Texas' LBJ School of Public Affairs, Michele Deitch, has been examining the issue of youth tried as adults in Texas. Her latest report on the issue, *Juveniles in the Adult Criminal Justice System in Texas*, demonstrates that youth who are certified as adults are similar to youth who receive determinate sentences in the juvenile justice system in Texas on factors such as criminal offense and prior criminal history, but nine out of ten of these youth are sent directly to adult prison without ever having had the opportunity to participate in TYC programs. The major difference between those who are transferred to the adult system and those who remain in the juvenile system is the county involved. She also showed major differences in the services and programs available to those 14- to 17-year-olds who are housed in adult prisons rather than in TYC. In light of the findings in the report, legislators have begun to consider changes to the Texas system to return more youth to the juvenile justice system.

## Virginia Legislators Move Forward to Reform Transfer Laws



Motivated in part by the advocacy efforts of the JustChildren Program of the Legal Aid Justice Center and Families and Allies of Virginia's Youth (FAVY) as part of the "Don't Throw Away the Key Campaign," Virginia has been the site of several legislative changes and it looks like more are to come. During the Virginia State Crime Commission's three-year study on youth tried as adults, the Commission identified many areas of concern within Virginia's system. As of February 2011, two bills proposing additional protections for youth in the adult system have passed the Senate. The first bill, SB 822, is sponsored by Senator John Edwards and would allow circuit court judges to review a commonwealth attorney's decision to certify cases to adult court. The other bill, SB 948, is sponsored by Senator Janet Howell, who also is the Chair of the Virginia State Crime Commission. This bill

would allow circuit court judges to give youth the opportunity to earn a juvenile delinquency adjudication upon successful completion of the terms and conditions set by the judge. The bills are awaiting action in the House where they will face an uphill battle for passage.

## Washington Presses for Transfer Reform



In Spokane County, Washington, over the last five years, only 14 out of 122 young offenders who were automatically transferred to the adult criminal justice system were returned to juvenile court.<sup>58</sup> Recognizing the grave need for juvenile justice reform in Washington, the Injustice Project, Team Child, Columbia Legal Services, and the Washington Coalition for the Just Treatment of Youth are pressing for reform. Reform efforts include: creating a juvenile-specific review process for periodic review of youth sentenced in the adult system; ending automatic declination practices; instilling a system to transfer youth back to juvenile court when appropriate; and requesting that youth be held in juvenile facilities pretrial and post-conviction until age 21. Washington reform efforts seem to be gaining headway. The state's Senate Majority Leader Lisa Brown has stated that there are already proposals for reform swirling around Olympia, and several senators and representatives seem willing to consider legislation to reform automatic declinations to keep youth in the juvenile justice system. In fact, in January 2011 a dozen representatives have sponsored H.B. 1289, a bill that would require a hearing before youth could be prosecuted in adult court. A hearing was held in February and advocates are optimistic.



## Trend 4

# States Rethink Sentencing Laws for Youth

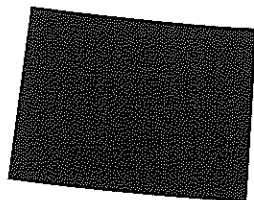
Youth who are prosecuted and sentenced in the adult criminal justice system have historically been subject to the same harsh sentencing laws as adults. Most states have some form of mandatory sentencing laws and few states have statutory exceptions for youth. This means that many states subject youth to harsh mandatory sentencing guidelines without allowing judges to take the child's developmental differences into account. However, in two recent United States Supreme Court cases, the Court explicitly held that youth are categorically less deserving of these punishments. In 2005, the Court abolished the juvenile death penalty in the case of *Roper v. Simmons*.<sup>59</sup> In 2010, the Court abolished life without parole sentences for youth convicted of nonhomicide crimes in *Graham v. Florida*.<sup>60</sup>

Several states (Colorado, Georgia, Texas, and Washington) reexamined how adult sentences are applied to youth and have recognized that youth have great potential for rehabilitation and that the developmental differences of youth should be taken into consideration in sentencing. In the wake of *Graham*, several additional states will likely be contemplating changes to prevent youth from being sentenced to extreme sentences.

## Recent Successes

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### Colorado Precedes Supreme Court in Abolishing Juvenile Life Without Parole



In May 2006, four years before the Supreme Court decision in *Graham*, the Colorado General Assembly ended the sentence of life without parole for youth in Colorado. The bipartisan legislation, H.B. 06-1315, was sponsored by 12 members of the

Colorado General Assembly and signed by Governor Bill Owens. Not only did this bill precede *Graham*, but it also went further than the Supreme Court by precluding all youth – including those convicted of homicide offenses – from receiving the sentence of life without parole for crimes committed after July 2006. The General Assembly set the alternative maximum sentence for juveniles at 40 years without parole. In the statement of findings, the General Assembly explained that it was “in the interest of justice to recognize the rehabilitation potential of juveniles who are convicted as



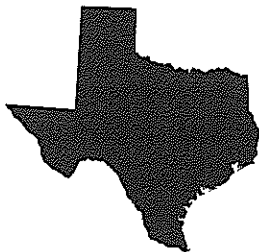
adults of class 1 felonies.” A year later, in 2007, Colorado Governor Bill Ritter signed an executive order creating a clemency board for offenders convicted as juveniles. However, to date the governor has not yet commuted any juvenile’s sentence. The Colorado legislature also made several additional changes from 2008 to 2010 allowing more youth to be sentenced to the Youthful Offender System.<sup>61</sup>

## Georgia Passes “Romeo and Juliet” Law to Protect Youth from Disproportionate Sentencing for Sex Offenses



The Georgia legislature recently took a necessary first step to remedy the problem of disproportionate sentencing for juvenile sex offenders. House Bill 1059, enacted April 26, 2006, creates an exception to the mandatory minimum sentences for sex offenders in cases where the victim is 13 to 15 years old, the offender is 18 years old or younger, and the age difference between the two is no more than four years. This legislation came in reaction to the highly publicized case of Genarlow Wilson, who, in 2005, was convicted of aggravated child molestation for receiving consensual oral sex from a 15-year-old girl when he was 17 years old. Genarlow was sentenced to the mandatory minimum for aggravated child molestation at the time, which was 10 years in jail without the possibility of parole. Under the new law, consensual sexual acts between teenagers meeting the age criteria above are now a misdemeanor, to which no mandatory minimum sentences are attached.<sup>62</sup>

## Texas Joins Trend of Banning Juvenile Life Without Parole



In 2009, the Texas legislature passed a new law abolishing the sentence of juvenile life without pa-

role in Texas courts. Much like the 2006 Colorado bill, Texas Senate Bill 839 applies to both homicide and nonhomicide juvenile offenders, and it sets the alternative maximum sentence at 40 years imprisonment without parole. The bill’s sponsor, Senator Juan “Chuy” Hinojosa, spoke out about the importance of the bill, stating that he thinks the law is necessary because “for someone so young, there is a chance to rehabilitate their lives.” In a hearing prior to the legislation’s enactment, District Attorney John Bradley testified that he supported the bill as a “rational approach” that gives juveniles an “incentive to behave” and an opportunity for rehabilitation while in prison.<sup>63</sup>

## Washington Eliminates Mandatory Minimum Sentencing for Youth Tried as Adults



With the passage of H.B. 1187 in 2005, Washington State became a leader in juvenile justice reform by eliminating the application of mandatory minimum sentences to juveniles tried as adults. This bill, proposed by Representative Mary Lou Dickerson, includes a statement acknowledging the emerging research on the developmental differences between adolescent and adult brains and finding that mandatory minimums are inappropriate for juveniles because they prevent “trial court judges from taking these differences into consideration in appropriate circumstances.” Tom McBride, head of the state Prosecutors’ Association, supported the measure, calling it “an awesome remedy” for those relatively few cases in which a judge may not believe an adult prison sentence is appropriate for a young defendant.<sup>64</sup>

# On the Horizon

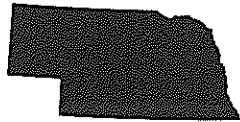
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## Second Chances for Youth in Florida



Florida's transfer statutes, and their use, are controversial. After the national news media broke the story of several 13- and 14-year-olds being sent to adult prisons in the late 1990s, Florida's adultification statutes gained national and international notoriety. Florida prosecutors have a great deal of power over transfer decisions, and during the 1990s, Florida prosecutors sent nearly as many youth to adult court (7,000) as judges in the entire U.S. did.<sup>65</sup> Florida is also the state responsible for the Supreme Court's most recent ruling abolishing the practice of sentencing youth to life without parole for juveniles convicted of a nonhomicide crime. The ruling in *Graham v. Florida* will directly affect 77 youth in Florida. A key complication in complying with the ruling is that Florida abolished parole in 1983. However, a Parole Commission does exist to evaluate persons convicted before the cutoff date. Florida State University law professor Paolo Annino has spearheaded efforts to pass the Second Chance for Children in Prison Act, which would restore parole eligibility for children who were sentenced to more than 10 years in prison.

## Reconsidering Youth Sentences in Nebraska



Nebraska is also a state that is affected by the *Graham* ruling because a few youth have been sentenced to life without parole for nonhomicide crimes, with a total of 27 youth currently serving life without parole sentences in the state overall.<sup>66</sup> Motivated by the Court's ruling, Omaha Senator Brenda Council has said she shares the Supreme Court's opinion "that from a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult." She has sponsored

L.B. 202 in January 2011 to help youth convicted of murder and sentenced to life without parole. The bill would provide an opportunity to have their cases reconsidered and allow youth to demonstrate that they have changed and are not a risk to public safety.

## Oregon Advocacy Group Campaigns for Second Look Legislation



Partnership for Safety and Justice (PSJ) has launched the "Youth Justice Campaign" to combat laws that automatically try, sentence, and imprison youth in Oregon's adult system. One of the major reform efforts PSJ has undertaken in the past few years is a movement to institute Second Look legislation for youth convicted as adults. Under Second Look, incarcerated youth who have served at least half of their sentence would have an opportunity to go back before a judge. If the youth could demonstrate that he or she had made significant changes since the original offense, the judge would have the authority to permit the youth to serve out the rest of the sentence in the community, under correctional supervision. Due in part to the PSJ's advocacy, Second Look legislation was introduced in the Senate Judiciary Committee in 2009. The bill, S.B. 682, was never moved to a vote, but PSJ is still advocating for these reforms and is currently working to educate legislators and executives about the benefits of Second Look legislation.<sup>67</sup>

RECOMMENDATIONS FOR POLICYMAKERS



A crucial lesson learned from the states profiled in this report is that change is possible. State legislators who want to make a change can, and those changes will be supported by the public. This report arrives at a moment when there is a real opportunity for reform. Within these pages are examples of the multitude of ways that states can change their laws to be more fair to youth. We should not stop now.

Policymakers should:

- Remove all youth from adult jails and prisons in their state or local jurisdiction.
- Raise the age of juvenile court jurisdiction to at least age 18.
- Reform juvenile transfer laws to keep youth in the juvenile justice system.
- Remove mandatory minimum sentences for youth convicted in the adult justice system.

Here are three easy steps to get started:

## 1. Do Your Homework

- Find out about the laws in your state that allow youth to be tried in the adult system.
- Look for data on the impact of the law in your state. Contact local law enforcement, justice agencies, and other youth officials to assess what information exists about the impact of the law.
- Talk to youth and families impacted by the law to learn first-hand about the law's effect.

## 2. Build a Team

- Identify other experts and interest groups working on juvenile justice reform in your state.
- Bring opposing views together to build consensus around fact-based solutions.
- Establish a task force to study the issue.

## 3. Make Your Case

- Talk to constituents about the issue. Host open town hall meetings. Generate a discussion and feedback about the laws and possible alternatives.
- Develop draft legislation.
- Request or hold hearings.
- Serve as a spokesperson for change.



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# Acknowledgments

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**Author:** Neelum Arya, Research & Policy Director at the Campaign for Youth Justice

**Research Assistants:** Brittany Brown, Lauren Chun, Megan McQuiddy

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1012 14<sup>th</sup> Street, NW, Suite 610  
Washington, DC 20005  
Phone: 202-558-3580  
Fax: 202-386-9807  
[info@cfyj.org](mailto:info@cfyj.org)  
[www.cfyj.org](http://www.cfyj.org)

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Name: GABRIELLE PRISCO

Address: The Correctional Association of NY

I represent: Director, The Juvenile Justice Project

Address: 2090 Adam C. Powell Blvd. Suite 200

Ny, NY 10027

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Name: Liz Ryan

Address: 1012 - 14<sup>th</sup> St, NW St. 610, W, DC 20005

I represent: Campaign for Youth Justice

Address: 1012 - 14<sup>th</sup> St, NW, St. 610, W, DC 20005

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Name: Avery Irons

Address: \_\_\_\_\_

I represent: Children Defense Fund NY

Address: 15 Maiden Lane, NY NY 10038

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