

April 4, 2011

Attorney General Eric Holder, Jr.  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530-0001

RE: Docket No. OAG-131; AG Order No. 3244 - 2011  
National Standards to Prevent, Detect, and Respond to Prison Rape  
**Questions 36 and 37**

Dear Attorney General Holder,

The signatories to this letter thank you for considering the comments submitted in response to the Advanced Notice of Proposed Rulemaking regarding the Prison Rape Elimination Act (PREA) last May. We appreciate the Department's continued exploration of the best ways to protect incarcerated youth<sup>1</sup> from the horrors of sexual victimization in custody and are pleased that you have posed questions to the field about how the Department's draft regulations could be strengthened to address the particular dangers for youth housed in adult jails and prisons.

In this letter we reaffirm our request that the Department use these regulations to ban placing youth in adult jails and prisons. Adult facilities housing children and youth face a dangerous dilemma, forced to choose between housing youth in the general adult population, where they are at substantial risk of both physical and sexual abuse, and housing youth in segregated settings which cause or exacerbate mental health problems. Neither option is safe or appropriate for children, or a good practice for corrections agencies ill-equipped to address the unique needs of youth. We believe that anything less than a complete ban would ignore all of the available research and evidence, expert opinion from correctional experts, current policies in federal and international law, and would fail to meet the goals established by Congress when passing PREA.

***Question 36:*** *Should the final rule include a standard that governs the placement of juveniles in adult facilities?*

Yes. According to the Bureau of Justice Statistics (BJS), 10,000 children are held in adult jails and prisons daily.<sup>2</sup> The annual number of youth exposed to the dangers of sexual assault in adult facilities is significantly higher because of the "flow" of youth entering and exiting facilities. The Department should protect these youth by requiring the removal of all youth under 18 from adult facilities.

It is not uncommon for a young person to have contact with the justice system once or twice, never to return. But if a young person is sexually abused while in custody, he or she will suffer lifelong trauma from that abuse, which often results in mental illness, substance abuse, and a higher likelihood of continued involvement in the criminal justice system.<sup>3</sup>

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<sup>1</sup> The Department's current definition of "juvenile" in § 115.5 currently does not include all youth. For the purposes of this letter, we use the terms "children" and "youth" interchangeably to refer to all persons under the age of 18. We have answered these questions assuming the Department intended to solicit comments about how the proposed PREA standards for adult facilities should be modified to address the needs of the entire youth population.

<sup>2</sup> Minton D. Todd, U.S. Dept. of Justice Bureau of Justice Statistics, Jail Inmates at Midyear 2009-Statistical Tables (June 2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/jim09st.pdf>; Heather C. West, U.S. Dept. of Justice Bureau of Justice Statistics, Prison Inmates at Midyear 2009-Statistical Tables (June 2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/pim09st.pdf>.

<sup>3</sup> See also Ching-Tung Wang & John Holton, Prevent Child Abuse America, *Total Estimated Cost of Child Abuse and Neglect in the United States* (September 2007), available at

**Youth in adult facilities are at great risk of prison rape.** Studies from across the nation confirm that youth incarcerated with adults fit the risk profile of those persons at the highest risk of sexual assault. According to the prison rape literature, the persons with the highest likelihood of being sexually assaulted are:

1. Inmates who are young, inexperienced in prison culture, and easily intimidated;
2. Those who are physically small or weak;
3. Inmates suffering from mental illness and/or developmental disabilities;
4. Inmates who are middle-class/not streetwise;
5. Offenders who are not gang affiliated;
6. Those who are known to be lesbian, gay, bisexual, transgender, or intersex;
7. Those who have been previously sexually assaulted;
8. Inmates who are disliked by staff or other inmates;
9. Those who “snitch,” that is, report prohibited behavior;
10. First-time, non-violent offenders.<sup>4</sup>

National Prison Rape Elimination Act Commissioner Brenda Smith testified before Congress that most of the youth held in adult facilities have “no prior exposure to the adult correctional environment [which] makes adult prisons very difficult for youth to navigate and puts them at an increased risk for sexual abuse.”<sup>5</sup> We know that the overwhelming majority of youth tried as adults are nonviolent offenders, and a considerable proportion are first-time offenders.<sup>6</sup> In more than half of the states, there is no lower age limit on who can be prosecuted as an adult, so even young children can be prosecuted as adults and sent to adult jails and prisons.<sup>7</sup> For example, only six states have age restrictions on the pre-trial detention of youth in jails.<sup>8</sup> In addition to age and offense, we know that other characteristics of youth further raise their risk levels. Youth in adult facilities have even more significant mental health needs than youth held in juvenile facilities.<sup>9</sup> Youth are also likely to have had significant histories of prior sexual assault, particularly the girls.<sup>10</sup> Many lesbian, gay, and bisexual youth are held in adult facilities as well.<sup>11</sup> All of these factors make youth more likely to be victimized.

PREA-funded studies confirm the high rates of sexual violence against youth in adult facilities. BJS studies conducted in 2005 and 2006 found that 21% and 13% respectively, of the victims of substantiated

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[http://www.preventchildabuse.org/about\\_us/media\\_releases/pcaa\\_pew\\_economic\\_impact\\_study\\_final.pdf](http://www.preventchildabuse.org/about_us/media_releases/pcaa_pew_economic_impact_study_final.pdf) (documenting the adverse impact on children who have been sexually abused).

<sup>4</sup> Kim English et al., *Sexual Assault in Jail and Juvenile Facilities: Promising Practices for Prevention and Response Final Report*: Submitted to the National Institute of Justice (Colorado Division of Criminal Justice 2010), available at <http://dcj.state.co.us/ors/pdf/PREA/FINAL%20PREA%20REPORT%20June%2028%202010.pdf>

<sup>5</sup> *Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 111<sup>th</sup> Cong. 12 (2010).

<sup>6</sup> *The Consequences Aren't Minor: the Impact of Trying Youth as Adults and Strategies for Reform 6* (Liz Ryan & Jason Zidenberg eds., Campaign for Youth Justice 2007), available at [http://www.campaignforyouthjustice.org/documents/CFYJNR\\_ConsequencesMinor\\_000.pdf](http://www.campaignforyouthjustice.org/documents/CFYJNR_ConsequencesMinor_000.pdf).

<sup>7</sup> Michele Deitch et al., *From Time Out to Hard Time: Young Children in the Adult Criminal Justice System 23*, (The University of Texas at Austin 2009), available at [http://www.campaignforyouthjustice.org/documents/NR\\_TimeOut.pdf](http://www.campaignforyouthjustice.org/documents/NR_TimeOut.pdf).

<sup>8</sup> Melissa Goemann et al., *Children Being Tried As Adults: Pre-Trial Detention Laws in the U.S. 2* (Campaign for Youth Justice 2007), available at <http://www.campaignforyouthjustice.org/documents/ChildrenBeing.pdf>.

<sup>9</sup> Daniel C. Murrie et al., *Psychiatric Symptoms Among Juveniles Incarcerated in Adult Prison*, 60 *Psychiatric Services* No.8 1092 (2009) (finding that over 50% of youth scored above the highest clinical cutoff (the “warning” range) on the MAYSI-2 subscale).

<sup>10</sup> Karen Abram et al., *Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention*, 61 *Archives of Gen. Psychiatry* 403 (2004), <http://archpsyc.ama-assn.org/cgi/reprint/61/4/403> (nearly one-third of girls reported prior sexual victimization with force, compared with less than 5% of boys).

<sup>11</sup> Kathryn E.W. Himmelstein & Hannah Brückner, *Criminal Justice and School Sanctions against Nonheterosexual Youth: A National Longitudinal Study*, *Pediatrics* (2010), <http://pediatrics.aappublications.org/cgi/reprint/peds.2009-2306v1.pdf>.

inmate-on-inmate sexual violence in jails were youth under the age of 18<sup>12</sup> – a surprisingly high percentage of victims considering that only 1% of all jail inmates are youth under 18.<sup>13</sup> Unfortunately, BJS studies conducted since that time have not disaggregated youth victimization in adult facilities but have grouped all persons under the age of 25 together.<sup>14</sup> This is a critical gap in our understanding of the risks to youth that the Department should rectify immediately.

In light of this evidence, the National Prison Rape Elimination Act Commission concluded that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse” and recommended that “individuals under the age of 18 be held separately from the general population.”<sup>15</sup> Although the Commission was right to recommend keeping youth separate from other adult inmates, the Commission overlooked the danger caused when youth are held in isolation conditions, a common side-effect of efforts to keep youth safe from sexual assault.

**Isolation has devastating consequences for youth.** Isolation conditions can cause anxiety, paranoia, and exacerbate existing mental disorders and put youth at risk of suicide.<sup>16</sup> In fact, youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.<sup>17</sup> According to University of California–Santa Cruz psychology professor Craig Haney, the effects of isolation are profound and disabling for youth:

The political stereotype is that a fourteen- or sixteen-year-old who commits an adult crime must be as sophisticated as an adult when paradoxically these kids are most often younger than their age emotionally. Regardless of what they have done, they are in an uncertain, unformed state of social identity. These are kids who are the least appropriate to place in solitary confinement. Not only are you putting them in a situation where they have nothing to rely on but their own, underdeveloped internal mechanisms, but you are making it impossible for them to develop a healthy functioning adult social identity. You're basically taking someone who's in the process of finding out who they are and twisting their psyche in a way that will make it very, very difficult for them to ever recover.<sup>18</sup>

Correctional staff understand this dilemma. Sherriff Gabriel Morgan of Newport News, VA, testified before Congress that:

[O]ur ability to effectively manage the juvenile safety is tenuous at best. Most of the time, we are forced to put them in protective custody or some sort of administrative segregation for their own protection. This amounts to additional punishment inasmuch as juveniles are in isolation cells for the majority of the day. These findings and many cited in my written submission begs the

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<sup>12</sup> Allen J. Beck, Paige M. Harrison, & Devon B. Adams, U.S. Dept. of Justice Bureau of Justice Statistics, Sexual Violence Reported by Correctional Authorities 2006 (August 2007), <http://bjs.ojp.usdoj.gov/content/pub/pdf/svrca06.pdf>; Allen J. Beck & Paige M. Harrison, U.S. Dept. of Justice Bureau of Justice Statistics, Sexual Violence Reported by Correctional Authorities 2005 (July 2006), <http://bjs.ojp.usdoj.gov/content/pub/pdf/svrca05.pdf>.

<sup>13</sup> Howard N. Snyder & Melissa Sickmund, U.S. Dept. of Justice Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Juvenile Offenders and Victims: 2006 National Report (March 2006), <http://www.ojjdp.gov/ojstatbb/nr2006/downloads/NR2006.pdf>.

<sup>14</sup> See e.g., Paul Guerino & Allen J. Beck, U.S. Dept. of Justice Bureau of Justice Statistics, Sexual Victimization Reported by Adult Correctional Authorities, 2007-2008 (January 2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/svraca0708.pdf>.

<sup>15</sup> National Prison Rape Elimination Commission Report (June 2009), <http://www.ncjrs.gov/pdffiles1/226680.pdf>.

<sup>16</sup> Lindsay M. Hayes, National Center on Institutions and Alternatives, Juvenile Suicide in Confinement: A National Survey, (Office of Juvenile Justice and Delinquency Prevention 2009), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf> (describing a “strong relationship between juvenile suicide and room confinement”).

<sup>17</sup> Angela McGowan et al., *Effects on Violence and Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review*, 32 Am. J. Preventative Med. S4, 7-28 (2007).

<sup>18</sup> Matt Olson, *Kids in the Hole-Juvenile Offenders*, The Progressive, Aug. 2003, available at [http://findarticles.com/p/articles/mi\\_m1295/is\\_8\\_67/ai\\_106225215](http://findarticles.com/p/articles/mi_m1295/is_8_67/ai_106225215).

question, is this a violation of the Eighth Amendment of our Constitution? Further, as a civilized body, are we guaranteeing the provisions of the 14<sup>th</sup> Amendment due process and equal protection clause?<sup>19</sup>

**The draft regulations are inadequate to protect youth.** Under the Department's proposed adult regulations an adult facility will identify youth as vulnerable and make an individualized determination of how to ensure their safety (§115.41). In many facilities, youth will be placed in protective custody to keep them safe. Although the draft adult regulations recognize that protective custody is a punitive condition that is both unfair and harmful to vulnerable inmates (§115.43), from a practical standpoint adult facilities will have no alternatives but to keep youth in isolation indefinitely. A similar problem occurs if one applies the current juvenile standards to youth held in adult facilities. The Department should not permit jurisdictions to house youth in protective custody to protect youth from sexual abuse, thus relying on one dangerous practice in an attempt to eliminate another.

Adult facilities are simply not equipped to meet the needs of youth. All leading professional associations in the field, including the American Bar Association, American Correctional Association, Council of Juvenile Correctional Administrators, National Commission on Correctional Health Care, and National Juvenile Detention Association have recognized that juveniles have distinct physical, emotional, social, and safety needs that are different than those of adults and have adopted policy statements and guidelines calling for youth to be housed in different settings than adult prisoners.<sup>20</sup>

***Question 37:** If so, what should the standard require, and how should it interact with the current JJDP requirements and penalties mentioned above?*

The Department should explicitly recognize that all youth have a heightened vulnerability for sexual abuse in adult correctional settings and include a standard requiring the removal of youth under 18 from adult facilities.

#### **§ 115.44 Prohibition on housing juveniles in adult facilities**

**(a) No person under the age of 18 may be housed in a jail or prison.**

**(b) The agency operating the adult facilit(ies) shall enter into memoranda of understanding or other agreements with juvenile justice agenc(ies) to receive and immediately house all persons under the age of 18 who are currently, or in the future, assigned to its care.**

Our proposed rule would go beyond the current requirements established by the Juvenile Justice and Delinquency Prevention Act (JJDP)<sup>21</sup> in order to protect all youth from the very real risk of sexual abuse in adult facilities.

The JJDP was enacted over three decades ago to keep youth out of adult facilities and requires states to ensure that no juvenile be "detained or confined in any institution in which they have contact with adult inmates."<sup>22</sup> Although this language suggests that Congress intended to prevent youth from being housed in adult facilities altogether, the JJDP does not protect all youth.

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<sup>19</sup> *Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 111<sup>th</sup> Cong. 12 (2010).

<sup>20</sup> See Attachment A. Copies of the policy statements can be found online at <http://www.campaignforyouthjustice.org/national-resolution.html>.

<sup>21</sup> See 42 U.S.C. §§ 5601-5681 (2006).

<sup>22</sup> 42 U.S.C. § 5633(a)(12) (2006).

There are four categories of youth that may potentially be placed in an adult jail or prison:

1. Youth who have not committed any crime (non-offenders);
2. Youth who have committed an offense that is not a criminal offense for adults (status offenders);
3. Youth who have committed a crime and are adjudicated in the juvenile justice system; and
4. Youth who have committed a crime and are prosecuted in the adult criminal justice system.

The JJDPa only protects youth in the first three categories, and allows youth in the third category to be held in rural jails in certain instances. The JJDPa does not currently protect youth prosecuted in the adult criminal justice system. At the time the JJDPa was passed, many fewer youth were prosecuted as adults. State legislative changes during the 1980s and 1990s made it easier for youth to be prosecuted in adult criminal courts, and now recent estimates are that 250,000 children are prosecuted as adults each year in the United States.<sup>23</sup>

Our recommended standard would remove all youth under the age of 18 from adult facilities, and therefore goes beyond the statutory requirements of the existing JJDPa. The penalties imposed on a facility or agency for failure to remove youth from adult facilities should be imposed as appropriate to the type of violation. To the extent that facilities are currently housing youth in adult facilities in violation of the current JJDPa (i.e., the first three categories of youth), these facilities should be found out of compliance with both the JJDPa and PREA. Facilities housing youth in adult facilities in violation of our recommended approach, but that are not in violation of the JJDPa (i.e., youth in the fourth category), should be found out of compliance with PREA alone. The statutorily prescribed financial penalties should be assessed. We urge the Department to set aside any funds that are withheld from jurisdictions that fail to comply with our proposed rule to help facilities come into compliance.

Although state juvenile justice systems differ in many ways, the majority of states (37) have set their maximum age of juvenile jurisdiction at age 18, and we believe the Department should similarly establish a clear line that adulthood begins at age 18. The American Bar Association recommends 18 as the age of juvenile jurisdiction.<sup>24</sup> The United States Supreme Court has also established age 18 as the age relevant to judge criminal penalties imposed on youth. In the 2005 decision of *Roper v. Simmons*, the Supreme Court affirmed the Missouri State Supreme Court's decision to prohibit the death penalty for juvenile offenders, defined as persons under the age of 18, even though Missouri's juvenile justice system ends at age 17.<sup>25</sup> Last year, the Court maintained this defining line in *Graham v. Florida*, when the Court held that persons cannot be given a life sentence without the possibility of parole for a non-homicide crime committed before the age of 18.<sup>26</sup> Finally, international treaties endorse age 18 as the proper age to delineate between juvenile and adult court treatment.<sup>27</sup>

The Department would also be justified in making such a rule on the basis of congressional intent. Congress passed PREA in response to its findings that “young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities – often within the first 48 hours of incarceration.”<sup>28</sup> As Chairman John Conyers noted in the most recent legislative hearing on the sexual abuse of incarcerated children, “I would like to discuss

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<sup>23</sup> Patrick Griffin, Convening by the National Institute of Corrections (June 18, 2010) (on file with author).

<sup>24</sup> American Bar Association, *Juvenile Justice Standards Relating to Transfer Between Courts* (1979).

<sup>25</sup> *Roper v. Simmons*, 543 U.S. 541 (2005).

<sup>26</sup> *Graham v. Florida*, 130 S. Ct. 2011 (2010).

<sup>27</sup> See Attachment A.

<sup>28</sup> 42 U.S.C. § 15601 (2006).

what I believe is a very simple solution: we should stop sending children to adult jails and prisons. It absolutely makes no sense to incarcerate children in dangerous adult jails.”<sup>29</sup>

**The costs of removing youth from adult facilities are justified by the benefits.** We acknowledge that the costs may be significant in some jurisdictions, particularly for states that have set their age of juvenile court jurisdiction below the age of 18. Nonetheless, the important inquiry for the Department is whether the costs outweigh the benefits. In addition to the moral benefit of removing youth from adult facilities, we believe that the Department will similarly find that from a cost-benefit standpoint, our recommendations are justified.

The Department’s Initial Regulatory Impact Analysis did not consider the abuse of youth in adult facilities in the baseline calculations of the prevalence of prison rape and sexual abuse in adult jails and prisons. When the Department revisits the cost-benefit issue, the Department should account for the increased risks that youth face when housed in adult jails and prisons (e.g., the higher suicide rates) and the increased costs associated with increased recidivism of youth prosecuted as adults. According to both the U.S. Centers for Disease Control and Prevention and the Department’s own 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>30</sup>

We also ask the Department not to make any blanket assumptions about the cost impact on state and local jurisdictions. While the average costs of housing youth in juvenile facilities are higher than the average costs of housing youth in adult facilities, adult facilities that keep youth safe from abuse often house youth in specialized units (e.g., mental health unit) that may be comparable to housing youth in juvenile facilities. For example, in 2007, the Rhode Island legislature dropped the age of juvenile court jurisdiction from 18 to 17 in an effort to save money. Yet the costs to keep youth safe in the adult facility skyrocketed and the legislature immediately reversed the change.

In conclusion, we urge the Department to swiftly promulgate a final rule with our recommendations to ensure that all youth are protected from sexual abuse as was intended by Congress when it passed PREA. Every day that youth remain in adult jails and prisons they are at great risk.

For your convenience, we have included several attachments we hope will prove helpful as the Department considers our recommendations. Attachment A provides a list of laws and policies that support our position. Attachment B provides copies of relevant testimony before Congress and the National Prison Rape Elimination Commission regarding the dangers posed by incarcerating youth in adult facilities. Attachment C is a copy of a recent report by the Campaign for Youth Justice illustrating recent state trends removing youth from adult facilities. Finally, in anticipation of concerns from juvenile correctional institutions that there may be a rare youth whose conduct in a juvenile facility is so extreme as to render a youth unmanageable in a juvenile justice environment, we have drafted language to accommodate those concerns in Attachment D.

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<sup>29</sup> *Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 111<sup>th</sup> Cong. 12 (2010).

<sup>30</sup> Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, 56 MMWR (No. RR-9) (Nov. 30, 2007), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>; Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, U.S. Department of Justice Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (June 2010), <http://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>.



Thank you for your consideration. Should you have any additional questions, please feel free to contact Neelum Arya at the Campaign for Youth Justice, (202) 558-3580 or [narya@cfyj.org](mailto:narya@cfyj.org), or Dana Shoenberg at the Center for Children's Law and Policy, 202-637-0377, x107 or [dshoenberg@cclp.org](mailto:dshoenberg@cclp.org).

Sincerely,

### **Organizations**

Ability to Work in Life (ATWIL)  
Ablechild.org  
Action for Children North Carolina  
Advocacy for Justice and Peace Committee of the Sisters of St. Francis of Philadelphia  
AdvocacyDenver  
Advocates for Children and Youth (Maryland)  
Advocates for Children of New Jersey  
AIDS Foundation of Chicago  
Alaska Association of Criminal Defense Attorneys  
Allies with Families  
American Civil Liberties Union  
American Civil Liberties Union, Wyoming Chapter  
American Foundation for Suicide Prevention/SPAN USA  
American Jail Association  
American Orthopsychiatric Association  
American Probation and Parole Association  
American Psychiatric Association  
Arkansas Advocates for Children and Families  
Arkansas Department of Human Services, Division of Youth Services  
Arkansas Federation of Families for Children's Mental Health  
Barton Child Law and Policy Center at Emory University School of Law  
Black Politics Today  
Booth Memorial Children's Home (Alaska)  
California Council of Churches/ California Church IMPACT  
Campaign for the Fair Sentencing of Youth  
Campaign for Youth Justice  
Center for Children's Law and Policy  
Center for Human Development  
Center for Juvenile Justice Reform at Georgetown University Public Policy Institute  
Center for Juvenile Law and Policy, Loyola Law School (California)  
Center for NuLeadership on Urban Solutions  
Center for Public Representation (Massachusetts)  
Center for Restorative Youth Justice (Montana)  
Center on Children and Families, University of Florida Levin School of Law  
Center on Juvenile and Criminal Justice (California)  
Central Juvenile Defender Center  
Child and Family Policy Center (Iowa)  
Children & Family Justice Center (Illinois)  
Children and Family Council for Prevention Programs (Vermont State Advisory Group)  
Children First/Communities In Schools of Buncombe County (North Carolina)  
Children's Action Alliance (Arizona)  
Children's Alliance of New Hampshire  
Children's Defense Fund

Children's Defense Fund - California  
 Children's Defense Fund - New York  
 Children's Defense Fund - Ohio  
 Children's Justice Clinic at the Rutgers School of Law - Camden  
 Children's Law Center, Inc. (Kentucky)  
 Citizens Against Recidivism, Inc. (California)  
 Citizens for Juvenile Justice (Massachusetts)  
 Civil Justice Clinic (Missouri)  
 Civitas ChildLaw Center, Loyola University Chicago School of Law  
 Coalition for the People's Agenda (Georgia)  
 Coalition of Advocates for Equal Access for Girls (Oregon)  
 Colorado CURE (Citizens United for Rehabilitation of Errants)  
 Colorado Juvenile Defender Coalition  
 Columbia Legal Services (on behalf of its clients)  
 Community Justice Network for Youth (California)  
 Connecticut Juvenile Justice Alliance  
 Connecticut Parent Teacher Student Association  
 Correctional Education Association  
 Council for Children with Behavior Disorders  
 Council for Educators of At-Risk and Delinquent Youth (CEARDY)  
 Daymark (West Virginia)  
 DC Lawyers for Youth  
 DC Prisoners' Project  
 Dedicated to Your Wholeness Counseling  
 Delaware Center for Justice  
 Department of Human Services County Youth Services Commission Elizabeth, New Jersey  
 Disabled in Action of Greater Syracuse, Inc. (New York)  
 Disciples Justice Action Network  
 East Bay Children's Law Offices, Inc. (California)  
 East of the River Clergy Police Community Partnership (Washington, DC)  
 Education Equals Making Community Connections (Texas)  
 Ella Baker Center for Human Rights  
 Equal Justice Initiative (Alabama)  
 Everychild Foundation (California)  
 Families & Allies of Virginia's Youth  
 Families and Friends of Louisiana's Incarcerated Children  
 Families and Friends Organizing for Reform of Criminal Justice (Missouri)  
 Families Rally for Emancipation & Empowerment (F.R.E.E)  
 Family Violence Prevention Fund  
 FedCURE  
 First Focus  
 Florida Institutional Legal Services  
 Florida Legal Services, Inc.  
 Free Minds Book Club and Writing Workshop (Washington, DC)  
 Gentle Spirit Christian Church (Georgia)  
 Girls & Gangs  
 Global Justice Institute  
 Global Youth Justice  
 Goodwill Homes Community Services, Inc. (Tennessee)  
 Haywood Burns Institute  
 HIV Prevention Justice Alliance



HIVictorious, Inc.  
Human Rights Defense Center  
Human Rights Watch  
Humanity for Prisoners (Michigan)  
Humboldt Mediation Services (California)  
Hunger Free Vermont  
Idaho Federation of Families for Children's Mental Health  
Idaho Voices for Children  
Indiana CURE (Citizens United for Rehabilitation of Errants)  
Indiana Juvenile Justice Task Force, Inc.  
International Community Corrections Association  
International Federation of Black Prides, Inc.  
Iowa Coalition 4 Juvenile Justice  
Iowa Commission on the Status of Women  
Jefferson County Youth Advocate Program (New York)  
Jim Lawrence Transportation, Inc.  
John Howard Association of Illinois  
Judge David L. Bazelon Center for Mental Health Law  
Just Detention International  
Just Kids Campaign (Maryland)  
JustChildren (Virginia)  
Justice 4 Kids (Florida)  
Justice for Juveniles (Texas)  
Justice Policy Institute  
Juvenile Justice Coalition  
Juvenile Justice Coalition of Minnesota  
Juvenile Justice Initiative of Illinois  
Juvenile Justice Project of Louisiana  
Juvenile Justice Trainers Association (JJTA)  
Juvenile Law Center (Pennsylvania)  
Juvenile Rights Advocacy Project at Boston College School of Law  
Kansas City Criminal Justice Task Force  
Kentucky Youth Advocates  
Kid's Dominion Family Childcare (Delaware)  
Kids First Law Center (Iowa)  
King County Sexual Assault Resource Center (Washington)  
L. A. Community Legal and Educational Center  
L.A.U.R.A. (Life After Uncivil Ruthless Acts)  
La Plaza de Encuentro  
Leadership & Renewal Outfitters (Indiana)  
League of Women Voters of Nevada  
Legal Services for Children (California)  
Madison-Area Urban Ministry (Wisconsin)  
Maine Children's Alliance  
Mainstream Oklahoma Baptists  
Maryland CURE (Citizens United for Rehabilitation of Errants)  
Maryland Disability Law Center  
Massachusetts Citizens for Children  
Men in Motion in the Community (MIMIC) (Pennsylvania)  
Mennonite Central Committee  
MensWork (Kentucky)

Mental Health America  
 Mental Health Association in Morgan County (Alabama)  
 Mentoring Male Teens in the Hood (Maryland)  
 Metropolitan Community Churches  
 Michigan Council on Crime and Delinquency  
 Mid-Atlantic Juvenile Defender Center  
 Midwest Juvenile Defender Center  
 Minnesota Community Action Partnership  
 Mississippi Youth Justice Project  
 Missouri Youth Services Institute  
 NAACP  
 National Advocacy Center of the Sisters of the Good Shepherd  
 National African American Drug Policy Coalition, Inc.  
 National Alliance on Mental Illness  
 National Alliance to End Sexual Violence  
 National Asian Pacific American Women's Forum  
 National Association for Children of Incarcerated Parents (NACIP)  
 National Association for Children's Behavioral Health  
 National Association of Criminal Defense Lawyers  
 National Association of Juvenile Correctional Agencies (NAJCA)  
 National Association of Social Workers, Connecticut Chapter  
 National Association of Social Workers, West Virginia Chapter  
 National Black Law Students Association  
 National Center for Lesbian Rights  
 National Center for Transgender Equality  
 National Center for Youth Law  
 National Center on Domestic and Sexual Violence  
 National Collaboration for Youth  
 National Council of Jewish Women  
 National Council of La Raza  
 National Crittenton Foundation  
 National Disability Rights Network  
 National Foundation for Mental Health  
 National Juvenile Defender Center  
 National Juvenile Detention Associations (NJDA)  
 National Juvenile Justice Network  
 National Latina Institute for Reproductive Health  
 National Network for Youth  
 National Parent Teacher Association  
 National Partnership for Juvenile Services  
 National Rural Social Work Caucus  
 National Safe Place  
 National Women's Conference Committee  
 Nebraska Appleseed Center for Law in the Public Interest  
 New England Juvenile Defender Center  
 New Hampshire Association of Criminal Defense Lawyers  
 New Mexico CURE (Citizens United for Rehabilitation of Errants)  
 New Mexico Voices for Children  
 New York Center for Juvenile Justice  
 North Dakota Federation of Families for Children's Mental Health  
 Offender Aid and Restoration of Arlington, Inc.

Ohio Juvenile Justice Network  
 Oklahoma Institute for Child Advocacy  
 Pacific Juvenile Defender Center  
 Partnership for Safety and Justice (Oregon)  
 Pennsylvania Coalition Against Rape  
 Pretrial Justice Institute (Washington, DC)  
 Prison Law Office  
 Prisoners' Legal Services of New York  
 Project IRENE  
 Project South  
 Project United Alliance (Indiana)  
 Prosperity Works (New Mexico)  
 Public Defender Service for the District of Columbia  
 Reform Sex Offender Laws of Indiana  
 Rhode Island Kids Count  
 RIHD Youth Initiative, Minority Youth Appreciation Society Center  
 Robert F. Kennedy Juvenile Justice Collaborative  
 Safe and Sound Campaign (Maryland)  
 Sasha Bruce Youthwork  
 Save the Children USA  
 Schuyler Center for Analysis and Advocacy  
 Sentencing Project  
 Sisters of Mercy West Midwest Justice Team  
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 Solidarity Committee of the Capital District (New York)  
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 Southern Poverty Law Center  
 Southwest Key Programs  
 Statewide Parent Advocacy Network of New Jersey (SPAN)  
 Student Peace Alliance  
 Support Center for Child Advocates (Pennsylvania)  
 SWAP Productions, LLC  
 Tamms Year Ten  
 TeamChild  
 Texas Association Against Sexual Assault  
 Texas Civil Rights Project  
 Texas Criminal Justice Coalition  
 The Black Children's Institute of Tennessee  
 The Center for HIV Law and Policy (New York)  
 The Children's Campaign (Florida)  
 The Coalition of Organizations and Individuals Nurturing Neighborhoods Successfully, Inc. (C.O.I.N.N.S.)  
 The Correctional Association of New York  
 The Embracing Project (Nevada)  
 The Equity Project  
 The Florida Youth Initiative, Southern Poverty Law Center  
 The Hosea Williams Help Save America Foundation  
 The Just Kids Partnership  
 The Peace Alliance

The Public Justice Center (Maryland)  
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 The Robert F. Kennedy Children's Action Corps  
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 West Virginia Citizen Action Group  
 Wilson Resource Center (Iowa)  
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 Women's Prison Association & Home  
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 Youth Art & Self-empowerment Project (Pennsylvania)  
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 Kristen Vogel, California  
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 Jeanette Wachter, Missouri  
 Brent Wade, Missouri  
 Robert Wade, Family Member, Missouri  
 Thelma Wade, Missouri  
 Trudy Wade, Missouri  
 Will Wade, Missouri  
 Sumayyah Waheed, Advocate, California  
 Michael S. Wald, Professor of Law, Stanford Law School, California  
 Brian Waldbillig, Publications Manager, Robert Schalkenbach Foundation, New York  
 Betty Walker, Concerned Citizen  
 State Representative Toni Walker, 93rd Assembly District, Connecticut  
 State Representative Wayne Wallingford, 158th District, Missouri  
 Connie Walton, Community Organizer, Families and Friends of Louisiana's Incarcerated Children,  
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 Jamyrik Walton, Families and Friends of Louisiana's Incarcerated Children, Louisiana  
 Geoff Ward, Social Scientist and Concerned Citizen, California  
 Alexei Ware, Maryland  
 Grace Warren, Illinois  
 Tyrona Warren, Concerned Citizen, Illinois  
 Brian Warth, Formerly Incarcerated Youth, California  
 Julie K. Waterstone, Director, Children's Rights Clinic, Southwestern Law School  
 David Watson, Missouri  
 Linda Watson, Grandparent, Pennsylvania  
 Tresa Watson, Missouri  
 Susan Weatherford, Florida  
 Dorothy Weathers  
 Robin B. Webster, Arizona  
 Kristen Weidus, President, Women's Law Society, University of the District of Columbia David A.  
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 Anita Weinberg, Loyola University Chicago School of Law, Illinois  
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Robert Weir, Missouri  
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 Nicole Wessel, Missouri  
 Professor Cornel West, Princeton University  
 Sandra D. Westervelt, Ph.D., Associate Professor of Sociology, University of North Carolina at  
 Greensboro, North Carolina  
 Rachel Whaley, Ph.D., Assistant Professor of Sociology, Southern Illinois University, Illinois  
 State Senator Tom Whatley, District 27, Alabama  
 Louise G. White, The Reentry Task Force, Washington, DC  
 Rhonda White, Missouri  
 Denea Whitest, Mother, Pennsylvania  
 Taliah Whitfield, Missouri  
 State Representative David Wilkerson, House District 33, Georgia  
 Debbie Willett, Friend, Pennsylvania  
 Anne Williams, Mother, Florida  
 Becky Williams, Missouri  
 Frank P. Williams, III, Criminologist, Texas  
 James R. Williams, Washington, DC  
 Jessy Williams, Missouri  
 Kathleen A. Williams, Juvenile Advocate, New York  
 Kelly Mikel Williams, Special Assistant to the Archbishop, Greater Mt. Calvary Holy Church,  
 Washington, DC  
 Marita M. Williams, CEO and Managing Consultant, Image Matters, LLC, Washington, DC  
 Ophelia Williams, California  
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 Marianne Wilson, Missouri  
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## **Attachment A**

### **List of Supporting Laws, Standards, and Policies**

#### **Federal Law and Policies**

- 18 U.S.C. § 5039 (prohibiting placement of youth in federal custody in adult facilities)
- 42 U.S.C. § 5633 (a)(prohibiting the placement of youth in state and local custody in adult facilities in certain circumstances)
- USDOJ, Federal Bureau of Prisons, Policy 5216.05 (prohibiting placement of youth in adult facilities)
- USDOJ, Federal Standards for Prisons and Jails (1980)
- USDOJ, Office of Juvenile Justice and Delinquency Prevention, Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (recommending that juveniles tried as adults be sight and sound separated from adult inmates)

#### **State Law and Policies**

- California Welfare and Institutions Code §§207.1, 207.6
- California Code of Regulations Title 15 §§ 1100 – 1163
- California Memoranda of Understanding between California Department of Corrections and California Youth Authority (2004, 2001)
- Georgia Board of Corrections Rule 125-4-8-.01
- Hawaii Revised Statutes 352-28
- Hawaii Department of Public Safety Policy No. Cor. 14.07
- Kentucky Revised Statutes 640.070
- Kentucky Department of Juvenile Justice Policy and Procedures Policy Number DJJ 352
- Maine Department of Corrections Title 15 §3202-A (7)
- New Jersey Statutes §§ 10A:31-28.1, 2A: 4A - 36

#### **Professional Standards**

- ABA Standards for Criminal Justice: Treatment of Prisoners (3<sup>rd</sup> edition)(2010) Standard 23-3.2 (b)
- ACA Adult Correctional Institutions (4<sup>th</sup> edition, 2003), 4-4306
- ACA Adult Correctional Institutions (4<sup>th</sup> edition, 2003), 4-4307
- ACA Adult Correctional Institutions (4<sup>th</sup> edition, 2003), 4-4308
- ACA Adult Correctional Institutions (4<sup>th</sup> edition, 2003), 4-4309
- ACA Adult Correctional Institutions (4<sup>th</sup> edition, 2003), 4-4310

- ACA Adult Correctional Institutions (4<sup>th</sup> edition, 2003), 4-4311
- ACA Adult Correctional Institutions (4<sup>th</sup> edition, 2003), 4-4312
- ACA Core Jail Standards (1<sup>st</sup> edition, 2010), 1-CORE-2A-19
- ACA Core Jail Standards (1<sup>st</sup> edition, 2010), 1-CORE-2A-20
- ACA Juvenile Detention Standards (3rd edition, 1991), 3-JDF-3E-04

## **Policy Statements**

- American Academy of Child and Adolescent Psychiatry, Recommendations for Juvenile Justice Reform, Second Edition (2005)
- American Academy of Pediatrics, Health Care for Children and Adolescents in the Juvenile Correctional Care System (2001)
- American Bar Association, Resolution on Youth in the Criminal Justice System (101D) (2002)
- American Bar Association, Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners (2001)
- American Bar Association, Juvenile Justice Standards, Standards Relating to Transfer Between Courts (1979)
- American Correctional Association, Public Correctional Policy on Juvenile Justice (2007)
- American Correctional Association, Public Correctional Policy on Youthful Offenders Transferred to Adult Criminal Jurisdiction (2009)
- American Jail Association, Juveniles in Jails (1993)
- American Medical Association, Health Status of Detained and Incarcerated Youth (1990)
- American Public Health Association, Encourage Healthy Behavior by Adolescents (2000)
- American Psychiatric Association, Adjudication of Youths as Adults in the Criminal Justice System (2006)
- Association of State Correctional Administrators, Resolution #2 – Evaluating the Effects of Incarceration in Adult Facilities on Youth Offenders (2006)
- Coalition for Juvenile Justice, Children Detained in Adult Jails (n/d)
- Council of Juvenile Correctional Administrators, Waiver and Transfer of Youths to Adult Systems (2009)
- International Community Corrections Association, Public Policy on Juvenile Justice (2006)
- National Association for the Advancement of Colored People, Opposition to Transfer of Youth to the Adult Criminal Justice System (2008)
- National Association of Counties, American County Platform & Resolutions (2009)
- National Association of Social Workers, Juvenile Justice and Delinquency Prevention (2005)
- National Commission on Correctional Healthcare, Health Services to Adolescents in Adult Correctional Facilities (1998)

- National Commission on Correctional Healthcare, Prevention of Juvenile Suicide in Correctional Settings (2007)
- National Juvenile Detention Association, Opposing the Use of Adult Jails for the Detention of Juveniles (1981)
- National Juvenile Detention Association, Holding Juveniles Under Criminal Court Jurisdiction in Juvenile Detention (1997)
- The Parent-Teacher Association, Child Safety and Protection (n/d)
- United States Conference of Catholic Bishops, Responsibility, Rehabilitation, and Restoration: A Catholic Perspective and Criminal Justice (2000)
- U.S. Conference of Mayors, Calling for Reauthorization of the Juvenile Justice and Delinquency Prevention Act (2008)

## **International Law**

- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador,” Article 16
- American Convention on Human Rights, Article 19
- American Convention on Human Rights, Article 5
- American Convention on Human Rights, Article 6
- American Declaration of the Rights and Duties of Man, Article XI
- Convention on the Rights of the Child, Article 1
- Convention on the Rights of the Child, Article 19
- Convention on the Rights of the Child, Article 27
- Convention on the Rights of the Child, Article 3
- Convention on the Rights of the Child, Article 34
- Convention on the Rights of the Child, Article 37
- Convention on the Rights of the Child, Article 40
- Declaration of the Rights of the Child, Principle 2
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem Do Para,” Article 7
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem Do Para,” Article 8
- Inter-American Convention to Prevent and Punish Torture, Article 7
- International Covenant on Civil and Political Rights, Article 10
- International Covenant on Civil and Political Rights, Article 24
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), Rule 52

- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), Rule 54
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 12
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 13
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 14
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 15
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 20
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 27
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 28
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 29
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 31
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 37
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 38
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 47
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 49
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 85
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Rule 13.4
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Rule 13.5
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Rule 26.2
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Rule 26.3
- United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 8

## **Attachment B**

### **Testimony on Dangers of Youth in Adult Facilities**

- Linda Bruntmyer, Hearing before the Senate Committee on the Judiciary, “Prison Rape Reduction Act of 2002,” July 31, 2002
- Deborah LaBelle, Esq., Hearing before the National Prison Rape Elimination Commission, “At Risk: Sexual Abuse and Vulnerable Groups Behind Bars,” August 15, 2005
- Gabriel A. Morgan, Hearing before the Subcommittee on Crime, Terrorism, and Homeland Security of the Committee on the Judiciary, “Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities,” February 23, 2010
- T.J. Parsell, Hearing before the National Prison Rape Elimination Commission, “At Risk: Sexual Abuse and Vulnerable Groups Behind Bars,” August 15, 2005

**Testimony of Linda Bruntmyer**  
**Hearing before the Senate Committee on the Judiciary**  
**"The Prison Rape Reduction Act of 2002"**  
**July 31, 2002**

Thank you for giving me this opportunity to testify. My name is Linda Bruntmyer, and I am here today to tell you about my son, Rodney Hulin.

When Rodney was sixteen, he and his brother set a dumpster on fire in an alley in our neighborhood. The authorities decided to make an example of Rodney. Even though only about \$500 in damage was caused by the fire, they sentenced him to eight years in an adult prison.

We were frightened for him from the start. At sixteen, Rodney was a small guy, only 5'2 and about 125 pounds. And as a first-time offender, we knew he might be targeted by older, tougher, adult inmates.

Then, our worst nightmares came true. Rodney wrote us a letter telling us he'd been raped. A medical examination had confirmed the rape. A doctor found tears in his rectum and ordered an HIV test, because, he told us, one-third of the prisoners there were HIV positive.

But that was only the beginning. Rodney knew if he went back into the general population, he would be in danger. He wrote to the authorities requesting to be moved to a safer place. He went through all the proper channels, but he was denied.

After the first rape, he was returned to the general population. There, he was repeatedly beaten and forced to perform oral sex and raped. He wrote for help again. In his grievance letter he wrote, "I have been sexually and physically assaulted several times, by several inmates. I am afraid to go to sleep, to shower, and just about everything else. I am afraid that when I am doing these things, I might die at any minute. Please sir, help me."

Still, officials told him that he did not meet "emergency grievance criteria." We all tried to get him to a safe place. I called the warden, trying to figure out what was going on. He said Rodney needed to grow up. He said, "This happens everyday, learn to deal with it. It's no big deal."

We were desperate. Rodney started to violate rules so that he would be put in segregation. After he was finally put in segregation, we had about



a ten minute phone conversation. He was crying. He said, "Mom, I'm emotionally and mentally destroyed."

That was the last time I heard his voice. On the night of January 26, 1996, my son hanged himself in his cell. He was seventeen and afraid, and ashamed, and hopeless. He laid in a coma for the next four months before he died.

Sadly, I know that Rodney is not alone. The human rights group Stop Prisoner Rape gets calls and letters everyday from men and women who have survived prisoner rape and from their family members asking them for help, asking them to help them move to a safer place, asking them to help protect their loved ones who are being raped, asking them to explain why there is no one in authority that will step in and say, "No! This is not justice. This is not right."

I strongly support this legislation because it will stop prisons from ignoring pleas for help from people like my son.

We know that what happened to Rodney could have been prevented. There are ways to protect the vulnerable inmates and ways to respond to the needs of prisoners who have been sexually assaulted. Even so, vulnerable prisoners are being sexually brutalized across the country, everyday. Rodney tried to ask for help, and I tried too. But nothing was done.

I am asking please, sirs. Please support this legislation. It is urgently, desperately needed. Rape in prison should no longer be tolerated. It destroys human dignity, it spreads disease, it makes people more angry and violent. It kills.

This is NOT what we mean when we say justice. Rape should not be considered a part of punishment. Rape is always a crime.

STATEMENT OF DEBORAH LaBELLE, ESQ.

CHAIRMAN WALTON: Ms. LaBelle.

MS. LaBELLE: Thank you.

I'm going to address my remarks mostly to juveniles who are housed in adult facilities, and there's special vulnerability in that placement.

The last study that a lot of people cite is over -- nearly 15 years old, 1989, a study of youth in prisons and state training schools, and it reported that youth are at greater risk than their peers that are kept in juvenile facilities, who have been placed in an adult facility. In fact, it estimated that sexual assault occurs five times more likely for juveniles who are housed in an adult facility than in a juvenile facility. And I think that given the statistics and the information we've been collecting in some of our midwest prisons, that that is currently a seriously, seriously underestimated number of the special threat to youth who are in adult facilities.

I'm going to talk a little bit about girls first and the sort of daunting tasks that this Commission has with both girls and boys in even getting to the reporting issue. The children who are in adult facilities are especially low to report. In my capacity as either a private practitioner, working as a senior Soros fellow, working for the State Bar of Michigan and for the ACLU, myself and my staff for

the last ten years have been going into prisons and adult facilities, both women's and men's, about two to three times a week.

We get about 12 calls a day from the prisons, a day. And a significant amount of them are -- a growing amount are from juveniles who are held in adult facilities. Those calls break down mostly to sexual-abuse issues and health-care issues. But the only reason we get the calls is that we are a significant presence over a long period of time for these kids. And they do not report readily. They have -- they are in --

The girls, for example, in Michigan, at the age of 14, you can go into the adult prison and you are put in general population. 14-year-olds in -- are represented -- 14, 15, 16 go directly into the adult facility in the women's facilities. They are guarded by male custodial staff. They have an incredible fear of the older male staff. If you take the general recognition that there's an incredible power differential between male staff and female prisoners, based both on socialized gender issues as well as the power of the uniform over the prisoner, and you add to that the age differential, you have an incredibly and very potent differential in power.

Young girls that go in that are supervised by male staff two, three times their age are not going to come forward when they are sexually

approached very readily.

The other thing is that they are children. They are still children. 14- and 15-year-old girls, they lack the cognitive skills and abilities of adults to step forward and say what's going on. And they look around and they see the system that's in place and they have a difficult time stepping out of that and being the one to put themselves front and center.

They have a lack of knowledge of the system when they go into the adult system, which is sometimes very complex in the reporting mechanisms. And they have both a childlike fear of not being believed, as well as the sense that no matter what happens that they're guilty for it.

And I think that most child psychologists who talk about even the simple act of a parental divorce, children feel they're responsible for what adults do and what happens. When you put them in the prison context and they're sexually assaulted -- and based upon our data that we're collecting, we believe that women -- girls that are in a women's prison have 20 times -- have 20 times more risk of being sexually assaulted by custodial than general population. And that is based upon almost ten years of going in and talking to the girls and following them through.

When they report, they often report when they're much older or when they're safe. They don't report during the first couple of years that they're

in the prison. And when they do, it's often with severe consequences. The girls that are coming forward have -- are being placed often in a secure environment when they do report, which is a segregation or a hole. And, in general, the younger girls have much more difficulty serving time in isolation than adult women. They lack the resources. And the fear of going to the hole is almost as strong for a number of the girls that report as the fear of some of the sexual touching. And so they are caught and they have a lack of ability to go to anyone that they trust in that system to report.

In addition to the -- I think the lack of reporting -- the difficulty in reporting, the girls suffer from a lot of the privacy violations in a very different way than the older women do. And that's not to diminish the privacy violations for women that I'll talk about later, but that for young girls especially, their sense of privacy about their bodies is very intense. And so to be viewed in the showers by older male staff, to be viewed while on the toilet is excruciating for these young girls.

They have been taught, they have been socialized that they are entitled to a certain zone of privacy. Men don't come in on you. Older brothers don't come in on you, and certainly strange men don't come in on you in the showers and in the bathrooms and when you're dressing and undressing.

What they see, whether it's supposed to be a professional officer or not, is a sexualized gaze that's so degrading to them that it's very difficult to function in the environment that they're in. And I think that myself and my staff, who have sat in many meetings of young girls coming forward while others are sucking their thumbs in group meetings, if I have one recommendation to this Commission, it is they don't belong in the adult facilities. You cannot safely house young girls in adult female facilities.

I don't think that -- the task of getting them to report is so daunting that I urge this Commission very strongly to take the concept of the recognition that they should not be housed in adult facilities where they are guarded as if they are women and capable of functioning in that way. Because they cannot. And the trauma to them is long-lasting and not being addressed at all.

CHAIRMAN WALTON: And you're saying that should be a categorical position? You don't think that there are some girls who, because of their maturity, can function within an adult facility?

MS. LaBELLE: I think that, cognitively, I'm sure that there are differences. You know, though, generally they say that children are not cognitively developed until 18, at least, and there are -- I'm sure there are exceptions also for people who can drive at 14 because they're mature enough, even

though we set these lines. Or vote or do a number of these things.

I don't mean to diminish your question, but I'm sure there's exceptions, but I have not seen the kind of screening process or the ability of any facility to do the kind of deep analysis to determine whether that girl is capable of functioning in that women's facility, or at least to make it cost effective to do it.

I want to talk a little bit about boys as well. I've been working with a group -- and it's a particular group of boys who have been sentenced to life in prison, without the possibility of parole. So they're a little unique, in that they've created either aiding-and-abetting felony offenses or homicide offenses, and they have, again, at the age of 14 up -- and the youngest one we deal with has been 14 -- been placed in adult facilities to serve their time until they're -- you know, for the rest of their life, actually. But they start out in adult facilities.

Working -- and their issue is not with so much custodial staff. In fact, I haven't had a single report. And the group I'm working with is not huge. It's 310. 310 in one state. And then 110 in two other states. So less than 500 boys. But they have been placed directly into adult, again, general-population facilities, often starting at



maximum level. Because of their life sentence, they start in the highest custody because of their sentence, and then they'll work their way down based upon what their behavior is.

And almost 80 percent of them work themselves down to the lowest level by the time they're 21. But 80 percent, 80 percent, of these boys have reported that within the first year they've been sexually assaulted by adult male prisoners. 80 percent. That's an astronomical number.

And so what they talk about is that when they come in that they have all the difficulties of being a very young person in -- sometimes the youngest in their unit and that they are an immediate target. And they have very few alternatives. They can fight, at which they understand that they will go to the hole. And then there's an incredible fear of that isolation.

If they don't fight, they can find a protector. They can try to talk to the officers. But, in general, their concept of being a snitch is as dangerous as being -- giving in to some of the sexual overtures.

And I wanted to read, because I think one of the boys wrote to me and he, just in a paragraph, sort of gave his dilemma of being in an adult facility. And he was in a Michigan facility. And he wrote:

"After a long trial and a four-day wait

for the jury, I was convicted. I tried not to cry as a child would. I stood and held my head up and I took my punishment, nodded understanding. I asked my judge, after I apologized to everyone, what could I do.

"I was sent to the maximum security prison at Muskegon. I walked in totally afraid. I saw men in there. I thought I would go to prison with people my age. That's what my lawyer told me, but that wasn't the case. I just thought, well, this is it.

"I went to the recreation area and sat alone. I felt them all looking at me. I was very pale because I had been in jail for two years and I hadn't really been outside. It seemed like I was the youngest person in a sea of men.

"Many asked me if I needed anything. They started crowding around me. How much time did I get. I tried not to answer. I tried to be left alone.

"The first one month was the hardest. You have a test. Are you a rat? Are you able to be pressed for money, sex or mule work? Was I going to be a person that moves in drugs for other people? Almost all the young ones are asked to do that. Some are

forced. If you are a rat, I believed I would not survive. That means don't tell the officers anything, not even if you're having trouble.

"One day going to the shower -- I had been there two months. I tried not to do it much. It was only my second time to the showers. I was afraid. Two men came in and tried to press me. I started squirting my shampoo in their eyes and swinging hard as I could left and right. I lived. I did live. I wasn't a rat. I lived. I guess I was fortunate."

That was his experience, and it's really indicative. I don't read that as a one in -- the only one I've got like this, but I have hundreds of letters like this.

And, again, there is no reason to put juveniles in adult facilities. I really would urge the Commission to consider that.

There are maximum-security juvenile facilities. And I'm not saying they aren't without problems, but to put kids who have no ability to really deal with what's coming at them and the complexity of it in adult facilities -- if there's one recommendation, that is the one I would make.

Secondly, for those who have been -- gone in as children, I think that the -- and many who are coming out, I think they significantly need

treatment. I think they have been damaged in a way that -- with trauma, and they certainly can't talk on the inside. A young boy cannot admit on the inside that he's been raped. The weakness of being in that position, unless you have nothing else to lose, is incredible. So you do not go out -- go and confess to a counselor and then go out in the general population as someone who has either both snitched and has been raped and has, as many of the boys say, had their manhood taken from them, because otherwise you cannot survive in that environment.

So I think that a mechanism for when they're coming out to get them some treatment so that they function on the outside is a really serious issue for this Commission, because I think in addition to what's happening inside we have to deal with the fact that the majority of people who go in come out. And they come out in ways that make them very difficult to function on the outside.

And I would just like one more point: In the jails we do require that juveniles be separated from adults, and there is much -- you know, specifically for the boys, who are separated from sight and sound from adults, there is very little sexual abuse that is reported based on our interviews. There are difficulties there, as there's long-term isolation, no outside, you know, a lot of mental-health problems, but the separation of sight

and sound from adults in the jails has saved boys from the sexual abuse in the juvenile facility.

For the girls, they haven't been quite so lucky. Because when they separate girls, based on the numbers, they're often the only girl in isolation, again, with no restrictions on guarding from male custodial staff and no one to tell. So the reports of girls in the jails is pretty significant.

And the other thing I would urge this Commission is to recommend some oversights. There's very little tracking of juveniles in jails. There's very little oversight. Trying to get the numbers of who's out there, it's a county-by-county thing. And so the kids that are placed into jails and the ability for them to function and what happens in there I think is a black hole that I don't envy this Commission dealing with, but I urge them to try to grapple with.

Thank you.

**“Keeping Youth Safe While in Custody: Sexual  
Assault in Adult and Juvenile Facilities.”**

---

**Gabriel A. Morgan  
Sheriff**

**February 23, 2010**

Good afternoon members of Congress. It is with great humility that I accept Chairman Conyers' invitation to testify at this hearing of the Subcommittee on Crime, Terrorism, and Homeland Security on the issue of "Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities."

I am here today to add my voice to an overwhelming body of work that states that incarcerating juveniles in adult facilities is dangerous and the practice is counterproductive in reducing crime.

The number of youth held in adult jails on a daily basis exceeds 7,500; and the number of youth prosecuted as an adult is approximately 200,000. In a 2007 study commissioned by the Campaign for Justice, Jolanta Juskiewicz, Ph.D., authored, "To Punish a Few: Too Many Youth Caught in the Net of Adult Prosecution." Dr. Juskiewicz found that two-thirds of that approximately 200,000 were subject to pre-trial detention in adult facilities. Moreover, Dr. Juskiewicz discovered:

1. If detained pre-trial, two-thirds of the youth in adult systems were held in adult jails.
2. As many as one-half of the youth prosecuted in the adult system do not receive an adult court conviction.
3. Most youth who were not convicted as adults spent more than one month in an adult jail.
4. Fewer than 25% of convictions in adult court result in a prison sentence.
5. The majority of youth sentenced to probation or given a juvenile sanction were held pre-trial in an adult jail.

In the late 1800s, Illinois instituted a juvenile court system that subsequently served as the model throughout the United States. The institution of a juvenile court system was designed to protect the welfare and rehabilitation of youthful offenders. This system created specialized detention centers, training schools, and youth centers apart from adult offenders and facilities. Their aims were to provide a structured, rehabilitative environment in which the educational, psychological, and vocational needs of youthful offenders could be addressed. Starting about 1987 juvenile crime started to escalate and continued on that trajectory until 1996. It should be noted that the juvenile crime rate has receded. However, a growing perception exists that the juvenile justice system is ineffective and a need to treat juveniles as adults is the answer. Nothing could be further from the truth. It is my observation and most of the empirical data supports:

Minors are granted special civil rights to education, training, medical, and emotional care that are unique to children. These rights are extremely difficult to enforce in an adult jail facility. An adult jail facility lacks the resources, specialized staffing, and the physical plant to deliver the required services.

Youthful offenders often present behavior problems when placed in general population. These same juveniles are more likely to be victims of brutal crimes that may include sexual assaults. Again, our ability to effectively manage the juvenile's safety is tenuous at best. Most of the time we are forced to put them in protective custody or in some form of administrative

segregation for their own protection. This amounts to an additional punishment, inasmuch, as the juvenile is in an isolation cell for the majority of the day.

These findings and many cited in my written submission begs the question; is this a violation of the Eight Amendment of our Constitution. Further, as a civilized body are we guaranteeing the provisions of the Fourteenth Amendment due process and equal protection clause.

Upon taking office, I was faced with an overcrowded jail that the National Institute of Corrections called a “ticking time bomb.” I had over 700 inmates in a facility that was designed for 248. Every time a juvenile was transferred to my custody it was a nightmare. For the protection of the juvenile, I had to move adult prisoners into already overcrowded blocks, further creating an added danger to the adult inmate and the correctional staff.

This situation was further complicated by the fact that almost 30% of the adults in my facility suffered from some form of mental illness. I lacked the professional staff to adequately deal with this population. Our Community Services Board would evaluate the most outrageous behavior. Despite my constant request for additional funding, my request was denied until there was a tragedy. After a brave deputy by the name of Brian Dodge was critically injured, losing one of his eyes at the hands of an inmate suffering from mental illness, I was able to secure a grant to address this problem.

It took Corporal Dodge’s injury for something to be done. There are plenty of juveniles who have fallen victim in adult facilities. In my state of Virginia a juvenile can be tried as an adult at the age of 14 and they are subject to the same facility as an adult offender.

As a criminal justice practitioner, I must also caution of the unintended consequences of good meaning laws. Please do not saddle us with unfounded mandates that would be impossible to accomplish without additional resources. We do our best with the limited resources that are given to us by state and local government. However, since the mid 1980s politicians seeking election or re-election have held the criminal justice system hostage to sound bites. Politicians talk about getting tough on crime and they pass many draconian laws without regard to the data and evidence-based practices. As a practitioner and a taxpayer, I would submit that we must be smarter on crime. We must begin to focus more on prevention, rehabilitation, and reintegration. We cannot afford to continue in this manner. We are wasting human capital along with monies that could provide greater returns on our investment.

Prevention is always cheaper than correction. It is time to do what was started in the late 1800s in Illinois. It is time to ensure a juvenile court system is designed to protect the welfare and rehabilitation of youthful offenders. We desperately need a system that will recognize that 99% of these juveniles will return to communities; and it is up to us to decide how they will return.

Thank you for allowing me to be here today and to add my voice in support of America’s children.



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STATEMENT OF T.J. PARSELL

CHAIRMAN WALTON: Mr. Parsell.

T.J. PARSELL: Good morning.

My name is T.J. Parsell, and I was a skinny 17-year-old with a face dotted with pimples. It was a stupid prank that sent me there. I had robbed a Fotomat with a toy gun. So while my friends prepared for high school prom, I was being gang raped in an adult prison.

Young men especially are targeted when they first arrive, and I didn't last 24 hours before an inmate spiked my drink with Thorazine and then ordered me down to his dorm. Even with the drug's heavy effect, it was the most agony I had ever experienced. They knocked me out of the bed and nearly suffocated me as they shoved my head into a pillow to muffle my screams.

I was powerless under their weight as they ripped my pants off. One of them grabbed my hair and smacked me and pulled my head down while the others took turns sodomizing me. When I choked on my own vomit and gasped for air, it only made them laugh. They were unmoved by my crying. It felt like a battering ram being shoved up inside of me, splitting and cracking me open. The crushing weight of that pain has never left me. Yet I was still just a boy.

My rectum bled for several days, but I was too afraid to come forward, even to see a doctor. I

was terrified I'd have to explain what had happened.  
I just wanted to do my time and get out alive.  
Everyone knew that snitches were killed.

What they took from me went beyond sex.  
They had stolen my manhood, my identity and part of  
my soul. They laughed about it afterwards and openly  
bragged while one of them flipped a coin to see who  
got to keep me. The inmate who won was nearly twice  
my age. He was serving time for aggravated assault.  
He wasn't one of those who raped me, but I found out  
later that he had set it up to make me more  
vulnerable. It's one of the oldest games in prison  
to help bring you into their fold. So I was forced  
into protective pairing.

It takes only one or two violent rapes  
before you start compromising. I wanted to shower  
and wash away what had happened. I hoped no one  
would find out about it, but as I walked the yard in  
a daze, other inmates pointed and laughed. The shame  
and humiliation I felt accompanied the classic  
symptoms of rape trauma syndrome. I blamed myself.  
I couldn't stop replaying the scenario in my head and  
weighing what I could have done differently to avoid  
it. I had trouble sleeping at night. I was obsessed  
with body parts, and I alternated between violent  
tendencies and suicidal thoughts.

The guards knew what had happened. The  
prison doctors knew as well. When I saw the

proctologist for my bleeding, I raised concern about the size of his rectal scope, and his reply was, "Well, it's not any larger than what's been going up there."

Most people find the notion of prison rape unsurprising. It's unsurprising because it happens frequently and lies as a constant possibility. I blame prison officials for my rape as much as I blame the men who assaulted me. They created and shaped the environment, both actively and through their negligence, in which I was gagged, effectively silenced, and unable to resist. Ultimately, the attitudes and prejudices of corrections officials contribute to an atmosphere that fosters rape behavior.

Once an inmate has been raped, he's considered turned out, as if having been turned gay regardless of his sexual identity before entering the system. Once an inmate has been turned out, he's considered a target wherever he goes. Gay men especially are victimized. A Pennsylvania study suggests gay men are four times as likely to be targeted.

My experience as a gay man was that gay men would most definitely be victimized unless they chose someone to protect them.

Recently, while touring prisons in South Africa, I spoke with a rape victim inside Pollsmoor Maximum Prison, who described in graphic details the

horrors he had endured. It was strikingly similar to my own experience. Yet when I asked him what it was like for gay prisoners, he said, "Well, that's different, because gay men like it."

"So they deserve to be raped," I asked.

"It's not the same thing," he said. "Gay men like it."

Unfortunately, this type of ignorance and lack of compassion from even a rape victim himself echoes the hypermasculine sentiment of most U.S. prisoners. Homophobia plays a significant role in addressing this issue.

A study by Dr. Helen Eigenberg showed nearly one in four corrections officers in Nebraska believed that homosexuals got what they deserved if raped. And 46 percent of Texas guards believed some inmates deserved to be raped.

Prison rape is often perpetrated by males who self-identify as heterosexuals. In the all-male world of prisons, the restraints of the heterosexual world no longer apply, where in the absence of female objects, men are compelled to use each other as substitutes.

But this activity must coincide with the notions of manhood between the prison code, where a rigid distinction exists between active and passive roles and gender identity is allocated according to those roles. To distance themselves from the notion

of having gay sex, men will often force-feminize their victims. I routinely witnessed gay men who were forced into adopting a female identity, assigned a woman's name, ordered to wear makeup made from pool chalk and underwear dyed red. They were made to wear their uniforms like halter tops and beaten for not talking in a high-pitched voice. Even the guards sometimes referred to them as "ladies" and "girls."

Being gang raped in prison has scarred me in ways that can't be seen or imagined. Today I've been clean and sober for 17 years. I'm a successful businessman, a functioning member of society. But that success has come at a great cost. I've undergone years of therapy to get where I am, but I still don't sleep well at night. I start up at the slightest noise. And as a gay man, I blamed myself for many years. You're degraded so much in there that after a while you start to believe it.

Sexual violence in prison exists not only in direct victimization, but in the daily knowledge that it's happening. It approaches legitimacy in the sense that it's tolerated. Those who perpetrate these acts of violence often receive little or no punishment. To that extent alone, corrections officials and prosecutorial authorities render these acts acceptable.

At the same time, we can't expect a rape victim to report it if he anticipates a lack of responsiveness, a lack of sensitivity or basic

protection by those who are charged with his care.

Please help to make incarceration safe for all prisoners and create an environment where if an inmate is raped, he or she can seek justice without repercussions.

Thank you.

CHAIRMAN WALTON: Thank you, Mr. Parsell.

I again would like to thank all of you for your courage in coming forward and presenting your testimony. It is essential to our mission, and we're very grateful for your willingness to make a public statement under circumstances where I know it's not easy to do so.

I always want to emphasize this, because I think it's important: What we hear coming from all of the witnesses is that there are, unfortunately, people in our society who think it's acceptable for this to occur because people are locked up and maybe because of who they are. And it's not acceptable. From a humanitarian perspective it's not acceptable.

But even if you don't look at it from that perspective, if you look at it from the perspective of selfishness, we have a vested interest in this not happening. Because all of you have suffered either physically, all, clearly, emotionally, and that's something that as a society all of us pay for.

So if for no other reason than self-preservation, as a society, we have an



obligation to aggressively attack this problem.

So, again, we thank you for your  
participation.

## **Attachment C**

**Campaign for Youth Justice report, *State Trends:  
Legislative Victories from 2005 to 2010 Removing Youth from the Adult Criminal Justice System***

# 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



# CONTENTS

A Letter From Liz Ryan, CEO of the Campaign For Youth Justice.....	2
Overview.....	6
Understanding the Consequences of Trying Youth as Adults.....	8
Teen Brains Are Not Fully Developed .....	9
Most Youth in the Adult System Are Convicted of Minor Crimes.....	13
Youth Are Often Housed in Adult Jails and Prisons.....	15
Prosecuting Youth in the Adult System Leads to More Crime, Not Less .....	17
Youth Have Lifelong Barriers to Employment.....	18
Youth of Color Are Disproportionately Impacted by These Policies .....	19
Four Trends to Watch .....	20
States and Local Jurisdictions Remove Youth from Adult Jails and Prisons .....	24
States Raise the Age of Juvenile Court Jurisdiction.....	29
States Change Transfer Laws to Keep More Youth in Juvenile Court .....	33
States Rethink Sentencing Laws for Youth.....	41
Recommendations for Policymakers .....	44

# 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. 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

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

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.

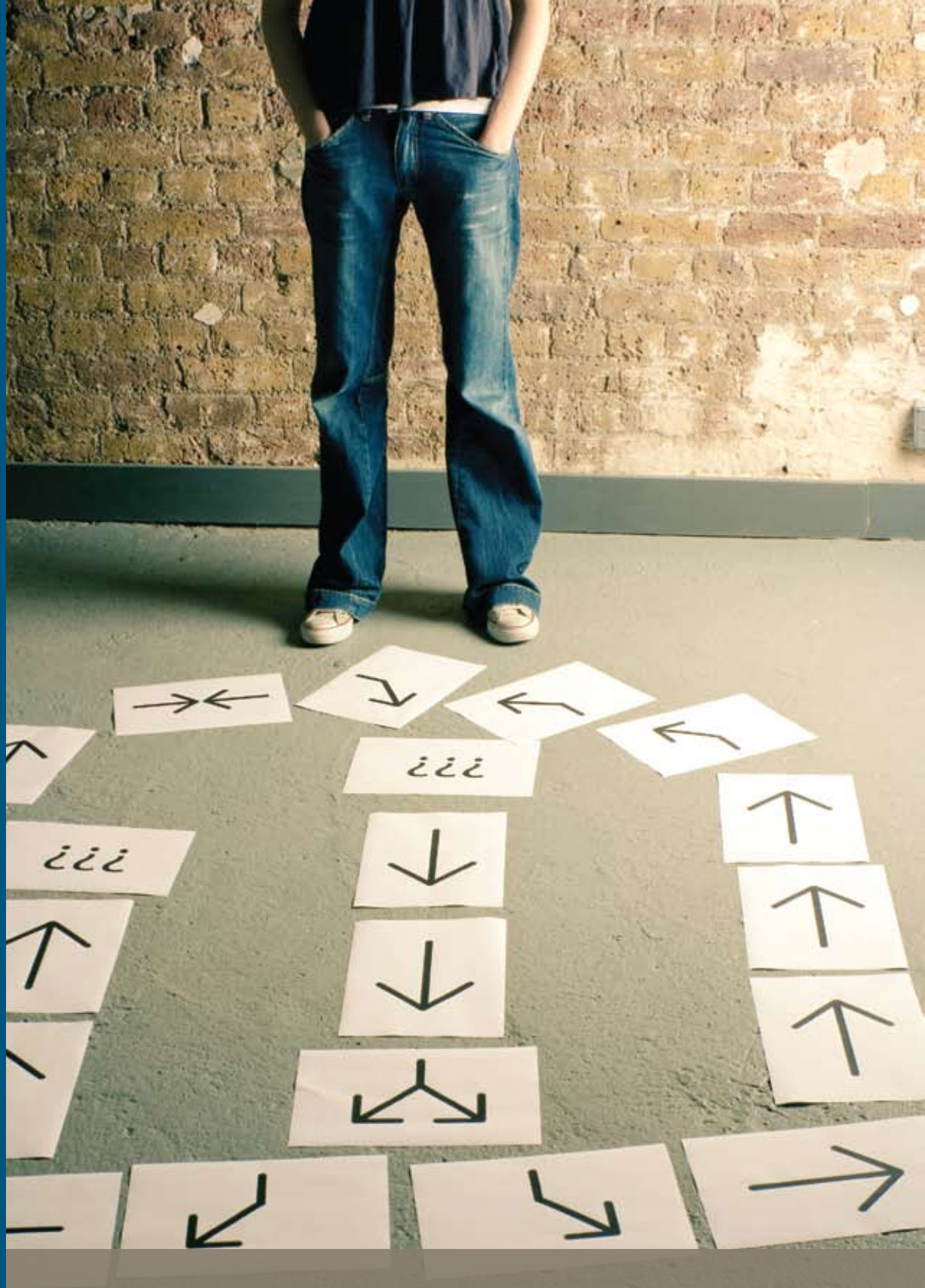
### Trend 4

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

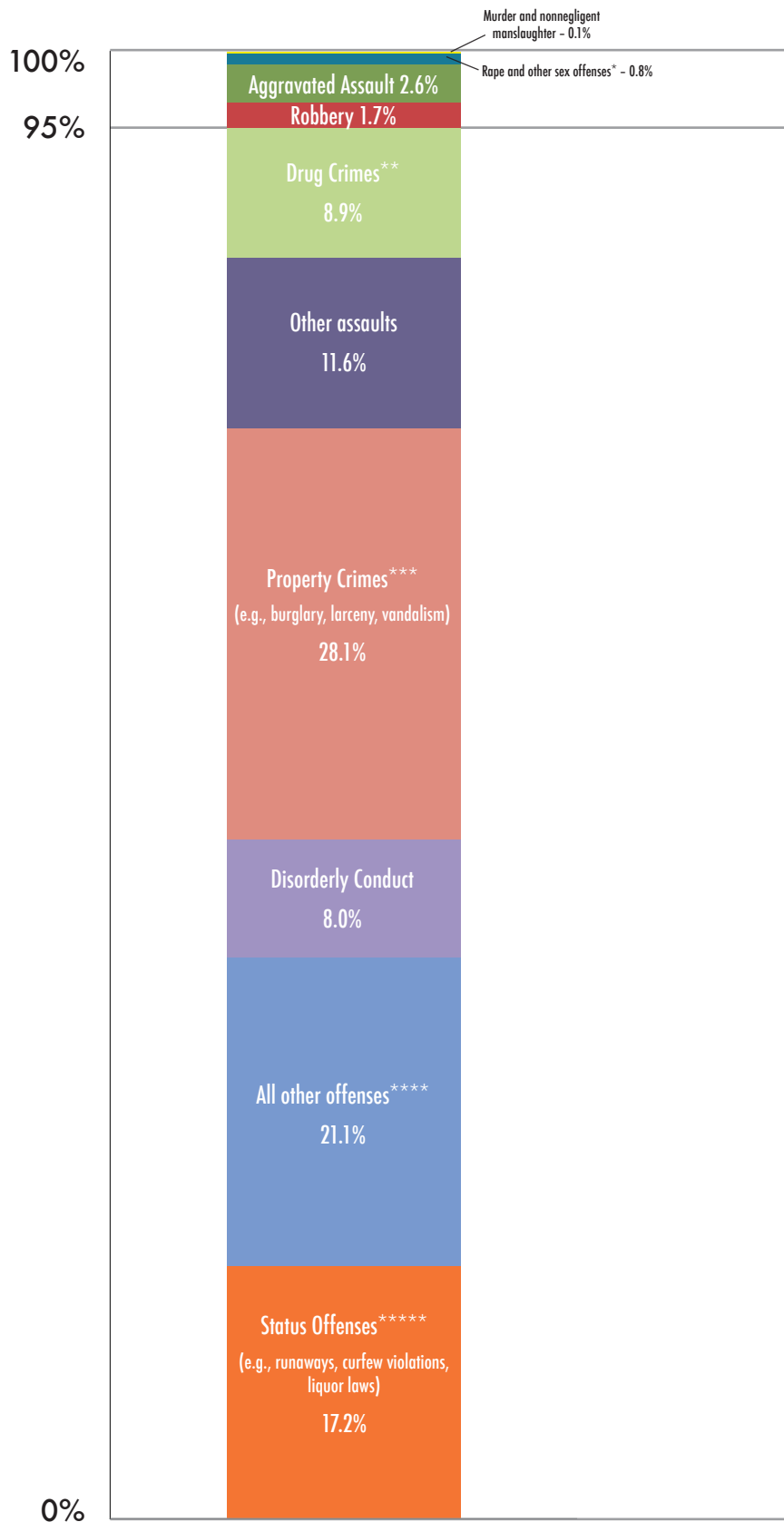
## Demands More Than the Adult Justice System

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



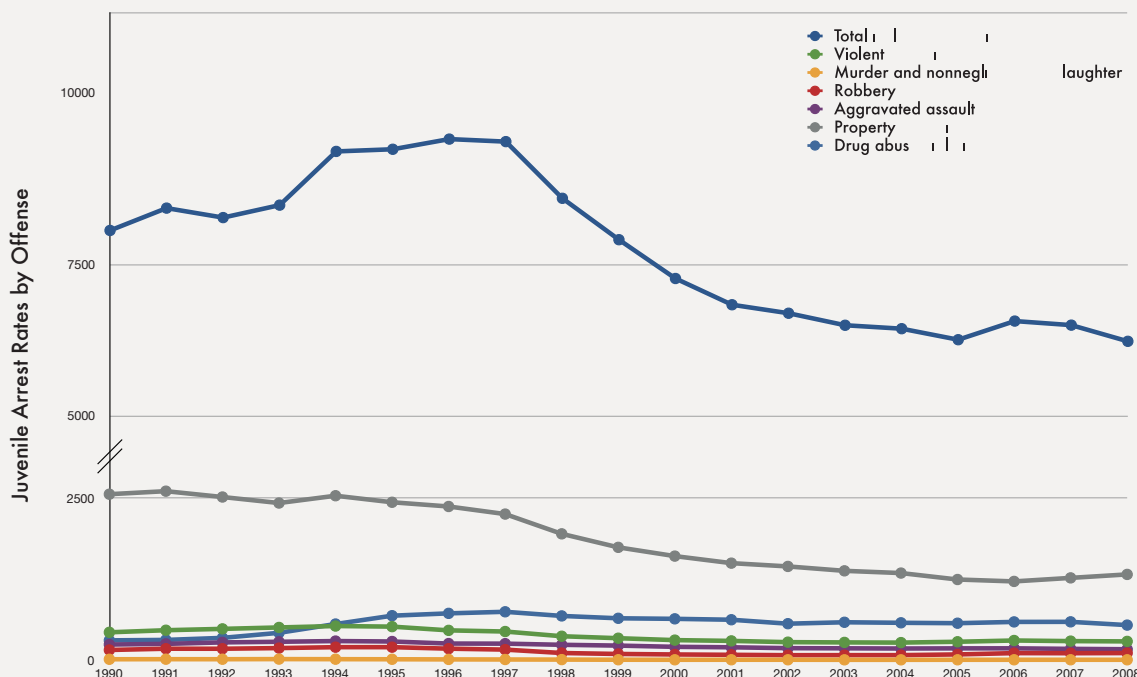
# Most Youth in the Adult System Are Convicted of Minor Crimes

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.

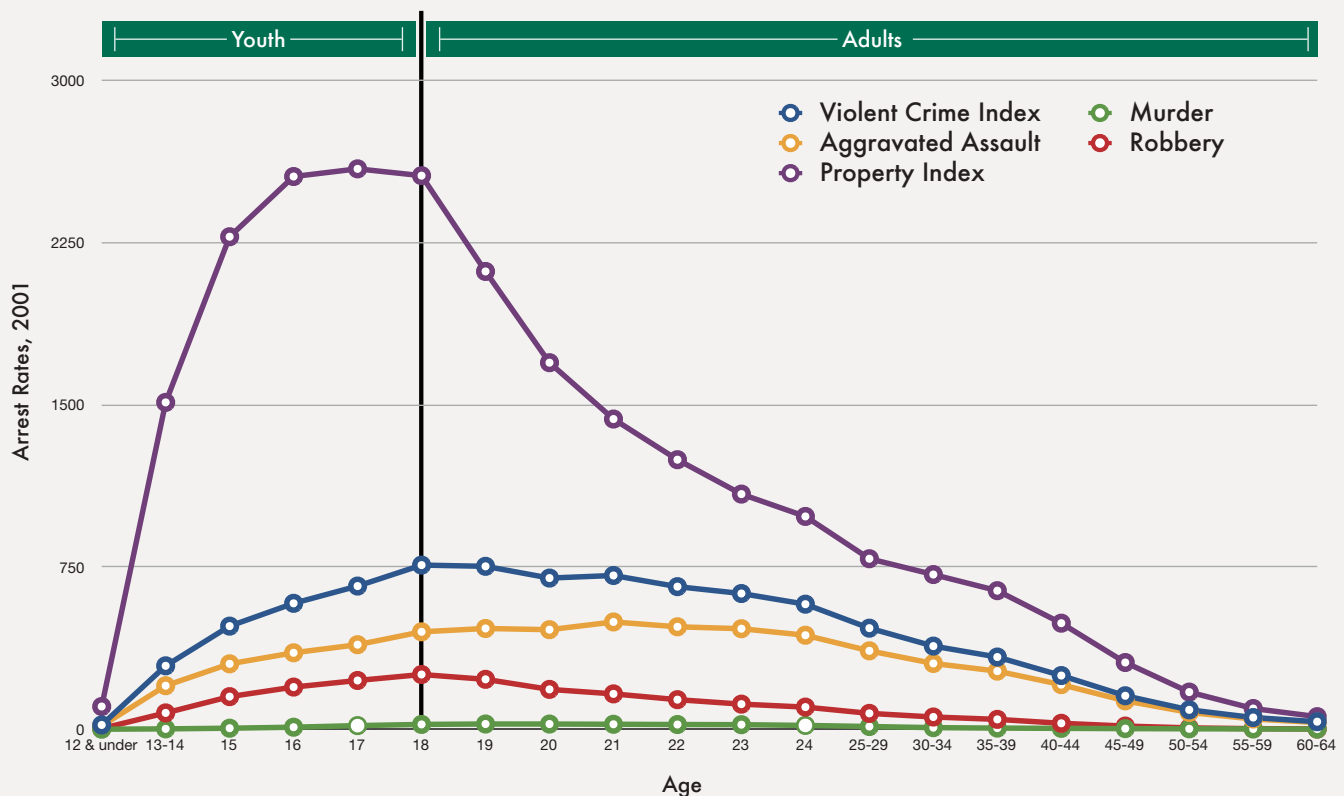
Source: National Center for Juvenile Justice; OJJDP Statistical Briefing Book

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

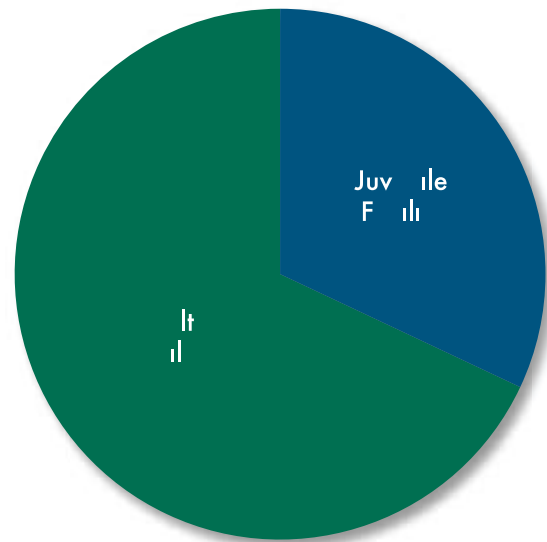
# Youth Are Often Housed in Adult Jails and Prisons

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

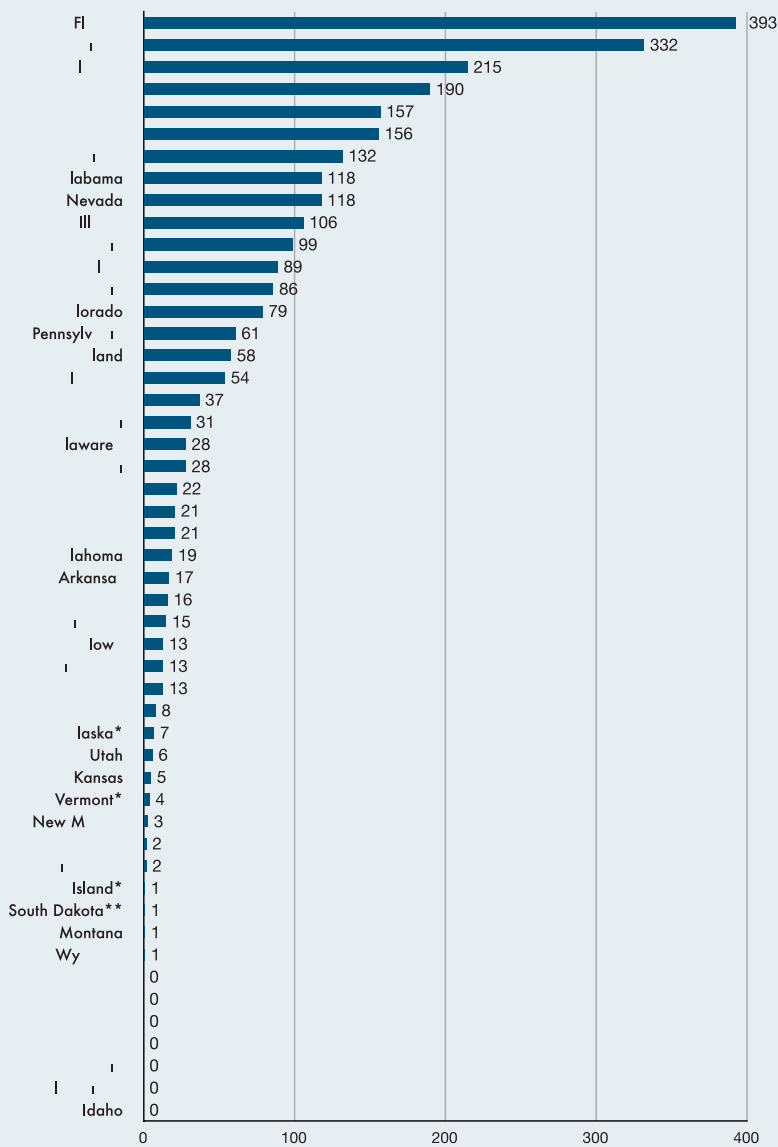
Youth are also in extreme danger when held in adult facilities. Staff in adult facilities face a dilemma: they can house youth in the general adult population where they are at substantial risk of physical and sexual abuse, or they can house youth in segregated settings in which isolation can cause or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



\*\* 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







### 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

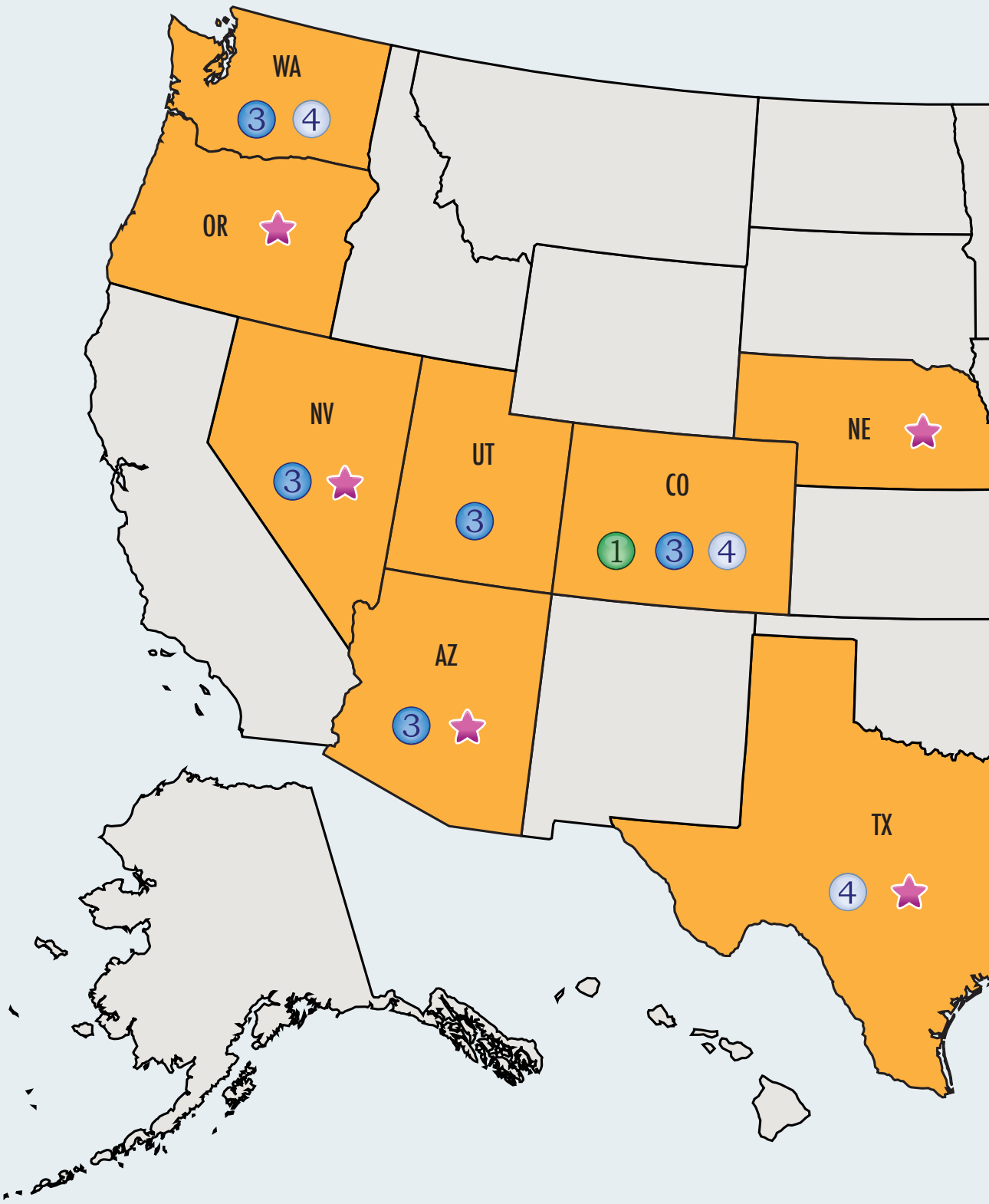
States Change Transfer Laws to Keep More Youth in Juvenile Court



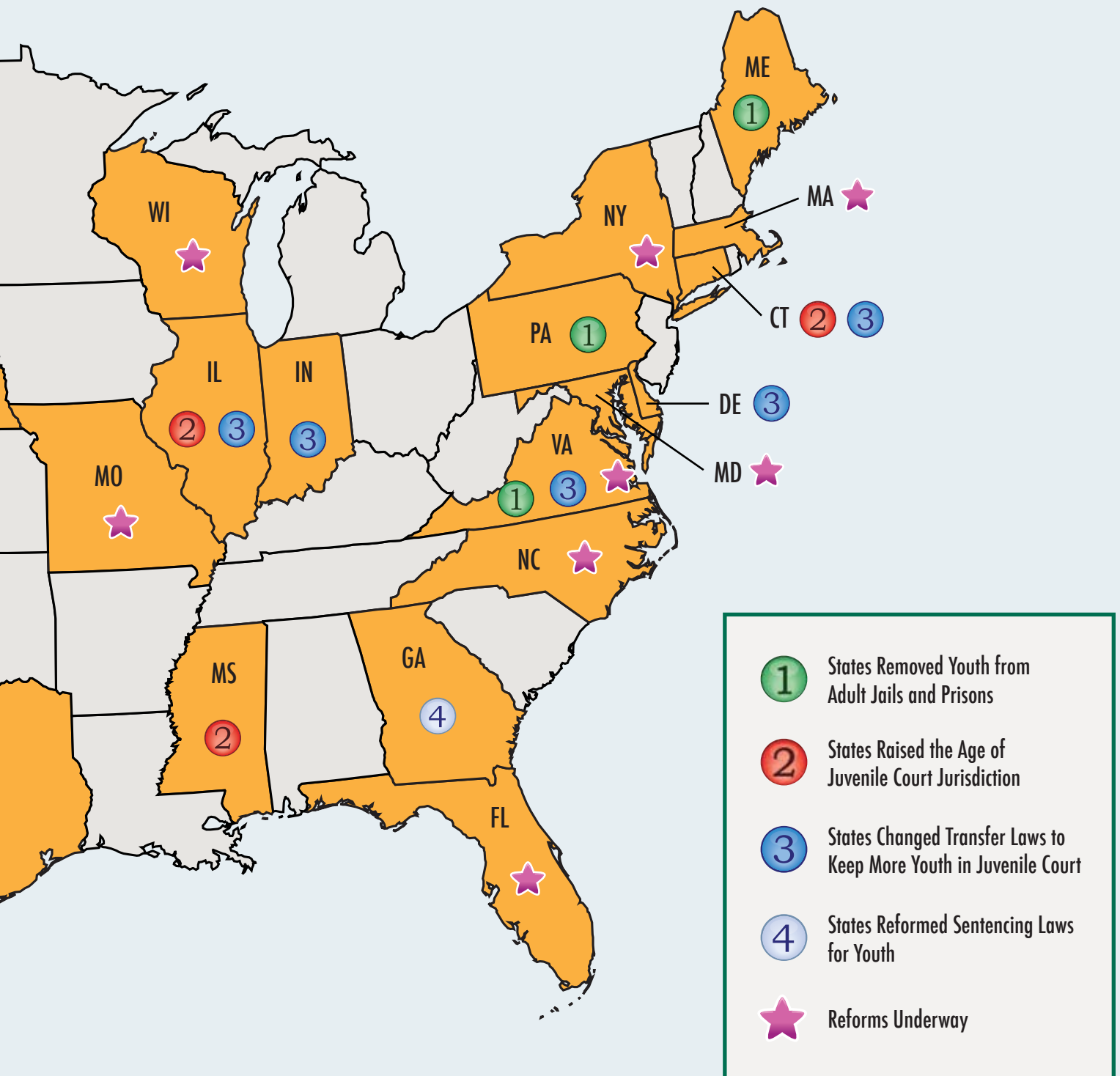
### Trend 4

States Rethink Sentencing Laws for Youth

# State Trends from 2005 to 2010: Removal



# ing 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 JJDPa 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.

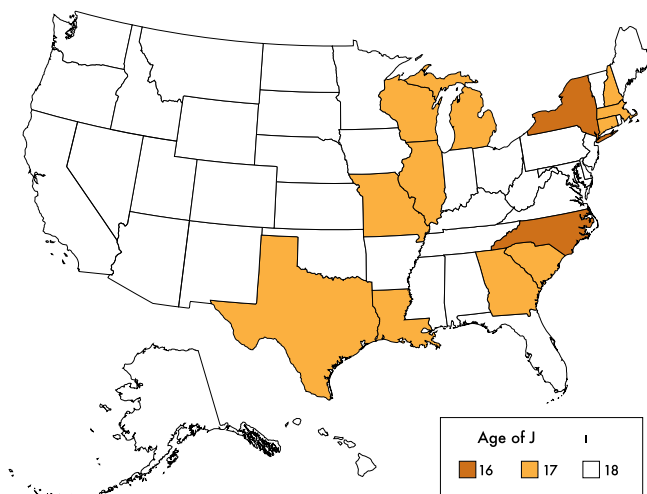




# States Raise the Age of Juvenile Court Jurisdiction

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.

Oldest Age for Original Juvenile Court Jurisdiction, 2011



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.

## 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





# 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

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### 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 pre-sentence 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



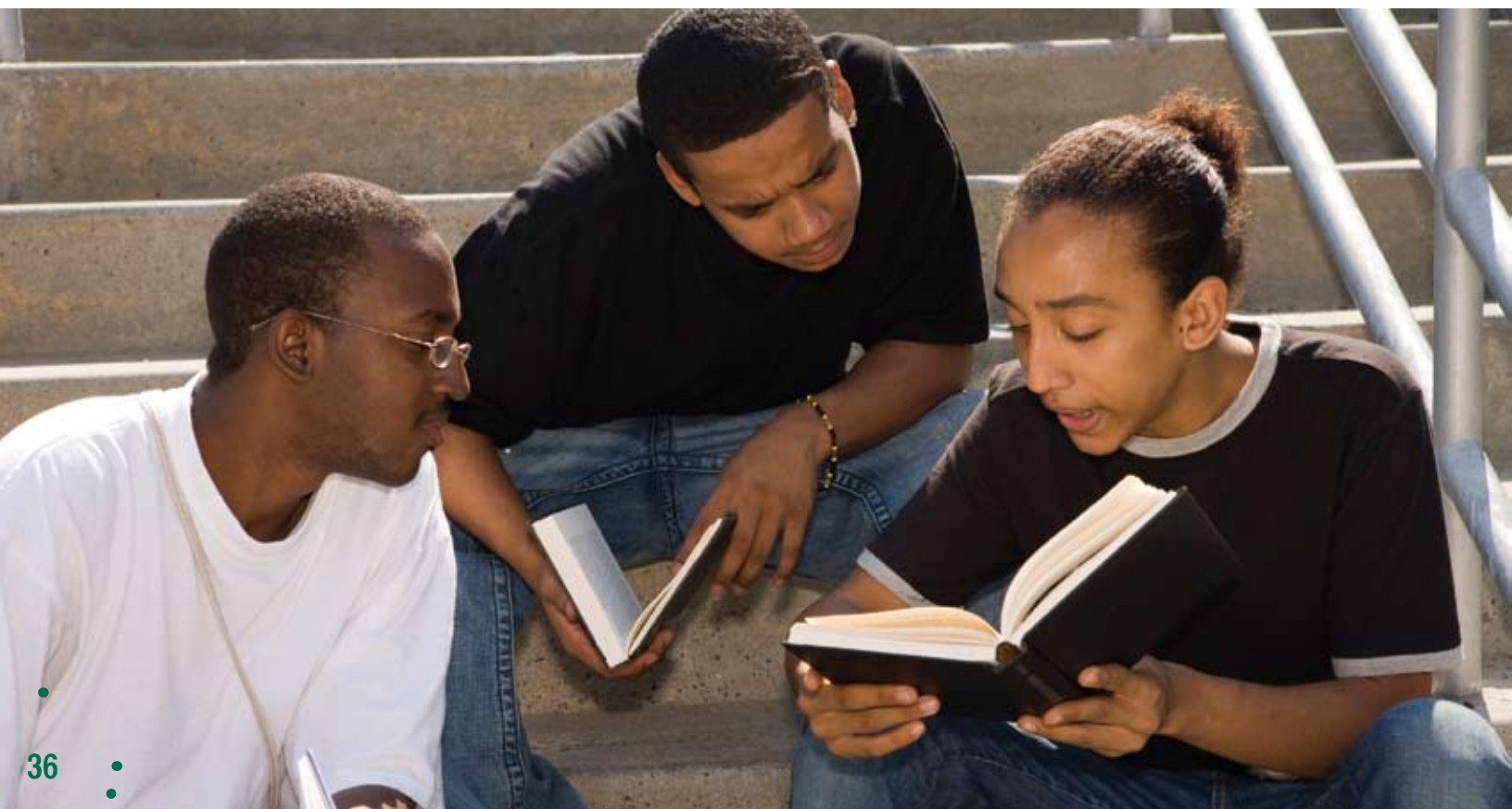
In 2008, the Indiana General Assembly enacted major reform with the passage of House Bill 1122, which eliminated a number of different pathways for transferring juveniles charged with misdemeanors into the adult system. First, it limits the juvenile court's ability to waive jurisdiction to cases where 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

## 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.

## 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

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.

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.

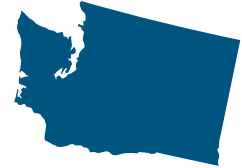
## Virginia Legislators Move Forward to Reform Transfer Laws



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.





# 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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CAMPAIGN FOR  
**YOUTH JUSTICE**

BECAUSE THE CONSEQUENCES AREN'T MINOR

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## **Attachment D**

### **Alternate Regulatory Proposal**

Although we believe that no youth should ever be housed in an adult facility, we have provided some additional language for the Department to consider. It is with great reluctance that we offer an alternative. As noted in the Departments Federal Standards for Prisons and Jails issued in 1980:

It is the position of the Department of Justice that juveniles, especially non-criminal juveniles, do not belong in adult prisons or jails of any sort. These standards do not treat in any detail the handling of juveniles in adult facilities, in keeping with our view that to recommend the development of special programs, policies and procedures to accommodate juveniles might encourage the placement of juveniles in adult facilities rather than their removal.

We have crafted our alternative proposal to address the potential concerns of some correctional agencies who may point to the very rare and isolated cases of youth who have caused serious injury to others in a juvenile facility and are beyond the facility's control. The proposed standard has three components. First, the regulations should require that adult agencies enter into agreements with juvenile agencies for the initial reception of youth who may otherwise enter their custody. Congress specifically found that youth are at risk within the first 48 hours. We believe that requiring adult agencies to make arrangements with juvenile justice agencies (see the memoranda from California provided in this attachment) will help ensure that youth are not exposed to adult facilities for any length of time without concrete evidence that a youth is disruptive to the juvenile facility.

Second, youth should never be housed in an adult facility without a court making a full investigation into the circumstances why the youth has been unsuccessful in the juvenile facility. We know that victims of sexual assault may engage in destructive behavior to escape from sexual assaults. This behavior can also include assaults on staff. Dr. Barry Krisberg, former president of the National Council on Crime and Delinquency and current Research and Policy Director at the Institute on Law and Social Policy at the University of California Berkeley Law School, testified before the National Prison Rape Elimination Commission that many youth become disciplinary problems as a self-protective mechanism:

What youth tended to do to protect themselves, particularly when the lights were out in the dormitory, was often to assault staff to get locked up, and they didn't mind being locked up 23 hours a day if that meant, as they would often say, not having to watch your back. So, you'd see staff, and, in fact, correctional officers and superintendents would routinely tell me that the lockup units were populated with essentially what they called protective custody cases. These were not gang-bangers, these were not violent youths, these were youth trying to escape the victimization that was going on in the dormitories. Another way out was to engage in abnormal behavior, like suicidal gestures, smearing feces on yourself or your bed, claiming that you were hearing voices, so that the psychologist and psychiatrist would, again, get you out of these terrible dormitories and into some single room where you'd feel some modicum of safety.<sup>31</sup>

Our proposal would require that before a youth could be transferred to an adult facility, a court must conduct a hearing, with the youth represented by counsel and physically present, so the judge can have a complete understanding of the issues. Given their previous histories of trauma and victimization, we know that some youth will pose behavioral challenges and may appear guarded, oppositional, angry,

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<sup>31</sup> Barry Krisberg, *Testimony by Barry Krisberg*, National Prison Rape Elimination Commission (June 2006), [http://www.nprec.us/docs/boston\\_natureofproblem\\_krisberg.pdf](http://www.nprec.us/docs/boston_natureofproblem_krisberg.pdf) (last visited March 31, 2011).

defensive, or manipulative.<sup>32</sup> Stress from a traumatic event may interfere with a child's capacity to listen or reason, and punitive interventions typically exacerbate behaviors of concern.<sup>33</sup> Our revisions require the Court to consider a youth's prior victimization and to consult with medical and mental health practitioners when determining an appropriate intervention or sanction. The court is prohibited from transferring a youth to an adult facility as part of a sanction for conduct in the juvenile facility.

Finally, for the few youth who may enter adult facilities, the regulations should contain additional protections including making sure that youth are separated from the adult population, youth are provided with programs and services to meet their developmental needs and opportunities for social interaction, and staff working with youth have the necessary training. Every 10 days, the court must review the decision to house a youth in the adult facility to determine if the youth should return to the juvenile facility.

The Department should consider the following language for a standard to:

**Alternate § 115.44 Prohibition on housing juveniles in adult facilities**

(a) No person under the age of 18 may be housed in a jail or prison, except under the special circumstances and after specific procedures detailed in paragraphs (c) and (e) of this section have been undertaken.

(b) The adult agency shall enter into memoranda of understanding or other agreements with juvenile justice agencies to receive and immediately house all persons under the age of 18 who are currently, or in the future, assigned to its care.

(c) No person under the age of 18 may be transferred to a jail or prison without a written court order after notice and evidentiary hearing, with the youth and his/her counsel present and able to participate, with findings that the youth has:

(1) Seriously injured or endangered the life or health of another youth resident or staff member in the juvenile facility or program; or escaped from the juvenile facility or program; or established a pattern of disruptive behavior not conducive to the established policies and procedures of the juvenile program; and

(2) The youth's behavior cannot be safely managed by disciplinary procedures in the juvenile facility. The court shall consult with medical and mental health practitioners to determine whether a youth's mental disabilities, mental illness, or previous history of victimization contributed to his or her behavior when determining an appropriate course of action. While the disciplinary history of the youth may impact the recommendation to transfer the youth to the adult facility, the transfer to an adult facility may not be used as a disciplinary sanction or activity.

(d) If persons under the age of 18 are transferred to the facility pursuant to the court order, the facility shall:

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<sup>32</sup> Gordon R. Hodas, *Responding to Childhood Trauma: The Promise and Practice of Trauma Informed Care*, Pennsylvania Office of Mental Health and Substance Abuse Services (February 2006), available at [http://www.nasmhpd.org/general\\_files/publications/ntac\\_pubs/Responding%20to%20Childhood%20Trauma%20-%20Hodas.pdf](http://www.nasmhpd.org/general_files/publications/ntac_pubs/Responding%20to%20Childhood%20Trauma%20-%20Hodas.pdf); See also *Children's Reaction to Trauma: Suggestions for Parents*, National Mental Health and Education Center, available at [http://www.naspcenter.org/safe\\_schools/trauma.html](http://www.naspcenter.org/safe_schools/trauma.html) (last visited March 31, 2011).

<sup>33</sup> *Id.*



- (1) Ensure youth do not have sight or sound contact with inmates over the age of 18;
- (2) Assess and provide programs and services to meet the special needs of youth including education comparable to that provided in the community, special diets to meet their nutritional needs, developmentally appropriate health and mental health care, daily opportunities for recreation and exercise, and contact visits with family members;
- (3) House youth in living conditions with adequate program space to meet the physical, social, and emotional needs of youth. Facilities must allow for social contact with peers and may not isolate juveniles from other juveniles, unless the juvenile presents an immediate health and/or safety risk to other inmates or staff;
- (4) Ensure youth are visually checked by staff at least every 15 minutes; receive daily visits from mental health or health care providers; and have opportunities for social interaction including daily visits by personnel from administrative, clinical, social work, or religious units; and
- (5) Ensure that employees working with persons under the age of 18 are trained in the developmental, safety, and other specific needs of youth including:
  - (i) Adolescent development for girls and boys, including what is normative sexual behavior for adolescents, what is acceptable behavior of adolescents, how to distinguish between normative adolescent behavior and sexually aggressive and dangerous behaviors, the factors that make youth vulnerable to sexual abuse, how to handle disclosures of victimization by youth in a sensitive manner, and the ways in which sexual victimization can affect healthy development;
  - (ii) The developmental and programming needs of youth;
  - (iii) The prevalence of trauma and abuse histories of youth, possible behaviors of youth with trauma and abuse histories, and appropriate gender specific ways of responding to those behaviors;
  - (iv) How to communicate effectively and professionally with specific populations of youth (e.g., gender, race, ethnicity, sexual orientation, gender identity, disability, or youth with limited English proficiency);
  - (v) The mental health needs of youth including crisis prevention and intervention, suicide prevention, cognitive-behavioral interventions, and substance use and abuse.
- (e) The facility shall provide written progress reports on the behavior and welfare of the youth to the court at an evidentiary hearing, after notice, with the youth and counsel present, every 10 days to determine whether the youth should be returned to a juvenile facility with the court providing written findings and placement determination.

## Memorandum

**Date :** July 2, 2004  
**To :** Superintendents  
**From :** Institutions & Camps Branch  
**Subject:** Arrival of Youthful Offender Inmates

Effective July 1, 2004, the California Youth Authority (CYA) entered into an agreement with the California Department of Corrections (CDC) to house CDC inmates under the age of 18. This population will come to us in two different ways: (1) the transfer of the current Youthful Offender Program inmates at Tehachapi to either Heman G. Stark or N. A. Chaderjian Youth Correctional Facilities; and (2) the intake of new inmates through the Southern Youth Correctional Reception Center and Clinic (SYCRCC) or the Preston Youth Correctional Facility (PYCF) Clinic. These inmates will be given numbers preceded by the letter "E".

Beginning in July, new inmates will be received from the counties at PYCF or SYCRCC. Counties will provide Intake and Court Services with the required documents, receive an acceptance letter, and arrange delivery with the appropriate clinic. New inmates shall receive the same assessment services and placement considerations as are afforded CYA commitments.

Inmates currently housed at Tehachapi will be temporarily housed at the HGSYCF or NACYCF. These two sites should not be considered as placement for inmates coming directly from the counties to our clinics.

Inmates with sentences extending past their 21<sup>st</sup> birthdays shall transfer to CDC at age 18. Inmates who are able to complete their sentences before the age of 21 will be afforded a choice to remain in the CYA for the remainder of their sentence. If an inmate elects to transfer to CDC at age 18, this election is irrevocable. If the inmate elects to remain in CYA after his 18<sup>th</sup> birthday, he may request to return to CDC; this decision to transfer to CDC will also be irrevocable. CYA may return an inmate 18 or older who has requested to remain in CYA to CDC if he has demonstrated by his misconduct that he is no longer amenable to placement in the CYA. Inmates who are 17 years 10 mos. at the time of their arrival at SYCRCC or PYCF shall remain at SYCRCC or PYCF and transfer to CDC upon their 18<sup>th</sup> birthday or, if they can complete their sentence prior to age 21, be offered the choice of transfer to CDC or placement in the CYA.

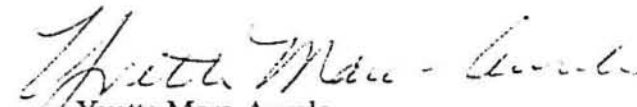
CDC inmates shall have access to all CYA treatment programs as appropriate. Inmates' progress, participation in programs, conduct, etc., shall be monitored by CYA using the normal case conference system. Placement decisions that would normally require Youth Authority Administrative Committee review and approval will require the same process for inmates. When appropriate, the inmates shall receive annual reviews.

While housed at CYA, inmates shall be subject to the Disciplinary Decision-Making System; however, dispositions that require an adjustment of the inmate's earliest possible release date (EPRD) shall be made in accordance with CDC's disciplinary system and its sanctions. Adjustment to an inmate's EPRD for disciplinary or restoration reasons shall be coordinated with the CDC Legal Processing Unit (LPU) in Sacramento that will be responsible for monitoring the inmate's case.

CYA Office of Prevention and Victims Services (OPVS) shall consider inmates the same as wards for purposes of carrying out OPVS requirements and activities. OPVS shall perform its normal victim outreach activities and contact victims of these inmates to advise the victims of their rights while the inmates are located within the CYA. Additionally, OPVS will provide referral information to the CDC Office of Victims Services and Restoration (OVS) (1707 form). If a victim contacts CYA OPVS directly regarding the whereabouts of an inmate, OPVS will inform them of the location and provide information for requesting notification from the CDC OVS. While housed at CYA, inmates shall be subject to the same victim restitution collection rate on all funds that are received that is used for CYA wards. This rate is 50% plus a 10% processing fee.

CYA facilities will submit a Notice of Critical Information – Disruptive Group Identification (CDC 812-B) and a Notice of Critical Case Information – Safety of Persons (CDC 812) to CDC upon the inmate's transfer to CDC. CYA facilities will submit an annual review document that is agreed upon by both departments for inmates who remain in the CYA past their 18<sup>th</sup> birthday. CYA facility parole agents will complete a Release Program Study for any inmate paroling from a CYA facility.

Training regarding CDC forms and reports is being planned and will take place in July or August. If you have any questions, please contact Pam Erskine at (916) 262-1505 or at [perskine@cya.ca.gov](mailto:perskine@cya.ca.gov).

  
Yvette Marc-Aurele  
Deputy Director (I)

cc: K. Lowe  
P. Erskine  
G. Jackson

## Youthful Offender Program Update 8/17/04

Currently 87 youthful offender inmates are housed at Heman G. Stark Youth Correctional Facility (HGSYCF). Two inmates are participating in the intensive treatment program; the remainder are housed on a living unit designated exclusively for them.

HGSYCF originally received 100 inmates. Twelve have returned to prison upon their eighteenth birthdays; 3 have elected to remain at HGSYCF. One inmate was transferred to Northern California in response to a parent request.

Inmates at HGSYCF are receiving education services, one large group counseling session per week, small group counseling sessions twice a month, and individual counseling two to three times per week. Inmates have also started the interactive journaling process of the ward basic core program. Inmates are out of their rooms approximately 3.5 hours per day.

N. A. Chaderjian Youth Correctional Facility (NACYCF) currently houses 11 inmates. NACYCF originally received 12 inmates from Tehachapi and one inmate from HGSYCF. Two inmates have been transferred back to the Department of Corrections. The 11 inmates are housed on Mojave Hall with CYA wards. NACYCF is attempting to run a separate program for them.

Inmates at NACYCF are receiving education and religious services on the hall. Inmates are receiving individual counseling and have started the interactive journaling process of the ward basic core program. Inmates are out of their rooms approximately 1.5 hours per day.

Ten inmates are in the clinic process; five are housed at the Southern Youth Correctional Reception Center and Clinic and five at the Preston Youth Correctional Reception Center and Clinic.

The legal issues regarding the integration of inmates into CYA programs are being explored at this time.




## Ventura Youth Correctional Facility

3100 Wright Road, Camarillo, CA 93010

(805) 485-7951

2/13/01

To: Section Heads  
Program Managers

Fr: Al Palomino   
Parole Agent III

Re: Memorandum of Understanding on CDC Minor Females

We received a copy of the updated MOU between CYA and the Department of Corrections on the handling of our CDC minor female offenders (B numbers). Please review the attached document and share this information with your staff. Thanks.

CC: PAs/CWSs  
Case Services  
SYCCs

## MEMORANDUM OF UNDERSTANDING

### AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND THE CALIFORNIA YOUTH AUTHORITY:

#### HOUSING OF CDC FEMALE INMATE MINORS in CYA FACILITIES

The following procedures and standards are established to assist the California Department of Corrections (CDC) in complying with statutory mandates to ensure separation of inmate minors from the adult inmate population by housing female inmate minors in the California Department of the Youth Authority (CYA).

Provision for housing inmate minors in CYA is permitted under Welfare and Institutions Code (WIC) Section 1731.5(c). The population of female inmates under 18 years of age who are sentenced as adults to serve a term of imprisonment in CDC is a small number and has not exceeded ten inmates at any one time. It is, therefore, proposed that female inmates under 18 years of age who are sentenced to State prison be housed in the CYA. This will comply with existing statutory requirements for the separation of minors from adult inmates, and provide minor female inmates with the appropriate housing and the opportunity to participate in CYA programs.

The following represents the agreement reached by the Director, CDC, and the Director, CYA, regarding housing of female inmates who are under 18 years of age in accordance with statutory provisions of WIC Section 1731.5(c):

1. The CDC shall notify county law enforcement agencies and courts to deliver female minors sentenced to State Prison directly to CYA. The CDC shall submit a draft of the proposed notice to CYA for review and approval prior to final notification to the counties.
2. The CDC shall advise the courts that the original and a certified copy of the court records and documents shall be submitted directly to the CYA Intake and Court Services Section in advance of a scheduled transport and delivery of a female inmate minor.
3. The county of commitment shall deliver female inmate minors to the CYA at the Ventura Youth Correctional Facility (VYCF) in Camarillo, California, after receiving necessary approval from VYCF.
4. The CYA Intake and Court Services Section shall forward the original court documents received from the courts to CDC. The CDC Legal Processing Unit, Correctional Case Records Services, Institutions Division, shall establish and maintain an inmate Central File containing original court documents for each of the female inmate.
5. Upon reaching her 18th birthday, a female inmate shall be transported by either CDC or CYA to the California Institution for Women-Reception Center to complete the CDC Reception Center process.
6. If the inmate's period of incarceration would be completed on or before her 21<sup>st</sup> birthday, the Director of the Youth Authority, at the Director's sole discretion, may continue to house the inmate until the period of incarceration is completed.
7. CDC agrees to reimburse CYA for the cost of providing extraordinary medical care in the event of a catastrophic injury or illness of a minor female inmate. Such reimbursement

8. CDC agrees to defend and indemnify CYA from all lawsuits challenging placement of minor female inmates in CYA custody.
9. This MOU may be terminated by mutual agreement of both Directors.



State of California

Department of the Youth Authority

**Memorandum**

Date:

*October 14, 2004*

To:

Superintendents  
Parole Agent III's  
Supervising Casework Specialist II's

From:

Institutions and Camps Branch

Subject:

**Transfer of Inmates from CYA to CDC Upon the Inmates  
Becoming 18 Years of Age**

Pursuant to an agreement between the California Department of Corrections (CDC) and the California Youth Authority (CYA), all inmates sentenced to CDC who are less than 18 years of age are now housed in the CYA. This memorandum is to provide instruction on the process for transferring the inmates from CYA to a CDC Reception Center (RC) when the inmates reach the age of 18.

When CDC inmates housed in the CYA reach their 18<sup>th</sup> birthday, if they are housed in a Northern California facility, they will be transferred to Deuel Vocational Institute (DVI) RC in Tracy; and if they are housed in a Southern California facility, they will be transferred to the California Institution for Men (CIM) RC in Chino. Transfer of the inmates to CDC will ordinarily occur on the inmates' 18<sup>th</sup> birthday; however, if the inmate's birthday falls on a weekend or a holiday, the transfer will occur on the following business day. If an inmate's period of incarceration will be completed on or before his 21<sup>st</sup> birthday, the inmate may be given the option, with the CYA Director's approval, to remain housed in the CYA until the inmate is released on parole.

Central Files (C-Files) for the inmates housed in the CYA are stored and maintained by the CDC Legal Processing Unit (LPU). Upon transfer of an inmate from CYA to CDC, the CYA shall provide the LPU with a copy of each document from the CYA Master File, Field File, and Living Unit File. The LPU only needs one copy of identical documents that are contained in more than one of the CYA files. The complete medical/mental health file shall be delivered to the receiving institution with the inmate upon transfer.

The CYA Institutional Parole Agent (PA) III shall be responsible for tracking birthdates of CDC inmates and for determining if they will transfer to CDC or remain housed in the CYA, upon reaching their 18<sup>th</sup> birthday. If an inmate meets the criteria to remain housed in the CYA and elects to do so, the Institutional PA III shall notify the LPU via fax.

*cc: R.N.  
A.P.  
R.H.*

*10/13/04 R12*

*mit #6*






Transfer of Inmates from CYA to CDC  
Page 2

If an inmate will soon become 18 years of age and requires transfer to CDC, the Institutional PA III shall notify the CYA Population Management Unit at (916) 262-1516, at least ten business days prior to the inmate's 18<sup>th</sup> birthday. At least five business days prior to the inmate's 18<sup>th</sup> birthday, the CYA Population Management Unit shall advise the RC Correctional Counselor (CC) III at DVI-RC or CIM-RC, as well as the LPU of the imminent transfer.

The CYA PAIII shall ensure that wards transferring to CDC do so with a current summary of their CYA program status. Wards currently in restricted program should be clearly identified, along with the nature of their program restriction. The CDC will use this information to determine the wards immediate and long-term placement up to and including administrative segregation and segregated housing unit.

The CYA Transportation Unit will provide transportation to CDC facilities. To arrange delivery of northern inmates to DVI-RC, the CYA Population Management Unit shall contact Ron Kuwahara, CC III, DVI-RC by phone at (209) 830-3972, by fax at (209) 830-3905, or by e-mail at [Ron.Kuwahara2@corr.ca.gov](mailto:Ron.Kuwahara2@corr.ca.gov). To arrange delivery of southern inmates to CIM-RC, the CYA Population Management Unit shall contact Reggie Simmons, CCIII, CIM-RC, by phone at (909) 606-7261, by fax at (909) 606-7201/2, or by e-mail at [Reginald.Simmons@corr.ca.gov](mailto:Reginald.Simmons@corr.ca.gov). The LPU shall be advised of these transfers by contacting Kathy Moore, Case Records Manager, by phone at (916) 323-2175, by fax at (916) 323-7374, or by e-mail at [Kathy.Moore@corr.ca.gov](mailto:Kathy.Moore@corr.ca.gov). Proper notification to the RCs and the LPU shall include a faxed memorandum and confirmation of receipt of the fax by phone or e-mail.

If you have further questions regarding this matter, please contact Richard Cole, CC II, Classification Services Unit, at (916) 445-6078; or Ricky Lazaro, Facility Captain, Classification Services. Pam Erskine, at (916) 262-1505, is the YA contact in Headquarters.

  
Yvette Marc-Aurele  
Deputy Director (A)

YMA:KL:jb/db

cc: W. Allen III  
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