

# 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.

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

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

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

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

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

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

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

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

*Liz Ryan*

CEO of the Campaign For Youth Justice



# How a Youth Ends Up in the Adult Justice System

## Age of Juvenile Court Jurisdiction

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

## Transfer and Waiver Provisions

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

## Judicial Waiver

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



## Prosecutorial Waiver

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

## Reverse Waiver

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

## Statutory or Legislative Exclusion

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

## "Once an Adult, Always an Adult"

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

## Blended Sentencing

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

# OVERVIEW



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

*– Congressman George Miller*



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

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

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

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

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

### Trend 1

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

### Trend 2

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

### Trend 3

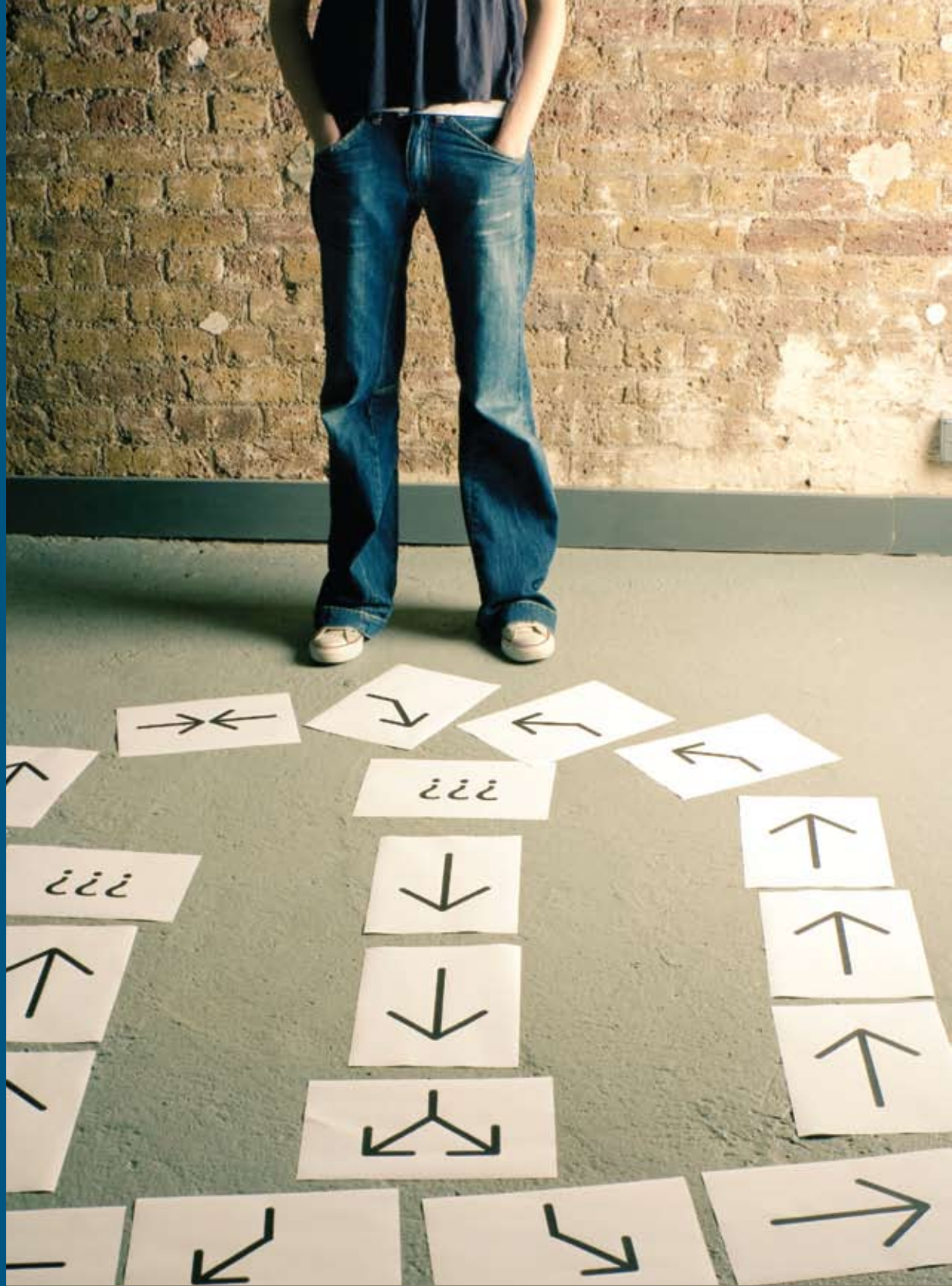
Ten states (Arizona, Colorado, Connecticut, Delaware, Illinois, Indiana, Nevada, Utah, Virginia and Washington) have changed their transfer laws making it more likely that youth will stay in the juvenile justice system.

### Trend 4

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



# UNDERSTANDING THE CONSEQUENCES OF TRYING YOUTH AS ADULTS



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

– Congressman Chris Murphy

# Teen Brains Are Not Fully Developed

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

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

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

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

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

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





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

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

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

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



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

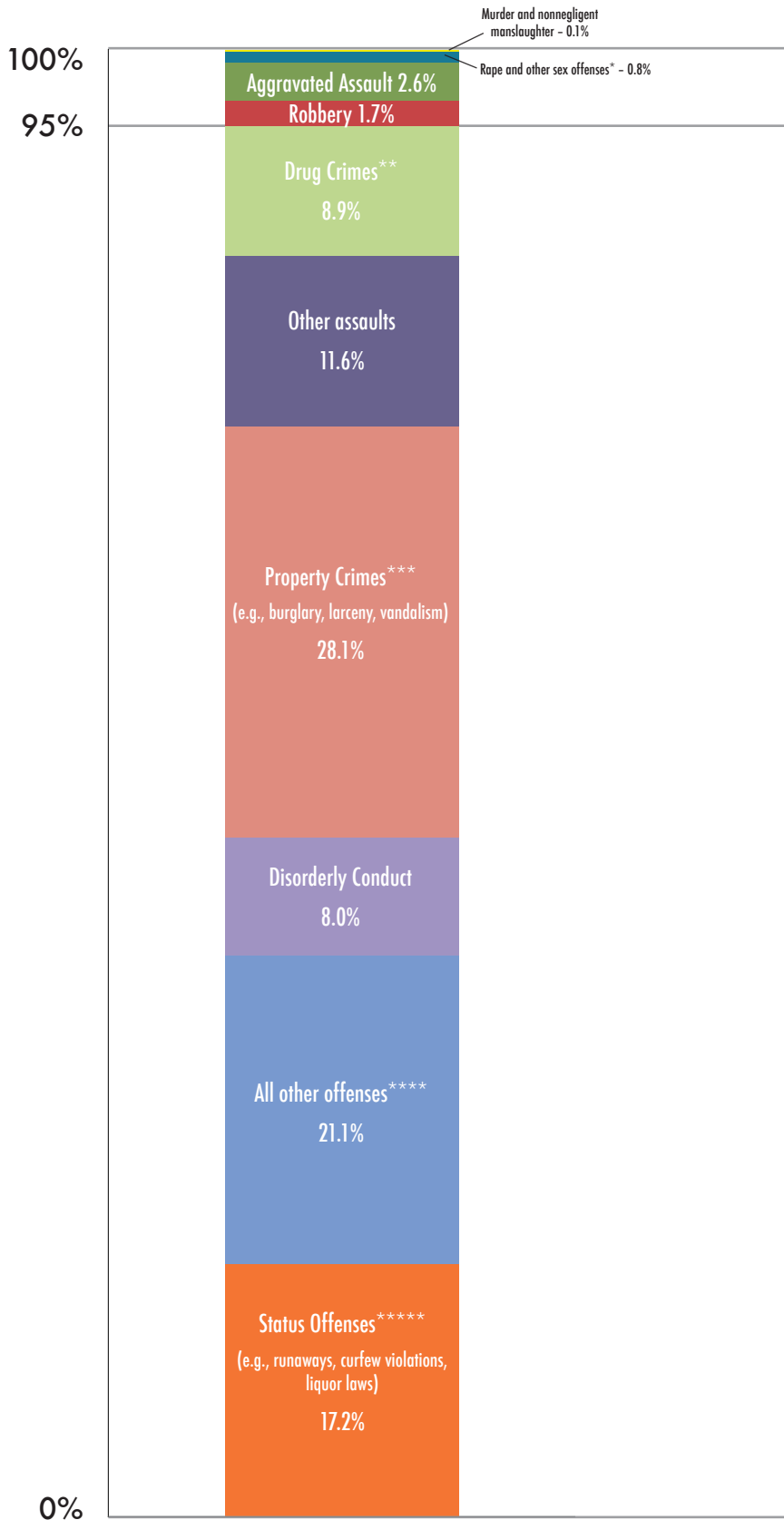


The adult system is typically thought to be more punishment-oriented than the juvenile system, but the minor crimes that youth commit mean that the majority of youth are only given an adult probation sentence as well as a lifelong adult criminal record that makes it hard for them to get jobs in the future.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

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

	In the Juvenile System	In the Adult System
Parent Involvement	<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>
Education	<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>
Age-Appropriate Services, Treatment, and Punishment	<ul style="list-style-type: none"> <li>• Youth receive assessments, have frequent contact with court counselors, and report regularly for rehabilitative services.</li> <li>• Youth and families often receive court-ordered evidence-based therapies: counseling, training, mentoring, tutoring, and parenting skills.</li> <li>• Youth with mental health and substance abuse issues receive intensive services.</li> <li>• Regular contact with court counselors.</li> </ul>	<ul style="list-style-type: none"> <li>• Services not required or, often, never even offered.</li> <li>• Those offered are intended for adults and therefore are not developmentally appropriate for youth.</li> </ul>

# Youth Arrests, 2009



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

\* Includes Forcible rape and other sex offenses except prostitution

\*\* Drug Abuse Violations

\*\*\* Property crimes are offenses of burglary, larceny-theft, motor vehicle theft, arson, vandalism, stolen property (buying, receiving, possessing)

\*\*\*\* Also includes forgery and counterfeiting, fraud, embezzlement, gambling, suspicion, offenses against the family and children, prostitution and commercialized vice, driving under the influence, drunkenness, and vagrancy, weapons offenses but does not include traffic offenses

\*\*\*\*\* Status offenses include runaways, curfew and loitering law violations, liquor laws

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

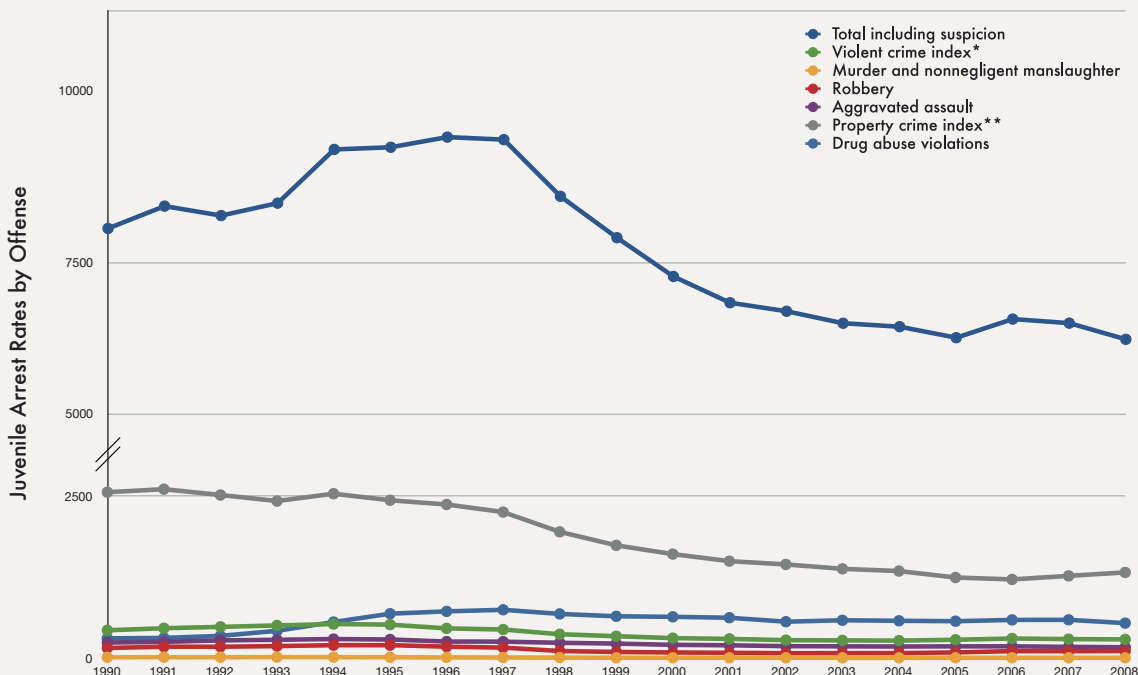
# Most Youth in the Adult System Are Convicted of Minor Crimes

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

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

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

## Juvenile Crime Has Been Declining for Years



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

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

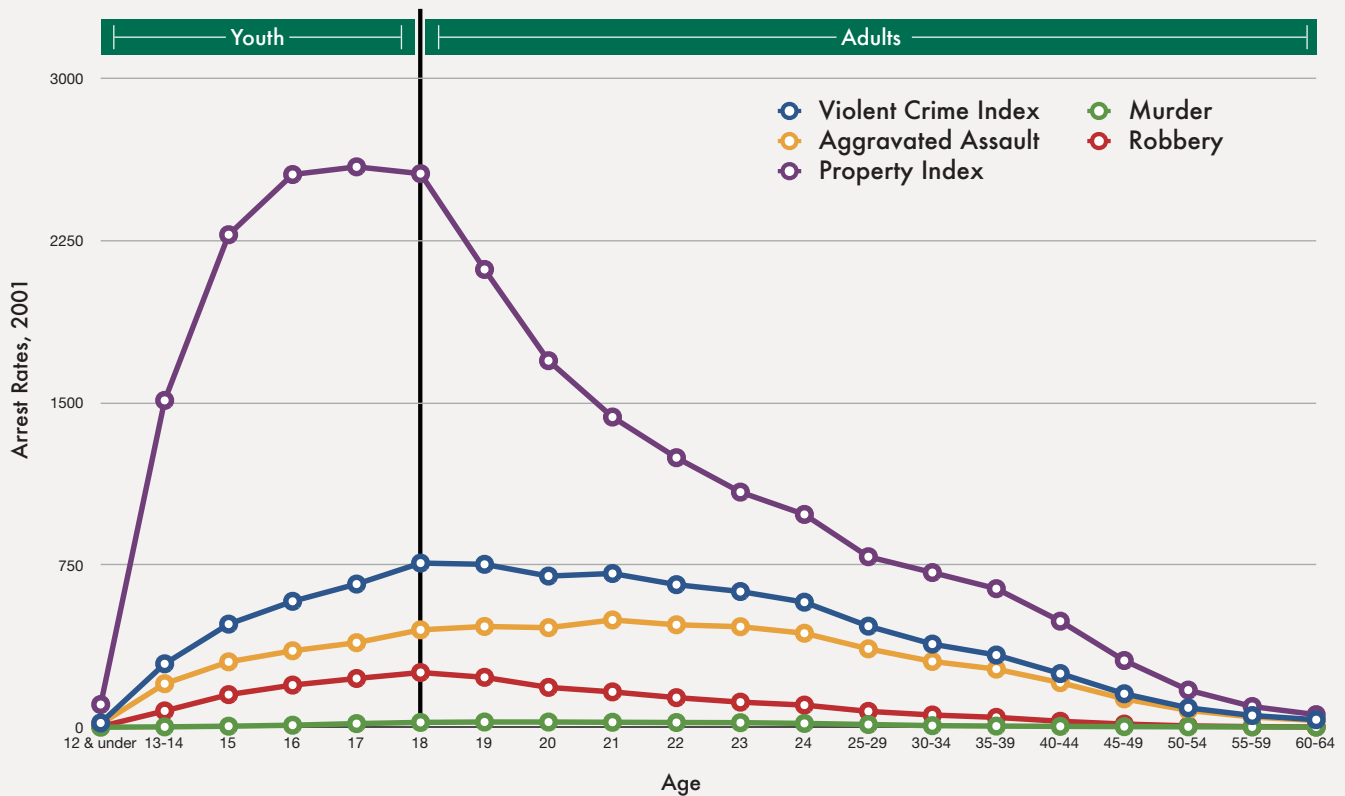
Source: National Center for Juvenile Justice; OJJDP Statistical Briefing Book

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

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

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

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



Source: Adapted from OJJDP Statistical Briefing Book



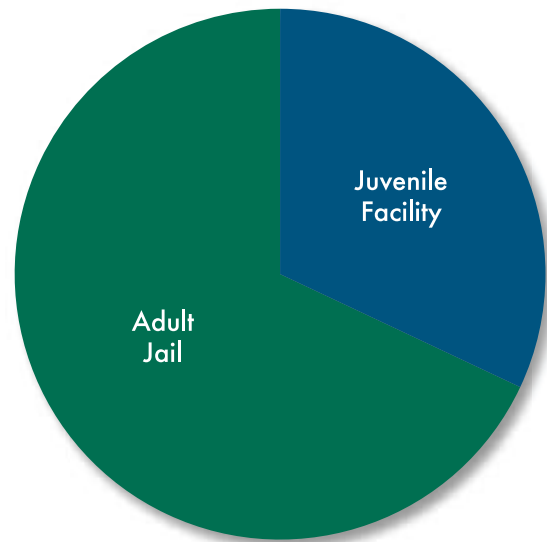
# Youth Are Often Housed in Adult Jails and Prisons

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

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

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

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



Source: *Jailing Juveniles*, Campaign for Youth Justice

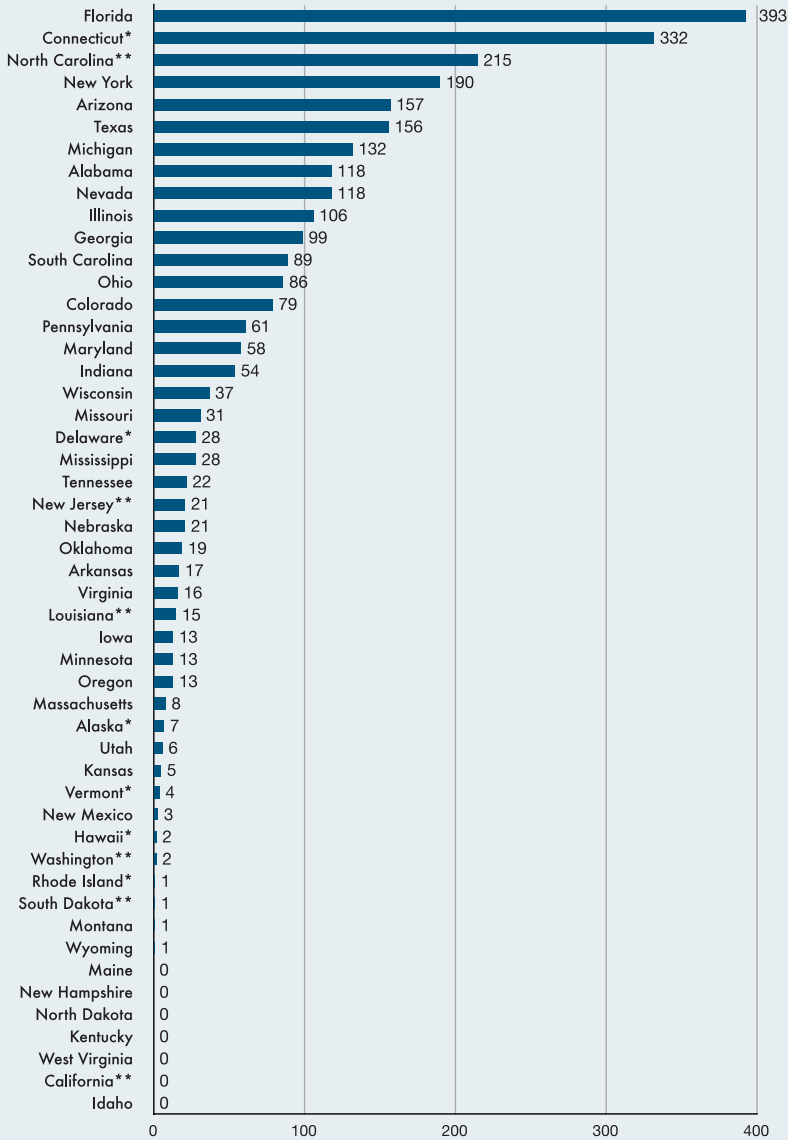
Youth are also in extreme danger when held in adult facilities. Staff in adult facilities face a dilemma: they can house youth in the general adult population where they are at substantial risk of physical and sexual abuse, or they can house youth in segregated settings in which isolation can cause or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

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

– New Hampshire State Representative Mary Walz



# Youth Under 18 in Adult Prisons, 2009



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

Source: Bureau of Justice Statistics

According to Sheriff Gabe Morgan of Newport News, Virginia:

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

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

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



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

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

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

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

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

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

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



# Youth Have Lifelong Barriers to Employment

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

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

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

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



# Youth of Color Are Disproportionately Impacted by These Policies

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

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

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



# FOUR TRENDS TO WATCH



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



### Trend 1

States and Local Jurisdictions Remove Youth from Adult Jails and Prisons



### Trend 2

States Raise the Age of Juvenile Court Jurisdiction



### Trend 3

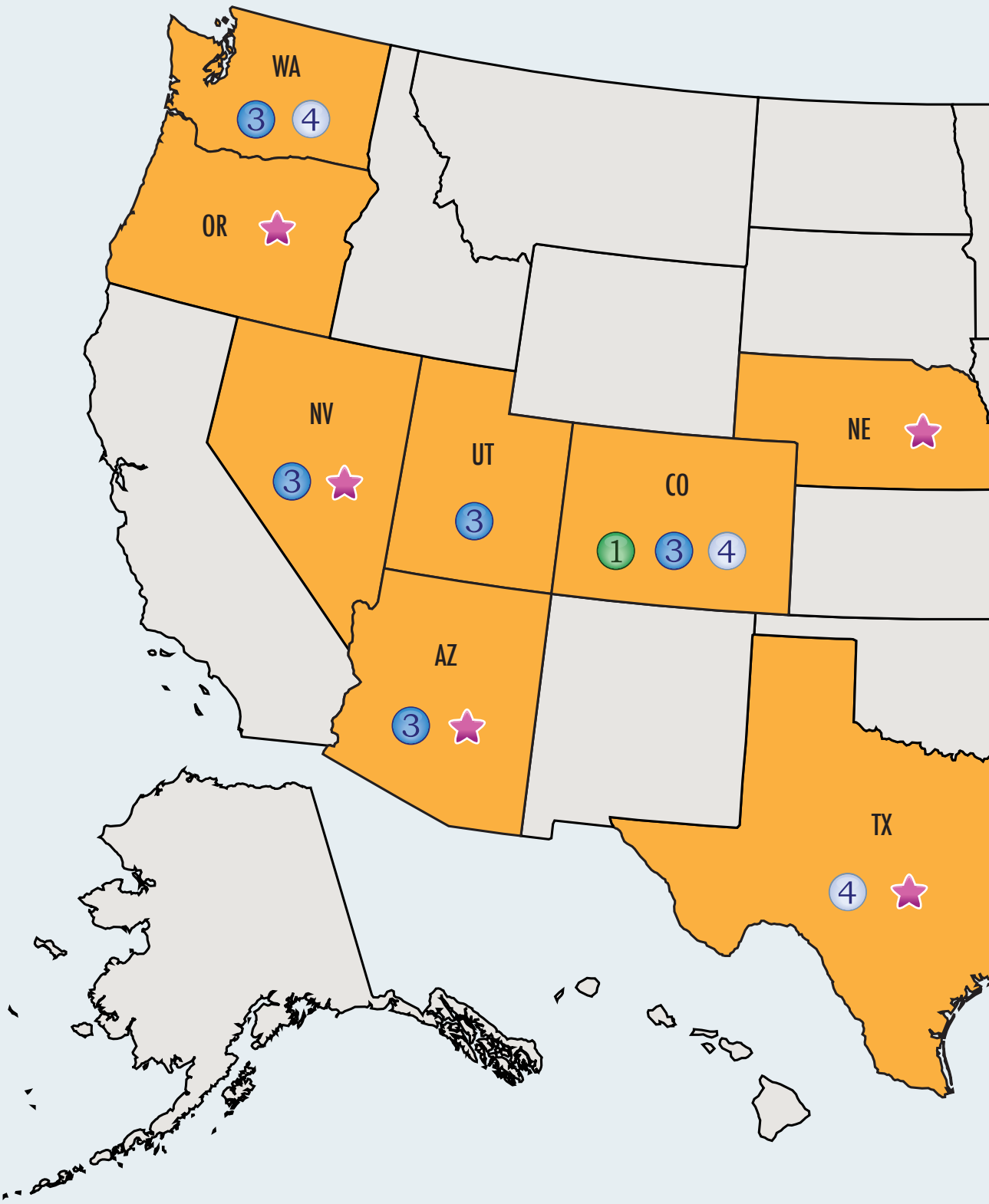
States Change Transfer Laws to Keep More Youth in Juvenile Court



### Trend 4

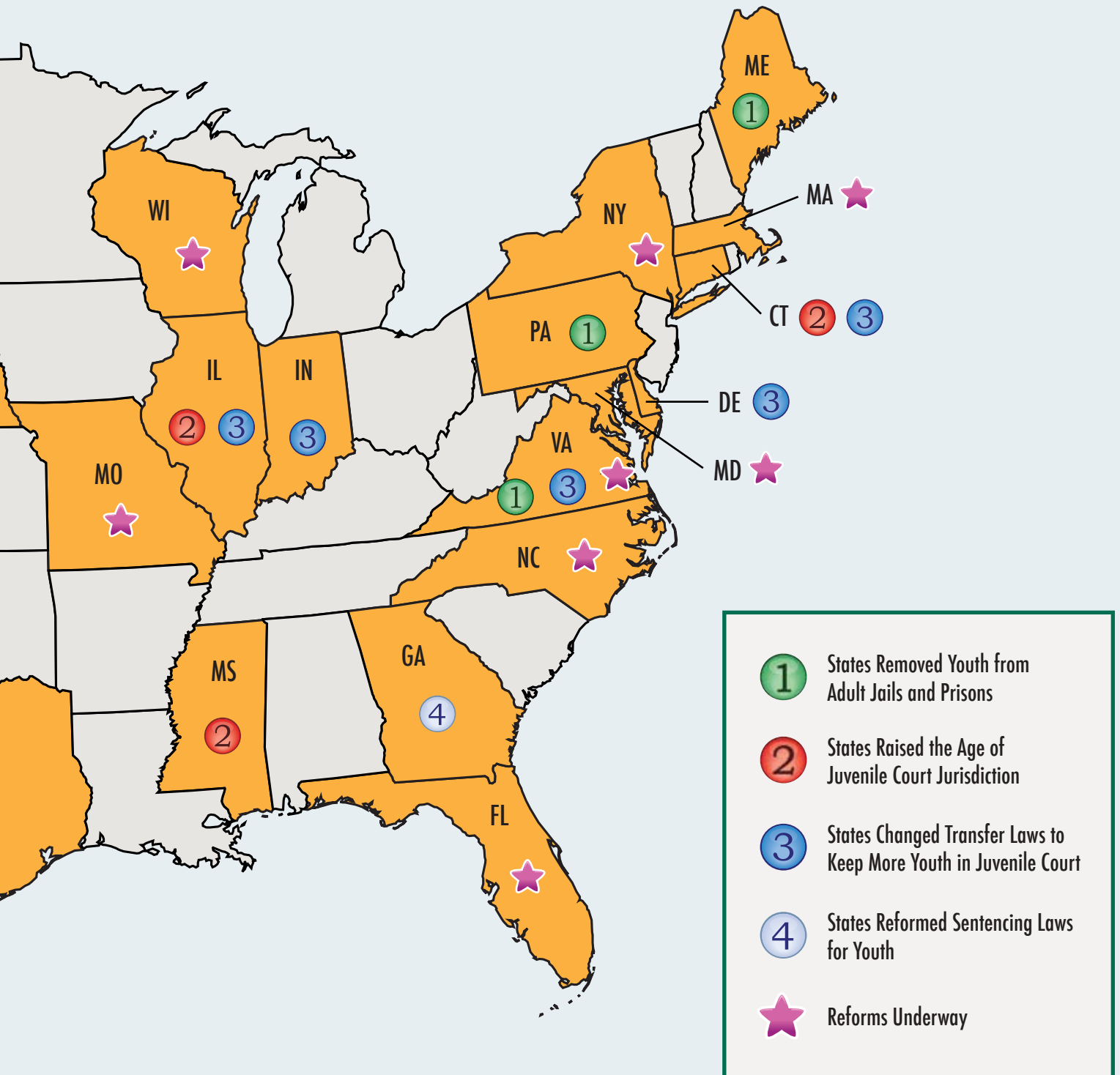
States Rethink Sentencing Laws for Youth

# State Trends from 2005 to 2010: 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

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



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

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



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

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

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

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



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

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

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



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

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



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

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

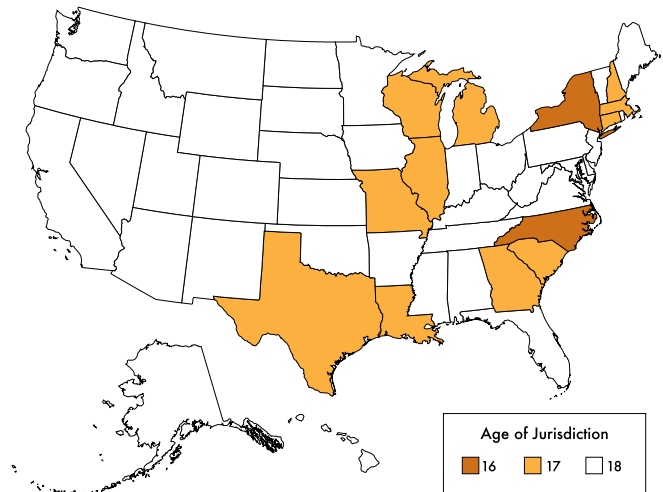
On March 10, 2010, the Attorney General asked for input on the standards proposed by the NPREC. In response, several advocacy organizations including the Campaign for Youth Justice, the Center for Children’s Law and Policy, the Children’s Defense Fund, First Focus, the Juvenile Law Center, the Youth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



# 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



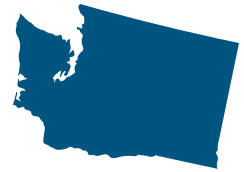
Utah House Bill 14, enacted March 22, 2010, allows an adult court judge with jurisdiction over a child to transfer the matter to the juvenile court “if the justice court judge determines and the juvenile court concurs that the best interests of the child would be served by the continuing jurisdiction 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

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## Arizona Poised to Extend Reverse Remand Law



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

## 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.

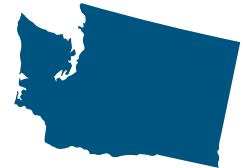
## Virginia Legislators Move Forward to Reform Transfer Laws



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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**Research Assistants:** Brittany Brown, Lauren Chun, Megan McQuiddy

**Campaign for Youth Justice staff, fellows, and consultants:** Sarah Baker, Grace Bauer, Roger Ghatt, Courtney George, Shantá Gray, Erin Holohan Haskell, Leah Robertson, Liz Ryan, Jessica Sandoval, Eric Solomon, Jill Ward, Audrey White, Jason Ziedenisberg

CFYJ also thanks our Board of Directors, Advisory Council, and members of the National Parent Caucus for their continued support and guidance.

CFYJ gratefully acknowledges our current and past funders and supporters who have contributed to this work, including Annie E. Casey Foundation, Carter & Melissa Cafritz Trust, Chasdrew Fund, Covington and Burling LLP, DHO Consulting, Eckerd Family Foundation, Falk Foundation, Ford Foundation, Fund for Nonviolence, JEHT Foundation, Gladys Jensen, Julie Jensen, John D. and Catherine T. MacArthur Foundation, Meyer Foundation, Moriah Fund, Open Society Institute, Public Welfare Foundation, Rockit Fund, The Atlantic Philanthropies, The California Endowment, The Tow Foundation and individual anonymous donors.

CFYJ also thanks Richard Ross who graciously offered the use of his photos, one of which appears above the Table of Contents.

**Design:** Holohan Creative Services

**Suggested Citation for this Report:**

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

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