

RAISING *the* BAR: STATE TRENDS

In Keeping Youth
Out Of Adult Courts
(2015-2017)

CAMPAIGN FOR

YOUTH JUSTICE

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YOUTH  JUSTICE

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 youth and families across the country impacted by the damaging laws, policies, and practices of the criminal justice system. We also dedicate this report to the advocates, governors, state legislators, and state and local officials who have championed these reforms.



LETTER FROM MARCY MISTRETT

Campaign for Youth Justice CEO

Dear Reader,

Thank you for your interest and commitment to some of our nation's most vulnerable youth, those placed in adult courts, jails, and prisons. In 2005, 250,000 children a year were prosecuted as adults. That same year, the Campaign for Youth Justice (CFYJ) launched with the singular goal of removing youth from the adult criminal justice system. Since 2005, 36 states and Washington, D.C. have passed 70 pieces of legislation to move youth out of the adult criminal justice system.

The most dramatic legislative shifts have been the number of states that raised the age of juvenile court jurisdiction. In 2007, approximately 175,000 youth were automatically excluded from juvenile court because they lived in one of 14 states that treated them as an adult because of their age. In 2014, after five states raised the age, that number dropped to 90,900 youth. With the passage of raise the age legislation in four additional states since 2014, the number of youth automatically tried as adults is expected to again be cut in half. In 2019, when New York and North Carolina fully implement their legislation, it will be the first time since the creation of the juvenile court more than a century ago that no state in the country will automatically treat 16-year-olds as adults solely because of their age.

We published our first State Trends Report in 2011 documenting the significant legislative victories from 2005 through 2010. This is our third update to the report that covers legislative victories from January 2015 through August 2017. Over the past two and half years, there has been substantial movement toward the removal of youth from the criminal justice system. However, as we reflect on our shared victories we must stay the course, for anticipated challenges lie ahead.

In January 2017, the United States swore in a new president and as a result, laws, policies, regulations, and funding will shift to meet the priorities of a new administration. Over the next several years, we can expect that federal funding will be redirected to crime reduction and law enforcement rather than crime prevention and reductions in incarceration. As a result, we will likely see state leaders respond in kind.

Advocates must be incredibly vigilant to ensure that legislative victories are fully implemented and preserved for ALL children, while also resisting legislation that does not reflect the overwhelming research in favor of serving youth in a developmentally appropriate, evidence-informed, community-based juvenile justice system rather than the adult system. Further, we must embrace solutions that reduce, and don't exacerbate penalties for youth of color.

We hope this report is a helpful resource as you join or continue your work in the youth justice movement! Now more than ever, our country's children need the supportive, bipartisan, and collaborative effort of their peers, their families, and their communities.

Onward!

A handwritten signature in black ink that reads "Marcy Mistrett".

ACKNOWLEDGEMENTS

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INTRODUCTION

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. Officially launched in 2005 by a parent whose 17-year-old son was charged as an adult, CFYJ remains committed to supporting state and federal advocacy efforts that keep youth out of the adult system.

Since 2005, 36 states and the District of Columbia have passed 70 laws to reduce the number of youth prosecuted, tried, and incarcerated in the adult system. Since 2011, CFYJ has reported on trends across the nation, celebrating the reforms and progress made in treating children in a developmentally appropriate way. This report tracks reform trends from January 2015 to August 2017.

The *State Trends* Report has traditionally documented four justice reform trends: (1) laws removing youth from adult jails and prisons, (2) laws expanding juvenile court jurisdiction so that 16- and/or 17-year-olds are not automatically

treated as adults, (3) laws to reduce the transfer of youth from the juvenile system to the adult system, and (4) changes to mandatory minimum sentencing laws with an emphasis on abolishing juvenile life without parole (JLWOP).

In 2009, the Campaign for the Fair Sentencing of Youth (CFSY) launched to coordinate and bolster the strategies around ending juvenile life without parole. CFSY's tremendous work has led to incredible victories in states throughout the country. We refer readers to excellent resources at www.fairsentencingofyouth.org for robust updates about ongoing efforts to end the trend of juvenile life without parole. As a result, the State Trends report will no longer detail legislative updates on juvenile life without parole.

Instead, our third trend, *laws to reduce the transfer of youth from the juvenile system to the adult system*, will be divided into two separate trend categories: (1) limiting the pathways of transfer and (2) restoring judicial discretion on transfer decisions by limiting the power of prosecutors or state legislators in transfer decisions.

2015-2017 STATE LEGISLATIVE REFORMS THAT REMOVE YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM

TREND 1:

Four states have passed laws to raise the age of juvenile court jurisdiction so that 16- and/or 17-year-olds are not automatically prosecuted as adults.

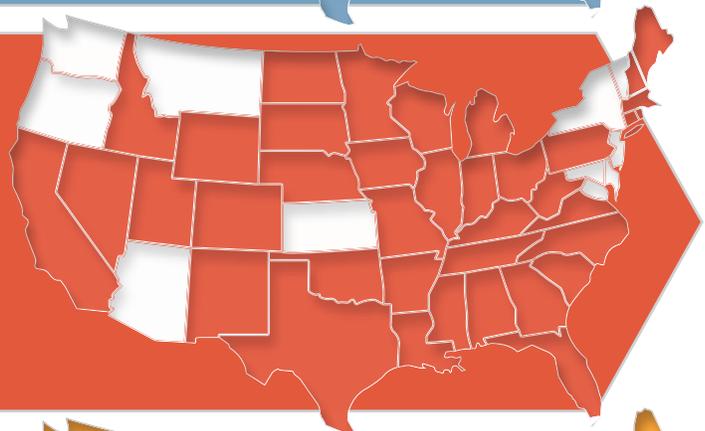
LOUISIANA, NEW YORK, NORTH CAROLINA, & SOUTH CAROLINA



TREND 2:

Nine states and the District of Columbia have passed laws limiting the housing of youth in adult jails and prisons.

ARIZONA, KANSAS, MARYLAND, MONTANA, NEW YORK, NEW JERSEY, OREGON, VERMONT, WASHINGTON & DISTRICT OF COLUMBIA



TREND 3:

Eight states have limited the pathways of transfer or created ways for youth to return to the juvenile court.

CONNECTICUT, CALIFORNIA, DELAWARE, ILLINOIS, KANSAS, NEW JERSEY, TEXAS & VERMONT



TREND 4:

Five states have restored judicial discretion on transfer decisions by shifting power from prosecutors or state legislatures to judges.

CALIFORNIA, ILLINOIS, INDIANA, UTAH & VERMONT



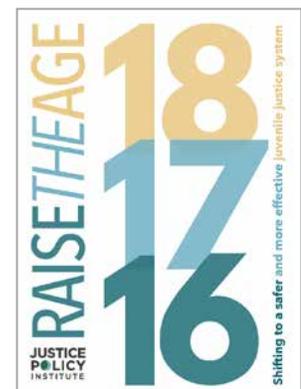
TREND 1: STATES RAISE THE AGE OF JUVENILE COURT JURISDICTION

1 In 2007, 14 states excluded youth under 18 from juvenile court jurisdiction simply because of their age. As of August 2017, only five states continue to automatically exclude 17-year-olds from juvenile court jurisdiction based solely on their age and have not passed legislation to change their laws in the near future. Those states are Georgia, Michigan, Missouri, Texas, and Wisconsin.

In March 2017, the Justice Policy Institute released a national report on how states have successfully raised the age of juvenile court jurisdiction. The report, ***Raise the Age: Shifting to a Safer and More Effective Juvenile Justice System***, highlights how states such as Connecticut, Illinois, and Massachusetts have contained costs while enhancing public safety

by implementing evidence-based reforms within their juvenile justice systems that prepared them to serve 16-and/or 17-year-olds. (SEE GRAPHIC A)

The momentum to raise the age of juvenile court jurisdiction over the last decade resulted in New York and North Carolina passing laws in 2017 to fully implement raise the age by 2019. For both of these states, this reform will change a century old precedent of treating 16-and 17-year-olds as adults.



GRAPHIC A: ROAD MAP TO RAISE THE AGE REFORM

- 1) *Expanding the Use of Diversion*
- 2) *Making Probation and Aftercare Approaches More Effective*
- 3) *Addressing Young People’s Mental Health Needs Outside the Deep End of the System*
- 4) *Reducing Pretrial Detention*
- 5) *Reducing Reliance on Facilities and Focusing Resources on Community-Based Approaches*
- 6) *Complying With the Prison Rape Elimination Act (PREA)*
- 7) *Improving Juvenile Justice System’s Management of Resources and Strengthening Strategies To Serve Young People More Effectively.*

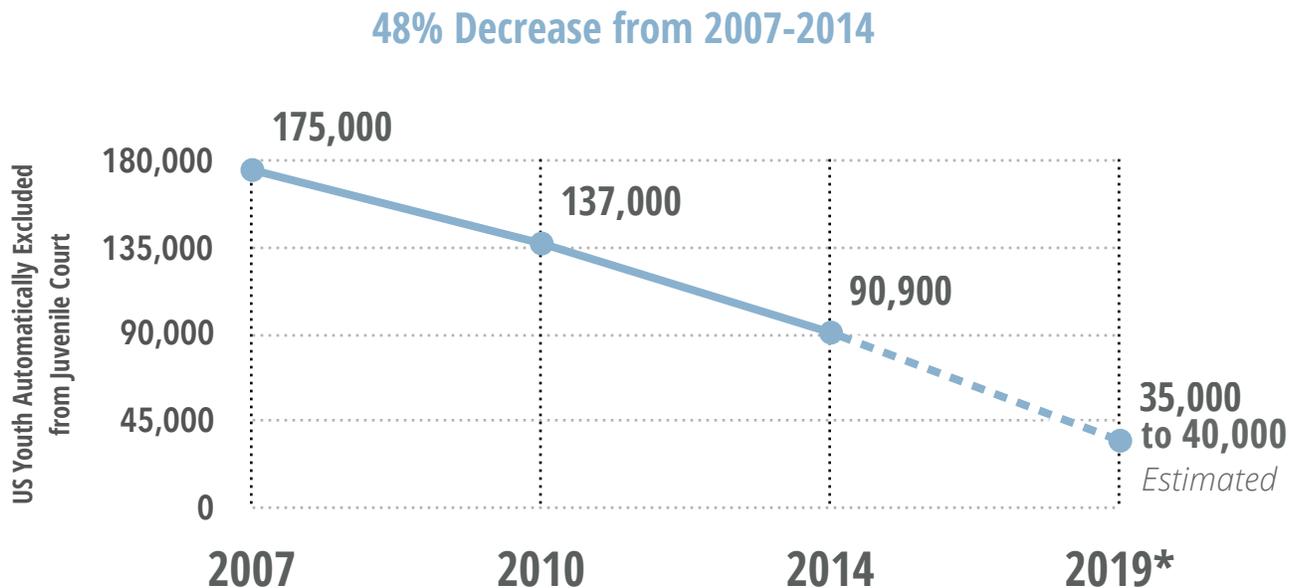
Source: Justice Policy Institute (2017) Raise the Age: Shifting to a Safer and More Effective Juvenile Justice System. 4. Washington, DC: Justice Policy Institute.

While New York and North Carolina’s efforts were successful this year, it is important to note that every state with a lower age of juvenile court jurisdiction considered legislation to raise the age in 2017. It is clear after this legislative session that there is support in every remaining legislature to raise the age. The question is no longer whether states *should* stop automatically treating all 16-or 17-year-olds as adults, but *when and how* to raise the age. It is also of note that in 2019, when both North Carolina and New York’s bills are fully implemented, it will be the first time since the creation of a separate juvenile court in 1899 that 16-year-olds are not automatically treated as adults solely because of their age.¹ (SEE GRAPHIC B)

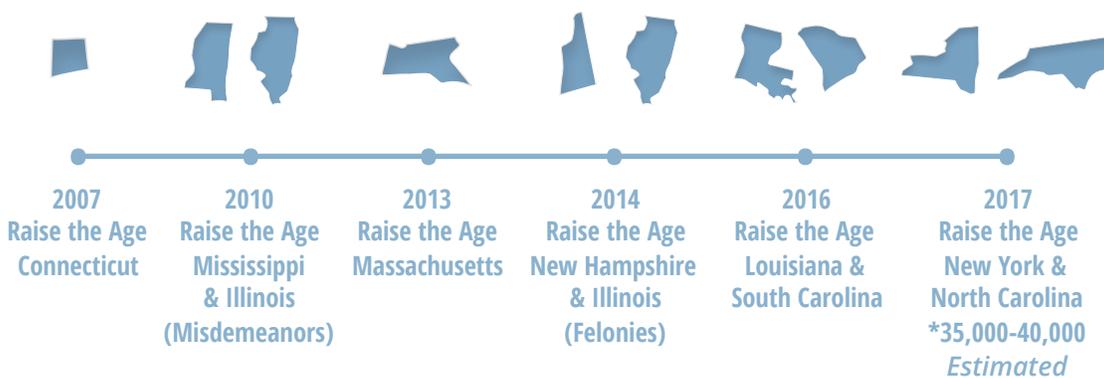
The Campaign for Youth Justice supports raise the age efforts because of the large number of youth blocked from adult court through this

reform. However, raise the age reforms are insufficient to protect youth from the adult system. Every raise the age reform has excluded some youth under 18 from juvenile court jurisdiction without the benefit of judicial review. Research and evidence overwhelmingly indicate that trying and treating youth as adults in the criminal justice system is harmful and leads to higher rates of suicide, abuse, and recidivism.² What is even more concerning is new data and research showing that while the number of youth being transferred to the adult system by juvenile court judges has decreased, the percentage of youth transferred who are Black is the highest it has been in nearly 30 years.³ Research shows that in states with high transfer numbers, like Florida, once Black youth are in the adult system, they are more likely to be incarcerated with longer sentences than their peers.⁴

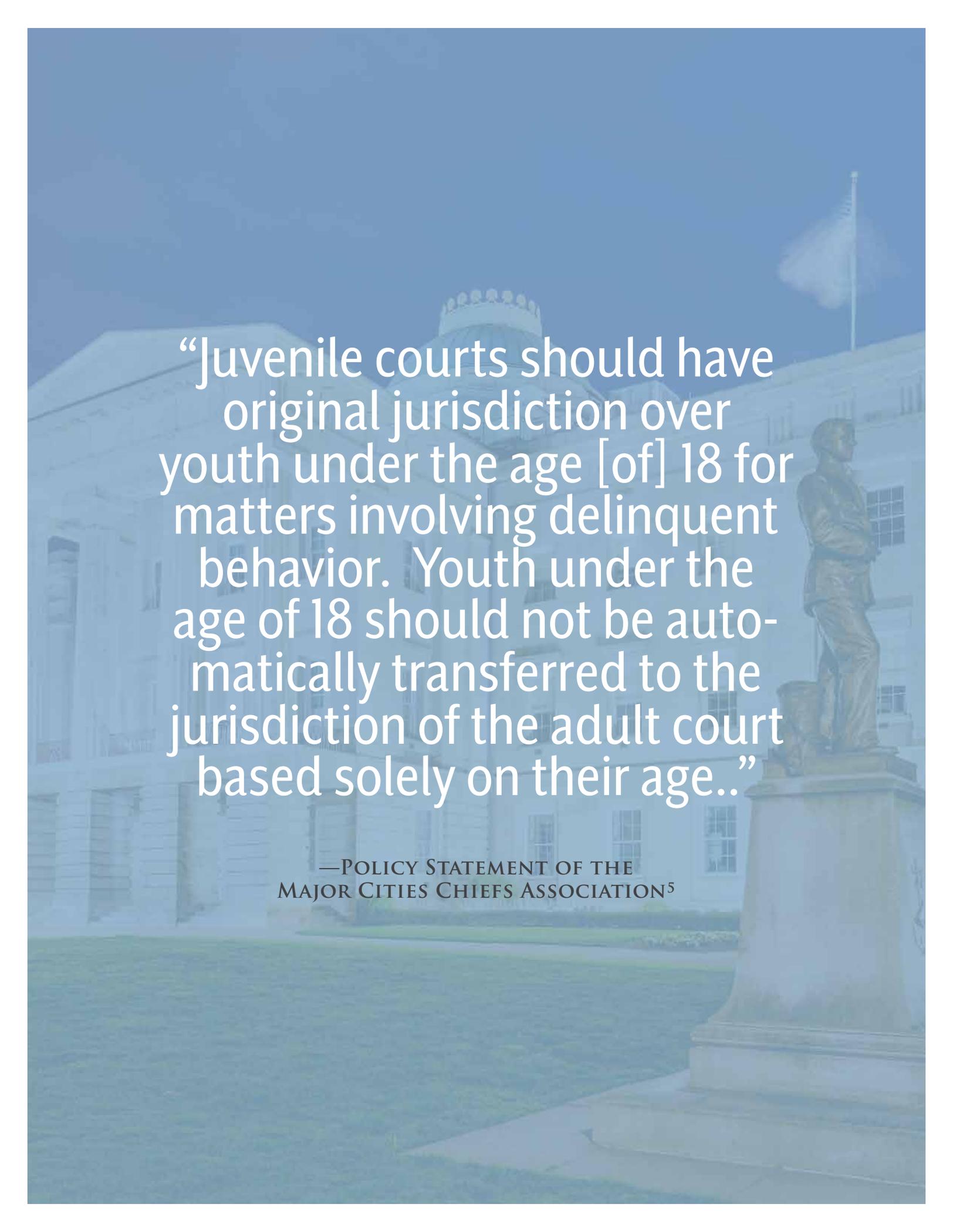
GRAPHIC B: DECREASE IN YOUNG PEOPLE AUTOMATICALLY EXCLUDED FROM JUVENILE COURT, 2007-2014



Raise the Age Timeline



Source: Justice Policy Institute (2017) *Raise the Age: Shifting to a Safer and More Effective Juvenile Justice System*. 4. Washington, DC: Justice Policy Institute.



“Juvenile courts should have original jurisdiction over youth under the age [of] 18 for matters involving delinquent behavior. Youth under the age of 18 should not be automatically transferred to the jurisdiction of the adult court based solely on their age..”

—POLICY STATEMENT OF THE
MAJOR CITIES CHIEFS ASSOCIATION⁵

States Raise the Age of Juvenile Court Jurisdiction: Recent Successes



LOUISIANA

During the 2015 session, the Louisiana legislature passed House Concurrent Resolution (HCR) 73 for the Institute of Public Health and Justice to study the impact of raising the age of juvenile court jurisdiction to 18.⁷ The following year, thanks to the collaboration of a number of advocates, families, and members of the **Louisiana Youth Justice Coalition**, the House and Senate passed SB 324, a bill to raise the age of juvenile court jurisdiction for youth charged with acts that are not “crimes of violence” by July 1, 2018 and for acts that are “crimes of violence” by July 1, 2020.⁸ Governor Bel Edwards signed the bill on June 14, 2016.

In addition to raising the age, SB 324 required the creation of the Louisiana Juvenile Jurisdiction Planning Implementation Committee (JJPIC) to submit an implementation plan by January 2017 and written status updates on April 1, 2017 and quarterly thereafter until the committee terminates on December 31, 2020. The Louisiana JJPIC requires that the membership includes two youth who have been prosecuted in criminal court at the age of 17, two parents whose children have experienced prosecution as adults while they were youth, and two child or youth advocates. Implementation committees are critical to holding decision makers and legislators accountable during the implementation process. The specific inclusion of youth, families, and advocates as a part of the committee’s membership is an important accountability measure.



SOUTH CAROLINA

In 2016, the South Carolina legislature unanimously passed SB 916 to raise the age of juvenile court jurisdiction for 17-year-olds in their state with the exclusion of 17-year-olds charged with Class A-D felonies.⁹ While the unanimous passage of the legislation was a significant victory, the implementation of raise the age in South Carolina is contingent upon the legislature providing the Department of Juvenile Justice (DJJ) with the funding required to implement the law during the 2018 legislative session. If DJJ requires additional funding to implement raise the age and the funding is not allocated, raise the age will not go into effect. If funding is provided then raise the age will be fully implemented by July 2019. South Carolina’s legislation does not require the creation of an implementation task force or committee. It only requires that state and local agencies start cooperating together to move toward implementation starting in September 2017. In December 2016, CFYJ convened advocates throughout South Carolina to form the Raise the Age SC coalition. The coalition advocates for the implementation of raise the age through expanded community-based services as an alternative to more youth prison beds.



“We are no longer giving
up on our young people;
rather, we are giving
them a chance to get their
lives back on track.”

—GOVERNOR JOHN BEL EDWARDS
OF LOUISIANA⁶



On April 10, 2017, Governor Andrew Cuomo signed A3009c/ S-2009c,¹⁰ a budget bill that included language to raise the age of juvenile court jurisdiction in New York for 16-year-olds in October 2018 and 17-year-olds in October 2019. All 16-and 17-year-olds charged with misdemeanors, other than vehicle and traffic law offenses, will now start and remain in Family Court. 16-and 17-year-olds who commit felonies will all start in the “Youth Part” of the adult criminal court.

There is a presumption that youth charged with “nonviolent felonies” will be transferred from the Youth Part to the Family Court unless the prosecutor can show, within 30 days, “extraordinary circumstances” for why the case should remain in the Youth Part of the adult court.

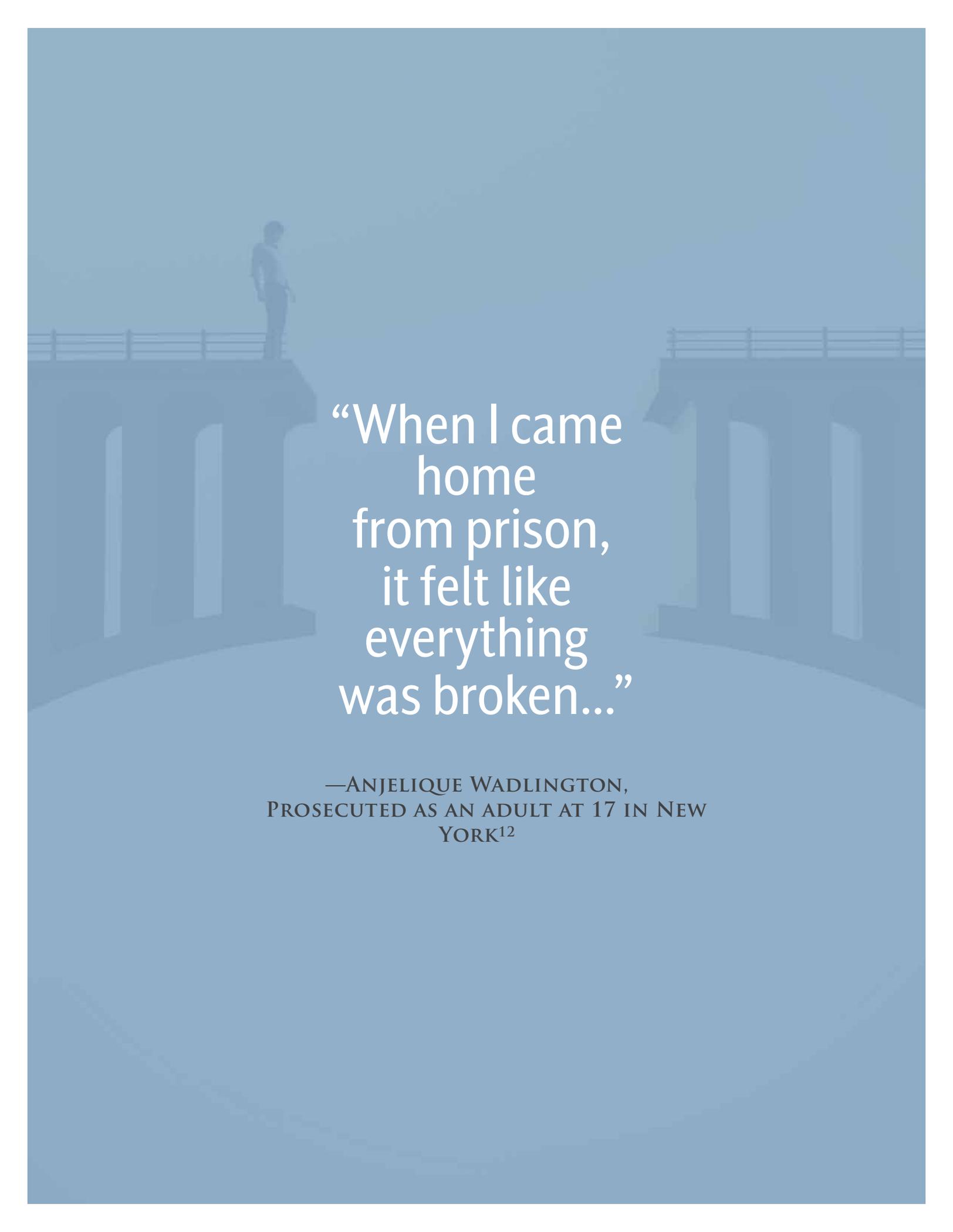
Youth charged with violent felonies can be transferred to the Family Court as well if the charge does not include:

- (1) displaying a deadly weapon during an offense or
- (2) causing significant physical injury, or
- (3) engaging in unlawful sexual conduct.

However, the prosecutor can also file a motion in these cases citing extraordinary circumstances. The only other offenses that are not eligible for transfer to the Family court are vehicle and traffic law cases and Class A felonies (excluding drug offenses). The youth who remain in the Youth Part of Adult Court are called “Adolescent Offenders” and they are sentenced as adults; however, the criminal court judge must take their age into account during sentencing.

In addition to raising the age, the bill also requires parental notification when children are arrested, and requires that youth are questioned in an age-appropriate setting. It prohibits the placement of youth under 18 in jails and prisons with adults by October 2018 for 16-year-olds and October 2019 for 17-year-olds, and it requires that youth in adult court are held in specialized Adolescent Offender Facilities for older youth. The budget bill also creates record sealing opportunities for individuals with no more than two convictions, neither of which can be for violent felonies, sex offenses, or Class A felonies. Finally, the bill creates a “Raise the Age Implementation Task Force” with members appointed by the Governor. The Task force will submit a report in April 2018 and in August 2019.

The Raise the Age effort in New York was bolstered by a robust and diverse coalition of more than 100 organizations and individuals directly impacted by the law. The public awareness campaign around the effort included countless news articles, press conferences, social media actions, rallies, and lobby days¹¹ to educate legislators and community members about why this change in the law was not only necessary, but inevitable if New York wanted better outcomes for its youth.

A person is standing on a balcony on the left side of the image, looking out over a courtyard. The courtyard is flanked by two buildings with arched windows. The entire scene is rendered in a monochromatic blue color scheme.

“When I came
home
from prison,
it felt like
everything
was broken...”

—ANJELIQUE WADLINGTON,
PROSECUTED AS AN ADULT AT 17 IN NEW
YORK¹²



On May 10, 2017, Representatives Chuck McGrady, David Louis, Duane Hall, and Susan Martin introduced House Bill 280¹³ to raise the age of juvenile court jurisdiction to 18. HB 280 was an outgrowth of the Criminal Investigation and Adjudication committee of the North Carolina Commission on the Administration of Law and Justice's report and recommendation to raise the age.¹⁴ Specifically, the Committee recommended that North Carolina raise the age to 18; however, 16- and 17-year-olds would be subject to mandatory transfer to the adult system if they were charged with a class A-E felony.

Under the mandatory transfer provision, if a juvenile court judge finds probable cause that a 16 or 17-year-old committed a class A-E felony after notice and a hearing, the judge must transfer the youth to adult court. Under this provision, a prosecutor may also seek a bill of indictment to move the youth to adult court. The change in the law does not apply to 16- and 17-year-olds charged with motor vehicle violations. Sixty-eight representatives co-sponsored HB 280. On May 17, the bill passed the House of Representatives with overwhelming support: 104 votes in favor of the bill and 8 against.

This overwhelming support from legislators across the state was due in large part to the **Raise the Age N.C. Campaign** coalition's tireless work to raise awareness and support of this issue on a local and state level through media, community events, and local proclamations.¹⁵

The North Carolina Senate did not take up HB 280, instead legislators decided to add raise the age language to SB 257¹⁶, North Carolina's budget bill. After legislative negotiations, the

budget language on raise the age expanded the type of offenses eligible for mandatory transfer to the adult system. Specifically, youth charged with class A through G felonies are eligible for mandatory transfer if probable cause is found or if there is an indictment. In addition, youth charged with class H and I felonies are eligible for transfer to adult court if a juvenile court judge determines after finding probable cause that transfer is appropriate.

While Governor Roy Cooper came out in support of raising the age of juvenile court jurisdiction on June 27, 2017, he vetoed the budget bill because of other policy concerns. His budget veto was overridden by both houses of the legislature by June 28. On Friday, July 28, in a show of support for raising the age, Governor Cooper signed a proclamation in recognition of the law.¹⁷

North Carolina's legislation requires the formation of a Juvenile Jurisdiction Advisory Committee (JJAC) for the implementation of the law. The advisory committee does not include membership of directly impacted youth and families. The JJAC is tasked with submitting an interim report by March 1, 2018 that makes recommendations regarding whether raise the age should exclude 16- and 17-year-olds who commit habitual misdemeanor assault, crimes against nature, obscene literature and exhibitions, third degree sexual exploitation of a minor solicitation of a child by a computer to commit an unlawful sex act, stalking when a court order is in effect, the Class A1 offenses of misdemeanor assault of a law enforcement officer, assault inflicting serious injury by strangulation, fraudulently setting fire to a dwelling house, any offense

requiring sex offender registration, and any other offense the JJAC believes should be considered for exclusion from the law.

The lack of directly impacted youth and families serving on the JJAC and the explicit requirement that the committee make recommendations regarding how and whether to exclude more 16-

and 17-year-olds from the juvenile court highlights how critical it will be for advocates, youth, and families to remain engaged and vigilant in holding the JJAC accountable and advocating against attempts to broaden the number of offenses that can result in the mandatory transfer of youth to adult court.

On the Horizon for the Raise the Age Movement

During the 2017 legislative session, legislators in all five states with lower ages of juvenile court jurisdiction introduced bills to raise their juvenile court age. While legislators have not passed raise the age in these states, there is significant positive momentum, particularly among the states with active and robust coalitions: Michigan, Missouri, and Texas. (SEE GRAPHIC C)

During the 2016 legislative session, the Michigan House passed a comprehensive youth justice package that included raising the age of juvenile court jurisdiction. Unfortunately, the bill package did not pass the Senate. However, the legislature allocated funding to research the costs of implementing raise the age. This session, there is another package of bills to raise the age in Michigan's House of Representatives.¹⁸

In Missouri, there were two similar bills, SB 40¹⁹ and HB 274²⁰ to raise the age of juvenile court

jurisdiction to 18. SB 40 was not voted out of committee, but HB 274 was voted favorably out of committee. In addition, the House voted favorably for House Amendment 8²¹ which mirrored HB 274 and was attached to SB 50²² while it was considered in the House. However, the Senate later removed the amendment.

In Texas, on April 20, HB 122 passed the House and moved to the Senate.²³ However, the Senate did not take up the bill. In Georgia, the House Juvenile Justice committee held a hearing on HB 53 to raise the age of juvenile court jurisdiction to 18.²⁴ The bill had bipartisan co-sponsorship by five legislators, but the bill died in committee.

The amount of legislative movement around raising the age in the five remaining states is promising. Each legislature has now laid the groundwork for progress for their next legislative session.

GRAPHIC C: WHO'S NEXT? STATES THAT HAVE PASSED RAISE THE AGE LAWS AND STATES THAT REMAIN, 2007-2017

Yet to Pass	GEORGIA	2007	CONNECTICUT
Yet to Pass	MICHIGAN	2010	MISSISSIPPI
Yet to Pass	MISSOURI	2010 & 2014	ILLINOIS
Yet to Pass	TEXAS	2013	MASSACHUSETTS
Yet to Pass	WISCONSIN	2014	NEW HAMPSHIRE
		2016	LOUISIANA
		2016	SOUTH CAROLINA
		2017	NEW YORK
		2017	NORTH CAROLINA



Source: Justice Policy Institute (2017) *Raise the Age: Shifting to a Safer and More Effective Juvenile Justice System*. 4. Washington, DC: Justice Policy Institute.

Raising the Age Beyond 18

In Connecticut, Illinois, Massachusetts and Vermont raising the age of juvenile court jurisdiction has taken on a whole new meaning. Legislators in each state have proposed bills to treat most youth under age 21 or 22 in the juvenile justice system instead of the adult criminal justice system. The extended age of juvenile court jurisdiction in these states already ranges from 19 to 21, which means these systems are equipped to serve the young adult population in some capacity.²⁵

In Connecticut, HB 7045 would create a “young adult” status that would progressively raise the age of juvenile court jurisdiction to 21 by July 1, 2020.²⁶ According to researchers at the Harvard Kennedy School, this reform would place 10,000 young adults a year, ages 18 to 21, in the juvenile justice system.²⁷ In Illinois, HB 2628 would place young adults, up to age 21, charged with misdemeanor offenses in juvenile court.²⁸ In Massachusetts, thirty-three legislators petitioned in favor of H 3037, a bill to raise the age of juvenile court jurisdiction to include 18- to 20-year-olds.²⁹ In addition to H 3037, there were three other bills to raise the age.³⁰

In Vermont, there have been a number of juvenile justice reforms over the last two years. In 2016, Governor Shumlin signed H. 95 which allows the majority of youth under 18 to originate in the Family Division of the Superior Court instead of in the adult court and it incrementally raises the age of the youthful offender status from 17 to 21 for youth who have not committed the “big 12 offenses.”³¹ This change in the law allows young adults to be eligible for protections that are generally afforded only to juveniles.³²

In November 2016, the Vermont Department of Children and Families and the Department of Corrections submitted a report looking into

whether youthful offender status should be extended to all 17-to 21-year-olds no matter their offense.³³ The report also makes recommendations regarding how to implement H. 95. In 2017, Governor Phil Scott signed S. 23 to clarify implementation of the expanded youthful offender status. S. 23 redefines a child for the purposes of juvenile judicial proceedings as an individual who “has committed an act of delinquency after becoming 10 years of age and prior to becoming 22 years of age.”³⁴ The bill allows prosecutors to commence proceedings in the Family Division of the Superior Court instead of having to start all cases in the Criminal Division. Even if a youth starts in the Criminal Division (adult criminal court), the prosecutor, defendant, or the court can motion for the youth to be treated as a youthful offender. Once a party files that motion, there is a hearing in the Family Division of the Superior Court where the judge decides whether to accept or reject treatment of a youth or young adult as a youthful offender. This change in the law will allow some youth and young adults to start in Family Court who might otherwise start in adult criminal court, provides placement and privacy protections, and prevents the duty to register as a sex offender unless youthful offender status is revoked. The bill will be fully implemented by July 1, 2018.

TREND 2: STATES LIMIT THE HOUSING OF YOUTH IN ADULT JAILS & PRISONS

2 *Leveraging Federal Law for State and Local Efforts to Move Youth Out of Adult Facilities*

Since 2005, 17 states and the District of Columbia have limited or removed youth from adult jails and prisons.³⁵ Half of these states engaged in reforms between 2015 and 2017. Three federal laws, the Prison Rape Elimination Act (PREA), the Justice for All Reauthorization Act, and the Juvenile Justice and Delinquency Prevention Act (JJJPA), have played a role in encouraging the separation, limitation, or complete removal of youth from adult facilities.

Prison Rape Elimination Act: Youthful Inmate Standard

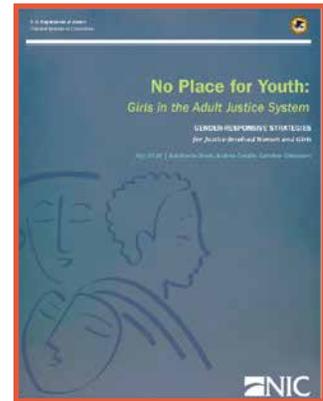
In 2012, the Department of Justice finalized regulations for the Prison Rape Elimination Act of 2002. The regulations include a number of national standards for both juvenile and adult jails, lock ups, and prisons. The Youthful Inmate Standard³⁶ requires that there is sight and sound separation of youth tried as adults under age 18 from adults in housing units. Even outside of housing units, youth must be either separated from adults or under direct staff supervision. Facilities are encouraged to implement the standard without placing youth in solitary confinement in order to comply with the regulations.

TREND 2: REMOVE YOUTH FROM ADULT PRISONS

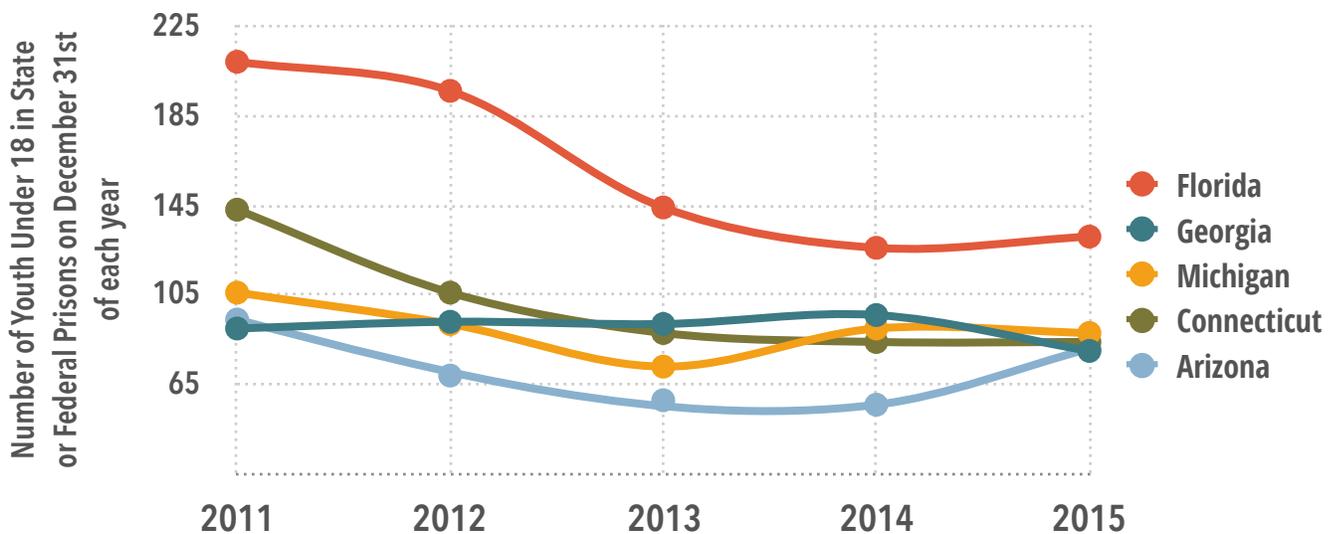
The physical space or layout of many adult prisons and jails has presented barriers to safely holding youth in compliance with the Youthful Inmate Standard. In its 2016 report, **No Place for a Child: Girls in the Adult Criminal Justice System**, the National Institute of Corrections and the National Council on Crime and Delinquency released survey results collected from members of the Association of State Correctional Administrators (ASCA). The survey asked members of the ASCA about on their ability to safely house youth, particularly girls, in adult prisons.³⁸ A majority, 59.1 percent of the respondents felt that their facilities were not prepared to address juvenile issues.³⁹

As a result of the declining youth crime rate, changes in the law to remove youth from the adult system, and the recognized difficulty associated with complying with the Youthful Inmate

Standard, the number of youth in adult prisons has decreased. The Bureau of Justice Statistics publishes a snapshot of the number of youth in adult prisons on December 31 of each year as a part of its Prisoners series.⁴⁰ Over the past seven years the number of youth under 18 in U.S. prisons during the snapshot has declined from 2,779 youth on any given day to 993 youth on any given day, a 64 percent decline. However, there are still a few states with a high number of youth in their adult prisons. (SEE GRAPHIC D)



GRAPHIC D: TOP FIVE STATES WITH THE HIGHEST NUMBER OF YOUTH UNDER 18 IN STATE OR FEDERAL PRISONS, 2011-2015



SOURCE: PRISONERS SERIES, BUREAU OF JUSTICE STATISTICS, OFFICE OF JUSTICE PROGRAMS, DEPARTMENT OF JUSTICE. RETRIEVED FROM [HTTPS://WWW.BJS.GOV/INDEX.CFM?TY=PBSE&SID=4](https://www.bjs.gov/index.cfm?ty=pbse&sid=4)

“Very scary not knowing what to expect as a first time offender being around people that got life. Currently I’m in a level 5 institution and I’m a level 2 with 4 years and my celly got 50 years...he never coming home.”

—WILLIAM, COMMITTED TO THE MISSOURI DEPARTMENT OF CORRECTIONS AT AGE 17³⁷

Justice for All Reauthorization Act of 2016

In December 2016, Congress passed the Justice for All Reauthorization Act of 2016⁴¹ which includes provisions to strengthen the Prison Rape Elimination Act (PREA) of 2002. Specifically, the Act places a six-year sunset provision from the date of enactment on state's ability to only "assure" that they are attempting to comply with PREA instead of certifying full compliance. The Act also requires Governors to submit additional compliance information with their annual certification or assurance submission to the Department of Justice. Finally, it requires the Department of Justice to post all final audit reports online and update the website annually. The reauthorization is expected to move more facilities into full compliance with PREA while also holding

facilities publicly accountable. The sunset provision is critical to the full implementation of PREA. Currently, states receive federal funding to become PREA compliant. States that do not make assurances or achieve full compliance in a three-year audit cycle are required to pay a 5 percent penalty out of federal funding pools. This incentive has moved many states in the right direction. In 2014, only two states were certified compliant with PREA, forty-one were making assurances and seven states were non-participating. By 2017, nineteen states were certified as compliant; and only two were not participating, the rest submitted assurances they were working toward certification.⁴²

Reauthorization of the Juvenile Justice and Delinquency Prevention Act

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP). The Act provides federal grant funding for states that monitor, track data, and work toward improving their juvenile justice systems in four core areas: (1) deinstitutionalizing status offenders (2) removing youth from adult jails (3) sight and sound separation when youth are in adult facilities, and (4) reducing disproportionate minority contact.⁴³ While PREA protects youth who are tried as adults, the JJDP only protects youth arrested as delinquent and placed in adult facilities, not those youth treated as adults.

Congress last reauthorized the JJDP in 2002.⁴⁴ National and state advocates formed a campaign called *ACT 4 JJ* to advocate for the reauthorization of the JJDP. CFYJ co-chairs the campaign coalition along with the Coalition for Juvenile Justice (CJJ).⁴⁵ In 2016, during the 114th Congress, the House of Representatives

passed HR 5963 to reauthorize the law, but the Senate did not because of disagreement over phasing out the valid court order exception.⁴⁶ This exception allows juvenile court judges to detain youth for disobeying a court order such as attending school or keeping curfew. Phasing out the valid court order exception has been widely supported, including by the National Council of Juvenile and Family Court Judges (NCJFCJ), a national group representing juvenile and family court judges across the country.⁴⁷

On May 23, 2017, the House passed HR 1809 to reauthorize the JJDP.⁴⁸ On August 1, 2017, the Senate passed S 860,⁴⁹ a Senate version of the bill to reauthorize the JJDP. These bills will need to be reconciled, but it is important to note that both versions encourage the removal of all youth under 18 from adult jails and prisons, including those youth who have been transferred to adult court.

TREND 2: REMOVE YOUTH FROM ADULT PRISONS

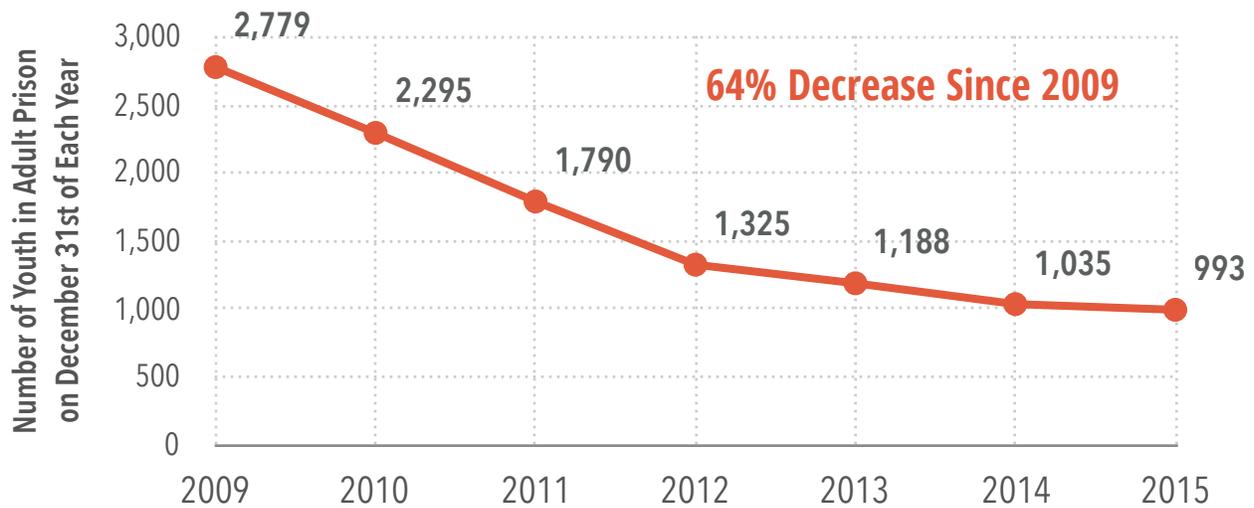
Efforts to reauthorize the JJDP Act have coincided with the adoption of updated regulations for the Act developed by the Office of Juvenile Justice and Delinquency Prevention. The new regulations were approved by the Department of Justice on April 28, 2017.⁵⁰ The regulations revise the methodology for determining whether states are in compliance with the core protections of the Act, it defines detained or confined so it is clear that it applies to both secure and non-secure detention of youth, and it pushes back the deadline for submitting compliance data for the previous fiscal year from January

31 to February 28, with the opportunity for the OJJDP Director to extend the deadline to March 31 for good cause. In addition, it requires that participating states provide a full twelve months of data on compliance each reporting period.

These federal laws financially encourage states to remove youth from adult jails and prisons. These laws and financial incentives, in conjunction with a growing number of state reforms, have successfully reduced the population of youth in adult facilities.

(SEE GRAPHIC E)

GRAPHIC E: NUMBER OF YOUTH HELD IN ADULT PRISON ON DECEMBER 31ST 2009-2015



Source: Prisoners Series, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice



ARIZONA

In 2016, the Arizona Legislature passed SB 1308⁵¹ which allows youth who have been charged or transferred to adult court to remain in juvenile detention centers if their offenses are not “dangerous offenses” and the court orders their placement in the juvenile facility. A dangerous offense is defined in Arizona statute as “an offense involving the discharge, use, or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person.”⁵² The juvenile court must also consider the best interest of the youth and others in the juvenile detention center, the severity of the charges, existing programs, and facilities for the juveniles and any other factor relevant to where the youth should be held. The House and the Senate unanimously passed this legislation. Governor Doug Ducey signed the bill on May 17, 2016 and it went into effect on December 31, 2016.



DISTRICT OF COLUMBIA

In November 2016, the DC City Council passed a comprehensive juvenile justice bill called the Comprehensive Youth Justice Amendment Act of 2016.⁵³ The bill, sponsored by Councilman Kenyan McDuffie and members of the Judiciary Committee, provides, among a host of other positive reforms, that youth charged in adult court receive more developmentally appropriate care at their unit in the adult jail and eventually that youth charged in adult court are removed from the jail entirely. First, the bill requires the Department of Youth Rehabilitative Services (DYRS), DC’s juvenile justice agency, take custody of all youth under 18 in the adult jail on or prior to October 1, 2018. In addition, the agency must track its capacity to detain

youth charged in the adult system in its juvenile detention center. If the juvenile detention center has capacity for four consecutive quarters, youth shall be removed from the adult jail and placed at the juvenile detention center. The passage of the Comprehensive Youth Justice Amendment Act was due in part to strong advocacy and pressure by the DC Youth Justice Project Coalition. This bill took effect on April 4, 2017.



KANSAS

In 2015, the Kansas legislature passed HB 2336⁵⁴ which allows youth ages 16 and 17 who have been prosecuted and convicted as adults to be placed in a juvenile correctional facility. Before this change in the law, youth who were prosecuted and convicted as adults were not eligible for placement in a juvenile facility. The decision to place a 16- or 17-year-old in a juvenile facility or an adult facility is within the discretion of the secretary of corrections, who notifies local sheriffs and judges, where youth are placed. The bill passed the Senate unanimously. Governor Brownback signed the legislation on April 8, 2015. The legislation went into effect on April 16, 2015.



MARYLAND

During the 2015 legislative session, Maryland’s legislature passed and Governor Hogan signed HB 618⁵⁵, which requires the adult criminal court to order that a child pending transfer of jurisdiction to be held in a secure juvenile facility. The bill includes three exceptions to the requirement for the judge to consider: (1) if the child is released pre-trial, (2) if there is no capacity in a secure juvenile facility, and (3) if the court finds that secure detention would pose a risk to the child and other youth within the ju-

TREND 2: REMOVE YOUTH FROM ADULT PRISONS

venile detention facility. If the court believes holding the child in a juvenile facility is a safety risk the court must state its reasons for this belief on the record. HB 618 went into effect on October 1, 2015.



MONTANA

On February 25, 2015, Governor Bullock of Montana signed HB 134 which prohibits the placement of youth transferred to district court from being placed in a state adult correctional facility if their only offense is a misdemeanor offense.⁵⁶ However, if the youth has committed a felony and has since turned 18, the district court may order that the youth is held in a state adult correctional facility. After an amendment, the bill passed unanimously through both houses of the Montana legislature. HB 134 went into effect on February 25, 2015.



NEW JERSEY

In June 2015, the New Jersey Legislature passed S. 2003⁵⁷ which made a number of reforms related to youth tried and treated as adults. One of those reforms was the creation of a presumption that juveniles waived to the adult court will serve their sentence in a state juvenile facility until they reach the age of 21. The bill gives the Juvenile Justice Commission authority to transfer that youth to the Department of Corrections in compliance with regulations promulgated for this portion of the bill. The bill also gives the Juvenile Justice Commission authority to hold a youth beyond the age of 21 if the Juvenile Justice Commission and the youth agree that the youth should remain there; otherwise the youth will spend the rest of their sentence in an adult facility; otherwise the youth will spend the rest of their sentence

in an adult facility. Under the bill, a transferred youth may remain in a juvenile facility, but the collateral consequences of an adult conviction remain the same. S. 2003 went into effect on July 1, 2016.



NEW YORK

In December 2015, Governor Cuomo issued an executive order directing the Department of Corrections and the Office of Children and Family Services to work toward removing youth from adult prisons in New York.⁵⁸ Executive Order 150 called for the removal of all female youth and male youth classified as medium or minimum security from adult facilities to separate facilities within the Department of Corrections. In 2017, a part of the raise the age legislation included language to ban placement of youth in facilities with adult. Under the budget language, if a youth is 16-years-old and commits an offense on or after October 1, 2018 or 17-years-old and commits an offense on or after October 1, 2019, which could result in the youth getting an adult sentence, that youth must be held in a juvenile detention facility and not an adult facility.⁵⁹ In addition to placement in juvenile detention facilities pre-trial, the budget bill establishes the creation of new Adolescent Offender Facilities for youth pre-trial and post-conviction, for youth under 18 serving adult sentences. These facilities will run with the coordination of both youth and adult corrections. The bill specifically states that to the "extent practicable" these new facilities should be *"smaller, more home-like facilities located near the youths' home and families that provide gender-responsive programming, services and treatment in small, closely supervised groups that offer intensive and on-going individual attention and encourage supportive peer relationships."*

TREND 2: REMOVE YOUTH FROM ADULT PRISONS



OREGON

In 2017, the Oregon Legislature passed HB 2251⁶⁰ to prohibit “under any circumstances” the incarceration of youth under 18 in adult prisons. Governor Kate Brown requested the bill for the Department of Corrections. As a result of the legislation, all youth sentenced to serve time under the age of 18 will now only serve time at an Oregon Youth Authority facility. Oregon’s legislation is among the strongest in the country in regards to the removal of youth from adult prisons. The law takes effect January 1, 2018.



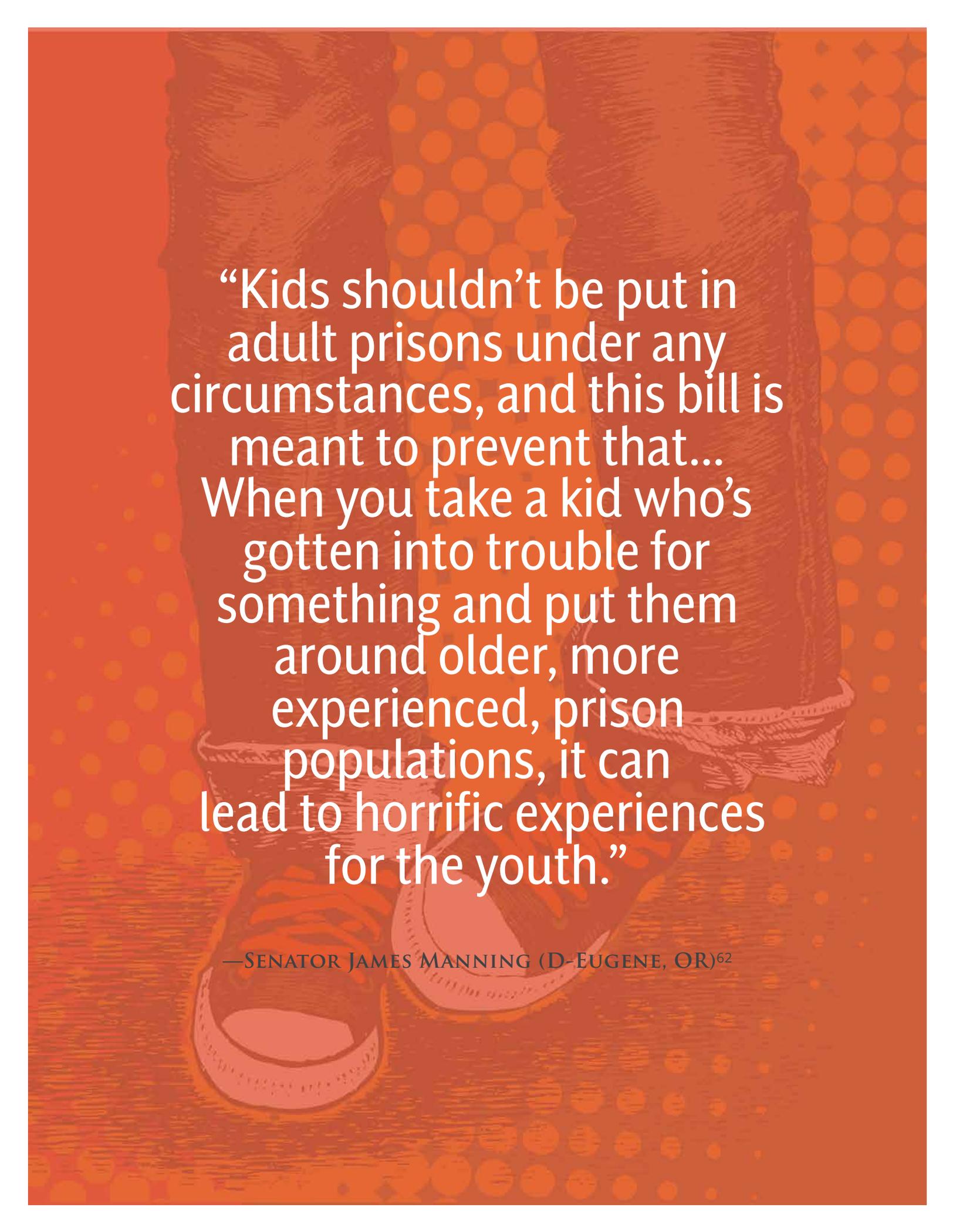
WASHINGTON

HB 1674 requires that the Department of Corrections transfers juveniles sentenced as adults who are expected to complete their sentence prior to their 21st birthday to the Department of Social and Health Services, where they are held in a juvenile facility.⁶¹ While youth are in the physical custody of DSHS, the DOC still controls when and if the youth is released from the juvenile facility. HB 1674 passed the house with only a single vote against it and passed the Senate unanimously. The law went into effect on July 24, 2015.



VERMONT

H. 95, Vermont’s significant juvenile justice reform bill, requires that the Department of Corrections provides separate facilities for the custody of youth and young adults under the age of 25. While the bill does not remove youth from the Department of Corrections, it requires the separation of youth and young adults from the general adult population.



“Kids shouldn’t be put in adult prisons under any circumstances, and this bill is meant to prevent that... When you take a kid who’s gotten into trouble for something and put them around older, more experienced, prison populations, it can lead to horrific experiences for the youth.”

—SENATOR JAMES MANNING (D-EUGENE, OR)⁶²

TREND 3: STATES LIMIT PATHWAYS OF TRANSFER TO THE ADULT SYSTEM

OR CREATE WAYS FOR YOUTH TO RETURN TO JUVENILE COURT

3 Every state in the U.S. has at least one transfer mechanism that allows youth to be tried and treated as adults. Most states have more than one mechanism. As a result, there are legislative opportunities in every state to limit these mechanisms in some way, whether it is by limiting the youth who are eligible for transfer based on their age or offense or creating additional mechanisms to allow youth to return to juvenile court. Twenty-five states have **reverse waiver** provisions in their statute that allows youth to be placed back in juvenile court.⁶³ This section will provide an overview of the multiple transfer mechanisms that exist across the country and how ten states have limited those transfer mechanisms from 2015 to 2017.

...in 1970, only eight states had transfer provisions that statutorily excluded youth from juvenile court because of their age and offense. Now 28 states have laws that statutorily exclude youth from juvenile court...

Transfer Mechanisms from Juvenile Court

According to the National Center for Juvenile Justice's, Juvenile Justice Geography, Policy, Practice and Statistics (GPS) site, 46 states and the District of Columbia allow juvenile court judges to have **judicial discretion** over transfer of youth to adult court if youth are a certain age and have been charged with certain offenses. Judicial discretion is the most common transfer mechanism in the U.S. Only four states, Massachusetts, Montana, New Mexico, and New York, lack a judicial transfer statute.

According to the U.S. Department of Justice's *Easy Access to Juvenile Court Statistics* site, the number of youth who are judicially waived to the adult system has decreased dramatically from 12,800 at its height in 1994 to 4,200 in 2014.⁶⁴ While the number of youth judicially transferred has declined dramatically, racial disproportionality in transfer has increased. In 2014, the most recent year for publicly available national data, Black youth are 52.5%⁶⁵ of the youth transferred to the adult system, even though they are 35.9% percent of the delinquency cases.⁶⁶

The decline in judicial transfer is likely the result of the increase in transfer mechanisms that start youth in the adult court, for example, prosecutorial discretion also known as direct file and statutory exclusion.⁶⁷ These mechanisms will be

discussed in detail in the next section *Trend 4: Restore Judicial Discretion*. In 1970, only eight states had transfer provisions that automatically excluded youth from juvenile court because of their age and offense.⁶⁸ Now, 28 states have laws that statutorily exclude youth from juvenile court and twelve states and the District of Columbia have laws that give prosecutors the power to start youth in adult court.⁶⁹

In 12 states and the District of Columbia, there are **presumptive waiver** provisions in which it is presumed that a juvenile court judge will transfer the youth to the adult court, unless the youth's defense counsel meets a specific burden of proof, in which case the youth can remain in juvenile court. In another 14 states, there is **mandatory waiver**, meaning that once a juvenile court judge verifies that certain conditions have been met—specifically, that a youth is a certain age, has been charged with a certain type of offense, has notice, a hearing, and there is probable cause that the youth committed the offense—that youth *shall* be transferred to the adult system. Therefore, while the juvenile court judge has original jurisdiction, the judge does not have discretion to keep the youth in the juvenile system once probable cause has been established.

Challenging Mandatory Transfer through Litigation

In December 2016, the Ohio Supreme Court decided *State v. Aalim*⁷¹ and held that the Federal and State Constitution prohibited the mandatory transfer of Ohio's youth to adult court on the grounds that mandatory transfer violated the youth's due process right to fundamental fairness by withholding the opportunity for that youth to have an amenability hearing.⁷² Six months later, the Ohio Supreme Court reconsidered the case and flipped its decision.

In May 2017, the Court held that it did not have the authority to give juvenile court judges jurisdiction over cases that the legislature has de-

ecided do not belong in juvenile court.⁷³ The Court also held that there was no due process right to an amenability hearing and that youth are not a protected class requiring the court to apply a higher level of scrutiny on statutes that negatively impact them. The Court's decision to flip the opinion was not unexpected. In 2017, two newly elected conservative Ohio Supreme Court justices took their seats on the bench. As a result, the political makeup of the Court shifted along with the decision. In anticipation of this decision, Ohio legislators filed a bill to eliminate the mandatory transfer statute.

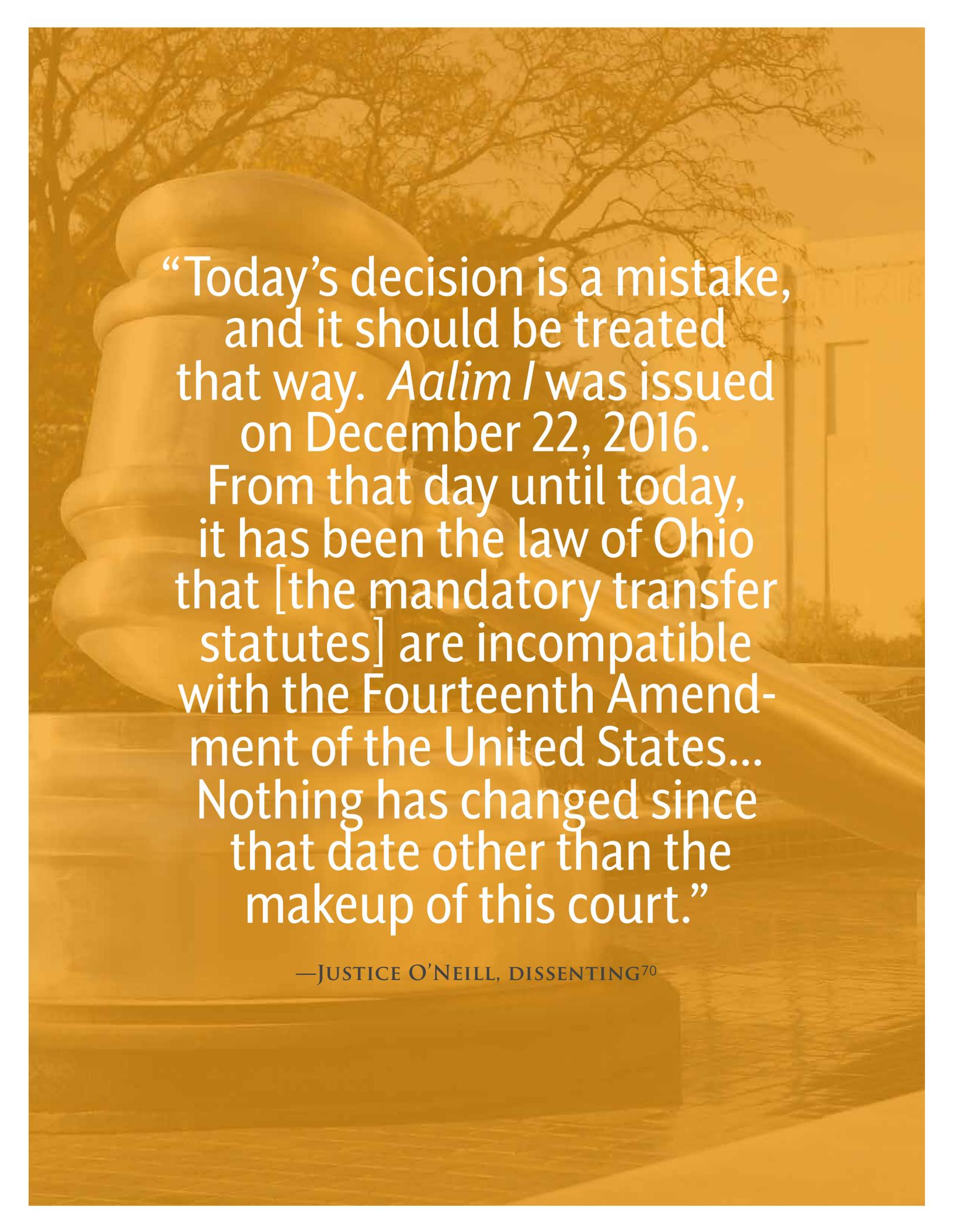
Raising the Floor: Raising the Lower Age of Transfer

Many states have enacted legislation to narrow the funnel of youth who are eligible for transfer to adult courts. In addition to challenging mandatory transfer, the most notable recent efforts have related to raising the minimum age at which a youth can be transferred from juvenile court, also called "raising the floor." In addition, there have been efforts to return youth back to juvenile court by expanding the state's reverse waiver mechanism, and efforts to encourage courts to do an individualized review of the needs of youth before moving them to the adult system.



On July 2, 2015, Connecticut Governor Dannel Malloy signed House Bill 7050⁷⁵ reforming several aspects of the state's transfer statute. One of the reforms raises the lower age at which a youth can be mandatorily transferred from the juvenile docket of the Superior Court to the regular

criminal court from age 14 to 15-years-old. The bill also limits the types of offenses that could be mandatorily transferred.⁷⁶ Specifically, the bill carves out some class B felonies from the list of offenses that are mandatorily transferred from juvenile court including larceny in the first degree, kidnapping in the second degree, burglary, and some classes of sexual assault. In cases involving felony charges that have been carved out of the mandatory transfer statute, a judge must hold a hearing; however, the judge may only transfer the youth if the judge can make three findings: (1) the youth is 15-years-old, (2) there is probable cause to believe the child has committed the act he or she is charged with, and (3) the best interests of the child and the public will not be served by keeping the youth in juvenile court. In making these findings the court must consider not only the child's prior criminal history, but also whether the child has disabilities, a mental illness, and the availability of services that could meet the child's needs. HB 7050 went into effect on October 1, 2015.



“Today’s decision is a mistake,
and it should be treated
that way. *Aalim I* was issued
on December 22, 2016.

From that day until today,
it has been the law of Ohio
that [the mandatory transfer
statutes] are incompatible
with the Fourteenth Amend-
ment of the United States...
Nothing has changed since
that date other than the
makeup of this court.”

—JUSTICE O’NEILL, DISSENTING⁷⁰



KANSAS

In addition to limiting the placement of youth in adult facilities, SB 367⁷⁷ also raises the minimum age that a youth can be prosecuted as an adult from 12 years old to 14 years old. It removes existing presumptions that a youth should be tried as an adult if they are a certain age and are charged with an offense that is a certain severity level. It limits the types of cases that can result in extended juvenile jurisdiction to cases involving off-grid felonies or non-drug severity level 1 through 4 person offenses. The bill also removes the burden of proof from the juvenile and instead requires that the state rebut the presumption that a juvenile should be tried and treated as a juvenile by a preponderance of the evidence. Finally, the bill removes the presumption that a youth will be transferred to district court if there is probable cause that a felony has been committed as well as the presumption that once a youth has been convicted as an adult they must be treated as an adult in all future prosecutions.



ILLINOIS

In 2015, the Illinois Legislature passed HB 3718 to decrease the number of juveniles automatically transferred to adult court. The bill raised the lower age at which a juvenile may be automatically prosecuted (statutorily excluded from juvenile court) from 15 to 16, and eliminated automatic adult prosecution for armed robbery with a firearm. Under this legislation, armed robbery with a firearm and aggravated vehicular hijacking with a firearm no longer call for an automatic transfer to adult court. Further, this bill limits transfers based on presumptive assumptions; now youth may only be presumptively transferred based on their previous delinquent history

or their possible gang affiliation. Judges are now required to take a child's age, lack of foresight, maturity, peer and family relationships, and social background into consideration when sentencing juveniles. Finally, the bill requires clerks to collect and track data related to juveniles in the adult system. The law went into effect on January 1, 2016, and a report on the impact is expected in the fall of 2017.



NEW JERSEY

In addition to creating a presumption that youth under 21 remain in juvenile facilities, S 2003⁷⁸ raised the minimum age that a youth may be considered for mandatory transfer from juvenile court to adult court from 14 to 15. The law also narrows the list of offenses that can result in transfer to the adult system, it requires that prosecutors prove by clear and convincing evidence that the need to transfer a youth outweighs that youth's ability to be rehabilitated in the juvenile system, and requires greater data collection on youth transferred to the adult system. Specifically, data will be collected on the demographics of the youth, the characteristics of the offense, the waiver rates by race and ethnicity, and the case processing time.



VERMONT

In 2016, the Vermont General Assembly passed H. 95 which includes a number of substantial juvenile justice reforms. It not only extended youthful offender protections to young adults as detailed earlier in this report. It also raised the age at which a youth's case may be filed in criminal court from age 10 to age 12.⁷⁹

Reverse Waiver to Juvenile Court



TEXAS

On May 12, 2015, Texas Governor Greg Abbott signed SB 888, a bill that unanimously passed through both the House and the Senate.⁸⁰ This bill allows a youth to appeal a juvenile court's decision to transfer the youth to adult court. While the appeal does not stay the criminal proceedings, it takes precedent over all other cases. Before this change in the law, a youth was allowed to appeal a transfer decision, however, the youth had to wait until he or she was convicted in adult court. The appeal process before this change could take years. Under SB 888, juveniles can immediately appeal with no need to wait for their trial and conviction in adult court. The Appellate Court and Supreme Court are responsible for adopting rules to speed up the appeals process. SB 888 went into effect on September 1, 2015.



DELAWARE

On June 30, 2017, the Delaware Senate passed HB 9 after earlier passing in the Delaware House.⁸¹ HB 9 gives judges in adult court the discretion to reverse waive youth back to the juvenile court if they have been charged with rioting, manufacturing, possessing, using or transporting a bomb, incendiary device, or explosive device, possessing a deadly weapon during the commission of a felony, or wearing body armor during a commission of a felony. As of the writing of this report, Delaware Governor John Carney has not signed the bill.



CALIFORNIA

On September 1, 2015, California Senate Bill 382 went into effect.⁸² The bipartisan bill revises how courts evaluate youth for transfer to the adult system. When evaluating whether to transfer a juvenile to the adult system (referred to as a "fitness hearing"), the court must now, take into account age, maturity, intellectual capacity, physical and emotional health, the effect of the minor's family on criminal sophistication, any significant trauma that the minor may have experienced and the consequences of that trauma, the minor's potential to grow and mature, the minor's previous delinquent history, previous services that were provided to the minor, and the actual harm caused by the delinquent act the juvenile is accused of committing. In 2014, before this bill was enacted, juvenile court judges were finding youth unfit for the juvenile justice system 66.7 percent of the time, the percentage decreased to 55.6 percent the year the law changed.⁸³ This bill was critical to the success of Proposition 57 which ended direct file in California.

TREND 4: STATES RESTORE JUDICIAL DISCRETION BY LIMITING STATUTORY EXCLUSION & DIRECT FILE

4 In 28 states, legislators decide when a youth is excluded from juvenile court by placing a blanket exclusion on all youth who are a certain age and have been charged with a certain type of offense. While there are a number of states with provisions that statutorily exclude youth from the juvenile justice system, some of the provisions are a lot more broad than others. For example, in Massachusetts, youth are only statutorily excluded from juvenile court when they are age 14 or older and are charged with first or second degree murder.⁸⁴ In comparison, in Maryland there are 33 offenses that statutorily exclude youth from juvenile court if they are 14 or older, and almost 60 percent of these youth get their cases dismissed or move back to the juvenile system with a reverse waiver, a costly policy in terms of attorney time and resources.⁸⁵ In addition to statutory exclusion from the juvenile court, youth can also start in adult court if they are direct filed by a prosecutor. Only 12 states and the District of Columbia give prosecutors the power to file youth directly in the adult court.⁸⁶

New research by Steven Zane calls into question the effectiveness of statutory exclusion and direct file by prosecutors. In his article, *Do Criminal Court Outcomes Vary by Juvenile Transfer Mechanism? A Multi-Jurisdictional Multilevel Analysis*, Zane posits that according to available data, judicial waiver is the transfer mechanism that is least likely to move youth to the adult system that will not be convicted as an adult.⁸⁷ Zane notes that other waiver mechanisms that do not include a judicial screening are generally over-inclusive and are more likely to result in youth being moved back to the juvenile system, youth having their cases dismissed, or youth returning back to the community without a jail or prison sentence, which is a waste of judicial time and resources.

Zane's research suggests that legislators who are interested in the most "effective" transfer mechanism, in terms of conserving judicial resources, should reconsider statutory exclusion provisions because they ultimately waste resources by transferring youth to adult court who should not and will not remain there.

Limiting Statutory Exclusion



ILLINOIS

In 2015, the Illinois Legislature passed HB 3718 to not only raise the age that a youth can be automatically transferred, but to also reduce the types of charges that are automatically transferred from a juvenile to adult court.⁸⁸ Under this legislation, armed robbery with a firearm and aggravated vehicular hijacking with a firearm no longer call for an automatic transfer to adult court. Further, this bill limits transfers based on presumptive assumptions; now youth may only be presumptively transferred based on their previous delinquent history or their possible gang affiliation. Judges are now required to take a child's age, lack of foresight, maturity, peer and family relationships, and social background into account when sentencing juveniles. This law also requires clerks to collect and track data relating to juveniles in the adult system. This law went into effect on January 1, 2016.



INDIANA

In Indiana, there are 9 specific offenses that statutorily exclude youth from the juvenile justice system; specifically, attempted murder, murder, kidnapping, rape, criminal deviate conduct, robbery if it is committed while armed with a deadly weapon or results in bodily injury, carjacking, felony carrying of a handgun without a license and felony possession by a child of a firearm. In 2016, the Indiana Legislature passed SB 160,⁸⁹ which provides that the adult court may waive a youth back down to juvenile court if he or she is charged with a statutorily excluded offense, but those charges are dismissed or acquitted, and the youth pleads guilty to or is convicted of any other offense that is not a statutorily excluded offense.



UTAH

On March 12, 2015, the Utah legislature passed a bill that reduced the number of charges that are statutorily excluded from juvenile court. Senate Bill 167, sponsored by Republicans Arron Osmand and V. Lowry Snow, was signed into law on March 30, 2015 and went into effect on May 12, 2015.⁹⁰ The bill effectively narrows the ways that children may be transferred to adult court by removing language giving automatic jurisdiction to the adult court when a juvenile is charged with an offense that would be considered a felony if committed by an adult. It limits the ways that a juvenile may be classified as a "serious youth offender." Juvenile courts may now only consider juveniles "serious youth offenders" for nine specific crimes and crimes involving dangerous weapons that would be considered felonies if committed by adults. Further, this law makes it harder to transfer juveniles to the adult court by changing the standard of review by which juvenile transfer hearings are evaluated.

Ending Prosecutorial Direct File



CALIFORNIA

Proposition 57⁹¹ in California made significant changes to the state's juvenile transfer laws. "Since 2003, more than 10,000 youth [in California] were prosecuted in adult court-nearly 70 percent of them were direct filed" by prosecutors.⁹² Proposition 57 not only eliminated the ability for prosecutors to direct file youth to adult criminal court, the proposition also requires that every youth have a transfer hearing in front of a juvenile court judge effectively ending all statutory exclusion from the juvenile court. It also replaces the presumption that a juvenile has to prove fitness to remain in juvenile court with a determination that the judge has to find that the youth should be transferred to the adult system. Proposition 57 passed on November 9, 2016 and went into effect that month. California joins the few states that only use judicial discretion to transfer youth to the adult system. The passage of Proposition 57 also marked the first significant transfer reform effort through a ballot initiative.



VERMONT

In 2016, the Vermont legislature passed H. 95 to end prosecutorial direct file in Vermont.⁹³ With this legislation, the Vermont legislature became the first to roll back prosecutorial power. While ending direct file was a significant step forward, H. 95 did not roll back the legislature's power to statutorily exclude youth. Under the bill, youth age 14 to 17 are statutorily excluded from juvenile court for arson causing death, assault and robbery with a dangerous weapon, assault and robbery causing bodily injury, aggravated assault, murder, manslaughter, kidnapping, unlawful restraint, maiming, sexual assault, aggravated sexual assault, and burglary into an occupied dwelling. H. 95 went into effect on January 1, 2017.

POLICY RECOMMENDATIONS FOR LEGISLATORS & POLICY ADVOCATES

Demand Transparency

- I. Use Data to Advance Legislative Reform
- II. Review and Redefine Serious Offenses

All Youth, All Crimes: Advocate for Age-Appropriate Responses to Youth Crime

- III. Ensure that Judicial Factors for Transfer are Individualized, Balanced, and Require Documentation
- IV. Raise the Floor: Advocate for the Age of Transfer to Increase in Order to Limit Eligibility for Adult Court
- V. Limit the Offenses that are Statutorily Excluded or Direct File Eligible From Juvenile Court

Sustain the Wins: Hold Stakeholders Accountable Through Training & Monitoring

- VI. Make a Plan for Monitoring Implementation of Raise the Age Laws by Pushing for the Creation of Transparent and Inclusive Implementation Committees
- VII. Require Training for Judges, Prosecutors, Juvenile Defense Attorneys, Law Enforcement and Juvenile Justice Professionals on the Impact of Transfer on Youth
- VIII. Pass and Appropriate Adequate Funding for the Juvenile Justice and Delinquency Prevention Act (JJDP)

Demand Transparency

I. USE DATA TO ADVANCE LEGISLATIVE REFORM

Successful and sustainable transfer reform is rooted in evidence-based decision making. A first step toward improving outcomes for youth who are transferred or at risk of transfer is to pass legislation requiring data tracking and public reporting of juvenile transfer. Over the past two years, several states have studied reforms, first by collecting and tracking data to determine next steps. For example, in 2015, Indiana, New Jersey and Illinois passed legislation that included data collection components focused on transfer.⁹⁴ This data is critical to advocacy efforts to limit transfer mechanisms, particularly for youth charged with serious offenses.

II. REVIEW AND REDEFINE SERIOUS OFFENSES

According to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Statistical Briefing Book, in 2014, the vast majority of juvenile cases involved property offenses, such as larceny, burglary, trespassing, drug law violations, or public order offenses.⁹⁵ Only .09 percent of juvenile cases involved criminal homicide, less than one percent involved forcible rape, approximately two percent involved robbery, and approximately three percent involved aggravated assault.⁹⁶ These

charges are considered the most serious offenses. However, it is important to review the definitions and data for the most serious offenses in each state to ensure that they are not overly inclusive.

For example, in 2016, the Arizona Court of Appeals heard *McGuire v. Lee*⁹⁷ and held that a teenager could be subject to mandatory transfer for armed robbery for committing robbery with a toy gun. The Court argued that if the legislature intended to limit the definition of armed robbery to only those robberies with a deadly or dangerous weapon, then it would have included that specific language. The Court's opinion highlights a significant issue with the definition of armed robbery in Arizona. This issue is not unique to Arizona. In states across the country, legislators need to review definitions in their criminal statutes to ensure that system resources are not overextended by the over-inclusion of acts that are not the most serious or dangerous.

It is also critical to remember that regardless of the offense, the facts regarding the neurological and adolescent development of youth remain the same. Relying on research and evidence, the U.S. Supreme Court has acknowledged that youth who commit serious offenses have the propensity for change and rehabilitation, which is why the Supreme Court has held that the death penalty and mandatory life without parole are unconstitutional when applied to children.

All Youth, All Crimes: Advocate for Age-Appropriate Responses to Youth Crime

III. ENSURE THAT JUDICIAL FACTORS FOR TRANSFER ARE INDIVIDUALIZED, BALANCED, AND REQUIRE DOCUMENTATION

In *Miller v. Alabama*, the U.S. Supreme Court outlined factors that judges must consider when deciding whether to sentence a youth to life without parole. The Court held that mandatory life without parole is unconstitutional because the Court does not have the opportunity to consider the youth's maturity, propensity for rehabilitation, family background, and other mitigating factors.

Legislators and policy advocates should consider incorporating the Miller factors into what juvenile court judges must consider when deciding whether transferring a youth to the adult system is appropriate. These factors should also be given equal weight to the seriousness of the offense. In California, the passage of S 382 included the consideration of a number of factors including: age, maturity, intellectual capacity, physical and emotional health, the effect of the minor's family on criminal sophistication, and any significant trauma on the youth.⁹⁸ In addition to the Miller factors, legislators who are concerned about racial disparities in their transfer system should consider having their courts consider racial disparity as a judicial transfer factor. Missouri added racial disparities in the certification process as a factor in 1995 when legislators noticed the deepening disparities.⁹⁹

Legislators and policy advocates should consider balancing the weight of factors that must be considered in the transfer decision. Requiring

judges to weigh more heavily the offense instead of individual factors could result in youth being transferred who could be rehabilitated in the juvenile justice system. For example, in Michigan, the Court of Appeals has grappled with the weight given to certain transfer factors. In a 2012 decision, *In re Barnes*,¹⁰⁰ the Court of Appeals noted all of the statutorily required factors that it had to consider, and emphasized that the juvenile's danger to the public and the seriousness of the offense should not be the only things considered when making the transfer decision. In 2015, the Court decided *In re Edwards*,¹⁰¹ and emphasized that the statute requires that greater weight is given to the seriousness of the offense.

A legislative opportunity presented by transfer litigation is the importance of requiring judges and prosecutors to document transfer factors considered when waiving a youth to the adult court. In *Moon v. State*,¹⁰² the Texas Court of Criminal Appeals held that a juvenile court abused its discretion when it failed to state the facts supporting the transfer of the youth to adult court. The Court went on to state that transfer should be an exception and not a rule and that the burden is on the prosecutor to show that transfer is appropriate. Similarly, in 2016, the New Jersey Supreme Court held that prosecutors had to consider the eleven factors spelled out in their transfer statute before deciding to waive a youth to adult court. It is important to note that in states without legislative protections around what factors must be documented and considered by judges or prosecutors, the judicial opinions go the opposite way. In Indiana, the Court of Appeals held in *Willhite v. State*,¹⁰³ that the juvenile court order did not need to express findings or record in anyway

the statutory factors considered. A similar decision came down in North Carolina, where the Court of Appeals of North Carolina decided that the court was not required to make findings that expressly tracked the statutory factors considered.¹⁰⁴ In these cases, requiring that judges or prosecutors consider certain factors and document those factors for review made a significant difference.

As a result, policy makers and advocates should review their transfer criteria and consider how to make them individualized, balanced, and require consideration and documentation of specific statutory factors.

IV. RAISE THE FLOOR: ADVOCATE FOR THE AGE OF TRANSFER TO INCREASE IN ORDER TO LIMIT ELIGIBILITY FOR ADULT COURT

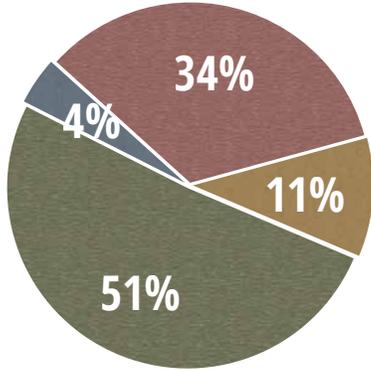
As noted in this report, a number of states are starting to “raise the floor” by raising the minimum age at which a youth can be tried and treated as an adult. The age at which a youth may be transferred is often different depending on the type of transfer mechanism. For example, in sixteen states and the District of Columbia, there is no minimum age for judicial transfer of certain offenses. In twelve additional states, the age is between 10 and 13-years-old. In 18 states, the age for judicial transfer is set at 14-years-old or older. Most states have a higher minimum age for youth who are statutorily excluded from the juvenile court. For example, Vermont’s age of judicial transfer is 12-years-old, but the age for statutory exclusion is 14-years-old. Legislators and policy advocates should review their minimum ages of transfer and consider whether it could be one way to limit transfer in their state. (SEE GRAPH F)

V. LIMIT THE OFFENSES THAT ARE STATUTORILY EXCLUDED OR DIRECT FILE ELIGIBLE FROM JUVENILE COURT

As noted in this report, a growing trend is finding ways to limit statutory exclusion and prosecutorial direct file. In states that have taken action so far, legislators pair “raising the floor” with an effort to limit the types of offenses that are eligible for transfer. Laws governing statutory exclusion are often overly broad. Very few are like Massachusetts, where only murder is required to be transferred to adult court. Many more states like Maryland and Iowa, allow for a broad range of offenses to result in youth being automatically excluded from juvenile court. Limiting or eliminating the types of offenses eligible for statutory exclusion and prosecutorial direct file are important steps toward blocking pathways to adult court. In 2017, the Georgia Legislature passed SB 160¹⁰⁵ expanding the list of offenses that are statutorily excluded from juvenile court, specifically, an assault on a peace officer with a firearm or aggravated battery of a peace officer. SB 160 was one of several bills introduced to increase the list of offenses that automatically place youth in adult court. While the final bill was not as inclusive as the introduced bill, any movement toward automatically moving more youth to adult court must be monitored and defended against.

GRAPH F: LOWEST AGE YOUTH MAY BE TRANSFERRED BY MECHANISM*

LOWER AGE OF JUDICIAL TRANSFER (46 STATES & DC)



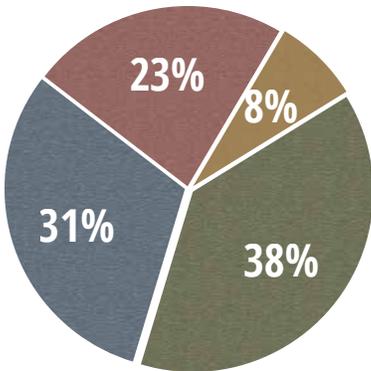
No Age Specified: AZ, ME, RI, MD, SC, TN, WV, OK, HI, AL, SD, WY, WA, OR, ID & DC

Age 10-12: VT, IN, IA, MO, CO

Age 13-14: AL, AR, NH, VA, PA, LA, NE, DE, MS, KS, NC, ND, NV, TX, UT, GA, FL, KY, OH, MI, IL, WI, MN, CA

Age 15-16: CT, NJ

LOWER AGE OF PROSECUTORIAL DISCRETION (12 STATES & DC)



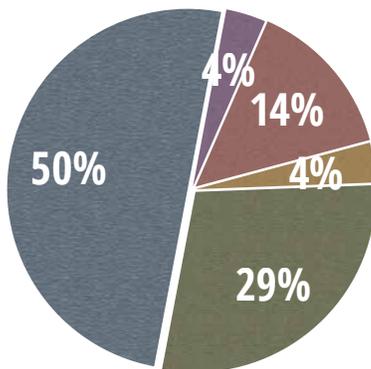
No Age Specified: GA, NE, FL

Age 12: MT

Age 13-14: WY, AZ, AR, MI, VA

Age 15-16: CO, LA, OK & DC

LOWER AGE OF STATUTORY EXCLUSION (28 STATES)



No Age Specified: DE, FL, PA, NV

Age 10: WI

Age 13-14: ID, MA, OK, MS, GA, NY, MD, VT

Age 15-16: AL, AK, AZ, IL, IN, IA, LA, MN, NM, OR, SC, SD, UT, WA

Age 17: MT

* Note these graphs indicate the lowest possible age that any youth may be transferred for any offense under each transfer mechanism.

Source: *Juvenile Justice Geography, Policy, Practice & Statistics. Transfer Provisions.*

Developed by the National Center for Juvenile Justice (NCJJ), with funding from the John D. and Catherine T. MacArthur Foundation. Retrieved from <http://www.jjgps.org/jurisdictional-boundaries#transfer-provisions?year=2015&type=1>.

Sustain the Wins: Holding Stakeholders Accountable Through Training & Monitoring

VI. MAKE A PLAN FOR MONITORING IMPLEMENTATION OF RAISE THE AGE LAWS BY PUSHING FOR THE CREATION OF TRANSPARENT AND INCLUSIVE IMPLEMENTATION COMMITTEES

Three out of the four states that have recently passed legislation to raise the age of juvenile court jurisdiction, have created committees focused on the implementation of the law. These committees are tasked with reviewing, evaluating, and recommending implementation strategies that will smooth the transition of 16- and/or 17-year-olds from the adult system to the juvenile system. The most effective committees are those that are inclusive of youth, families, and advocates, instead of solely heads of system departments and agencies. **The broad inclusion of directly impacted youth and families is critical.** In addition, these committee meetings should be open to the public and should accept written and public testimonies from the community.

VII. REQUIRE TRAINING FOR JUDGES, PROSECUTORS, JUVENILE DEFENSE ATTORNEYS, LAW ENFORCEMENT AND JUVENILE JUSTICE PROFESSIONALS ON THE IMPACT OF TRANSFER ON YOUTH

Training for system stakeholders is imperative to the full and successful implementation of juvenile justice legislation. Judges, prosecutors, juvenile defense attorneys, law enforcement and juvenile justice professionals need to know how their decisions, particularly to transfer a youth to the adult system or hold a youth in an adult facility, have harmful long-term consequences. Training on adolescent brain development, the dangers of youth in adult facilities, and effective, evidence-based alternatives to out of home placements are a few of the topics that should be integrated into the curriculum of trainings, conferences, and policy statements by statewide system associations. In many states, without robust training there is a higher risk of “justice by geography,” which is often defined by individuals getting different treatment, sentences, and therefore outcomes because of where they live and not because of the law. While discretion is generally preferable to laws that automatically exclude youth from the juvenile court, it is critical that discretion is based on a well-informed understanding of the youth, their needs, and the services available that could offer rehabilitation. Robust training of system stakeholders is key to increasing just outcomes.

VIII. PASS AND APPROPRIATE ADEQUATE FUNDING FOR THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT (JJDP A)

For the first time in 15 years, both the U.S. House and Senate have passed bills (HR 1809 and S860) to reauthorize the Juvenile Justice & Delinquency Prevention Act (JJDP A). However, the bill that passed the House is different than the bill that passed the Senate. As a result, there is still advocacy required to ensure the bills are reconciled and funding is appropriated to implement the law. In addition to providing funding in support of evidence-based juvenile

justice programming across the country, the JJDP A also requires data collection and sets a floor for the treatment of youth in the juvenile justice system. The reauthorization of the JJDP A is an opportunity to leverage reform efforts in all 50 states at once. The bills to reauthorize the JJDP A also call for youth prosecuted as adults to be removed from adult jails and lock ups, unless a judge finds placement in an adult facility necessary after a hearing. Even after a hearing and written findings, the bills require that states keep youth separated (sight and sound) from adult inmates. If reauthorized, this would be the first time that youth who are prosecuted as adults are included in the JJDP A's four core protections.

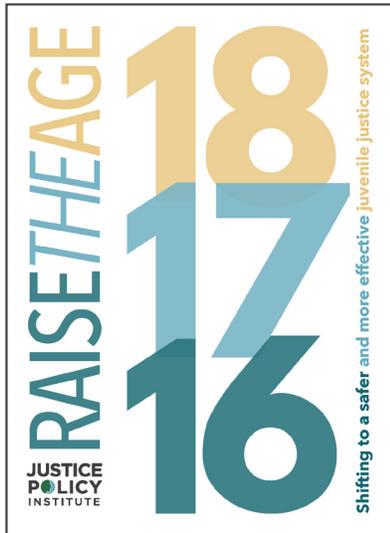
CONCLUSION

Thanks to a number of campaign coalitions, outspoken youth and family members, and tenacious legislators, many more youth were removed from the adult system from 2015 to 2017. Nineteen states and the District of Columbia changed their laws in the past two years. Raise the age momentum has had the most significant impact on the total numbers of youth in adult court, jails, and prisons, but these efforts have only blocked pathways to the adult system for some youth, primarily with low-level offenses.

Looking forward, efforts to block youth from the adult system must focus on how to best serve, support, and rehabilitate all youth, including those charged with serious offenses. Without a comprehensive strategy to serve these youth outside of the adult criminal justice system, the society will continue to pay the financial, social, and public safety costs of high unemployment and high recidivism rates when these youth return to their communities in their 20s or early 30s.

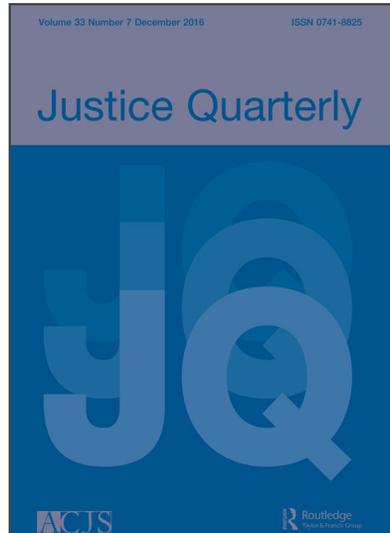
It is in the best interest of these youth, our communities, and law enforcement professionals that federal, state, and local governments fund evidence-based prevention and intervention efforts that will rehabilitate youth in their homes and communities rather than further criminalize and traumatize youth in adult jails and prisons.

FURTHER RESEARCH



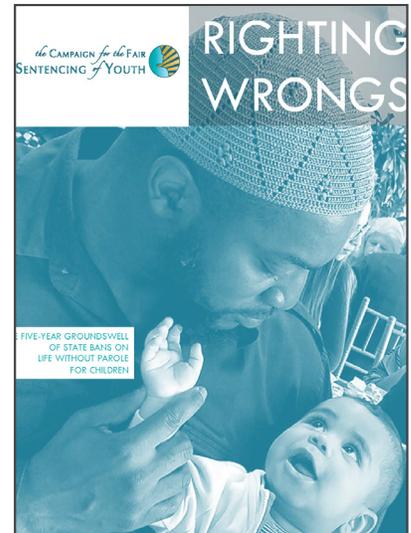
Raise The Age: Shifting to a Safer and More Effective Juvenile Justice System

2017
Justice Policy Institute



Do Criminal Court Outcomes Vary By Juvenile Transfer Mechanism? A Multi-Jurisdictional Multilevel Analysis

2017
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Righting Wrongs: The Five-Year Groundswell of State Bans on Life Without Parole for Children

2016
The Campaign for the Fair Sentencing of Youth



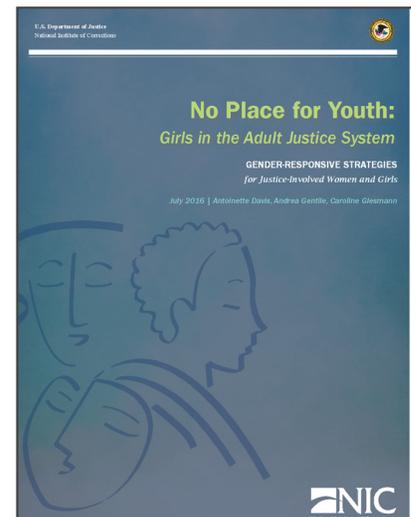
How Tough on Crime Became Tough on Kids: Prosecuting Teenage Drug Charges in Adult Court

2016
The Sentencing Project



Unjust: How the Broken Juvenile and Criminal Justice System Fails LGBTQ Youth

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No Place for Youth: Girls in the Adult Justice System

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