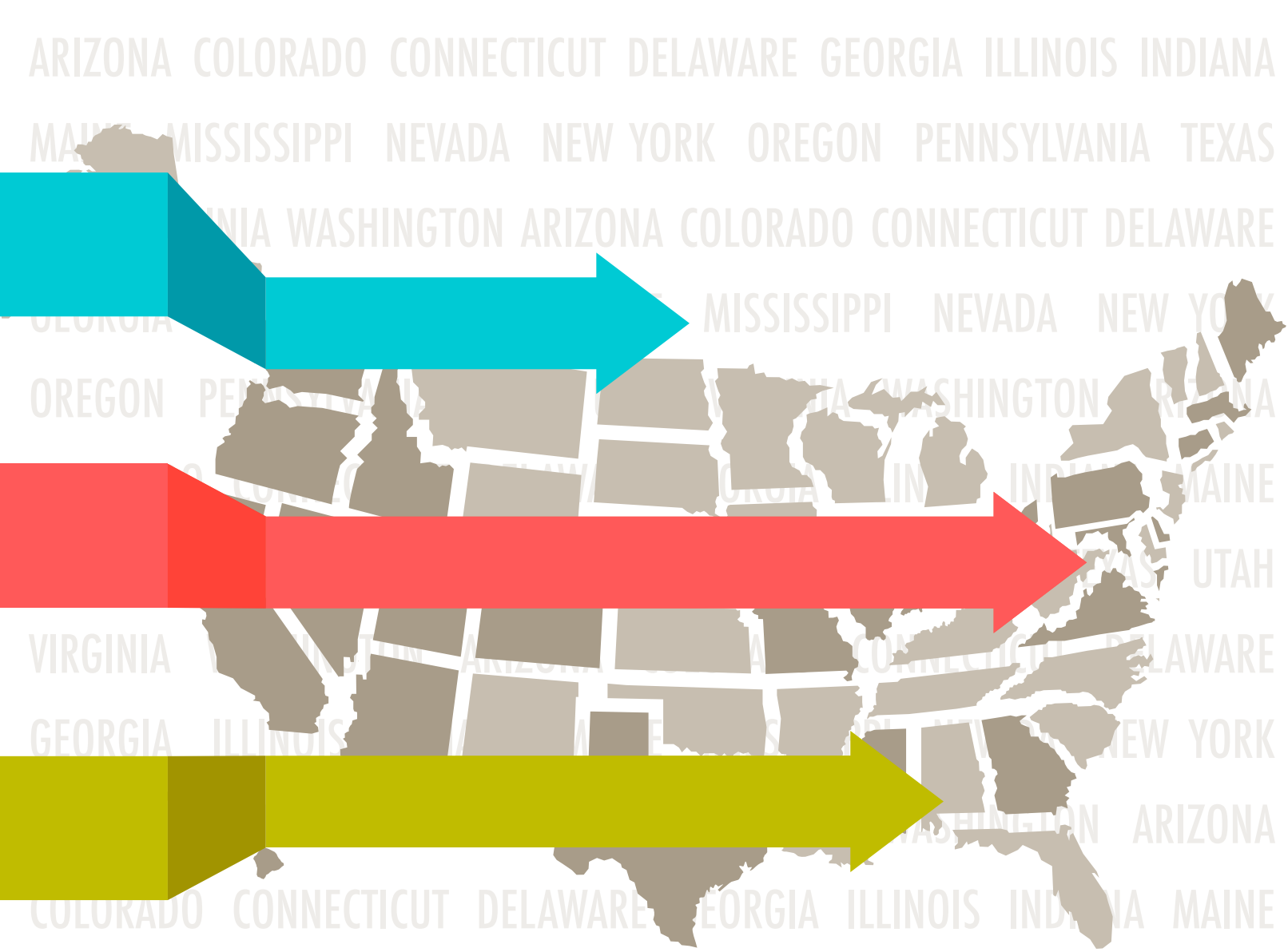
State Trends

Legislative Victories from 2011-2013



Removing Youth from the Adult Criminal Justice System

Campaign for Youth Justice

Because the Consequences Aren't Minor

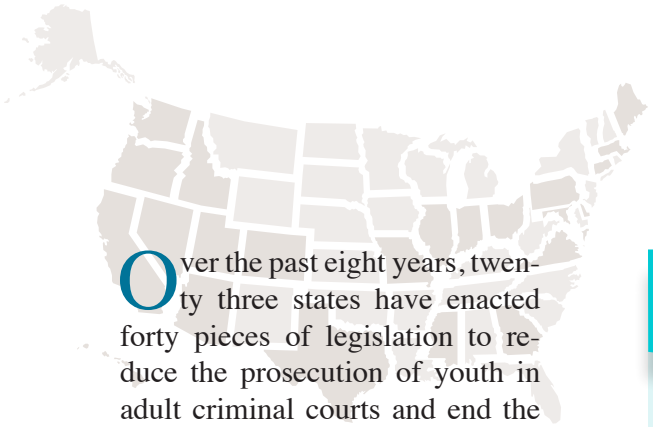
CAMPAIGN FOR

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 youth and their families across the country that are impacted by laws, policies, and practices of the criminal justice system. We also dedicate this to the advocates, Governors, State Legislators, State Officials, and Local Officials who championed these reforms.

Introduction



Over the past eight years, twenty three states have enacted forty pieces of legislation to reduce the prosecution of youth in adult criminal courts and end the placement of youth in adult jails and prisons.

This report highlights the key pieces of legislation enacted between 2011 and 2013.

In 2013 alone, several states moved toward reducing the prosecution of youth in adult court and removing children from adult jails and prisons. Illinois Governor Pat Quinn signed legislation in July 2013 that raises the age of juvenile court jurisdiction to 18, and Massachusetts enacted similar legislation. Missouri passed "Jonathan's Law" to give more youth an opportunity at rehabilitation in the juvenile justice system instead of the adult criminal justice system. Also, both the Maryland General Assembly and Nevada State Assembly created task forces to examine the issue of automatic transfer, which allows prosecutors to bypass the juvenile courts and prosecute youth directly in criminal courts. Finally, the Nevada and Indiana legislatures approved legislation to keep more kids out of adult jails and prisons.

State Trends documents the continuation of four trends in justice reform efforts across the country and in the last eight years the following progress was made:

Trend 1

Eleven states (Colorado, Idaho, Indiana, Maine, Nevada, Hawaii, Virginia, Pennsylvania, Texas, Oregon, and Ohio) have passed laws limiting states' authority to house youth in adult jails and prisons.

Trend 2

Four states (Connecticut, Illinois, Mississippi, and Massachusetts) 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

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

Trend 4

Eight states (California, Colorado, Georgia, Indiana, Texas, Missouri, Ohio, and Washington) have changed their mandatory minimum sentencing laws to take into account the developmental differences between youth and adults, allow for post-sentence review for youth facing juvenile life without parole or other sentencing reform for youth sentenced as adults.

Trend 1

States and Local Jurisdictions Remove Youth from Adult Jails and Prisons

From 2005 to 2010, three states (Maine, Virginia, and Pennsylvania), and one local jurisdiction (Multnomah County, Oregon) enacted laws to either permit or require that youth in the adult system be placed in juvenile facilities rather than adult facilities. From 2011 to 2013, eight more states (Colorado, Hawaii, Idaho, Indiana, Nevada, Texas, Ohio, and Oregon) removed youth from adult jails and prisons:

Colorado

In the wake of two suicides by youth placed in adult facilities, Colorado House Bill 1139 passed both houses of the legislature unopposed in 2012 and was enacted by the Governor.[1] HB 1139 prohibits detaining youth who are being tried as an adult in an adult jail or pretrial facility unless the district court finds that an adult jail or pretrial facility is the appropriate place of confinement for the youth after an evidentiary hearing.[2] In determining pretrial placement, the judge must consider several factors, including the youth's age, mental state, and whether or not the youth is a risk to others.[3]

Prior to the passage of HB 1139, when a youth was charged as an adult in district court, the transfer of that youth from a juvenile detention facility to an adult facility was at the sole discretion of the prosecutor.[4] The Colorado Defender Coalition detailed the dangers of placing youth in adult jails in its report "*Caging Children in Crisis*" which highlighted the egregious conditions in which youth were placed. The report found that Colorado's jails were neither built nor equipped to hold youth and lacked developmentally appropriate programs and structure, while staff had limited training to prepare them to work with incarcerated youth.[5] The Bill was sponsored by 27 representatives and 22 senators, supported by sheriffs and district attorneys, and passed unanimously at every hearing and vote.[6]

Hawaii

Hawaii's House Bill 1067 repeals the authority of the Executive Director of the Office of Youth Services to transfer youth committed to the Hawaii Youth Correctional Facility to an adult correctional facility for disciplinary or other reasons.[7] Prior to its passage, youth ages 16 or older who have allegedly disrupted the operations of the youth facility and/or injured staff at such facilities could be transferred to an adult facility with approval from the family court.[8] Supported by local advocates and Hawaii's own Department of Human Services, HB 1067 was enacted in 2011.

Idaho

Idaho's Senate Bill 1003 allows youth who have been waived to adult court to be placed in the general population of a juvenile detention center rather than an adult facility.[9] Prior to SB 1003's enactment in February 2011, youth waived to the adult system were prohibited from being housed in a juvenile detention center unless those youth were sight and sound separated from youth in the general population.[10] That meant that youth, in some cases as young as 12, were segregated from other youth in a youth facility, or resided in an adult jail.

Indiana

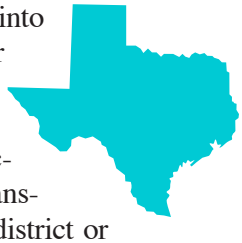
Signed into law in April 2013, House Bill 1108 allows for judges to consider alternative sentencing and placement for youth under 18 years of age convicted of crimes under Indiana's adult criminal code.[11] Now, criminal courts can consider alternative sentencing which allows a judge to send youth convicted as an adult into a state-run juvenile correctional facility for appropriate supervision and rehabilitative treatment until the youth turns 18.[12]

Nevada

Enacted on June 11, 2013, Assembly Bill 202 allows youth that have been transferred to adult court to re-

quest placement in a juvenile facility prior to sentencing.[13] Previously, youth under 18 years of age statutorily excluded from juvenile court jurisdiction were the only population able to request placement in a juvenile facility prior to sentencing.[14] Now, both statutorily excluded youth and youth certified for criminal proceedings may petition the juvenile court for temporary placement in a juvenile facility.[15] Both the Assembly and Senate unanimously passed the bill.[16]

Texas



Unanimously passed and signed into law by the governor on September 1, 2011, Texas Senate Bill 1209 allows Texas juvenile boards the option of adopting policy that specifies whether a child under 17 transferred from a juvenile court to a district or criminal court for criminal prosecution can be detained in a juvenile facility pending trial.[17] Uniquely, SB 1209 requires that transferred youth be considered a child under the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) for purposes of "sight and sound" separation from detained adults. Under JJDPA, youth charged as adults are excluded from the JJDPA and can be placed in adult jails and prisons without the protections of this federal statute, including "sight and sound" separation from adult inmates.[18]

Prior to the passage of SB 1209, upon certification of a youth for prosecution as an adult in a criminal court, the youth was treated as an adult and transferred to the adult county jail for incarceration pending the completion of his or her adult proceeding and trial.[19] Bolstered by data and research provided by the Lyndon B. Johnson School of Public Affairs in its report, "*From Time Out to Hard Time: Young Children in the Adult Criminal Justice System*," legislators found the practice of housing youth with adults inappropriate as, in most cases the requirements of sight and sound separation meant that the juvenile was housed in conditions that were not conducive to his or her rehabilitation and was harmful to the juvenile's mental health.[20]

Ohio

Known as the Collateral Sanctions Reform Bill, Senate Bill 337 creates a presumption that youth who are in the process of being transferred to adult court and youth under the juvenile court's extended jurisdiction (i.e. youth ages 18-21 who do not receive new charges, but violate their parole) remain in juvenile detention facilities instead of being placed in adult jails.[21] Enacted on June 26, 2012, the new law requires a juvenile court judge to hold a hearing to determine if transfer is warranted under a strict set of circumstances.[22] The court must now consider a variety of factors, including the youth's age, intelligence, maturity, emotional state, whether the youth would face solitary confinement as a way to keep the youth separated from adults, and whether the adult facility would adequately serve the needs of the youth.[23] If the court does allow the youth to be held in an adult facility, the youth may petition the court for a review hearing where the court would reconsider the youth's placement. Youth held in an adult facility must be sight and sound separated from adults and supervised at all times.[24]

Oregon

Enacted in 2011, House Bill 2707, the "Safe Kids, Safer Communities" bill, requires agreement between county juvenile departments and sheriffs before youth who are 16 or 17 years of age may be detained in jail or any other facility where adults are detained.[25] Through HB 2707's provisions, those youth who fall under certain sentencing scheme may have an opportunity to be placed in a more appropriate setting pretrial.[26]

Partnership for Safety and Justice led the effort to ensure that counties no longer placed youth in adult facilities pretrial. In testimony submitted to Oregon House Judiciary Committee, Partnership for Safety and Justice Associate Director Shannon Wight stated, "[w]e believe that juvenile detention centers are the appropriate place for youth to be housed while they are detained pretrial. Detention center staff is trained in juvenile specific interventions. Juvenile facilities also provide educational programming and often offer behavioral and treatment programs that help youth turn their lives around."[27]

In 2013, Governor John Kitzhaber signed into law House Bill 3183 which authorizes county sheriffs to deliver persons sentenced to the custody of the Department of Corrections directly to a youth correction facility if the person is under 20 years of age at time of sentencing and was under 18 years of age at time of offense.[28]

Trend 2

States Change the Age of Juvenile Court Jurisdiction

"Raise the Age" advocacy efforts from 2005 to 2010 led to three states (Connecticut, Illinois, and Mississippi) raising the age of juvenile court jurisdiction. Building from this momentum, both Illinois and Massachusetts raised the age of juvenile court jurisdiction to 18 in 2013:

Illinois

House Bill 2404, passed in the Illinois legislature in a vote 40 to 10 and enacted into law in July 2013, raises the age of juvenile court jurisdiction to 18.[29] This bill comes three years after Illinois raised the age of juvenile court jurisdiction for 17 year olds who committed misdemeanor offenses only.[30]

After the passage of the misdemeanor bill above, the Illinois Juvenile Justice Commission, Illinois' state advisory group under the Juvenile Justice and Delinquency Prevention Act, was statutorily created to study the impact of including *all* 17 year olds in the juvenile system – not only misdemeanants – and to provide recommendations on extending juvenile court jurisdiction to 17 year olds.[31] In 2012 the Commission published a report detailing the effects of sending 17-year-old misdemeanants through the juvenile system.[32] The report found that upon the raising of the age for juvenile court jurisdiction for 17-year-old misdemeanants, crime did not increase and public safety was not at risk. In fact, Illinois saw a decline in both crime reported and arrests of juveniles, and violent crime decreased.[33] Illinois was the first state to exclusively send misdemeanants through the juvenile system. The process of sending 17-year-old misdemeanants to juvenile court and keeping 17-year-old felons in adult court caused confusion about the boundary between minor and serious offenses. Thus, the report found that jurisdictional questions commonly arose, as there was no uniform statewide process to differentiate between ages and offenses.[34] Further, the report found that the new law was not costly, and that there was a "net fiscal benefit" in sending youth – even those who committed a felony – to juvenile court instead of adult court.[35] Additionally, the report stated that juvenile facilities were not over capacity as anticipated, and, in fact, one detention center and two state incarceration facilities closed due to low numbers of residents.[36]

Based on their findings, and through advocacy efforts by such groups as the Juvenile Justice Initiative, the Illinois Juvenile Justice Commission recommended that all 17 year olds be charged as juveniles as reasoned in HB 2404. [37]

Massachusetts

Signed into law in September 2013, House Bill 1432, "An Act to Expand Juvenile Jurisdiction of the Juvenile Court Department of the Trial Court", raises the age at which a youth will be tried as an adult from 17 years to 18 years old.[38] HB 1432 was approved by the House of Representatives on May 22, 2013 and unanimously passed the Senate in August 2013.[39]

The law is supported by an alliance of law enforcement, local representatives, and community groups including Citizens for Juvenile Justice (CFJJ), a Massachusetts based advocacy group which developed the successful *Justice for Kids Campaign*.[40] Other supporters of the reform included the Massachusetts Sheriffs' Association, the Juvenile Courts, the Department of Youth Services, the Office of the Child Advocate, the MA Public Health Association, the MA Bar Association, and the Committee for Public Counsel Services. In addition to keeping youth in a more appropriate juvenile court, supporters note that implementation of HB 1432 would assist Massachusetts in complying with the federal Prison Rape Elimination Act and help promote safety by keeping kids out of adult facilities.

Trend 3

States Change Transfer Laws to Keep More Youth in Juvenile Court

From 2005 to 2010, ten states (Arizona, Utah, Colorado, Nevada, Indiana, Virginia, Washington, Connecticut, Delaware, and Illinois) made significant changes to laws that allow for the prosecution of youth in the adult criminal justice system. Five states (Arizona, Colorado, Maryland, Nevada, and Ohio) also made remarkable advances in keeping youth out of the criminal justice system from 2011 to 2013:

Arizona

Signed into law on April 19th, 2011 by Governor Jan Brewer, Senate Bill 1191 expands a judge's ability to hold "reverse remand" hearings (reverse waiver) for youth under the age of 18 transferred to the adult justice system from specifically delineated sex offenses to a much wider array of criminal offenses.[41] Under the new law, youth may also request that a judge hold a reverse remand hearing.

Prior to SB 1191's enactment in 2011, prosecutors possessed unfettered discretion to determine whether to prosecute youth as young as 14 in the adult criminal justice system for many offenses, including nonviolent ones. Fortunately, the Arizona advocacy community, led by such groups as the Children's Action Alliance, rallied to provide the Arizona legislature with key research and recommendations, including its November 2010 publication entitled, "*Improving Public Safety by Keeping Youth Out of the Adult Criminal Justice System*."[42] The report states that

> [I]n 2009 alone, there were over 600 youth prosecuted as adults. More than one-quarter (29%) of these youth were not charged with violent offenses, but were charged with property or misdemeanor crimes. Forty percent of youth were charged automatically in adult court based on the nature of the crime they were charged with and their age; another 16% were automatically charged in adult court based on their age, offense, and offense history. More than one-third (37%) of the youth were charged at the sole discretion of the prosecutor.[43]

Armed with this data, advocates were able to garner support for sending less youth into the adult criminal justice system with the provisions of SB 1191.

Colorado

House Bill 1271 substantially amended Colorado's direct file statute. In "*Re-Directing Justice: The Consequences of Prosecuting Youth as Adults and the Need to Restore Judicial Oversight*," the Colorado Juvenile Defender Coalition made the case for reforming prosecutorial direct file.[44] House Bill 1271 narrowed direct file eligibility by age and offense, provided all youth facing trial in adult court to ask for a "reverse transfer" hearing during which a judge will decide in which system, juvenile or adult, the youth's case belongs, and eliminated mandatory minimum sentencing for you convicted of crimes of violence.[45] Youth ages 14 to 15 can now only be considered for adult court in hearings presided over by juvenile court judges.[46] Youth ages 16 to 17 that are direct filed as adults can request a reverse transfer hearing presided over by adult court judges to decide whether the case should be transferred to juvenile court.[47]

Nicole Miera played a pivotal role advocating for both HB 1271 and HB 1139 (See Trend 1) after her brother was charged, tried, and convicted as an adult at age 17. After one month in jail and being placed in solitary confinement for a second time, Nicole's brother took his own life. After his death, Nicole became a staunch advocate for juvenile justice reform. HB 1271 was championed by the Republican house majority whip, passed the Colorado legislature by a 67-33 vote, and Governor Hickenlooper signed it into law on April 20, 2012.

Maryland

Enacted in May 2013, House Bill 786 created a governor-appointed Task Force on Juvenile Court Jurisdiction to study practices, which result in charging

youth as adults by default, and will consider whether to return discretion to the juvenile courts.[48] Currently, youth 14 to 17 years of age must be charged as adults if they are accused of committing any of thirty-three enumerated offenses.[49] This decision is made upon arrest, based solely on age and charge, and well before a judge has had the opportunity to review individual circumstances of the alleged crime or the background of the involved youth.

Delegate Jill Carter, sponsor of HB 786, stated, "[W]hat we've found is that over the years we're overcharging youth as adults, and we saw [this] recently with the decision not to build the $70 million Baltimore detention center for youth. … We really don't have a need for that many bed spaces because we're overcharging."[50]

HB 786 requires that the Task Force report their findings to the Governor and General Assembly by December 1, 2013.[51] The Bill gained support by the strong efforts of local advocates including Community Law in Action (CLIA) and Public Justice Center who partnered to form The Just Kids Partnership to End the Automatic Prosecution of Youth as Adults. The bill was approved by the house in a 128-8 vote, and by the Senate in a 45-2 vote.[52]

Nevada

Assembly Bill 202, enacted in June 2013, amends the criteria for transferring youth to adult court so that only those youth who are at least 16 years old, commit a specified felony, and have previously been convicted of a felony may be transferred to adult court.[53] These reforms built on reforms made just four years ago when Nevada changed the age at which a youth could be transferred to adult court from 14 to 16 years old, and found that the Fifth Amendment right against self-incrimination applies to juvenile transfer hearings.[54]

In addition to limiting the number of youth automatically transferred to the adult criminal justice system, Nevada's Assembly Bill 202 requires the Legislative Committee on Child Welfare and Juvenile Justice to create a task force to study certain issues pertaining to juvenile justice.[55] The task force will examine best practices related to certification of youth as adults and offenses excluded from the jurisdiction of the juvenile court. The task force will also examine the ability of adult correctional facilities to provide appropriate housing and programming for youth who are convicted of crimes as adults and incarcerated in adult facilities and institutions.[56] Under the law, a report with recommendations will be provided to the 78th Session of the Nevada Legislation in 2015 in hopes of continued positive reforms. AB 202 passed unanimously in both the Assembly and Senate.

Ohio

On June 29, 2011 Ohio took a crucial step in justice reform by enacting House Bill 86 which contained some of the most sweeping criminal justice reforms in the state in over a decade. In addition to reforming sentencing schemes, adopting a uniform competency code that applies to youth, and giving juvenile courts the ability to release youth from juvenile correctional facilities earlier even if they are given formerly mandatory specifications, HB 86 creates a narrow reverse waiver mechanism. Under this law, reverse waiver applies to youth under a strict set of circumstances and allows those youth to go back to the juvenile court to receive a hearing to determine whether they could be eligible for juvenile sentencing.[57] On signing this landmark piece of legislation, Ohio Governor Kasich stated, "[t]his is a great story. Fewer kids in our institutions. More in community settings. What we know is if we can successfully apply community treatment, we have much better outcomes than when we lock people up and throw away the key. And that is what we are all searching for."[58]

Photo by Richard Ross

Trend 4

States Rethink Sentencing Laws for Youth

States are rethinking their sentencing laws for youth in the adult criminal justice system as evidenced by the reform effort made in 2005 to 2010 in four states (Colorado, Georgia, Texas, and Washington) in addition to changes made by three states (Indiana, Missouri, and Ohio) between 2011 and 2013.

While several states considered and adopted new sentencing schemes in light of *Miller v. Alabama*, several states replaced juvenile life without parole with "virtual life" sentences, such as Texas' Senate Bill 2, enacted in July 2013, which replaces juvenile life without parole with a mandatory forty years to life sentence for youth.[59] Other states (California, North Carolina, and Wyoming) took this opportunity to eliminate juvenile life without parole and replace it with more restrained sentencing options. We highlight a few of the *Miller* reforms in this section:

Indiana

In addition to placing youth in juvenile facilities rather than adult facilities (see Trend 1), Indiana's HB 1108 allows judges to reassess the youth's adult sentence at age 18 to determine whether to send the youth: 1) to prison to serve the criminal sentence; 2) to a community-based program in order for the youth to transition back into society successfully; or 3) discharge the youth.[60]

Missouri

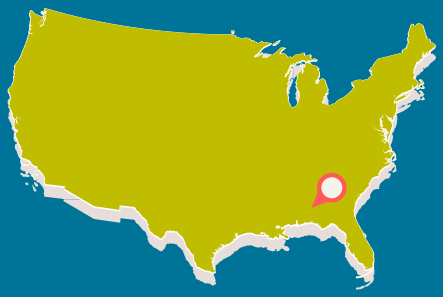
Enacted in June 2013, "Jonathan's Law" amends three sections of Missouri's law on juvenile criminal offenders.[61] Under Missouri's previous statute, a youth once transferred to adult court would never return to juvenile court for subsequent offenses, regardless of how minor the charged offense may be.[62] Under Jonathan's Law, youth will no longer face the "once an adult, always an adult" provision if found not guilty.[63] Jonathan's Law also raises the age at which a youth must be considered for Missouri's dual jurisdiction from 17 years to 17 years and 6 months.[64] The law clarifies that judges should consider dual jurisdiction and issue findings if the court believes that placement with Missouri's Division of Youth Services (DYS) is inappropriate for the youth. Dual jurisdiction allows for a youth to receive a suspended adult sentence and be placed under the care DYS to reside in a juvenile detention facility.[65] The bill, sponsored by Senator Wallingford, received overwhelming support in Missouri and passed through the House and Senate unanimously.[66]

Jonathan's Law was named after a Missouri youth, 17 year- old Jonathan McClard, who committed suicide after receiving a 30-year maximum prison sentence. Since Jonathan's death, his family founded Families and Friends Organizing Reform of Juvenile Justice (FORJ-MO), the first parent-lead juvenile justice organization in Missouri working to change state policies on children in the adult criminal justice system.[67]

Ohio

Sponsored by Representatives Lynn Slaby and Tracy Heard and supported by bipartisan representation and various stakeholders, HB 86 makes changes to Ohio's mandatory transfer law, which allowed some youth be to transferred to the adult criminal justice system after the juvenile court judge found probable cause – a very low legal standard – that the youth could be found guilty of the offenses charged. This law prohibited juvenile court judges from making individualized determinations about whether youth should remain in juvenile court and prevented youth from rehabilitation opportunities in juvenile facilities. Specifically, HB 86 allows mandatory transfer youth who are eventually convicted of a lesser offense in adult court to return to juvenile court for an amenability hearing to determine whether the youth can be rehabilitated in juvenile court. This law ensures that more youth in Ohio will only be placed in the adult criminal justice system after their individual case is reviewed by a trained juvenile court judge.[68]

Subsequently in 2012, Ohio passed Senate Bill 337 which requires courts to factor in the amount of time a youth spends in a juvenile detention facility during the juvenile or adult court process and reduce youth's sentence in either juvenile correctional facilities or adult prisons accordingly.[69]



Miller v. Alabama:

Sentencing Changes Across the Nation

In 2012, the Supreme Court of the United States issued an opinion in two cases – *Miller v. Alabama* and *Jackson v. Hobbs* – involving 14 year olds sentenced to life without possibility of parole.[76] The Supreme Court found that a mandatory sentence of life without possibility of parole is unconstitutional under the 8th Amendment's prohibition against cruel and unusual punishment when applied to those who are under the age of 18 at the time of their crimes.[77] This decision comes in the wake of several 8th Amendment decisions acknowledging the lesser culpability of youth offenders, including banning the death penalty for youth, and banning life without possibility of parole for youth who commit non-homicide offenses.[78]

In *Miller*, the Court notes that youth are prone to recklessness, immaturity, irresponsibility, more vulnerable to peer pressure, less able to avoid negative environments, and more amenable to rehabilitation than adults and therefore punishment should be "graduated and proportioned" not only to the offense but also to the offender.[79] The Court punctuates these concerns with what it calls a "foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."[80]

California

California SB 9, introduced by Senator Yee and enacted into law on September 30, 2012, allows for most offenders under the age of 18 at the time of their offense, and sentenced to juvenile life without parole (JLWOP), to petition the court to hold a new sentencing hearing after serving fifteen years of the original sentence.[70] Advocates around the state highlighted the concerns with JLWOP sentencing in California as expressed in a 2008 Human Rights Watch publication which found, "[e]ighty-five percent of youth sentenced to life without parole are people of color, with 75 percent of all cases in California being African American or Hispanic youth. African American youth are sentenced to life without parole at a rate that is 18.3 times the rate for whites. Hispanic youth in California are sentenced to life without parole at a rate that is five times the rate of white youth in the state."[71]

Building on that success, in 2013 the California Fair Sentencing for Youth Coalition drafted a bill to address the cases of all other youth tried as adults and sentenced to lengthy adult prison terms. Signed into law in September 2013, SB 260 creates a new type of parole process for people who were under the age of 18 at the time of their crime. The "Youth Offender Parole Hearing" requires the board of parole hearings to review the sentences of any youth sentenced to more than 15 years in prison, and to consider suitability for parole giving "great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity" of the individual, and altering other features of the typical parole process so that these individuals have a "meaningful opportunity for release."[72] Prior to SB 260, there was no process for authorities to review whether someone who was under 18 at the time of a crime had matured and earned an earlier chance at parole. Human Rights Watch estimates approximately 5,000 people currently in state prison will benefit from the new law.

North Carolina

In July 2012, the North Carolina Governor signed into law Senate Bill 653 eliminating juvenile life without parole for all youth convicted of second degree murder, and requiring a person convicted of first degree murder, and under the age of 18 at the time of the crime, to serve twenty five years in prison before becoming parole eligible.[73] Prior to the enactment of SB 653, North Carolina imposed mandatory life without parole for youth convicted of first and second-degree murder.

Wyoming

Wyoming, which enacted House Bill 23 in February 2013 requires that youth sentenced to life for first-degree murder be eligible for parole after serving twenty-five years in prison.[74] The Governor also has the option of commuting the youth's sentence to a term of years. Wyoming's HB 23 does not apply retroactively.[75]

Lessons Learned

Working with allies advocating for justice reforms in the states revealed many lessons from the successful efforts described throughout this report. Here are just a few:

First, in state reform efforts, local research and analysis has played a significant role in informing policymakers. In a number of these jurisdictions, state experts researched and wrote reports that evaluated state law and available data, and interviewed directly affected youth and their families. These reports provided insights on the issue, identified problems, and created a platform for reform for state policymakers.

Second, research on recidivism showing that youth are more likely to re-offend when prosecuted in adult criminal court has proved invaluable.[81] Policymakers are most interested in the impact on public safety when they consider policy reforms on juvenile justice.

Youth and families' voices and perspectives are vital to informing and educating policymakers on the negative impacts of prosecuting youth in adult criminal court.

Third, a number of these states created study commissions comprised of key stakeholders, dedicated resources and staff, and a research and analysis capacity to examine the issue. These study commissions obtain buy-in from key stakeholders, are a vehicle to create and advance policy recommendations, as well as find agreeable solutions and monitor implementation of reforms.

Fourth, the public strongly supports these kinds of reforms and view this issue as one of fairness and humane treatment of children. In 2011, public opinion polling conducted by GBA Strategies, based in Washington, D.C., showed that the public strongly supports rehabilitation and treatment of youth over incarceration and automatic prosecution in adult criminal court; favors judicial decision-making rather than automatic transfer; and supports reducing racial and ethnic disparities in the justice system.[82] Public opinion polling indicates that voting citizens largely reject placing youth in adult jails and prisons.

Finally, involving directly affected youth and their families in these efforts is essential. Youth and families' voices and perspectives are vital to informing and educating policymakers on the negative impacts of prosecuting youth in adult criminal court.

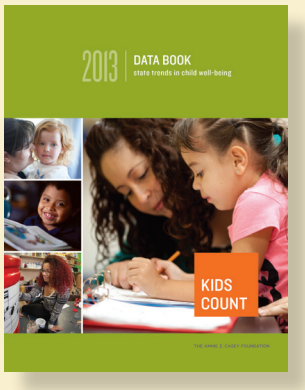
Opportunities for Further Reform

Through strong research and advocacy efforts, states have made meaningful progress in the last few years towards ensuring that all youth are afforded the chance to receive appropriate punishments and opportunities to strive, but much more is needed. In the last few years, several significant pieces of data and information have further underlined how critical reform is today.

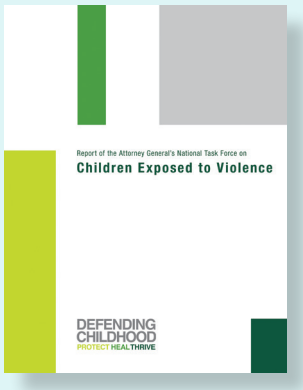
Lowered youth incarceration rates, decreased youth arrests, the Attorney General's Task Force on Children Exposed to Violence, the landmark *Miller v. Alabama* decision, impending Prison Rape Elimination Act (PREA) implementation, and communities simply wanting more accountability and options from their criminal and juvenile justice systems create opportunities for further reform across the country.

Youth Incarceration Drop

A new KIDS COUNT data snapshot released by The Annie E. Casey Foundation in 2013, "*Reducing Youth Incarceration in the United States*," reports that the number of young people in juvenile correctional facilities on a single day fell to 70,792 in 2010, from a high of 107,637 in 1995. This downward trend, documented in data from the U.S. Census Bureau's *Census of Juveniles in Residential Placement*, has accelerated in recent years.[83] KIDS COUNT indicates most states and the District of Columbia reflected the national decline and several even halved their youth confinement rates.[84] As space in juvenile facilities becomes available, opportunities arise to remove children who are currently residing in adult jails and prisons and place them into more appropriate juvenile detention and corrections facilities.

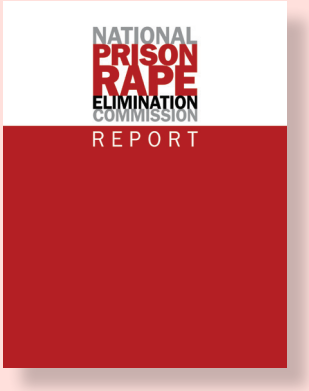


The Attorney General's National Task Force on Children Exposed to Violence



In December 2012, the Attorney General's National Task Force on Children Exposed to Violence (Task Force) released its recommendations after an exhaustive year-long examination on best practices and approaches to reducing children's exposure to violence.[85] Through extensive public hearings, the Task Force heard from directly affected youth and their families about the violence children are exposed to in the justice system. Among the extensive set of recommendations, the task force report included a chapter on reducing exposure of children to violence in the justice system with a recommendation to abandon policies that prosecute, incarcerate or sentence youth under 18 in adult criminal court.

According to the Task Force's report, "We should stop treating juvenile offenders as if they were adults, prosecuting them as adults in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore their capacity to grow."[86] The Task Force's recommendation is consistent with the research across the nation undertaken by the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the federal Centers for Disease Control and Prevention highlighting the ineffectiveness of juvenile transfer laws at providing a deterrent for juvenile delinquency and decreasing recidivism.[87] States and policymakers should rely on such data and research when determining how to appropriately address kids in the adult criminal justice system.



The Prison Rape Elimination Act (PREA), unanimously passed by Congress in 2003, is a federal statute focused on sexual assault and victimization in juvenile facilities, prisons, jail, lockups, and other detention facilities.[88] The statute aims to prevent, detect, and respond to sexual abuse in detention facilities and the regulations state, "as a matter of policy, the Department [of Justice] supports strong limitations on the confinement of adults with juveniles."[89]

The National Prison Rape Elimination Commission, created by PREA, found that "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse."[90] Thus, the Youthful Inmate Standard of PREA exists to protect youth in adult facilities. Specifically, the PREA Youthful Inmate Standard requires that:[91]

- No youth under 18 can be placed in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters.
- Outside of housing units, agencies must either maintain "sight and sound separation"– *i.e.*, preventing adult inmates from seeing or communicating with youth – or provide direct staff supervision when the two are together.
- Agencies must avoid placing youth in isolation and absent exigent circumstances, must afford youth daily large-muscle exercise and any legally required special education services, and must provide them access to other programs and work opportunities to the extent possible.

Stakeholders from across the country have weighed in to support the full implementation of PREA, including removing children from adult jails and prisons. Many of the major national stakeholder associations that deal with juvenile or adult detention or corrections, including the American Correctional Association, Council of Juvenile Correctional Administrators, National Juvenile Detention Association, and the American Jail Association have policies that strongly back this recommendation.[92]

Governors must begin to certify compliance with PREA in 2013 or risk losing a percentage of funding allocated for justice programs in their state. PREA requires that children should be protected from dangers of adult jails and prisons, therefore states should use this as an opportunity to make a change in how it houses children in the criminal justice system, and completely remove youth from adult jails and prisons.

Miller v. Alabama

States must now comport with *Miller* in addressing sentencing options for youth under the age of 18. Yet, most states still impose lengthy sentences on youth that impose "virtual life" and none have removed youth from the adult criminal justice system. Thus, as advocates move forward with keeping more kids out of the adult criminal justice system, states' adoption of appropriate sentencing remedies in light of *Miller* should also reflect a shift in attitude towards keeping kids from automatic prosecution in adult court and out of adult jails and prisons.

Conclusion

State Trends documents the continued momentum around reform efforts for youth in the adult criminal justice system. Each law highlighted contributes to the reduction of the estimated 250,000 youth under the age of 18 who are prosecuted, sentenced, and incarcerated in the adult criminal justice system each year and the nearly 100,000 youth who are placed in adult jails and prisons each year. With 23 states enacting 40 pieces of legislation in the last eight years, it is clear that policymakers, advocates, youth, and families are coming together to recognize that kids are different and require different considerations when contemplating punishment. Yet, while many states took great strides in improving its justice system, there is still work to be done and many opportunities to effectuate change in the coming years.

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Author: Carmen E. Daugherty, Policy Director, Campaign for Youth Justice

Research and Writing Assistant: Brighton Haslett

Campaign for Youth Justice staff: Angella Bellota, Roger Ghatt, Liz Ryan, Jessica Sandoval, Aprill Turner

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1220 L Street, NW, Suite 605
Washington, DC 20005
Phone: 202-558-3580
Fax: 202- 386-9807
info@cfyj.org
www.cfyj.org