

# YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM\*

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\* The author has previously published a substantially similar version of this Article. See LIZ RYAN, CAMPAIGN FOR YOUTH JUSTICE, YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM (2012), available at [http://www.campaignforyouthjustice.org/documents/FR\\_YACJS\\_2012.pdf](http://www.campaignforyouthjustice.org/documents/FR_YACJS_2012.pdf).

† Liz Ryan founded the Campaign for Youth Justice (CFYJ), an organization that is dedicated to ending the practice of trying, sentencing, and incarcerating children in the adult criminal justice system.

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## INTRODUCTION

During the past eight years, approximately 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.<sup>1</sup> These reforms have been undertaken in all regions of the country, led by republican and democratic lawmakers, and signed into law by a bipartisan group of governors.

First, several states have raised the age of juvenile court jurisdiction to age eighteen, including Connecticut, Illinois, Mississippi, and Massachusetts.<sup>2</sup>

Second, around a dozen states have changed their transfer/waiver laws to keep more youth in juvenile court. These efforts have focused on providing judges with more discretion to consider whether a youth's case should be considered in adult criminal court and have dealt with felony cases as well as younger offenders. States enacting these reforms include Arizona, Colorado, Connecticut, Delaware, Illinois, Indiana, Nevada, Ohio, Utah, Virginia, and Washington.<sup>3</sup>

Third, approximately ten states have changed their laws to remove youth under the age of eighteen from pretrial placement in adult jails and/or placement in adult prisons. These states include Colorado, Indiana, Idaho, Maine, Minnesota, Ohio, Oregon, Pennsylvania, Texas, and Virginia.<sup>4</sup>

Finally, a handful of states have changed their sentencing laws as they apply to youth. These include Colorado, Georgia, Texas, and Washington.<sup>5</sup>

This Article provides a snapshot of the status of youth in the adult criminal justice system and why state policymakers are advancing policy reforms to remove youth from adult criminal courts.

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<sup>1</sup> See generally CARMEN E. DAUGHERTY, CAMPAIGN FOR YOUTH JUSTICE, STATE TRENDS LEGISLATIVE VICTORIES FROM 2011–2013: REMOVING YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM (2013), available at <http://www.campaignforyouthjustice.org/documents/ST2013.pdf>.

<sup>2</sup> See *id.* at 1, 4.

<sup>3</sup> See *id.* at 1, 5–6.

<sup>4</sup> See *id.* at 1–3.

<sup>5</sup> See *id.* at 1, 7–8.

## I. WHAT THE RESEARCH SAYS

A. *The Overwhelming Majority of Youth Who Enter the Adult Court Are Not There for Serious, Violent Crimes*

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.<sup>6</sup>

*U.S. Attorney General's Task Force Report  
on Children Exposed to Violence*

Estimates range on the number of youth prosecuted in adult court nationally. Some researchers believe that as many as 200,000 youth are prosecuted every year.<sup>7</sup> Despite the fact that many of the state laws were intended to prosecute the most serious offenders, most youth who are tried in adult courts are there *no matter how minor their offense*.<sup>8</sup>

In states such as North Carolina and New York, youth aged sixteen and seventeen can automatically be tried as adults no matter what the offense. In eight other states (Georgia, Louisiana, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin), seventeen-year-olds are automatically prosecuted as adults.<sup>9</sup>

In most states, youth who are processed in adult court, if convicted, are placed on adult probation. Approximately 80% of youth convicted as adults will be released from prison before their twenty-first birthday, and 95% will be released before their twenty-fifth birthday.<sup>10</sup>

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<sup>6</sup> U.S. DEP'T OF JUSTICE, REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 189 (2012), available at <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

<sup>7</sup> See Jennifer L. Woolard et al., *Juveniles Within Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 INT'L J. FORENSIC MENTAL HEALTH 1, 4 (2005).

<sup>8</sup> NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, STATE TRENDS: LEGISLATIVE VICTORIES FROM 2005 TO 2010: REMOVING YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM 14 (2011), available at [http://www.campaignforyouthjustice.org/documents/CFYJ\\_State\\_Trends\\_Report.pdf](http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf).

<sup>9</sup> See RICHARD E. REDDING, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUVENILE TRANSFER LAWS: AN EFFECTIVE DETERRENT TO DELINQUENCY? (2008), available at <http://www.ncjrs.gov/pdffiles1/ojdp/220595.pdf>.

<sup>10</sup> See *id.* at 1-2.

B. *Youth Who Are Charged As Adults, Can Be Held Pre-Trial in Adult Jails Where They Are at Risk of Assault, Abuse, and Death*

[B]arbaric.<sup>11</sup>

*Judge Wendell P. Gardner Jr., D.C. Superior Court*

Currently, most states permit or require that youth charged as adults be placed pre-trial in an adult jail.<sup>12</sup> On any given day, nearly 7500 young people are locked up in adult jails.<sup>13</sup>

This policy places thousands of young people at risk, as it is extremely difficult to keep youth safe in adult jails. Jail officials are in a Catch-22 when it comes to young people in their custody. On the one hand, if jail officials do not separate youth from adults, youth will have regular contact with adults. This situation can result in serious physical and emotional harm to youth. On the other hand, when officials do separate youth from adults, they are often placed in isolation for long periods of time. This equates to solitary confinement and can lead to depression, exacerbate already existing mental health issues, and put youth at risk of suicide. Essentially, this is a no-win situation for jail officials. In fact, the American Jail Association resolved that it would “be opposed in concept to housing juveniles in any jail unless that facility is specially designed for juvenile detention and staffed with specially trained personnel.”<sup>14</sup>

Recent national research also shows that youth may await trial in adult jails before being sent back to juvenile court for prosecution before adult court judges.<sup>15</sup> In some cases, these youth are not even convicted.<sup>16</sup> Instead of adult jails, states and counties could place youth, if they pose a risk to public safety, into juvenile detention facilities where they are more likely to receive developmentally appropriate services, educational programming, and support by trained staff.

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<sup>11</sup> Quoted in Henri E. Cauvin, *Girl's Jailing Likely Breaks Federal Law, Judge Says; 16-Year-Old Murder Suspect Being Held in Women's Wing*, WASH. POST, Sept. 16, 2006, at B04 (stating so in reference to the practice of placing “a 16-year-old girl in an adult wing of the D.C. jail”).

<sup>12</sup> PATRICK GRIFFIN ET AL., U.S. DEP'T OF JUSTICE, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING 22 (2011), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf>.

<sup>13</sup> See ARYA, *supra* note 8, at 16–17.

<sup>14</sup> American Jail Association Resolution: Juveniles in Jail (May 22, 1990), reprinted in AM. JAIL ASS'N, RESOLUTIONS OF THE AMERICAN JAIL ASSOCIATION 23 (2012), available at [http://members.aja.org/assets/cms/files/Membership/Resolutions%2004\\_2012.pdf](http://members.aja.org/assets/cms/files/Membership/Resolutions%2004_2012.pdf).

<sup>15</sup> See JOLANTA JUSZKIEWICZ, BLDG. BLOCKS FOR YOUTH, YOUTH CRIME/ADULT TIME: IS JUSTICE SERVED? 9 (2000).

<sup>16</sup> See *id.* at 10.

C. *Youth Sentenced as Adults Can Be Placed in Adult Prisons*

Once you place a juvenile in prison, the only guarantee is that they will be broken . . . .<sup>17</sup>

*Dwayne Betts, Youth Advocate*

On any given day, approximately 2700 young people are locked up in adult state prisons.<sup>18</sup> Youth in adult prisons are at risk of abuse, sexual assault, suicide, and death.

Youth who are held in adult facilities are at the greatest risk of sexual victimization. According to research by the Bureau of Justice Statistics, youth under the age of eighteen represented 21% of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005, and 13% in 2006—surprisingly high considering that only 1% of jail inmates are juveniles.<sup>19</sup> The National Prison Rape Elimination Commission found that “[m]ore than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”<sup>20</sup> Yet, correctional administrators—at both juvenile and adult facilities—do not support efforts to place youth in adult prisons.

The National Institute of Corrections (NIC) reported, “[t]he leading professional associations in the field of corrections have all encouraged legislators, executives and their members to review policies and statutes so that, young offenders can received [sic] the critical service and supervision they need, in an appropriate correctional setting.”<sup>21</sup>

In a policy statement, the American Correctional Association stated that:

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<sup>17</sup> Dwayne Betts, *Juvenile Jails: A Monument to Failure*, OPEN SOC’Y FOUND. (Apr. 27, 2012), <http://www.opensocietyfoundations.org/voices/juvenile-jails-monument-failure>. Dwayne Betts is a Presidential Appointee of the Federal Coordinating Council on Juvenile Justice.

<sup>18</sup> See HEATHER C. WEST, U.S. DEP’T OF JUSTICE, PRISON INMATES AT MIDYEAR 2009—STATISTICAL TABLES 24 (2010), *available at* <http://www.bjs.gov/content/pub/pdf/pim09st.pdf>.

<sup>19</sup> See ALLEN J. BECK, PAIGE M. HARRISON & DEVON B. ADAMS, U.S. DEP’T OF JUSTICE, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2006, at 35 (Carolyn Williams ed., 2007), *available at* <http://www.bjs.gov/content/pub/pdf/svrca06.pdf>; ALLEN J. BECK & PAIGE M. HARRISON, U.S. DEP’T OF JUSTICE, SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2005, at 6 (Tina Dorsey et al. eds., 2006), *available at* <http://www.bjs.gov/content/pub/pdf/svrca05.pdf>.

<sup>20</sup> NAT’L PRISON RAPE ELIMINATION COMM’N, NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 18 (2009), *available at* <http://www.ncjrs.gov/pdffiles1/226680.pdf>.

<sup>21</sup> JASON ZIEDENBERG, U.S. DEP’T OF JUSTICE, NAT’L INST. OF CORR., YOU’RE AN ADULT NOW: YOUTH IN ADULT CRIMINAL JUSTICE SYSTEMS 29 (2011), *available at* <http://static.nicic.gov/Library/025555.pdf>.

[It] supports separate housing and special programming for youths under the age of majority who are transferred or sentenced to adult criminal jurisdiction. . . . [T]hose jurisdictions that continue to house youths under the age of majority in adult correctional/detention systems, [should] hous[e] them in specialized facilities or units that have . . . no sight or sound contact with adult offenders in living, program, dining or other common areas of the facility . . .<sup>22</sup>

D. *State Laws Contradict Core Federal Protections Designed to Prohibit Confinement of Youth in Adult Jails and Prisons*

State laws that allow for youth under age 18 to be confined in the adult criminal justice system seem to contradict the intent of the federal Juvenile Justice and Delinquency Prevention Act, which, for more than 30 years, has required sight and sound separation when youth are housed in adult lock-ups, as well as speedy removal of youth whenever they are placed in adult jails.<sup>23</sup>

*Nancy Gannon Hornberger,  
Former Executive Director, Coalition for Juvenile Justice*

Federal protections approved by the Congress in 1974 and 1980 to protect youth from the dangers of adult jails and lockups do not apply to youth who are prosecuted as adults. The vast majority of states have statutes that require or allow youth prosecuted as adults to be placed in adult jails without federal protections.<sup>24</sup>

The federal protections, under the Juvenile Justice and Delinquency Prevention Act (JJDP), specifically cover youth under the jurisdiction of the juvenile court.<sup>25</sup> The protections will still apply to youth who are in juvenile court and have not yet been “transferred” or “waived” to adult court by a juvenile court judge but do not apply to

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<sup>22</sup> *Public Correctional Policy on Youthful Offenders Transferred to Adult Criminal Jurisdiction (January 14, 2009)*, in AM. CORRECTIONAL ASS'N, PUBLIC CORRECTIONAL POLICIES 71, 71–72 (2012), available at [http://www.aca.org/government/policyresolution/PDFs/Public\\_Correctional\\_Policies.pdf](http://www.aca.org/government/policyresolution/PDFs/Public_Correctional_Policies.pdf).

<sup>23</sup> Quoted in LIZ RYAN & JASON ZIEDENBERG, CAMPAIGN FOR YOUTH JUSTICE, THE CONSEQUENCES AREN'T MINOR: THE IMPACT OF TRYING YOUTH AS ADULTS AND STRATEGIES FOR REFORM 8 (2007), available at [http://www.justicepolicy.org/images/upload/07-03\\_C4YJConsequences\\_JJ.pdf](http://www.justicepolicy.org/images/upload/07-03_C4YJConsequences_JJ.pdf).

<sup>24</sup> See NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 26–37 (2007), available at [http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing\\_Juveniles\\_Report\\_2007-11-15.pdf](http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf).

<sup>25</sup> See Juvenile Justice and Delinquency Prevention Act of 1974 § 502, 18 U.S.C. § 5032 (2012).

youth who are automatically prosecuted as adults through other mechanisms.<sup>26</sup>

More recently, some limited federal protections have been put into place through the Prison Rape Elimination Act (PREA) of 2003 regulations. Under the PREA regulations, the youthful inmate standard requires that youth be separated from adults in adult jails and prisons.<sup>27</sup> The PREA Resource Center has issued guidance to jurisdictions, stating that “PREA standards can be met by housing youth convicted as adults in juvenile facilities” and that “[k]eeping youthful inmates out of adult facilities makes operational sense.”<sup>28</sup>

E. *The Decision to Send Youth to Adult Court Is Most Often Not Made by the One Person Best Considered to Analyze the Merits of the Youth’s Case—the Juvenile Court Judge*

I know if James would have went before the judge the judge could have looked at him individually and he would have been able to assess the risk factors of my brother. There is no doubt in my mind that the judge would have kept him at the juvenile facility, and he would still be here today doing his public service work just like he wanted to do.<sup>29</sup>

*Nicole Miera, Youth Advocate*

Since the founding of the first juvenile court in Chicago in 1899, the most traditional way for a youth to enter the adult court was to be found unfit for rehabilitation by a juvenile court judge, who had the discretion to remove a child from consideration in the juvenile court.<sup>30</sup> Judicial transfer was intended to be used in limited circumstances, only after a careful deliberation process that included a hearing.

With the passage of these state laws, this process is used less than other mechanisms so that, in most instances now, juvenile court judges do not make the decision about whether a youth should be prosecuted

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<sup>26</sup> See S. REP. NO. 111-280, at 3, 5, 11 (2010).

<sup>27</sup> See 28 C.F.R. § 115.14 (2013); see also *Youthful Inmate Implementation*, NAT’L PREA RES. CTR., <http://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/youthful-inmate-implementation> (last visited Jan. 6, 2014) (using phrase “youthful inmate standard”).

<sup>28</sup> *Youthful Inmate Implementation*, *supra* note 27 (emphasis omitted).

<sup>29</sup> *Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (written statement of Nicole Miera testifying to her brother Jimmy Stewart’s death in jail in Colorado), available at [http://www.campaignforyouthjustice.org/documents/Testimony\\_Miera\\_062012.pdf](http://www.campaignforyouthjustice.org/documents/Testimony_Miera_062012.pdf).

<sup>30</sup> See JILL WOLFSON, CHILDHOOD ON TRIAL: THE FAILURE OF TRYING & SENTENCING YOUTH IN ADULT CRIMINAL COURT 13–14 (2005).

in adult court.<sup>31</sup> Despite the fact that a juvenile court judge is in the best position to investigate the facts and make an informed decision, state laws have removed some authority and discretion from these judges and, instead, require placement of youth in adult court on the motion of a prosecutor or automatically by age and offense or by age.<sup>32</sup>

These statutes are based on age and/or category of offense and therefore require that youth are automatically processed in adult criminal court. Essentially, juvenile court judges have no role in these processes.<sup>33</sup>

F. *Youth of Color Are Disproportionately Affected by These Policies*

Our job, in working to achieve fairness and equity, is to sound the alarm about the unjust criminal justice system and demand that our leaders and those in power act now to halt this destructive, unfair treatment of our brothers and sisters, especially of our children.<sup>34</sup>

*James Bell, Executive Director, Haywood Burns Institute*

Youth of color are disproportionately impacted. For example, African-American youth overwhelmingly receive harsher treatment than white youth in the juvenile justice system at most stages of case processing:

African-American youth make up 30% of those arrested while they only represent 17% of the overall youth population. At the other extreme end of the system, African-American youth are 62% of the youth prosecuted in the adult criminal system, and are nine times more likely than white youth to receive an adult prison sentence.<sup>35</sup>

Compared to white youth, “Latino youth are: 4% more likely . . . to be petitioned; 16% more likely . . . to be adjudicated delinquent; 28% more likely . . . to be detained; [and] 41% more likely . . . to receive an out-of-home placement . . .”<sup>36</sup> The most severe disparities occur for Latino youth tried in the adult system. Latino children are “43% more

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<sup>31</sup> See GRIFFIN, *supra* note 12, at 2, 8–9.

<sup>32</sup> See *id.*

<sup>33</sup> See *id.*

<sup>34</sup> James Bell, *Criminal Justice: Correcting the System of Unequal Justice*, in THE COVENANT WITH BLACK AMERICA 47, 52 (2006).

<sup>35</sup> Hilary O. Shelton, *Foreword to NEELUM ARYA & IAN AUGARTEN, CAMPAIGN FOR YOUTH JUSTICE, CRITICAL CONDITION: AFRICAN-AMERICAN YOUTH IN THE JUSTICE SYSTEM 1* (2008) (footnote omitted).

<sup>36</sup> NEELUM ARYA ET AL., *AMERICA’S INVISIBLE CHILDREN: LATINO YOUTH AND THE FAILURE OF JUSTICE 6* (2009).

likely than white youth to be waived to the adult system; and 40% more likely to be admitted to adult prison.”<sup>37</sup>

Native youth are more likely to receive the two most severe punishments in juvenile justice systems: “out-of-home placement” (i.e., incarceration in a state correctional facility) and “waivers to the adult system.”<sup>38</sup> Compared to white youth, Native youth are 1.5 times more likely to receive out-of-home placement and are 1.5 times more likely to be waived to the adult criminal system.<sup>39</sup> “Nationwide, the average rate of new commitments to adult state prison for Native youth is 1.84 times that of white youth.”<sup>40</sup>

G. *The Consequences for Prosecuting Youth in Adult Court “Aren’t Minor”*

While incarcerated, you have nothing but time to sit back and reflect. . . . As you see, it cost me family members, relationships and time that I could’ve been using to do something productive. . . . I leave everyone with the challenge of exposing younger generations to a better way of living, with opportunities and dreams, rather than exposing children to prison.<sup>41</sup>

*Michael Kemp, Youth Advocate*

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

When youth leave jail or prison, are on probation, or have completed their adult sentence, they carry the stigma of an adult criminal conviction.<sup>42</sup> They may have difficulty finding a job or getting a college degree to help them turn their lives around.<sup>43</sup> Access to a driver’s license may be severely restricted, and, in some states, youth may never

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<sup>37</sup> *Id.*

<sup>38</sup> I NEELUM ARYA & ADDIE C. ROLNICK, A TANGLED WEB OF JUSTICE: AMERICAN INDIAN AND ALASKA NATIVE YOUTH IN FEDERAL, STATE, AND TRIBAL JUSTICE SYSTEMS 8 (2008).

<sup>39</sup> *See id.*

<sup>40</sup> *Id.*

<sup>41</sup> Michael Kemp, *Ex-Offender Reflects on Double Life He Left Behind*, WASH. POST, Mar. 9, 2012, at B02 (reflecting on his juvenile prison experience).

<sup>42</sup> *See generally* LEGAL ACTION CTR., AFTER PRISON: ROADBLOCKS TO REENTRY: A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS (2004), available at [http://www.lac.org/roadblocks-to-reentry/upload/lacreport/LAC\\_PrintReport.pdf](http://www.lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf).

<sup>43</sup> *See id.* at 10, 18.

be able to vote or hold public office.<sup>44</sup> The consequences of an adult conviction are not minor; they are serious, long term, life threatening, and in some cases, deadly.

H. *The Research Shows that These Laws Do Not Promote Public Safety*

The Network set out to find scientific evidence of whether juveniles were different enough from adults to merit different treatment by the courts. What we found was that young offenders are significantly unlike adults in ways that matter a great deal for effective treatment, appropriate punishment, and delinquency prevention. Society needs a system that understands kids' capacities and limits, and that punishes them in developmentally appropriate ways.<sup>45</sup>

*Dr. Lawrence Steinberg,  
Director, MacArthur Foundation Research Network*

The research is unequivocal: Every study conducted on this issue shows that sending youth to the adult criminal justice system increases the likelihood that they will reoffend.

For example, a Centers for Disease Control and Prevention (CDC) task force report recommended against transfer policies.<sup>46</sup> The report found that transferring youth to the adult criminal system increases violence, causes harm to juveniles, and threatens public safety.<sup>47</sup> The CDC's review systematically examined all published studies on transfer policies that were in a published journal or had been conducted by a government agency. The task force checked to make sure each study compared the same kind of youth charged with comparable offenses, recognizing that youth who are transferred to the adult court may be charged with more serious offenses or may have more serious backgrounds that make them different from youth in the juvenile system.<sup>48</sup> The CDC review made sure that those factors were taken into consideration when it was doing its analysis.

After assessing all the research, the CDC task force recommended against "laws or policies that facilitate the transfer of juveniles from the juvenile to the adult criminal judicial system."<sup>49</sup> The task force also

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<sup>44</sup> See *id.* at 17.

<sup>45</sup> Quoted in RYAN & ZIEDENBERG, *supra* note 23, at 14.

<sup>46</sup> See CTRS. FOR DISEASE CONTROL & PREVENTION, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, MORBIDITY & MORTALITY WKLY. REP., Nov. 30, 2007, at 9–10, available at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.

<sup>47</sup> See *id.*

<sup>48</sup> See *id.* at 3–6.

<sup>49</sup> *Id.* at 1.

stated that “[t]o the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good,”<sup>50</sup> and that the “use of transfer laws and strengthened transfer policies is counterproductive to reducing juvenile violence and enhancing public safety.”<sup>51</sup>

A U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention report mirrored the findings in the CDC report.<sup>52</sup> After reviewing the research, the report concluded: “To best achieve reductions in recidivism, the overall number of juvenile offenders transferred to the criminal justice system should be minimized. Moreover, those who are transferred should be the chronic repeat offenders—rather than first-time offenders—particularly in cases where the first-time offense is a violent offense.”<sup>53</sup>

#### I. *Assessing the Impact of the Issue Is Difficult Because of a Lack of Available Data*

If the goal is to decrease crime, we’re not doing a very good job.<sup>54</sup>

*Former Representative Michael Lawlor*

As previously mentioned, every year, thousands of young people are tried, sentenced, or incarcerated as adults. However, no one really knows how many young people this affects. There is no one single, credible national data source that tracks all the youth prosecuted in adult courts.

A 2011 report from the U.S. Department of Justice noted that only thirteen states publically report the total number of youth prosecuted in adult courts.<sup>55</sup> Most states do not collect data, as there is a lack of available data on the impact of transfers and waivers.<sup>56</sup> In these states, limited to no public data exist on the number of transfers or waivers to adult court made by prosecutors, the availability or use of objective

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<sup>50</sup> *Id.* at 9.

<sup>51</sup> *Id.* at 10.

<sup>52</sup> See REDDING, *supra* note 9, at 5–8.

<sup>53</sup> *Id.* at 8.

<sup>54</sup> Quoted in RYAN & ZIEDENBERG, *supra* note 23, at 15. Michael Lawlor represented the city of East Haven in the Connecticut House of Representatives from 1987 to 2011 and served as the co-chair of the Connecticut General Assembly’s Judiciary Committee from 1995 to 2011. See *Mike Lawlor*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Michael\\_Lawlor](http://en.wikipedia.org/wiki/Michael_Lawlor) (last visited Jan. 5, 2014).

<sup>55</sup> See GRIFFIN, *supra* note 12, at 1, 14.

<sup>56</sup> See H. TED RUBIN, RETURN THEM TO JUVENILE COURT 7 (2007), available at <http://www.campaignforyouthjustice.org/documents/ReturnThem.pdf>.

criteria for prosecutorial decision-making, or on the exercise of discretion not to send a youth to adult court.<sup>57</sup>

If researchers are not able to really know the magnitude of the impact that these state laws have on youth, then policymakers lack the information to make informed decisions. There is a need to collect more data so that we can properly understand just how many youth are affected.

#### J. *The United States Is an Outlier Among Nations*

How come people are not standing up to this antiquated, inhumane and unjust practice?<sup>58</sup>

*Tracy McLard,*  
*Founder, Parent Organizer,*  
*Families Organizing for Reform of Juvenile Justice—Missouri*

The American criminal justice system is unique in the world in that it allows for hundreds of thousands of children (under eighteen) to be tried, sentenced, and incarcerated as adults and leads the world in incarcerating children.<sup>59</sup>

The United States violates major provisions of international human rights conventions. For example, Article 37 of the United Nations Convention on the Rights of the Child (CRC)—an international instrument that the United States has not adopted—states unequivocally that children who are detained should be separated from adults and that they should not be subject to “torture” or other inhumane forms of punishment.<sup>60</sup> However, laws in most states allow for children charged as adults to be placed in adult jails without any separation from adults. Less than half the states provide any safeguards that require some form of separation from adults.<sup>61</sup>

However, “separation” is not a real solution, as many corrections officials will then place children in isolation or solitary confinement so that they do not have contact with adults. Placing children, or adults, in solitary confinement is mentally debilitating, can lead to suicide, and is considered “torture” by some. In a report released in October 2012, the

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<sup>57</sup> See GRIFFIN, *supra* note 12, at 12–18.

<sup>58</sup> Tracy McClard, *Youth Justice Awareness Month: My Story*, CAMPAIGNFORYOUTHJUSTICEBLOG.ORG (Oct. 1, 2012), [www.campaignforyouthjusticeblog.org/2012/10/youth-justice-awareness-month-my-story.html](http://www.campaignforyouthjusticeblog.org/2012/10/youth-justice-awareness-month-my-story.html).

<sup>59</sup> See RICHARD A. MENDEL, THE ANNIE E. CASEY FOUND., NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION 2–3 (2011).

<sup>60</sup> Convention on the Rights of the Child, G.A. Res. 44/25, art. 37, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/RES/44/25 (Nov. 20, 1989).

<sup>61</sup> See ARYA, *supra* note 24.

American Civil Liberties Union and Human Rights Watch documented egregious cases of youth held in solitary confinement in adult jails and prison.<sup>62</sup>

In Article 37, the CRC provides that imprisonment should only be a last resort and that children who are deprived of their liberty “shall be separated from adults.”<sup>63</sup> In most U.S. states children are tried, sentenced, and incarcerated as adults for crimes that would not be considered the most serious offenses.

The CRC’s Article 37 also states that they must have access to services that meet their needs.<sup>64</sup> We know, for example, that youth have limited access to education while in adult jails and prisons. According to the U.S. Department of Justice’s Bureau of Justice Statistics (BJS), in 1999, 40% of local adult jails had no educational services at all and only 11% of local adult jails had special education services.<sup>65</sup>

## II. THE OPPORTUNITY FOR CHANGE

At the age of 16, I was charged as an adult in the adult criminal justice system. It is because of my exposure to the adult system that I’m here to urge this task force not to expose any more young people to violence in the justice system, particularly in adult jails or prisons. . . . For example, to get to school we had to walk through a tunnel that went through the adult men’s prison. One day the facility went on lock down. We were told to turn our backs and close our eyes. But, in jail you learn to never turn your back or close your eyes. That day, we saw a man get stabbed to death.<sup>66</sup>

*Jabriera Handy*

For today’s policymakers, there are tremendous opportunities for change that will increase public safety and nurture the successful transition of our youth into adulthood.

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<sup>62</sup> See IAN KYSEL, HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 48–62 (2012), available at <http://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf>.

<sup>63</sup> See G.A. Res. 44/25, *supra* note 60.

<sup>64</sup> See *id.* art. 37.

<sup>65</sup> See CAROLINE WOLF HARLOW, U.S. DEP’T OF JUSTICE, EDUCATION AND CORRECTIONAL POPULATIONS 4 tbl. 3 (2003), available at <https://youthbuild.org/sites/default/files/news/2012/08/3022/ecp.pdf>.

<sup>66</sup> *Understanding the Scope of Children’s Exposure to Violence: Hearing Before the Attorney General’s National Task Force on Children Exposed to Violence* (Nov. 29, 2011) (written testimony of Jabriera Handy, youth advocate, Community Law in Action), reprinted in *Youth Testimony*, CAMPAIGN FOR YOUTH JUSTICE (Nov. 29, 2011), <http://www.campaignforyouthjustice.org/youth-testimony.html#jabrERIA>; see also U.S. DEP’T OF JUSTICE, *supra* note 6, at 215–16.

A. *All the New Research Supports a Change in Policy Direction*

[I]t's time for the law to change course and follow the science.<sup>67</sup>

*Dr. Jeffrey Fagan,  
Professor of Law, Columbia University*

State and local policymakers did not have the benefit of this new compelling research on recidivism, competency, adolescent brain development, and effective juvenile justice programs when they were considering changes to their state's laws on trying youth as adults. This research provides a strong basis for re-examination of and substantial changes to state statutes and policies.

B. *The Public Strongly Supports Reform*

With a groundswell of support for their position, advocates for youth justice should start by sharing the findings with federal and state policy makers, rebutting the misguided argument that Americans want to lock up our young people and throw away the keys.<sup>68</sup>

*Michael Bocian, Partner, GBA Strategies*

A new national survey released in October 2011, conducted by GBA Strategies, "reveals that Americans are squarely on the side of reforming our youth justice system—with a greater focus on rigorous rehabilitation over incarceration, and against placing youth in adult jails and prisons."<sup>69</sup>

Key survey findings show that Americans

- Favor rehabilitation and treatment approaches, such as counseling, education, treatment, restitution, and community service (89%);
- Reject placement of youth in adult jails and prisons (69%);
- Favor involving the youths' families in treatment (86%), keeping youth close to home (77%), and ensuring youth are connected with their families (86%);

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<sup>67</sup> Jeffrey Fagan, *Juvenile Crime and Criminal Justice: Resolving Border Disputes*, 18 JUV. JUST. 81, 109 (2008).

<sup>68</sup> Michael Bocian, *How to Use Public Support for Juvenile Justice Reform*, YOUTH TODAY (Nov. 9, 2011), [http://www.youthtoday.org/view\\_blog.cfm?blog\\_id=547](http://www.youthtoday.org/view_blog.cfm?blog_id=547). Michael Bocian is a founding partner at GBA Strategies and the author of a 2011 survey on youth justice.

<sup>69</sup> See GBA STRATEGIES, CAMPAIGN FOR YOUTH JUSTICE YOUTH JUSTICE SYSTEM SURVEY (2011), available at [http://www.gbastrategies.com/public\\_files/cfyj101111m1.pdf](http://www.gbastrategies.com/public_files/cfyj101111m1.pdf).

- Strongly favor individualized determinations on a case-by-case basis by juvenile court judges in the juvenile justice system over automatic prosecution in adult criminal court (76%);
- Support “[r]equir[ing] the juvenile justice system to reduce racial and ethnic disparities” (66%).<sup>70</sup>

### C. *The Juvenile Justice System Is a Better Alternative*

[D]oes society want to nourish our youth with continued criminal education or do we want to deter our youth with an opportunity to recover from their mistake[s]?<sup>71</sup>

*Vicky Gunderson, Youth Advocate*

The current juvenile justice system is a much more viable alternative than the adult criminal justice system in treating young people in conflict with the law. Rather than continuing to spend public dollars on the adult criminal system, federal, state, and local policymakers should redirect public investments into the juvenile justice system to more effectively treat the youth who are currently in the adult criminal justice system.

There are several reasons why making an investment in a quality juvenile justice system makes sense. First, the long-term nationwide benefits to society of returning youth to the jurisdiction of the juvenile court far outweigh any short-term costs that may be incurred. In testimony at a briefing of the Joint Judiciary Committee of the Connecticut legislature, the Urban Institute’s senior researcher and economist, John Roman, showed that there would be costs associated with returning sixteen- and seventeen-year-olds to the juvenile court, but that there also would be long-term benefits.<sup>72</sup> This action would reduce youth recidivism rates and future crime rates, as the likelihood of recidivating is lower for youth who are maintained in juvenile court rather than transferred to adult court. According to John Roman, “[i]f juveniles commit fewer crimes because they have received more and

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<sup>70</sup> *Id.* at 3–4.

<sup>71</sup> *Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (written statement of Vicky Gunderson, parent of a child who committed suicide in adult jail), available at <http://www.judiciary.senate.gov/resources/transcripts/upload/061912RecordSubmission-Durbin.pdf>.

<sup>72</sup> See *The Economic Impact of Raising the Age of Juvenile Jurisdiction in Connecticut: Remarks before the Judiciary and Appropriations Comm., Conn. General Assembly*, 2006 Leg. 1–5 (Conn. 2006) (statement of John Roman, researcher in the Justice Policy Center at the Urban Institute), available at [http://www.urban.org/UploadedPDF/900959\\_juvenile\\_jurisdiction\\_CT.pdf](http://www.urban.org/UploadedPDF/900959_juvenile_jurisdiction_CT.pdf).

better services, fewer community members will be victimized.”<sup>73</sup> He explained further that “[l]ess crime will mean fewer victims, fewer missed days of work, lower medical bills, and, maybe most important, less fear and less suffering.”<sup>74</sup> Overall, John Roman estimates that returning sixteen- and seventeen-year-olds to juvenile court jurisdiction will result in approximately a three-dollar savings benefit for the correctional and judicial systems for every one dollar spent.<sup>75</sup>

Second, new research shows that programs—including ones that treat serious, chronic, and violent offenders in the juvenile justice system—reduce juvenile crime. In, *Return Them to Juvenile Court*, Judge Ted Rubin, a former state legislator and juvenile court judge, provided examples of several programs that have worked effectively to treat youth who are in conflict with the law in the juvenile justice system instead of the adult criminal justice system.<sup>76</sup>

Other promising approaches to promoting public safety and assisting youth include:

- The evidence and theory-based practices and programs set outside of a correctional setting featured in *Blueprints for Violence Prevention*, released by the Center for the Study of Violence Prevention in Denver, Colorado;<sup>77</sup>
- The Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI);<sup>78</sup> and
- The Missouri Youth Services model approach to juvenile corrections.<sup>79</sup>

Finally, the costs of simply keeping the juvenile justice system as is affects society in ways that cannot be calculated in dollars and cents. No study has yet been done that could calculate what would amount to an astronomical price tag on the lost opportunities for that young person or to society. What we do have is the testimony of individuals who were given a second chance in the juvenile justice system, rather than prosecution in adult court, and who have achieved success in our

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<sup>73</sup> *Id.* at 4.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 3.

<sup>76</sup> RUBIN, *supra* note 56, at 22–31.

<sup>77</sup> See generally *We Know What Works: Blueprints for Healthy Youth Development*, CENTER FOR STUDY & PREVENTION OF VIOLENCE, <http://www.colorado.edu/cspv/blueprints> (last visited Jan. 5, 2014).

<sup>78</sup> See generally *Juvenile Detention Alternatives Initiative*, ANNIE E. CASEY FOUND., <http://www.aecf.org/Home/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx> (last visited Jan. 5, 2014). This initiative started in 1992. See *id.*

<sup>79</sup> See generally Dick Mendel, *Small is Beautiful: The Missouri Division of Youth Services*, in *ADVOCASEY, 5 JUVENILE JUSTICE AT A CROSSROADS: ADVOCASEY EXPLORES THE CHALLENGES FACING AMERICA’S JUVENILE COURTS AND CORRECTIONS SYSTEMS*, 28, 28 (2003), available at <http://www.aecf.org/upload/publicationfiles/juvenile%20justice%20at%20crossroads.pdf>.

society. These include Olympic Gold Medalist Bob Beamon, Author Claude Brown, Former U.S. Senator Alan Simpson, D.C. Superior Court Judge Reggie Walton, etc.<sup>80</sup>

There is simply no feasible way to fully calculate the contributions to society of these and other individuals who have received a second chance in the juvenile court.

#### D. *System Stakeholders Support Reforms*

As juvenile crime rates have dropped over the last decade, state legislatures have reexamined juvenile justice policies to balance the interests of both public safety and the rehabilitation of young offenders, while seeking to make them as cost effective as possible as well during a difficult budget climate.<sup>81</sup>

##### *National Conference of State Legislatures*

State legislators; juvenile and adult court judges; juvenile and adult detention, jail, and correctional administrators; and probation officials throughout the country are pushing for reforms nationally and throughout the states. These public officials are supported by scores of prominent national, state, and local organizations that are calling for major changes in national and state policy.

All of the major professional associations of juvenile and criminal justice system stakeholders support the following positions:

- Youth should never be automatically prosecuted in the adult criminal court.
- Youth charged with non-violent offenses and first-time offenders should not be prosecuted in adult criminal court.
- Youth should be removed from adult jails and prisons.
- Youth should be treated in a developmentally appropriate manner throughout the justice system.
- Harsh sentences for youth, such as mandatory minimums, should be eliminated.<sup>82</sup>

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<sup>80</sup> See LAUREN CHAMBLISS ET AL., THE JUSTICE POLICY INST. & CHILDREN AND FAMILY JUSTICE CTR., SECOND CHANCES—100 YEARS OF THE CHILDREN'S COURT: GIVING KIDS A CHANCE TO MAKE A BETTER CHOICE 19, 29, 35, 94 (1999), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/99-06\\_rep\\_secondchances\\_jj.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/99-06_rep_secondchances_jj.pdf).

<sup>81</sup> NCSL Report Shines Light on State Trends in Juvenile Justice Legislation Over Past Decade, NSCL.ORG (Aug. 7, 2012), <http://www.ncsl.org/press-room/juevenile-justice-trends.aspx>.

<sup>82</sup> JILL WARD & LIZ RYAN, CAMPAIGN FOR YOUTH JUSTICE, SNAPSHOT OF NATIONAL ORGANIZATIONS' POLICY STATEMENTS ON YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM 1

## CONCLUSION

I got off the corner and into the community center and school.<sup>83</sup>

*Bob Beamon, Olympic Gold Medalist*

On the one-hundred-year anniversary of the juvenile court, more than one hundred prominent national organizations gathered to recommit to the basic principles of the juvenile court, such as:

- Youth have different needs from those of adults and need protection and guidance;
- Youth have constitutional and human rights and need adult involvement to ensure those rights; and
- Young people are everyone's responsibility.<sup>84</sup>

State statutes that make it easier to try youth as adults have eroded these founding principles and threaten to dismantle the juvenile court's major goal to rehabilitate the youth.

How do we calculate the loss of life of a youth who committed suicide in an adult jail or prison? How do we calculate the contributions to society of an Olympic Gold Medalist such as Bob Beamon or a U.S. Senator, such as Alan Simpson, or an entertainer, such as Ella Fitzgerald?

As a society, are we only going to commit to providing our youth with a jail cell or a prison bed? Or will we commit to reinvesting in our nation's youth through policies, programs, and laws that nurture a successful transition into adulthood and the realization of their full potential?

Fortunately for our youth, nearly half the states have begun to move away from these punitive statutes and instead are returning to the founding principles of the juvenile court.

It is now up to us to ensure the other half follow their lead.

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(2012), available at [http://www.campaignforyouthjustice.org/documents/SNOPS\\_102012.pdf](http://www.campaignforyouthjustice.org/documents/SNOPS_102012.pdf).

<sup>83</sup> CHAMBLISS, *supra* note 80, at 21.

<sup>84</sup> "How Shall We Respond to the Dreams of Youth?": A National Juvenile Justice Summit (Live National Satellite Broadcast June 7, 2000). For an overview of this broadcast, see *About Conference*, JUV. JUST. TELECONFERENCING WEBSITE, <http://www.juvenilenet.org/jjtap/archives/summit/index.html> (last visited Jan. 6, 2014).