

NATIONAL
JUVENILE
JUSTICE
NETWORK



NJJN POLICY PLATFORM:
RAISE THE MINIMUM AGE FOR TRYING
CHILDREN IN JUVENILE COURT

Photo by Mary Taylor from Pexels

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ABOUT NATIONAL JUVENILE JUSTICE NETWORK

The National Juvenile Justice Network leads a membership community of 60 state-based organizations and numerous individuals across 42 states and D.C. We all seek to shrink our youth justice systems and transform the remainder into systems that treat youth and families with dignity and humanity. Our work is premised on the fundamental understanding that our youth justice systems are inextricably bound with the systemic and structural racism that defines our society; as such we seek to change policy and practice through an anti-racist lens by building power with those who are most negatively affected by our justice systems, including young people, their families and all people of color. We also recognize that other vulnerable populations - including LGBTQIA+, those with disabilities and mental illness, girls and immigrants - are disparately and negatively impacted by our justice systems, and thus we also seek to center their concerns in our policy change work.

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NATIONAL JUVENILE JUSTICE NETWORK

POLICY PLATFORM:

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2020

Introduction

Given its documented public health harms, court processing and incarceration is a failed approach for all children. For this reason, NJJN continues to recommend that states apply a public health lens to youth and seek to avoid justice system processing. Of particular concern, is that **over half the states (28 states) in the U.S. still have no minimum age of juvenile court jurisdiction.** This has led to many examples of outrageous treatment of young children, including the arrest of a 6-year-old in Orlando for throwing a temper tantrum in school, the arrest of a 10-year-old in Detroit for throwing a ball at a child's face during dodgeball, and the arrest of a 7-year-old in Kansas City for refusing to go to the principal's office.¹

Children this young *should* be supported by their families, schools, and holistic resources, not handcuffed and sent to detention or court. They do not have the brain development necessary to understand what is happening in court or be able to participate in their defense in any meaningful way, they are unable to fully grasp what it means to break the law or to fully understand the legal and moral implications of their actions, and they face great risk of being physically harmed and emotionally traumatized by the experience. Younger children are at the greatest risk of being victims of violence when in custody – more than one-quarter of youth under 13 years old were victims of some type of violence while confined, compared to nine percent of 20-year-olds.² Furthermore, justice system processing is a treatment that is disproportionately used for children of color, enhancing the racial and ethnic disparities in the youth justice system.³

The United States is an outlier throughout the world in the practice of trying young children in court. In 2019, the Committee on the Rights of the Child, which monitors the implementation of the United Nations Convention on the Rights of the Child (CRC), issued General Comment No. 24 stating that 14 is the most common minimum age of criminal responsibility internationally, and urging nations to set their minimum age of criminal responsibility to at least 14-years-old.⁴ The United Nations Global Study on Children Deprived of Liberty in its 2019 report also called on countries to set the minimum age of prosecution in juvenile court at 14-years-old.⁵

It is shocking to the conscience that there are still states in this country that have not set a bare minimum age at which you can try a child in juvenile court. As the United Nations Global Study stated, “depriving children of liberty is depriving them of their childhood.”

Accordingly, NJJN makes the following policy recommendation:

NJJN calls on the states to ensure that all our children have the protection of a reasonable minimum age of prosecution when in conflict with the law, a human right included in the Convention on the Rights of the Child (CRC). The most common minimum age internationally is 14, which is consistent with scientific evidence on brain development and with the minimum age recommended by the CRC.

BACKGROUND ON LOWER AGE OF JURISDICTION

Below you will find detailed information to provide further context for our policy platform recommendation as well as information for advocates working to establish or raise their state’s minimum age for juvenile court jurisdiction. The sections are outlined as follows:

- A. State Laws on Age Limits
- B. National Data on Involvement of Younger Children in the Juvenile Justice System
- C. International Standards on Lower Age of Jurisdiction
- D. Policy Research on Issues that Impact the Lower Age of Jurisdiction and Confinement

A. State Laws on Age Limits

JUVENILE COURT JURISDICTION

Twenty-two states and the territory of American Samoa have set a lower age of juvenile court jurisdiction by statute.⁶ However, no states align with current United Nations Committee on the Rights of the Child’s recommendation of 14-years-old and only three states align with the prior UN recommendation of 12-years-old. There is also currently no federal standard or

recommendation on a minimum age of juvenile court jurisdiction. However, the National Juvenile Justice and Delinquency Prevention Coalition (NJJJPC) recently provided a Policy Platform to the Biden/Harris Administration which included a recommendation that the federal government incentivize states to reduce incarceration by establishing laws setting a reasonable minimum age of 12 years for juvenile court jurisdiction.⁷

Minimum Age of Jurisdiction	Number of States	Which States?
Age 12	3	California, ⁸ Massachusetts, Utah ⁹
Age 11	1	Nebraska
Age 10	14	Arkansas, Arizona, Colorado, Kansas, Louisiana, Minnesota, Mississippi, Nevada, North Dakota, Pennsylvania, South Dakota, Texas, Vermont, ¹⁰ and Wisconsin
Age 8	1	Washington ¹¹
Age 7	2	Connecticut, New York
Age 6	1	North Carolina

States that do not have a statutorily prescribed lower age of juvenile court jurisdiction may have established a lower threshold for juvenile court jurisdiction by other means, such as through case law, court rules, or common practice, and often through establishing capacity and competency standards.¹² However, when set this way, the practical minimum age of jurisdiction is more subject to variability based on prosecutorial and judicial discretion.¹³

B. National Data on Involvement of Younger Children in the Juvenile Justice System

STATISTICS ON ARRESTS OF YOUNGER CHILDREN

The overall arrest rate of younger children declined significantly from 1980 to 2010; the arrest rate of youth aged 10–12 years old dropped 38 percent (from 1,259 arrests per 100,000 persons in this age group to 784).¹⁴ Yet arrests of young children in the current decade are still much too high. Between 2013-2018, an astounding 30,467 children under age 10 and 266,321 children aged 10–12 years old were arrested in the United States.¹⁵ In 2019, 36,691 youth aged 10–12 years old were arrested and 2,550 youth under aged 10 were arrested.¹⁶ While this is a decline in arrests of children under age 10 from a high of 6,394 in 2013, it is still far too many young children getting arrested.¹⁷ Nonetheless, the arrests of children age 12 and under comprise just 8% of the total arrests of youth under 18 (485,964 in 2019).¹⁸

Not only are arrests of young children too high, but they are often arrested for age-appropriate child behavior that should involve the engagement and support of parents and teachers, not police and handcuffs. Examples include arrest of a 6-year-old in Orlando for throwing a temper tantrum in school, arrest of a 10-year-old in Detroit for throwing a ball at a child's face during dodgeball, and arrest of a 7-year-old in Kansas City for refusing to go to the principal's office.¹⁹ National data shows that less than 1/10th of 1 percent of violent crime arrests are of children under age 10 and only 0.7 percent are of children aged 10-12-years-old.²⁰

STATISTICS ON COURT INVOLVEMENT OF YOUNGER CHILDREN

Most delinquency cases do not involve young children. In 2010, middle school-aged youth (age 12 and 13) comprised only 13 percent of all cases, and youth under 12 accounted for only 4 percent.²¹ In 2020, of the 744,500 cases handled by juvenile courts nationally, only 62,600 (8.4%) were of youth aged 12 and under.²²

STATISTICS ON CONFINEMENT OF CHILDREN

The number of youth aged 12 and under that are detained or committed to (placed in) juvenile facilities nationally varies depending on the data set used. Advocates should be aware that the statistics in the *Easy Access to the Census of Juveniles in Residential Placement* and the *Easy Access to Juvenile Court Statistics* tell different stories. (See chart below.) Depending on what you are trying to convey, one source may be more appropriate than the other:

- The *Easy Access to the Census of Juveniles in Residential Placement* is a one-day standing population count of youth held in residential placement facilities, which encompasses both detained and committed youth. In 2017, 1.9 percent of all detained youth under 18-years-old were age 12 and younger and 1.1 percent of all committed youth under 18-years-old were age 12 or younger.²³
- The *Easy Access to Juvenile Court Statistics* measures flow population statistics, such as average daily populations and case counts. In 2018, 1.6 percent of detained youth under 18-years-old were aged 12 and younger and 1 percent of all placed youth under 18-years-old were aged 12 and younger.²⁴

Data Source	Detained Youth			Committed Youth		
	Total	12 and younger		Total	12 and younger	
Easy Access to the Census of Juveniles in Residential Placement	14,675	272	1.9%	21,660	247	1.1%
Easy Access to Juvenile Court Statistics	191,031	3,129	1.6%	59,780	586	1%

C. International Standards on Lower Age of Jurisdiction

AGE LIMITS FOR TRYING YOUTH IN OTHER COUNTRIES

Because not all countries have separate judicial systems for youth, international discussions of minimum ages of jurisdiction generally refer to a “minimum age of criminal responsibility,” or the minimum age below which the state has determined that children do not have the capacity to infringe the law.²⁵ While this minimum age varies widely, 14-years-old is the most common age of criminal responsibility internationally.²⁶ It should be noted, though, that all international standards call for developmentally appropriate treatment of youth below the age of 18.

Most countries throughout the world have a higher minimum age of criminal responsibility than is commonly found in the U.S. Below is a sampling of the minimum age of criminal responsibility in many other countries:

Age	Country	Details
10	Cameroon	Children younger than 10 years old cannot be held criminally responsible. ²⁷
10	Cote d'Ivoire	Children under the age of 10 cannot be held criminally responsible. ²⁸
10	Great Britain	Children under 10 cannot be charged with a criminal offense and are given curfews or child safety orders. Children between the ages of 10 and 17 are dealt with by youth courts and sent to youth prisons. ²⁹
10	Guinea	Children under the age of 10 cannot be subject to criminal prosecution and children under the age of 13 may only be subject to protective measures, educative and supervision measures. ³⁰
10	Lesotho	No child under the age of 10 can be prosecuted for a criminal offence. ³¹
10	New Zealand	Children between 10-14 years have a rebuttable presumption of irresponsibility.

		Children between 10-13 can only be prosecuted for certain offenses. Children 14-18 can be charged with any offense under the youth justice system, with exceptions. ³²
10	Northern Ireland	Children under 10 are only subject to child welfare laws. ³³
10	South Africa	A child who commits an offence while under the age of 10 is not considered to have criminal capacity and so cannot be prosecuted. A child who is older than 10 but younger than 14 is presumed to lack criminal capacity unless the State proves otherwise. ³⁴
12	Canada	Children aged 12-17 are adjudicated pursuant to an Act that guarantees the rights of young people in the criminal justice system. ³⁵
12	Eritrea	Children under the age of 12 cannot be held criminally responsible for their actions. ³⁶
12	Gambia	The minimum age of criminal responsibility is 12. ³⁷
12	Ghana	A child under the age of 12 years is considered incapable of committing a criminal offence. ³⁸
12	Morocco	A child under the age of 12 at the time of an alleged offence cannot be held criminally liable. ³⁹
12	Netherlands	An irrebuttable presumption of irresponsibility exists for children under age 12. ⁴⁰
12	South Sudan	A child under the age of 12 cannot be held criminally responsible. ⁴¹
12	Uganda	The minimum age of criminal responsibility is 12. ⁴²
13	Burkina Faso	No person can be held criminally responsible if they were under the age of 13 at the time of the alleged criminal offence. ⁴³
13	Chad	Children under the age of 13 cannot be convicted of any criminal offence. ⁴⁴
13	France	Judges can impose “educational sanctions” on children aged 10 to 18, such as making reparations, paying fines, and doing community service. ⁴⁵
13	Gabon	Children cannot be held criminally responsible until the age of 13. ⁴⁶
13	Madagascar	A child under the age of 13 cannot be held criminally responsible. ⁴⁷
13	Mali	Children under the age of 13 are conclusively presumed not to have the capacity to commit a criminal offence. ⁴⁸
13	Niger	Children can be held criminally responsible from the age of 13, but can only be subject to protection, assistance or re-education measures where they lack discernment. ⁴⁹

13	Senegal	There are no provisions permitting criminal penalties for children under the age of 13. ⁵⁰
13	Tunisia	Children under the age of 13 cannot be held criminally responsible. ⁵¹
14	Angola	No person can be held criminally responsible for an offence allegedly committed while under the age of 14. ⁵²
14	Austria	Children under 14 are subject to child welfare laws. ⁵³
14	China	The minimum age at which children can be held criminally liable is 14 for serious offenses. 16 is the age of full criminal responsibility. ⁵⁴
14	Germany	The age of criminal responsibility is set at 14 in Germany. Children under age 21 are treated as juveniles if they show a lack of maturity. ⁵⁵
14	Japan	The minimum age of criminal responsibility for juveniles is 14 years old. ⁵⁶
14	Rwanda	Children cannot be subjected to criminal penalties until the age of 14. ⁵⁷
14	Sierra Leone	No child can be held criminally responsible for his or her actions while under the age of 14. ⁵⁸
14	Togo	The introduction of the Children's Code 2007 effectively increased the minimum age of criminal responsibility to 14 by providing that children under this age are "criminally irresponsible." ⁵⁹
15	Burundi	No one can be held criminally responsible for an offence committed while under the age of 15. ⁶⁰
15	Finland	Children under 15 are not subject to any type of criminal prosecution, and children under 18 are incarcerated only in rare circumstances. ⁶¹
15	Sweden	The age of criminal responsibility in Sweden is 15. ⁶²
16	Argentina	Children under 16 who commit a criminal offense are not punishable. The youth court has jurisdiction over 16 and 17-year-olds, who can only be prosecuted when they have committed an offense punishable by two years or more in prison. ⁶³
16	Cape Verde	Persons under the age of 16 cannot be held criminally responsible. ⁶⁴
16	Portugal	The age of criminal responsibility in Portugal is 16. ⁶⁵
16	Sao Tome and Principe	Children under the age of 16 cannot be held criminally responsible. ⁶⁶
18	Luxembourg	The age of criminal responsibility in Luxembourg is 18. ⁶⁷

INTERNATIONAL POLICIES ON AGE LIMITS FOR TRYING YOUTH

The United Nations Convention on the Rights of the Child (CRC) gives general guidance about minimum age of criminal responsibility, couched in a human rights framework. The Convention is an international human rights treaty setting minimum standards to protect the due process, civic, political, economic, social, and cultural rights of children. The United States is the only United Nations member state that has not ratified it.⁶⁸

The Committee on the Rights of the Child, which monitors the implementation of the Convention, issued General Comment No. 10 in 2007, which stated that jurisdictions should set their minimum age of criminal responsibility at 12 years old as the “absolute minimum age,” and continue to increase it to a higher age level.⁶⁹ In 2019, the Committee replaced this Comment with General Comment No. 24, stating that it now finds age 12 to be too low an age for criminal responsibility and encouraged nations to **increase their minimum age of criminal responsibility to at least 14-years-old**, and commended nations with higher minimum ages.⁷⁰ They also stated that nations should not allow exceptions to be carved out to this minimum age that would allow younger children to be held criminally responsible at a lower age.⁷¹

In 2019, the United Nations Global Study on Children Deprived of Liberty released its report in which it stated that “depriving children of liberty is depriving them of their childhood” and called on states to “develop and implement a strategy for progressive deinstitutionalization [of children].”⁷² **This report also recommended that nations set the minimum age of prosecution in juvenile court at 14-years-old.**⁷³

D. Policy Research on Issues that Impact the Lower Age of Jurisdiction and Confinement

1) CHILDREN HAVE LIMITED CAPACITY TO STAND TRIAL

Capacity refers to the inability of children to appreciate the nature and wrongfulness of what they have done, to fully know right from wrong. It has been referred to as “the cognitive ability that a person must possess to be held accountable for a crime.”⁷⁴ Young children may understand they should not disobey parents, caregivers, or teachers, but they do not have the mental capacity necessary to fully grasp what it means to break the law or to fully understand the legal and moral implications of their actions.⁷⁵ Under English common law, young children under the age of 7-years-old were considered incapable of forming the criminal intent to commit an offense (the doctrine of *doli incapax*) and could not be prosecuted.⁷⁶

2) YOUNG CHILDREN ARE NOT COMPETENT TO STAND TRIAL

In the landmark U.S. Supreme Court decision, *Dusky v. United States*, the Court held that competency to stand trial is a constitutional right and established a standard for determining

competency.⁷⁷ Though the *Dusky* case concerned an adult, and made no reference to youth competency, the *Dusky* standard is used by many state courts to determine youth competency and often forms the basis of state competency laws for youth.⁷⁸ The standard is as follows:

“The ‘test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of the proceedings against him.’”⁷⁹

Legal experts and social scientists have voiced significant concerns about young children’s competency to understand and exercise their legal rights in any meaningful way.⁸⁰ A 2003 study found that “juveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding.”⁸¹ They further found that in terms of capacities relevant to competence, approximately one-third of 11 to 13-year-olds and one-fifth of 14 to 15-year-olds were “as impaired . . . as are seriously mentally ill adults who would likely be considered incompetent to stand trial by clinicians who perform evaluations for courts.”⁸² Studies have also found notable developmental gaps between youth aged 16 to 18 years old and those 14-years-old and younger, which could impact their ability to understand trial matters.⁸³

3) SETTING A MINIMUM AGE IS A NECESSARY PROTECTION AGAINST UNCLEAR AND INCONSISTENTLY APPLIED CAPACITY AND COMPETENCY LAWS

States throughout the country have a patchwork of caselaw and statutes addressing the capacity and competency of children. Some states, such as California, apply caselaw on capacity to determine if young children can stand trial.⁸⁴ As of 2015, twenty-one states had competency laws for youth in juvenile justice proceedings.⁸⁵ Some states permit findings of incompetence based on developmental immaturity, in which the child lacks substantial capacity to understand the proceedings. However, such laws are a poor substitute for changing the law to raise the lower age of juvenile court jurisdiction. Below are some of the chief concerns with relying on capacity and competency laws rather than raising the minimum age of jurisdiction in order to protect young children.

➤ *Inequitable and Unfair Treatment of Young Children*

While virtually all young children are incompetent to stand trial, competency and capacity laws can be unevenly and poorly implemented when used on a case-by-case basis to remove young children from juvenile justice processing. This can result in inequitable and unfair treatment of young children:

- Researchers found that many youth do not receive high quality evaluations, a problem disproportionately impacting youth of color.⁸⁶
- A California study on capacity law implementation found inconsistency in the types of officials that counties used to administer capacity assessments; lack of trainings on how

to administer the assessments; inconsistency in the multiple factors counties were considering; inappropriate inclusion of factors such as consideration of the victims' wishes; and prosecutors who were circumventing the law.⁸⁷

- In states without minimum age thresholds, informal practices often create age boundaries but they may not be evenly applied and these inconsistencies pave the way for racial disparities.⁸⁸

➤ ***Relying on Incompetency Laws Can Harm Young Children and Be Costly***

When the issue of competency is raised, some states engage in attempts to “restore” competency, involving placing children in a holding pattern that delays the provision of potentially helpful interventions while the state undertakes often costly evaluations of them and engages in lengthy and expensive restoration programming. This has resulted in a host of problems:

- A California study on competency law implementation found that there were several barriers to raising the competency issue in court, including the lengthy and expensive process and the fact that the time limits are often varied and contested by the stakeholders.⁸⁹
- The competency process can take so long (possibly several years) that by the time the child has been “restored” to competency, so much time has passed that the young person has matured beyond the person they were at the time of the offense, raising issues of due process.⁹⁰
- Children may be unjustly confined while going through costly competency restoration processes.⁹¹
- Children may just be learning to memorize trial elements through the restoration process without really understanding the concepts and being able to apply them to their case.⁹²
- While waiting for competency to be restored, the children are not receiving services to address whatever underlying challenges may have brought them to juvenile court.
- If, instead, the children were handled in a more appropriate system, such as child welfare or mental health in extreme cases, or through supportive family services, they could have stayed with their families and accessed services to help address their challenges.

4) DISPROPORTIONATE CRIMINALIZATION OF BLACK CHILDREN

Research has found that adults with a history of child incarceration were disproportionately Black or Hispanic, male, and from lower socio-economic backgrounds.⁹³ Nationally, 52.7 percent of children aged 12 and under who had cases processed in juvenile courts in 2018 were minority youth (Black, American Indian, Asian/NHPI, and Hispanic) and 47.3 percent were white youth.⁹⁴ As the chart below demonstrates, Black children were significantly overrepresented as they only comprised 16.9 percent of the 12 and under population at the time⁹⁵ while they accounted for 35.8 percent of the youth processed in juvenile court.⁹⁶

Race	Percentage processed in juvenile court	Percentage of population
White	47.3%	74.8%
Black	35.8%	16.9%
Hispanic	14%	25.4 % [note that the OJJDP data provides Hispanic and non-Hispanic in separate datasets from race]
American Indian	2.2%	1.9%
Asian	0.8%	6.3%

A 2020 study of Black children under the age of 12-years-old in California found that, from 2010-2015 (i.e., before implementation of California’s minimum age law of 12), Black children were overrepresented at each stage of the juvenile justice system relative to white youth and this disproportionality widened at each successive stage of justice system involvement.⁹⁷ For example, the rate of referral to probation for Black children was 3.8 times the rate for white children; for petitions filed by prosecutors against Black children, this disproportionality rose to 6 times the rate of white children.⁹⁸ Stakeholders interviewed attributed the overrepresentation to implicit and explicit biases particularly in the early phases of contact where more discretion is applied, such as school discipline and arrests, and suggested that alternatives to formal justice system involvement would help to address this overrepresentation.⁹⁹

5) MINIMUM AGE LAWS CAN DISRUPT THE SCHOOL-TO-PRISON PIPELINE

School-based arrests are one of the key ways that children end up in the justice system – so much so that this phenomenon has earned its own label of the “school-to-prison pipeline.”¹⁰⁰ By prohibiting the arrest of young children through minimum age of juvenile court jurisdiction laws, it would prevent large numbers of children from being arrested in school and sent through this pipeline. It would also serve as a mechanism for helping to disrupt justice system disparities as children of color, students with disabilities, and LGBTQIA students are disproportionately funneled through the school-to-prison pipeline.¹⁰¹ Black and Latinx youth make up over 58 percent of school-based arrests while they comprise only 40 percent of public school enrollment.¹⁰² During the 2015-16 academic year, Black students comprised 15 percent of the school population but were 31 percent of the students arrested or referred to law enforcement.¹⁰³ Finally, juvenile court involvement can be grounds for school suspension and so removing juvenile court involvement would help to reduce school exclusion.

6) FORMAL JUSTICE SYSTEM PROCESSING HARMS CHILDREN AND REDUCES PUBLIC SAFETY

Research has demonstrated negative impacts from formal justice system processing, particularly for younger children. Problems include the following:

- Early contact with the juvenile justice system has a negative impact on future behavior of children, increasing inversely with the age of the first contact.¹⁰⁴ Those who become involved with the justice system as children, are more likely to become chronically involved with the juvenile and criminal legal systems.¹⁰⁵
- All youth bear the collateral consequences of justice system involvement as a permanent juvenile record is often created that can lead to barriers to education and employment, fines and fees, and risk to immigration status.¹⁰⁶
- Rather than providing a public safety benefit, formal system processing often has “a negative or backfire effect,” resulting in youth subsequently committing more offenses.¹⁰⁷ A 2020 Health Impact Review by the Washington state Board of Health of Bill S-6720.1—legislation that raised the age of juvenile court jurisdiction from 8 to 13-years-old, found that there was very strong evidence raising the age would decrease juvenile recidivism, which would in turn decrease involvement in the criminal legal system and improve health outcomes.¹⁰⁸
- By removing the threat of prosecution, it reduces the chance that children or families will avoid accessing treatment because of fear of legal repercussions. Thus, more children will be able to be helped and will be less likely to commit any harm to others in the future.
- Probation has also been found to be harmful for youth. In one study, youth who were put on probation were 12 times more likely to be arrested as adults than youth who were not put on probation.¹⁰⁹

7) JUSTICE SYSTEM INCARCERATION CAN SIGNIFICANTLY HARM CHILDREN

➤ *Children Victimized in Custody*

As a society, we recognize that young children need added protection and must not be exposed to harmful influences. Yet incarceration in a juvenile facility is in and of itself a traumatizing experience¹¹⁰—youth prisons are “routinely found to be unsafe, unhealthy, and unconstitutional,”¹¹¹ and family separation is traumatic. Incarcerated children are at risk of experiencing physical and sexual abuse, suicide, disruptions to their mental and physical development, and disruptions to their education.¹¹² A 2014 report found that younger children are at the greatest risk of being victims of violence when in custody – more than one quarter of youth under 13 years old were victims of some type of violence while confined, compared to nine percent of 20-year-olds.¹¹³

➤ *Incarceration is Harmful to Youth Development*

Additionally, placing youth in secure confinement at a young age is counterproductive to their development, as it limits their opportunities for positive experiences and can exacerbate any social, academic, and emotional difficulties.¹¹⁴ As youth undergo their developmental process,

they experience significant change (e.g., physical, cognitive, social, emotional, moral, and intellectual),¹¹⁵ and this growth could be stymied by their exposure to and placement in a juvenile correctional facility. In fact, research has found statistically significant, short-term declines in psychosocial maturity for youth incarcerated in a secure facility.¹¹⁶ Youth incarceration is traumatic to both youth and their families and can create “a state of toxic stress that disrupts healthy brain development.”¹¹⁷ Perhaps this is why incarceration actually raises the level of future offending for some youth.¹¹⁸

➤ ***Incarceration Leads to Poor Adult Physical and Mental Health Outcomes***

Research has also found that incarceration at a young age (7 to 13-years-old) is associated with the highest rates of poor adult health outcomes for physical and mental health—including worse adult general health, functional limitations, depressive symptoms, and suicidality, compared to youth first incarcerated at older ages and youth never incarcerated.¹¹⁹ Of the individuals first incarcerated at age 7 to 13-years-old, 21 percent reported subsequent poor adult health outcomes compared to 13 percent of those first incarcerated at age 14-32 and 8.4 percent of those never incarcerated.¹²⁰ The most notable results were for the significantly higher rates of subsequent adult suicidality for those first incarcerated as children from 7 to 12-years-old (49.9 vs. 17.1 percent).¹²¹ In a follow-up study, these researchers found that child incarceration (children under the age of 14) has wider sociodemographic disparities and is more strongly associated with poor physical and mental health outcomes during adulthood.¹²²

8) WE HAVE BETTER WAYS TO SERVE YOUNG CHILDREN

For many young children, the support, learning, and accountability that their family provides them is the best resource for handling mistakes or misbehavior, and this should be the primary method used. For youth struggling with significant challenges, such as substance abuse, family fragmentation, academic failure, or abuse and neglect, other systems can address the root causes of a child’s challenges without the negative impacts of justice system involvement, though diversion should not be mandatory as it would lead to net widening. In serious cases, however, the child behavioral health system can provide psychiatric treatment, counseling, intensive home and/or community-based services in order to address the treatment needs of children with mental health issues and substance use challenges.¹²³ The child welfare system can provide in-home supports such as family counseling or parenting education. And schools can provide students with guidance counselors, positive behavior supports, and restorative justice programs to help them find healthy ways to deal with trauma and address conflicts with other students and teachers.¹²⁴

While too many young children are currently processed through the juvenile justice system, they still represent a small fraction of the number of youth in the juvenile justice system; the arrests of children age 12 and under are just 8% of the total arrests of youth under 18 (485,964 in 2019).¹²⁵ Accordingly, this relatively small number of children should not overwhelm other systems and pathways for care if they are no longer routed through the justice system.

A study of childhood incarceration found that approximately one-third of the incarcerated children reported exposure to five or more adverse childhood experiences (ACEs).¹²⁶ The researchers surmised that these youth may benefit more from health and psychosocial focused interventions than from incarceration and suggested “a new policy approach may be needed—one in which justice system involvement is prohibited for the very young, avoided whenever possible for those slightly older, and intentionally buffered by health-protective interventions for those ultimately incarcerated.”¹²⁷

CONCLUSION

Young children simply do not belong in juvenile court – they are unable to fully understand the legal and moral implications of their actions; they don’t have the cognitive abilities to understand the court process or be able to assist in their defense; the process itself and certainly any confinement is substantially likely to harm them; and rather than providing a public safety benefit, formal system processing often results in youth subsequently committing more offenses. It is clear that court prosecution is not the optimal approach. Alternate child-serving systems can be scaled up through funding investments, including via reallocation of funds from juvenile justice, so that young children can be healthy and thrive—and can contribute throughout their lifetime to healthier, safer communities. It’s well past time that all states set a reasonable minimum age for charging children in court and we recommend that age be no lower than 14-years-old.

¹ Bill Hutchinson, “More than 30,000 Children Under Age 10 Have Been Arrested in the US since 2013: FBI,” ABC News (October 1, 2019), <https://abcn.ws/3owx2HE>.

² Melissa Sickmund and Charles Puzzanchera (eds.), “Juvenile Offenders and Victims: 2014 National Report” (Pittsburgh, PA: National Center for Juvenile Justice, 2014): 216, <https://bit.ly/37TiLON>.

³ M. Sickmund, A. Sladky, and W. Kang, “Easy Access to Juvenile Court Statistics: 1985-2018,” (National Center for Juvenile Justice, 2020), <https://www.ojjdp.gov/ojstatbb/ezajcs/asp/demo.asp>.

⁴ United Nations Convention on the Rights of the Child (CRC), Committee on the Rights of the Child, *General Comment No. 24 (2019) on Children’s Rights in the Child Justice System* (2019): 6, CRC/C/GC/24, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?DocTypeID=11&Lang=en&TreatyID=5

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