Lower Age of Juvenile Court Jurisdiction and Youth Confinement

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INTRODUCTION

Nearly two-thirds of the states in the U.S. have not statutorily set a minimum age boundary at which a youth can be subject to the jurisdiction of the juvenile court.¹ Once youth are involved in the system, only a slim majority of states (28 as of 2004) have statutorily set a minimum age for confining youth in a correctional facility.² But the movement to set minimum age boundaries has been gaining momentum in recent years, as advocates recognize its importance. Not only do processing and confining youth in the juvenile justice system expose young children to damaging impacts, but setting minimum age jurisdictional boundaries can be a useful tool for related efforts around school to prison pipeline, deincarceration and adultification.

- School to prison pipeline work can be facilitated by raising the lower age of jurisdiction, making it more difficult to move young children into the juvenile justice system for minor school infractions because prosecutors would be prohibited from petitioning their cases to court.
- A minimum age boundary for processing youth in the system and/or confining youth can be a useful deincarceration tool.
- Reducing the number of younger children in juvenile court and youth confinement facilities can make space available to bring youth from the adult system back to the juvenile system.

Below are key facts, rationales, recommendations, helpful resources, talking points, and sample fact sheets from NJJN members to help establish or raise your state’s minimum age for juvenile court jurisdiction or confinement.
BACKGROUND ON LOWER AGE OF JURISDICTION AND CONFINEMENT

State Laws on Age Limits

**JUVENILE COURT JURISDICTION**

Nineteen states have set a lower age of juvenile court jurisdiction by statute.³

<table>
<thead>
<tr>
<th>Minimum Age of Jurisdiction</th>
<th>Number of States</th>
<th>Which States?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age 11</td>
<td>1</td>
<td>Nebraska</td>
</tr>
<tr>
<td>Age 10</td>
<td>11</td>
<td>Arkansas, Colorado, Kansas, Louisiana, Minnesota, Mississippi, Pennsylvania, South Dakota, Texas, Vermont, and Wisconsin</td>
</tr>
<tr>
<td>Age 8</td>
<td>1</td>
<td>Arizona</td>
</tr>
<tr>
<td>Age 7</td>
<td>5</td>
<td>Connecticut, Maryland, Massachusetts, New York, and North Dakota</td>
</tr>
<tr>
<td>Age 6</td>
<td>1</td>
<td>North Carolina</td>
</tr>
</tbody>
</table>

See [this chart](#) from the Juvenile Justice Geography, Policy, Practice & Statistics (JJGPS) website for a list of states and their ages of juvenile court jurisdiction.⁴

States that do not have a statutorily prescribed lower age of juvenile court jurisdiction may still have established a lower threshold for juvenile court jurisdiction by other means, such as through case law, court rules, or common practice. However, when set this way, the practical minimum age of jurisdiction is more subject to variability based on prosecutorial and judicial discretion.⁵ For examples of case law and court rule mechanisms for establishing a lower age of jurisdiction, see the chart on page 36 of the *Final Report of the Governor’s Commission on Youth, Public Safety and Justice: Recommendations for Juvenile Justice Reform in New York State*.

**CONFINEMENT OF YOUNGER CHILDREN**

The most recent comprehensive review of statutory minimum age boundaries for confinement was conducted by the National Center for Juvenile Justice in 2004.⁶ NJJN is currently updating this research and will make it available as soon as possible.
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 has declined significantly in the past three decades – from 1980 to 2010, the arrest rate of youth aged 10 – 12 years old dropped 38 percent (from 1,259 arrests to 784 arrests). Arrests involving youth under 13 years old for offenses falling under the Violent Crimes Index declined between the early 2000s and 2010, from a high of 10 percent to 7 percent of all youth arrests.\(^7\)

Statistics on Court Involvement of Younger Children
Most delinquency cases involve older teens. In 2010, high school-aged youth (age 14 and older) comprised 83 percent of the delinquency caseload nationally, while middle school-aged youth (age 12 and 13) made up 13 percent of the cases, and youth under 12 accounted for 4 percent.\(^8\) In terms of case processing, youth age 16 and older were more likely to have their cases formally petitioned to court and, once petitioned, were more to be judicially waived to criminal court than youth aged 15 and younger.

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 2013, 2.2 percent of all detained youth were age 12 and younger (389 out of 35,659) and 0.8 percent of all committed youth were age 12 or younger (269 out of 17,803).\(^9\)

- The Easy Access to Juvenile Court Statistics measures flow population statistics, such as average daily populations and case counts. In 2013, 4.1 percent of detained youth were aged 12 and younger (9,000 out of 221,600), and three percent of all placed youth were aged 12 and younger (2,400 out of 78,700).\(^10\)
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.” This minimum age varies widely; however, the median age worldwide is 12 years old.\(^\text{11}\) It should be noted, though, that all international standards call for developmentally appropriate treatment of youth below the age of 18.

Many western countries have a higher minimum age of criminal responsibility than is commonly found in the U.S. Here’s a sampling of the minimum age of criminal responsibility in other countries:\(^\text{12}\)

<table>
<thead>
<tr>
<th>Age</th>
<th>Country</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>Belgium</td>
<td>16 for more serious offenses</td>
</tr>
<tr>
<td>15</td>
<td>Sweden</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Japan</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>France</td>
<td>Judges can impose “educational sanctions” on children aged 10 to 18, such as making reparations, paying fines, and doing community service.(^\text{13})</td>
</tr>
<tr>
<td>10</td>
<td>Great Britain</td>
<td>Children between the ages of 10 and 14 years old are presumed to be not criminally responsible, and the prosecution must satisfy a heightened burden of proof in order to try them.</td>
</tr>
</tbody>
</table>
**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. 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. Nations with higher minimum ages, such as 14 or 16 years of age, were urged not to lower their minimum age to 12 years old, and not to allow exceptions to the minimum age, such as in cases where the child is accused of committing a serious offense. (See items 30-35 of the General Comment for the full recommendations.)

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

**CHILDREN HAVE LIMITED CAPACITY TO STAND TRIAL**

There are significant concerns about young children’s capacity to understand and exercise their legal rights in any meaningful way. Legal experts and social scientists have raised serious questions regarding the capacity of young children to stand trial with a 2003 study finding that 11 to 13 year old children “demonstrated significantly poorer understanding of trial matters, as well as poorer reasoning and recognition of the relevance of information for a legal defense, than did 14- and 15-year-olds.” 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 capacity to understand trial matters.

Many states use either statutory or case law incompetency standards to determine whether a child is competent to stand trial and some permit findings of incompetence based on developmental immaturity, in which the child lacks substantial capacity to understand the proceedings. While such laws are used on a case-by-case basis to remove children from juvenile justice processing, they can also be incorporated into larger advocacy efforts for a higher minimum age of jurisdiction, based on the fact that virtually all youth under a particular age would meet the standard of incompetency. In an article in the *Cornell Journal of Law and Public Policy*, David R. Katner recommends that all youth aged 14 and under be presumed not competent to stand trial, requiring the government to bear the legal burden of proving the youth’s competency in order to be able to try them in juvenile or adult court. Katner notes that in Great Britain there is a rebuttable legal presumption that children between ages 10 and 14 years old “cannot distinguish between right and wrong, and are therefore, incapable of committing a crime.”
**Confinement Can Harm Youth and Reduce Public Safety**

As a society, we recognize that young children need added protection and must not be exposed to harmful influences. Yet placement in a secure facility is in and of itself a traumatizing experience. Young prisons are “routinely found to be unsafe, unhealthy, and unconstitutional.”

Children in secure confinement are at risk of experiencing physical and sexual abuse, suicide, disruptions to their mental and physical development, and disruptions to their education. 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.

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. As youth undergo their developmental process, they experience significant change (e.g., physical, cognitive, social, emotional, moral, and intellectual) that 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.

**Other Systems or Alternatives to Confinement are Better for Youth and the Public**

Younger youth who enter the juvenile justice system may be struggling with issues that pre-date their system involvement (e.g., substance abuse, family fragmentation, academic failure) and a secure facility is not a place where their needs can be easily met. Other systems can better serve these youth without causing the harm they are likely to experience through juvenile justice system confinement. For example, the children’s 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. The child welfare system can provide in-home supports such as family counseling or parenting education. For those youth that remain in the juvenile justice system, community-based alternatives rooted in adolescent development can provide youth with a foundation for success and are much more cost-effective than youth jails, with programs yielding net benefits from $3,600 to over $67,000 per child.

**Community-Based Supervision Decreases Recidivism**

Research has demonstrated negative impacts from both formal juvenile justice system processing and juvenile justice confinement. Rather than providing a public safety benefit, formal system processing often has “a negative or backfire effect”, resulting in youth subsequently committing more offenses, especially when compared to youth provided with diversion with services. For youth confined in juvenile correctional facilities, recidivism rates remain high. Approximately 75 percent of confined youth are rearrested within three years and 45-72 percent are convicted of a new offense.
The results for community-based programs have been much more promising. Studies examining the effects of youth incarceration on recidivism, compared to justice-involved youth who were not incarcerated, have ranged from finding no impact on recidivism at the lowest end of the range of impacts, to findings that youth incarceration increased the likelihood of recidivism by 22 to 26 percent.³³ The Council of State Governments (CSG), in a recent study, reviewed records from an 8-year period, compiling a dataset of more than 13,000 youth released from state-run secure facilities between 2006-2011 in Texas. CSG found that serving youth in their communities and close to home was more effective than confinement, and decreased a youth’s likelihood to recidivate. Youth confined in a state secure facility, compared to youth supervised by probation in the community, were 21 percent more likely to be re-arrested and three times more likely to commit a felony.³⁴
TALKING POINTS

Young Children Don’t Belong in Juvenile Court

*Children Learning to Read “Diary of A Wimpy Kid” Should Be in School, Not Court*
- Sending young children to court doesn’t make sense. They’re too young to understand complex court proceedings, or connect them to their behavior in a meaningful way. They do understand consequences given by their family.

*Only a Few Kids Enter Juvenile Court, and for Minor Offenses* [as appropriate]
- Very few children under [AGE] in [STATE] enter juvenile court, often for comparatively minor offenses.

*Community-Based Services are Better and Cheaper than Juvenile Court*
- Services in the community are cheaper than court, and result in lower recidivism.
- Court can traumatize children and leave them with a record that may follow them into adulthood.
- Research shows that processing kids and teens in the justice system can actually increase the chances they’ll commit new crimes. 35

*No 3rd-Grader Should Be Put on Trial — Their Families Should Hold Them Accountable*
- When a very young child acts out, it’s just common sense that the whole family should be involved in the response.
- If kids have more serious needs, we should connect them with age-appropriate services in the community, such as schools, child welfare, family services, trauma-informed care, and/or mental health services. This is a sensible approach that will activate the right system to respond to these children’s needs.

*Many States Have Set a Minimum Age for Charging — Our State Should, Too.*
Young Children Don’t Belong in Lockup

- **Secure Lockup is No Place for Children**
  - Given their high barb-wired fences, recycled jumpsuits, steel beds, steel toilets, deadbolt doors, and cement walls and floors, secure facilities are no place for kids. The responsible thing to do is hold them accountable in the community.

- **Only a Few Kids Are Locked Up, and for Minor Offenses** [as appropriate]
  - Very few children under [AGE] in [STATE] are detained or incarcerated, often for comparatively minor offenses.

- **Locking Up Young Kids and Pre-Adolescents Harms Their Development**
  - As children grow up, they experience significant change physically, cognitively, socially, emotionally, morally, and intellectually.
  - Incarceration in a secure facility limits their opportunities for positive experiences, and can make a youth’s academic and emotional difficulties worse.
  - Children are also at much higher risk of experiencing psychological issues, as well as becoming victims of physical or sexual abuse.

- **Holding Children Accountable in the Community is More Effective than Secure Lockup**
  - Services in the community are cheaper than lockup.
  - Research shows that locking kids up – even those who have committed serious crimes -- increases the chance they’ll commit new crimes.\(^\text{36}\)
  - Holding children accountable in the community is the smart thing to do.

- **Young Children Should Be Held Accountable by Their Families – Not Held in Lockup**
  - Most youth can be held accountable by their parents or caregivers. When a child acts out, it’s common sense that the whole family will need to be involved in the response.
  - When children and pre-adolescents commit serious crimes, their behavior can usually be traced to pre-existing issues, such as trauma, abuse, mental health issues, or family turmoil. Instead of relying on secure lockup, we should shift gears to trauma-focused treatment, wraparound services for the family, and mental health treatment.
  - With this common-sense approach, we can hold children accountable while ensuring they grow up into responsible adults, and keep our neighborhoods safe.

- **Many States Have Set a Minimum Age for Confining Youth — Our State Should, Too.**
RESOURCES

- Benjamin Chambers and Annie Balck, “Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System”
- Commission on Youth Public Safety and Justice, *Final Report of the Governor’s Commission on Youth, Public Safety and Justice: Recommendations for Juvenile Justice Reform in New York State*
- *Convention on the Rights of the Child*, art. 40 (3)(a), General Assembly resolution 44/25 of Nov. 20, 1989
- JIGPS Jurisdictional Boundary Map and Chart
- Angel Zang, “U.S. Age Boundaries of Delinquency 2015” (National Center for Juvenile Justice, May 12, 2016)
- Just for Children Briefing No. 4, “The Minimum Age of Criminal Responsibility”
- UN Committee on the Rights of the Child, *General Comment No. 10: Children’s Rights in Juvenile Justice*
APPENDIX

In composing the talking points above, NJJN staff relied heavily on issue briefs produced by our members, from which we borrowed liberally. We are grateful for their help. These member issue briefs and fact sheets are linked below and are incorporated in this document after the endnotes.

- **Nebraska**: Voices for Children in Nebraska, “Data Snapshot: Kindergarten Court” (January 2016).

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4 Note that the chart has not been updated to include the 2016 Nebraska law establishing a minimum age of 11 for juvenile court jurisdiction. See LB 894, 104th Leg., 2nd Sess. (NE 2016).


6 See Szymanski, “Minimum and Maximum Age of Juvenile Correctional Custody.”


9 Pursuant to the Easy Access to the Census of Juveniles in Residential Placement, “detained” youth are defined as “juveniles held prior to adjudication while awaiting an adjudication hearing in juvenile court, as well as juveniles held after adjudication while awaiting disposition or after adjudication while awaiting placement elsewhere. Also includes juveniles awaiting transfer to adult criminal court, or awaiting a hearing or trial in adult criminal court.” Youth who are “committed” are defined as “juveniles in placement in the facility as part of a court-ordered

10 “Detention” is defined by the Easy Access to Juvenile Court Statistics as “The placement of a juvenile in a restrictive facility between referral to court intake and case disposition” and “placement” is defined as “Cases in which youth were placed in a residential facility for delinquents, or cases in which youth were otherwise removed from their homes and placed elsewhere.” Sickmund, M., Slady, A., and Kang, W., “Easy Access to Juvenile Court Statistics: 1985-2013,” accessed April 13, 2016, http://www.ojjdp.gov/ojstatbb/ezacjrp/.


12 Katner, 428-9. An extensive list of the ages of criminal responsibility in other countries is provided on p. 430.


26 Psychosocial maturity includes temperament (the ability to curb impulsive and aggressive behavior), perspective (the ability to see things from multiple different points of view, including consideration of others and future orientation), and responsibility (the ability to function independently, including personal responsibility and resistance to peer influence). National Juvenile Justice Network, “Arrested Development: Confinement Can Negatively Affect Youth Maturation” (Dec. 2013): 1, http://bit.ly/1VD6jCQ.
27 Texas Criminal Justice Coalition, “Fact Sheet: Support Positive Development Among Younger Youth Who Enter the Juvenile Justice System by Keeping Them Out of Secure Facilities” (2015). The fact sheet states that of the 325 youth 14 and under who were currently confined in a state secure facility, more than half (52 percent) had a moderate to high need for substance abuse treatment, 44 percent had previously been involved with child protective services, and 86 percent were not reading at grade level; citing Texas Juvenile Justice Department, “Teddy Bears Behind Bars: Young Children in the Juvenile Justice System,” Texans Care for Children 2015 Children’s Policy Conference (February 6, 2015).


“Kindergarten” literally translates as “child-garden” – and what a perfect description. In the elementary school years, with the right encouragement, children blossom as they learn to read and write, experiment with numbers, discover a larger world, and navigate social situations.

Kids aren’t mini adults. We don’t expect our little leaguers to play baseball with the same capability as adult players. We don’t expect a third grader to read or solve math problems as well as a high schooler. Why, then, should we expect a young child who has engaged in bad behavior – even very bad behavior – to have the same reasoning skills, same intent, and same ability to understand complex court processes and legal consequences as a teenager or adult? And the stakes are high; how we choose to respond to childish misbehavior can have lifelong impacts.

**Data Snapshot: Kindergarten Court**

Children under the age of 14 who engage in criminal behavior must be tried in the juvenile court rather than the adult criminal system. This means they cannot go to prison. However, in Nebraska's juvenile justice system, the child will still be served with legal paperwork and charging documents, face trial or have to enter a plea agreement, and undergo a sentencing process called “disposition.” The judge has a wide range of dispositional options, from probation and treatment at home to sending the child to a group home out of state. There is no minimum age at which a child can be held in a juvenile detention facility.

**What is Nebraska’s Current Process?**

<table>
<thead>
<tr>
<th>Age</th>
<th>Grade</th>
<th>Most Popular Book in Nebraska:</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-6</td>
<td>Kindergarten</td>
<td>(still learning letters)</td>
</tr>
<tr>
<td>6-7</td>
<td>First grade</td>
<td>“Green Eggs &amp; Ham”</td>
</tr>
<tr>
<td>7-8</td>
<td>Second grade</td>
<td>“Click, Clack, Moo”</td>
</tr>
<tr>
<td>8-9</td>
<td>Third grade</td>
<td>“Creepy Carrots!”</td>
</tr>
<tr>
<td>9-10</td>
<td>Fourth grade</td>
<td>“Diary of a Wimpy Kid”</td>
</tr>
<tr>
<td>10-11</td>
<td>Fifth grade</td>
<td>“Diary of a Wimpy Kid”</td>
</tr>
<tr>
<td>11-12</td>
<td>Sixth grade</td>
<td>“Diary of a Wimpy Kid”</td>
</tr>
</tbody>
</table>

Information taken from the 2015 LearnAnalytics “What Kids Are Reading” report, available online.

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WHAT DOES THE DATA SHOW?

In Nebraska, elementary age children are brought into contact with the juvenile justice system more frequently than one might expect.

ARRESTS

716 children age 12 and younger were arrested in 2014. In years for which detailed data was available to compare age at arrest with type of offense, the most commonly arrested offenses for this age group were for misdemeanor assault (i.e. fighting), theft (i.e. shoplifting), and vandalism (i.e. graffiti).²

PROBATION

A small number of very young children were placed on juvenile probation in 2015, primarily for delinquent rather than status offenses.³*

DETENTION

The smallest but most troubling number is the young children admitted to Nebraska’s detention facilities.

2. Data provided by the Nebraska Crime Commission.
3. Data provided by the Nebraska Probation Administration.
*Delinquent offenses are criminal in nature, such as disorderly conduct. Status offenses are behaviors, such as truancy, that would not be chargeable, but for the child’s age.
What Happens Elsewhere?

Eighteen states have set minimum ages for charging children, ensuring that very young kids get the help they may need through other measures than facing trial.⁴

**Minimum Ages for Delinquency Charging in the US (2015)**

Recommendations:

**Adopt a minimum age for charging children:** Children learning to read “Creepy Carrots!” are not capable of understanding complex court proceedings, and comprehension is fundamental to our Constitution. Many states have set a minimum age for charging, and Nebraska should follow suit in identifying an appropriate age at which greater ability to reason and comprehend begins to set in.

**Pursue alternative court jurisdiction as necessary:** To ensure that very young children engaging in troubling behaviors receive needed interventions, our juvenile code provisions should be modified to permit filing in a way that does not force the child to face trial. This would mean that instead of putting the 3rd grader on trial, county attorneys would file for a type of court jurisdiction that involves the whole family and permits services and supports through the Department of Health and Human Services rather than Probation. This is a sensible approach that will activate the right system to respond to children’s needs.

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⁴ Based on information from the National Juvenile Defender Center & U.S. Age Boundaries of Delinquency. Juvenile Justice Geography, Policy, Practice StateScan: August 2015.
Setting a Minimum Age for Youth Incarceration in Rhode Island

Nationally and in Rhode Island, preadolescent children make up a small portion of youth involved in the juvenile justice system. During 2013, less than 7% of juvenile arrests in Rhode Island and the United States were of children age 12 or younger. State laws vary in their treatment of young offenders, with many states setting a lower age limit for the use of incarceration and/or a minimum age for delinquency jurisdiction.

Juvenile Correctional Custody: Twenty-eight states set a minimum allowable age for sentencing a youth to a juvenile correctional facility. This minimum age is age 12 in twelve states, age 11 in four states, age 10 in nine states, age 8 in two states, and age 7 in one state.

Delinquency adjudication: Eighteen states have a minimum age for delinquency adjudication that prevents the prosecution of children below a certain age in juvenile court. The minimum age is age 10 in eleven states, age 8 in three states, age 7 in three states, and age 6 in one state.

Rhode Island is one of 13 states that has no established minimum age for either juvenile correctional custody or delinquency adjudication. Rhode Island also is not among the 19 states that set a minimum age of criminal responsibility, below which children cannot be tried in adult criminal court.

Children and Youth at the Training School, 2014

During 2014, there were eight children aged 12 and under who spent time at the Rhode Island Training School, representing less than 2% of total number of youth held during the year. There were 70 youth ages at the Training School ages 13-14, 242 youth ages 15-16, and 205 youth ages 17-18.

During 2014, the average age for youth at the Training School was 15.9 years.

Nationally, 1% of youth in the juvenile justice system who were residing in a correctional or residential setting were age 12 and younger.
Why Not Incarceration?

- For preadolescent children, incarceration with older youth can expose them to inappropriate peer role models that can increase their likelihood of reoffending.

- Children in secure confinement are at risk of experiencing psychological distress as well as physical or sexual abuse.

- Incarceration in a secure facility limits opportunities for positive experiences and can exacerbate a youth’s social, academic, and emotional difficulties.9

Developmentally-Appropriate Alternatives and Treatment

- To ensure services are age-appropriate, all preadolescent children that come into contact with the Rhode Island’s juvenile justice system should be evaluated for threat to public safety as well as individual and family risk factors. They should be referred to a developmentally-appropriate alternative to incarceration for remediation and treatment.

- When preadolescent children exhibit law-breaking behavior, there is often family dysfunction or behavioral health issues present that can best be addressed outside of the juvenile justice system.

  - In cases where a parent’s failure to provide adequate supervision constitutes child neglect, the child welfare system can provide in-home supports (e.g., family counseling or parenting education) or place the child with a relative, foster family, or in a group or residential setting in order to provide the child with support and to establish positive behavioral norms.10,11

  - For children with mental health issues, the children’s behavioral health system can provide psychiatric treatment, counseling, intensive home- and/or community-based services, residential placement, and/or hospitalization in order to address their treatment needs so they can live safely and securely in their homes.12

Recommendation

Rhode Island should enact legislation to prohibit any child age 12 or younger from being held in pre-trial detention or sentenced to the Rhode Island Training School unless they are charged with a capital offense.

References

2 Juvenile detention data summaries. (2013). Submitted by Rhode Island Police Departments to the Rhode Island Department of Public Safety, Grant Administration Office.
6,7 Rhode Island Department of Children, Youth and Families, RIC HIST, 2014.

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Support Positive Development Among Younger Youth
Who Enter the Juvenile Justice System by Keeping Them Out of Secure Facilities

TEXAS’ MIDDLE SCHOOL-AGED YOUTH CAN BE CONFINED IN SECURE FACILITIES UNDER CURRENT LAW

The lower age of juvenile jurisdiction in Texas is 10 years old, meaning any child aged 10 or older is eligible for confinement in a secure juvenile correctional facility. Given the high barb-wired fences, recycled jumpsuits, steel beds, steel toilets, deadbolt doors, and cement walls and floors, these facilities are indeed “no place for kids.”

Despite this inappropriate setting for young children, over 600 kids between the ages of 10 and 13 were confined in a local or state secure juvenile correctional facility, post-adjudication, in the last three years. This population is small in comparison to the overall number of youth who are confined within the system, as approximately 2,300 older youth (teenagers 14 to 17) were committed to state secure facilities between 2012 and 2014, alone. However, because of the tender age of these youngest system-involved children, placement in harsh secure environments warrants serious consideration as policy-makers move forward in reforming the State’s juvenile justice system.

The table below illustrates the number of secure facilities that currently house youth aged 13 and under, post-adjudication, and the minimum behavior that qualifies them for placement in such a facility.

<table>
<thead>
<tr>
<th>Secure Juvenile Facilities That House Youth Aged 13 and Under, Post-Adjudication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Secure Facilities⁵</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Number of Facilities Across the State</td>
</tr>
<tr>
<td>Capacity of Facilities *</td>
</tr>
<tr>
<td>Conduct Eligible for Confinement in a Facility⁷</td>
</tr>
<tr>
<td>Example: a “scuffle” resulting in a minor injury</td>
</tr>
</tbody>
</table>

*The number of beds within a facility differs by facility and county size.

PLACEMENT IN A SECURE FACILITY IS DETERIMENTAL TO EARLY ADOLESCENTS’ DEVELOPMENT

Youth undergo a developmental process as they grow – physically, cognitively, socially, and emotionally. An understanding of these stages of development is necessary to make informed decisions regarding the best course of action to address youth misbehavior. For instance, during early adolescence (approximately 11 to 13 years of age), youth begin to have a greater interest in privacy, they begin to test rules and limits, and they have a tendency to revert to “childish” behavior in times of high stress. But in secure confinement, these youth have limited privacy and are subject to strict rules and regulations.
Because the inherent nature of secure facilities runs contrary to the needs of youth in this developmental stage, confined 10 to 13 year-olds are in a constant state of strain. Consequently, the stress of these environments can exacerbate early adolescents’ tendency to revert to “childish” behavior and can significantly delay their development. By allowing younger youth to be confined in secure settings when they are found “guilty” of delinquent conduct, Texas law supports a practice that runs contrary to positive youth development.

**THE MAJORITY OF EARLY ADOLESCENTS CONFINED IN SECURE FACILITIES HAVE SIGNIFICANT UNMET NEEDS**

Much like their teenage peers, younger youth who enter the juvenile justice system are struggling with issues that pre-date their system involvement (e.g., substance abuse, family fragmentation, academic failure). According to the Texas Juvenile Justice Department, of the 325 youth (14 and under) who are currently confined in a state secure facility, more than half (52%) have a moderate to high need for substance abuse treatment, 44% were previously involved with child protective services; and 86% are not reading at their grade level. But a secure facility is not a place where these needs can be easily met. In fact, research demonstrates that youth are better served in their communities than in confinement, and that confinement increases their likelihood of recidivism.

These facts and research demonstrate that early adolescents are a unique population, worthy of special consideration by policy-makers. While the natural inclination is to punish a “kid behaving badly,” more often than not the State is confining a kid that has gone without a hug, without love, and without someone that cares.

**KEY FINDINGS**

- **Between 2012 and 2014, 628 youth between the ages of 10 and 13 were confined in secure facilities in Texas.** 500 of these youth were confined in local secure juvenile correctional facilities, and 128 were confined in state secure juvenile correctional facilities.

- **The majority of youth (ages 10 to 13) who are formally referred to the system engage in nonviolent and misdemeanor-level behavior.** Between 2012 and 2014, 69% of youth (ages 10 to 13) who came into contact with the juvenile system were referred for misdemeanor and nonviolent behavior (e.g., child only offenses and violation of probation).

- **Placing youth in secure confinement at such a young age is counterproductive to their positive development.** As youth undergo their developmental process, they experience significant change (e.g., physically, cognitively, socially, emotionally, morally, and intellectually) that could be stymied by their exposure to and placement in a juvenile correctional facility. Placement in a secure facility is in and of itself a traumatizing experience.

- **Research has demonstrated that serving youth in their communities and close to home is more effective than confinement, and it decreases a youth’s likelihood to recidivate.** According to the Council of State Governments, youth confined in a state secure facility – as opposed to being supervised in the community – are 21% more likely to be re-arrested and three times more likely to commit a felony when recidivating. These findings carry significant implications for what happens to youth when they are confined: It makes them behave worse.
• Serving younger youth in their community is a more cost-effective alternative to confinement. The matrix below illustrates the costs to the State (per day) to treat a youth in the community or via confinement. Community supervision is 66 times cheaper than state-secure confinement, and it is 5 times cheaper than local-level secure confinement.

<table>
<thead>
<tr>
<th></th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Secure Facility</td>
<td>$437.11</td>
</tr>
<tr>
<td>Local Secure Facility</td>
<td>$35.97</td>
</tr>
<tr>
<td>Community Supervision</td>
<td>$6.67</td>
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</tbody>
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**COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT CSHB 2931 BY REPRESENTATIVE WU**

• CSHB 2931 limits the secure confinement of youth aged 13 and under in local secure juvenile correctional facilities, post-adjudication. If a juvenile judge finds, with a validated risk and needs assessment, that a youth of this age is of high risk to public safety and in high need of services that are not available within the community, only then can that youth be placed in a secure local juvenile correctional facility.

• CSHB 2931 prohibits the secure confinement of youth aged 13 and under in state secure juvenile correctional facilities, post-adjudication. CSHB 2931 will bring the State’s juvenile justice system into compliance with best practices for youth by preventing the traumatic exposure to prison-like settings and acknowledging that adolescent development must be factored in when implementing behavioral correction strategies.

• CSHB 2931 promotes a “smart-on-crime” approach to delinquency by requiring the juvenile justice system to use effective alternatives to incarceration (e.g., community supervision and programming). By prohibiting the use of post-adjudication secure confinement for youth aged 13 and under, CSHB 2931 will better ensure the best outcomes for youth and the State.
Citations

3. Texas Criminal Justice Coalition’s analysis of data provided by the Texas Juvenile Justice Department for 2012-2014.
4. Ibid.
5. Texas Juvenile Justice Department, “Juvenile Facility Registry,” http://www.tjjd.texas.gov/publications/other/searchfacilityregistryresults.aspx?SelectedFacilityType=o5MkhJSWp2E=&SelectedSortBy=laExhobORj5ZHimppFKN0Q==&IncludeInactive=bZL7qeN3jY=
11. Texas Criminal Justice Coalition’s analysis of data provided by the Texas Juvenile Justice Department, 2012-2014.
12. Ibid.
14. CSG, “Closer to Home.”