



Removing Youth from Adult Jails: A 50-State Scan of Pretrial Detention Laws for Youth

CAMPAIGN FOR

YOUTH  JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR

About the Campaign for Youth Justice:

The Campaign for Youth Justice (CFYJ) is a national initiative focused entirely on ending the practice of prosecuting, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system.

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Introduction

While proponents of criminal justice reform around the country were celebrating the passage of the First Step Act in December 2018, that was not the only major legislative victory signed into law that month. On the same day the First Step Act was signed into law, the president also signed the Juvenile Justice Reform Act of 2018 (“JJRA”). The JJRA reauthorized the Juvenile Justice and Delinquency Prevention Act (JJDP A)¹ for the first time in sixteen years and, in addition to many other important reforms, the law will now require states to remove all youth, including those transferred to the adult system, from adult jails and lock-ups pretrial.

Jail Removal Requirement under the Updated JJDP A:

*(i) not later than 3 years after the date of enactment of the Juvenile Justice Reform Act of 2018, unless a court finds, after a hearing and in writing, that it is in the interest of justice, **juveniles awaiting trial or other legal process who are treated as adults for purposes of prosecution in criminal court** and housed in a secure facility—*

(I) shall not have sight or sound contact with adult inmates; and

(II) except as provided in paragraph (13), may not be held in any jail or lockup for adults

While the juvenile population held in local jails continues to decline each year,² the use of adult correctional facilities to house youth presents numerous concerns and can have harmful and long-lasting effects on our youth. Research shows that the placement of youth in adult facilities are at a higher risk of physical, sexual, and emotional abuse compared to their peers detained in the juvenile justice system.³ Yet, according to the Office of Juvenile Justice & Delinquency Prevention, more than 5,000 children sleep in adult facilities every night, 3,200 of whom are in local jails, charged as adults.⁴

Currently, 41 states permit or require youth charged as adults to be held in adult jails pre-trial, yet many of the youth detained in adult jails will eventually be returned to their communities on probation, sent back to the juvenile system for sentencing, or have their charges dropped. In many of these states, youth may be eligible for release, but lack the resources to post bail. Depending on the state, children as young as age 7 years are eligible to be charged as adults and housed in adult jails pretrial.⁵ Unlike juvenile detention facilities, adult jails are not designed with a focus on rehabilitation, and staff receive little or no training on the social, emotional, or psychological needs of children, nor do they provide adjustments to physical techniques used to control older inmates.

Previous iterations of the JJDPa only prevented youth facing delinquency charges from being held in adult jails, leaving juveniles charged as adults vulnerable to the dangers and shortcomings of adult jail.

But under the reauthorized statute, all youth held in adult jails –including youth charged as adults, who make up about 88% of youth in adult facilities – must be removed to juvenile detention centers within three years of implementation of the new law.⁶

The passage of the JJRA is groundbreaking, and while states will need to take action to ensure they are in compliance with this new provision, many states are well on their way to ensure youth are protected from the harms of adult jails and lock-ups. This brief provides a snapshot of where youth transferred to the adult criminal justice system are currently held pretrial across the country, and, as states prepare to come into compliance with the reforms made to the JJDPa, it takes a closer look at states that already house transferred youth in juvenile facilities.

Trends in Pre-trial Housing of Youth Transferred to the Adult System

Over the past decade, there has been momentum in states to pass laws that limit or remove youth from adult criminal justice system.⁷ Unfortunately, every state and territory in the United States allows young people to be transferred to the adult system and, while state laws may allow transferred youth to be held in juvenile detention centers, that is not always what happens in practice.⁸ Generally, state laws regarding the pre-trial detention of youth transferred to the adult system follow one of three trends: juvenile detention is required, juvenile detention is allowed, or adult jail is presumed or required. A summary of these laws follows.

Juvenile Detention Required

Fourteen states and the District of Columbia currently require juvenile pretrial detention for youth transferred to the adult system: California,⁹ Colorado,¹⁰ Delaware,¹¹ Georgia,¹² Kentucky,¹³ Massachusetts,¹⁴ New Jersey,¹⁵ New Mexico,¹⁶ New York,¹⁷ Ohio,¹⁸ Oregon,¹⁹ Vermont,²⁰ Virginia,²¹ and West Virginia.²²

In Kentucky, youth under the age of 18 are strictly prohibited from being detained or confined in adult jails. The state actually went from being out of compliance with the JJDPa's jail removal requirement for delinquent youth, to completely removing all youth from adult jails and prisons.²³ In the early 1990s, Kentucky had only two juvenile detention centers in the entire State, resulting in many youth being held in adult jails,

"I didn't go in the hole because that's against the law for youth, but they had a fake hole for juveniles there. The fake hole is just the same as the hole but it'd be a group of juveniles there and they have to stay on their unit and can only come out for like two hours of rec."

– Young man at the New Beginnings facility in the District of Columbia on his experience at the DC Jail.

often on the same floor as adults.²⁴ During this time, advocates in Kentucky filed two lawsuits - one filed after a suicide in an adult jail - based on violations of JJDP and the youth's constitutional rights to safe conditions of confinement.²⁵ The claims included inadequate personnel, fire safety violations, and insufficient education, medical and mental health care, recreation, and religious programming for youth.²⁶ As a result of these lawsuits and other investigations, including an investigation of the juvenile facilities by the Department of Justice Civil Rights Division, Kentucky chose to forgo federal funds and not comply with the JJDP from 1992-1996, rejoining the Act in 1997 after a settlement agreement was reached.²⁷ While transferred youth must be moved to adult facilities if they turn 18 and are still detained, these children are much more likely to receive age-appropriate services and treatment that they otherwise would not receive had they been housed in an adult jail. Given that Kentucky allows children as young as age 14 to be prosecuted as adults, this law gives youth up to four years of protection and age appropriate services that they otherwise wouldn't receive. Kentucky's Department of Juvenile Justice also made sure to work with stakeholders at each site to ensure a smooth transition when the adult jails' juvenile sections were closed.²⁸

Unfortunately, there are limitations and exceptions to many of these laws. In Massachusetts, for example, it depends on the nature of the crime. If a youth is charged with murder, he or she may be confined in an adult jail, which often times leads to the youth being placed in solitary confinement so that the state is complying with the sight and sound separation requirements under the Prison Rape Elimination Act.²⁹ While Georgia law requires transferred youth to be held in juvenile detention pretrial, they have yet to raise the age of criminal responsibility in the state, meaning youth 17 years of age and older are automatically treated as adults. In New Mexico, a child who has been adjudicated as a youthful offender and is violent towards staff or other residents may be moved to a county jail. Further, if that child has previously been incarcerated as an adult, he or she may no longer be permitted to be detained in a juvenile facility.

Juvenile Detention Allowed

In 27 states across the country, including Alaska,³⁰ Arizona,³¹ Arkansas,³² Illinois,³³ Iowa,³⁴ Louisiana,³⁵ Maine,³⁶ Maryland,³⁷ Michigan,³⁸ Minnesota,³⁹ Missouri,⁴⁰ Montana,⁴¹ Nebraska,⁴² Nevada,⁴³ New Hampshire,⁴⁴ North Carolina,⁴⁵ North Dakota,⁴⁶ Oklahoma,⁴⁷ Pennsylvania,⁴⁸ Rhode Island,⁴⁹ South Carolina,⁵⁰ South Dakota,⁵¹ Tennessee,⁵² Texas,⁵³ Utah,⁵⁴ Washington,⁵⁵ and Wisconsin⁵⁶ juvenile detention is allowed, but not required.

In Louisiana, if a child is transferred to the adult system, the child may be held "any facility used for the pretrial detention of accused adults...." However, some localities are taking matters into their own hands. In

Stories of Youth in Adult Jails

In Baton Rouge, LA, a 17-year-old who was incarcerated in and jail was raped by a prisoner who infected the teenager with HIV. Under PREA, the boy should have been sight and sound separated, but he instead was moved from the juvenile wing of the jail, after which he was raped by an adult inmate.

Source: <https://www.chicagotribune.com/nation-world/ct-louisiana-prison-rape-hiv-lawsuit-20180130-story.html>

June 2015, the New Orleans City Council adopted an ordinance designating “the Youth Study Center as ‘the appropriate’ place to hold juvenile detainees awaiting trial as adults.”⁵⁷ Unfortunately, less than a year after the ordinance had passed, the juvenile facility requested to transfer some of its occupants to the adult jail,⁵⁸ and, in October 2016, a 15 year old committed suicide while being detained pretrial in the Orleans Parish Prison, which is currently under a federal consent decree for its deplorable conditions.⁵⁹ Despite this terrible story, New Orleans has continued to make progress, and the number of children transferred to the adult system decreased by 80 percent the following year.⁶⁰

In states like Arkansas and Utah, it is particularly troubling that youth transferred to the adult system may be held in adult facilities because both have refused to come into compliance with the Prison Rape Elimination Act (“PREA”).⁶¹ A spokesperson for the Governor of Utah claims that the state has implemented a majority of PREA’s requirements (though she did not state which requirements), but claims that the audit requirements are burdensome.⁶² Most of the states in this category do specify, in compliance with both PREA and the JJDP, that youth in adult facilities must be sight and sound separated, including Florida, Montana, Nebraska, and South Dakota. In Maine, the statute states that youth in adult facilities must be held in an entirely separate section for youth that is sight and sound separated.

In Arizona, if a youth is transferred to the adult system pursuant to the state’s transfer statute,⁶³ he or she may be detained in an adult facility. A 2017 investigation revealed that the number of youth held in adult jails in Maricopa County alone has nearly doubled.⁶⁴ Of 92 total youth in custody, 79 of the youth were being charged as adults and are awaiting trial.⁶⁵ To try and remedy this, in 2016, Arizona did amend their detention law, to provide that “[a] juvenile who is charged with or on trial for an offense listed in section 13-501 may be detained in a juvenile detention center if the detention is ordered by the court.”⁶⁶

Adult Jail Required or Presumed

Despite the positive trend in many states to remove youth from adult facilities, there are still states where it is presumed or required that youth transferred to the adult system be held in adult jails. Those states include Alabama,⁶⁷ Connecticut,⁶⁸ Florida,⁶⁹ Hawaii,⁷⁰ Idaho,⁷¹ Indiana,⁷² Kansas,⁷³ Mississippi.⁷⁴

In some of these states, the statutes are not entirely clear regarding the pretrial detention of youth transferred to the adult system. For example, in Indiana, the statute states that if a child under 18 had committed a crime that would be an offense if committed by an adult, then the juvenile court loses jurisdiction over that child. When the juvenile court loses jurisdiction, this means the child cannot be held in a juvenile facility; however, in 2013, Indiana amended the law to allow a judge to send a youth charged as an adult to juvenile justice custody post-conviction.⁷⁵ In the past two legislative sessions, there has been further movement around publicly releasing data about the number of youth charged and sentenced as adults, as well as the addition of a

reverse waiver provision that requires youth who plea to a lower, non-transferrable offense, to be adjudicated and disposed under the juvenile court.⁷⁶

In Idaho, if a child is transferred to adult court, adult jail is presumed to be the appropriate detention facility and is the default placement. The court can only order a youth charged as an adult to be detained in a juvenile facility if it finds good cause to do so. The statute does not provide any clarification as to what constitutes good cause.

Stories of Youth in Adult Jails

At the Palm Beach County jail in Florida, youth are often held in solitary confinement and face abuse at the hands of deputies. One teen got his teeth knocked out by deputies after he flooded his cell with toilet water as a response to losing his phone privileges. Other youth were forced to drink putrid water from the sink attached to their toilet after deputies refused them clean water.

Source: <https://www.palmbeachpost.com/news/breaking-news/suit-jail-keeps-teens-solitary-for-months-without-care-education>

In Florida, a state that prosecutes more children in adult court for felonies than any other state in the country, the law plainly states that a young person transferred to the adult system for a felony must be transferred to an adult jail or lock-up.⁷⁷ While legislators have considered a record number of bills to transform its justice system and protect children this year, youth across the state continue to suffer in adult facilities.⁷⁸ The Florida Department of Juvenile Justice has also stopped their practice of transferring physical custody of children under their care to adult corrections for acting out or fighting.

In Alabama, a child transferred to the adult criminal justice system is detained in and adult jail or lockup by default, though a circuit court judge can recommend that a child be placed in a juvenile detention center. Alabama allows youth as young as 14 to be transferred to the adult system, and youth who are 16 and 17 are automatically charged as adults if they commit certain enumerated offenses.⁷⁹ One young man, Rick Ward, who was 16 when he was arrested for murder, recounts how he had to worry about just trying to survive each day when he was transferred to the Jefferson County jail and kept with the adult population while he awaited trial.⁸⁰ Ward noted that he had a cellmate who was able to inform him of the unwritten rules to stay out of trouble, but, since his release, Ward has volunteered with a youth mentor and works as an advocate to keep kids out of adult jails.⁸¹

Interviews with Transferred Youth Housed in Juvenile Facilities

Youth transferred to the adult system are frequently mischaracterized as the “worst of the worst.” Further, there are often concerns that juvenile facilities will be unable to accommodate youth from the adult system or that the facilities are inadequately designed to hold youth for a longer period of time, as often is required for youth tried as adults. However, juvenile facilities that hold transferred youth across the country have proven these fears are unfounded. It is important to note that in some localities that retain youth charged as adults in their detention centers pre-trial, the transfer laws are quite expansive and give unusual powers to prosecutors to directly file youth into the adult system. Housing youth in more developmentally appropriate settings is simply a minor attempt to mitigate the harms of sending so many children to adult court.

Under Virginia law, there is a presumption that youth tried as adults will be held in juvenile facilities pretrial. In Richmond, youth who are being tried as adults, regardless of the charge, are held in the juvenile detention facility and fully integrated with the youth charged as delinquent. One employee reports that there has not been pushback and that it is generally accepted that if you are under 18, you should be held in a juvenile facility. While the detention center can request to have a young person charged as an adult moved to a jail due to behavioral issues, that request must go before a judge, and it is rare for that request to be granted.

The Campaign for Youth Justice interviewed several youth sentenced as adults who are currently detained at the Bon Air Juvenile Correctional Center, where they are held in the same units as youth in juvenile system. One young man was held in a regional jail for a few months before coming to Bon Air and explained how the food was different, visitation with family was restricted, and how he was in a facility that held grown men. After coming to Bon Air, he has been able to see his family more. He has also completed his GED and is now taking several post-secondary courses and technical training certifications. He plays basketball and football, and participates in the facility’s Student Government Association. These opportunities have made him feel well-prepared to go back to his community and succeed, and none of these opportunities would be available to him in an adult facility.

The law has also been implemented smoothly in more rural settings in Virginia, such as Charlottesville. There, youth tried as adults are held in juvenile facilities and fully integrated with youth charged as delinquent including in housing units. The Director of the facility ensures that all youth receive services and access to programming.

Partnerships with Community Colleges

The Campaign for Youth Justice interviewed 6 young people at the Virginia Beach Juvenile Detention Center. Many of the young people mentioned participating in classes offered by Tidewater Community College (TCC). In addition to the various trade certification courses provided at the facility, the partnership with TCC has allowed the young people in the facility to prepare to enter college when they return to their communities. One young man we spoke with was taking a full course load, including Introduction to Business, History, and Introduction to Sociology, among other classes. TCC also offers an entrepreneurial program as well as a leadership program. This is the first time a college has partnered with the detention center, which has opened up immense opportunities for the young people in the facility. The Detention Center hopes to continue to expand this program in the near future.

Last year, the District of Columbia removed youth charged as adults from the adult jail back to a youth facility after the City Council passed a critical juvenile justice reform bill.⁸² On October 1, 2018, 25 youth were moved to New Beginnings, a youth facility run by the Department of Youth Rehabilitative Services (DYRS) in Washington, D.C. Delinquent youth are held in the same facility with a total capacity of 60 youth. Prior to the passage of the Comprehensive Juvenile Justice Reform Act, youth certified as adults were placed on their own unit in the DC Jail. Conditions in the jail were dangerous and programming was limited. Between 2011-2014, the DC Jail contracted with DYRS to try and implement developmentally-appropriate improvements.⁸³ Ultimately, it became clear that youth belong at a DYRS-operated facility.

Access to Education: Adult Jails vs. Juvenile Facilities

“At jail they don’t really care if you do your work or not. They were just there for the money. I feel like I wasn’t learning at all. At NB [New Beginnings] they give us work and they make sure we know it. The teachers are caring and want to see you win. They got computers here, they didn’t have computers at DC jail.”

– Young man at New Beginnings in the District of Columbia

Today, instead of corrections officers staffing the facility, youth are now met by development specialists, who received specialized training to work with young people. During intake, all youth, whether charged as an adult or juvenile, receive a comprehensive medical exam, and a mental health screening. They also undergo a classification assessment and a vulnerability assessment so they can be appropriately matched with programming while they are awaiting trial.

Youth charged as adults have a separate housing unit, in recognition that they might spend more time at the facility, but otherwise are integrated with their peers during school, meals, and recreation time. They have access to education, including special education classes, and classes for English language learners.

DYRS also brings in community members to work with the young people, including “Credible Messengers.” These Credible Messengers are often formerly incarcerated individuals who come from similar backgrounds and neighborhoods and help to counsel the youth, resolve conflicts, and help them prepare for be successful once they are back home.

The youth who have been transferred to New Beginnings after spending time at the DC Jail talk about the differences in the way they are treated by staff. Several youth interviewed for the Campaign for Youth Justice noted that they feel the staff at New Beginnings actually care for them and want to make sure they succeed. While they may dislike that there is less free time (a common complaint for any teen) at New Beginnings, they feel like they are challenged at school and they enjoy the access to more activities and better food. Contrary to what some feared, there have been no mass

outbreaks of violence and, in line with national standards, the facility does not use pepper spray or restraints as a method of discipline.

Recommendations

Removing *all* youth from adult jails will look different in every state, county, and jail, yet it is not impossible. We recommend states take the following steps to ensure the protection of justice-involved youth:

1. Prohibit the Detention of Youth in Adult Jails and Lock-Ups

Ideally, to protect youth involved in the justice system and to aid judges in issuing pretrial detention orders, every state should adopt a clear, bright-line rule against detaining any young person in an adult facility. Such a rule would bring jurisdictions into compliance with the JJDP and PREA, would give detained youth access to vital educational and rehabilitative services while their cases are pending, and prevent numerous incidents of sexual assault and violence. State legislators, even in states that currently have relatively strong laws, will need to review their statutes to ensure they meet the new requirements under the JJDP.

There are already many good laws states can turn to as an example. Under the JJDP, all youth must be removed from adult jails and lock-ups, unless a court finds that it is in the interest of justice to detain a child in an adult facility. If a court does find that it is in the interest of justice to detain a child in an adult facility, the court must conduct a hearing at least every 30 days (45 days for rural jurisdictions), and may not keep a young person in adult facility for more than 180 days, unless it determines there is good cause for an extension. In Ohio, a young person can only be held in an adult facility if a court finds that the young person is “a threat to the safety and security of the facility,” and provides a list of criteria a court can consider in making that determination, many of which are similar to the requirements under the JJDP.⁸⁴ Similarly, North Dakota requires a hearing for youth to be transferred to an adult facility; however, the court is only required to consider the interests of the department, the safety of other residents, or the interests of the general public.⁸⁵

While the JJDP does allow a state to house youth transferred to the adult facility pretrial under strict circumstances, we urge states to instead consider adopting statutes similar to West Virginia’s, which states that “[a] juvenile, including one who has been transferred to criminal jurisdiction of the court, may not be detained or confined in any institution in which he or she has contact with or comes within sight or sound of any adult persons incarcerated because he or she has have been convicted of a crime or are awaiting trial on criminal charges....”⁸⁶ This bright-line rule is the only way to ensure children are truly protected from the harms of adult jails and lock-ups.

JJDPA: In the Interest of Justice

(ii) in determining under clause (i) whether it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults, or have sight or sound contact with adult inmates, a court shall consider—

- (I) the age of the juvenile;*
- (II) the physical and mental maturity of the juvenile;*
- (III) the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;*
- (IV) the nature and circumstances of the alleged offense;*
- (V) the juvenile's history of prior delinquent acts*
- (VI) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and*
- (VII) any other relevant factor*

2. Support Full Funding for the JJDPA

In order to support states in implementing the updated jail removal requirements under the JJDPA, members of Congress should fight for robust juvenile justice funding. Overall support of key juvenile justice programs has declined to the lowest levels in more than a decade, impacting states' ability to serve youth.⁸⁷ Cuts have weakened the federal-state partnership and slowed national, state, and local progress in this area. Congressional appropriators should fight to restore the critical juvenile justice funding that has been lost since 2002. Further, state advocates and legislators should make clear to their members of Congress that this funding is critical to their success in protecting youth in their states.

3. Raise the Age of Criminal Responsibility

As of May 2019, only four states continue to automatically excluded 17-year-olds from juvenile court jurisdiction based solely on their age: Georgia, Texas, Wisconsin, and Michigan (though the Michigan legislature is on the precipice of passing a law to raise the age).⁸⁸ As noted, this means that even in states like Georgia that otherwise have strong laws on where youth transferred to the adult system are held pretrial, because 17-year-olds are automatically treated as adults in the eyes of the law, they do not benefit from these critical protections.

States that have successfully raised the age of juvenile court jurisdiction have not only been able to contain costs, but have they enhanced public safety in their states by implementing evidence-based reforms within their juvenile justice systems in order to be prepared to serve teenage youth. Research and evidence overwhelmingly indicate that trying and treating youth as adults in the criminal justice system is harmful and even leads to higher rates of recidivism.⁸⁹ While raising the age of criminal responsibility will not protect youth in states with bad laws on pretrial detention, it will

at least ensure that youth are not automatically excluded from the protection of strong laws on the basis of age alone.

4. Limit the Pathways of Transfer to the Adult System

Every state in the U.S. has at least one transfer mechanism that allows youth to be tried and treated as adults. Forty six states and the District of Columbia allow juvenile court judges to have judicial discretion over the transfer of youth to the adult court if youth are a certain age and have been charged with a certain offense.⁹⁰ In 12 states and the District of Columbia, there are presumptive waiver provisions in which it is presumed that a juvenile court judge will transfer the youth to adult court, unless the young person's defense counsel can meet a specific burden of proof, allowing the young person to stay in the juvenile court system.⁹¹ Finally, in 14 states there is mandatory waiver, which requires juvenile court judges to send youth to adult criminal court after finding probable cause and confirmation of the youth's age.⁹²

Thanks in part to these transfer mechanisms, every year at least 76,000 youth are prosecuted in the adult criminal justice system.⁹³ While it is possible to remove youth from adult jails and lock-ups without changing transfer laws, the reality is that youth are more likely than adults to be permanently traumatized by the harsh realities of the adult system. Further, they are more likely to respond positively to rehabilitation available in the juvenile system. Limiting pathways to transfer to the adult system will not only protect youth from the harms of adult jails, but also the harms of the adult system as a whole.

Conclusion

Youth housed in adult facilities lose much more than their freedom. While there are federal and state laws granting all children the right to an education, most jails do not offer age appropriate educational services.⁹⁴ Despite the fact that youth are more likely to benefit from rehabilitation than adults, such services also are not provided in adult facilities, which can lead to youth under age 18 who are released in worse shape than when they entered.⁹⁵ And, as mentioned earlier, youth in adult facilities are at an extreme risk for sexual and physical violence.⁹⁶ In fact, youth are five times more likely to be sexually assaulted in adult facilities compared to juvenile facilities, and often within the first 48 hours of their incarceration.⁹⁷

While PREA and other state-level reforms have pushed many states in the right direction when it comes to detaining youth in adult facilities, states need to do more. From updating state statutes to prohibit the placement of youth in adult prisons, to implementing model approaches to removing youth from adult prisons and increasing data collection efforts and research on youth in the adult criminal justice systems, there are many steps states and localities can undertake to protect youth. As one young man at the Bon Air detention facility in Virginia noted, “[i]t’s hard to stay a child when you’re locked up.” Young people are more than their worst mistake, and should not be robbed of their childhood by the hands of the adult system.

Appendix of State Laws

State	Statute	Juvenile Detention Required	Juvenile Detention is Possible but not Required	Adult Jail is Presumed or Required
Alabama	ALA. CODE. § 12-15-208 (2018).			X
Alaska	ALASKA STAT. § 47.12.240 (2016).		X	
Arizona	ARIZ. REV. STAT. § 8-305 (2016).		X	
Arkansas	ARK. CODE. ANN. § 9-27-336 (2016).		X	
California	CAL. WELF. & INST. § 207.1 and § 207.6 (2018).	X		
Colorado	COLO. REV. STAT. §19-2-508 (2017).	X	X	
Connecticut	CONN. GEN. STAT. §46b-127 (2015).			X
Delaware	81 DEL. CODE ANN. 308 (2018).	X - Hearing required for children 16 and Older		
Florida	FLA. STAT. §985.265 (2017).			X - If a felony
Georgia	GA. CODE §15-11-565 (2016).	X - Until the age of 17		
Hawaii	HAW. REV. STAT. §571-32 (2016).			X
Idaho	IDAHO CODE § 20-509 and § 20-518 (2017).			X
Illinois	705 ILL. COMP. STAT. 405/5-410 (2018).		X	
Indiana	IND. CODE §37-1-2 (2016).			X
Iowa	IOWA CODE § 232.22 (2018).		X	

State	Statute	Juvenile Detention Required	Juvenile Detention is Possible but not Required	Adult Jail is Presumed or Required
Kentucky	KY. REV. STAT. § 640.020 (2015).	X		
Louisiana	LA. CHIL. CODE ART. 306 (2018).		X	
Maine	ME. REV. STAT. TIT. 15 § 3205 (2017).		X	
Maryland	MD. CODE CRIM. PROC. § 4-202 (2017).		X	
Massachusetts	MASS. GEN. LAWS CH. 119 § 68 (2017).	X - Except when charged with 1st or 2nd degree murder		
Michigan	MICH. COMP. LAWS § 764.27a (2017).		X	
Minnesota	MINN. STAT. § 260B.176 (2018).		X	
Mississippi	MISS. CODE. ANN. § 43-21-301(6) and § 43-21-315 (2017).			X
Missouri	MO. REV. STAT. § 221.044 (2018).		X	
Montana	MONT. CODE § 41-5-206 (2017).		X	
Nebraska	NEB. REV. STAT. § 43-250 (2018).		X	
Nevada	NEV. REV. STAT. § 62C.030 (2017).		X	
New Hampshire	N.H. REV. STAT. § 169-B:24 (2018).		X	
New Jersey	NJ. STAT. ANN. § 2A:4A-36 (2017).	X		
New Mexico	N.M. STAT. § 32A-2-12 (2017).	X		
New York	N.Y. CRIM. PRO. L. § 510.15 (2017).	X		
North Carolina	N.C. GEN. STAT. § 7B-2204 (2018).		X - Unless it is more convenient to hold a child in a holdover facility for pretrial/trial	

State	Statute	Juvenile Detention Required	Juvenile Detention is Possible but not Required	Adult Jail is Presumed or Required
North Dakota	N.D. CENT. CODE §12-46-13 (2017).		X	
Ohio	OHIO REV. CODE § 2152.26 (2018).			
Oklahoma	OKLA. STAT. tit. 10A-2-5-204 (2018).		X	
Oregon	OR. REV. STA.T § 419C.130 (2017).	X - If under 16		
Pennsylvania	42 PA. CONS. STAT. § 6327 (2017).		X	
Rhode Island	R.I. GEN. LAWS §14-1-26 (2018); <i>In re Joseph</i> , A.2d 985 (R.I. 1990)		X	
South Carolina	S.C. CODE § 63-19-820 (2018).		X	
South Dakota	S.D. CODIFIED LAWS § 26-7A-26 and § 26-11-1 (2018).		X	
Tennessee	TENN. CODE § 37-1-134 (2017).		X	
Texas	TEX. FAM. CODE ANN. § 51.12(f) and §54.02(p) (2017).		X	
Utah	UTAH CODE ANN. § 78A-6-113(9) - (12) (2018).		X	
Vermont	VT. STAT. tit. 33 § 5293 (2019).	X - Unless a felony charge has been filed		.
Virginia	VA. CODE § 16.1-249	X		
Washington	WASH. REV. CODE §13.04.030 (2017).		X	
West Virginia	W. VA. CODE § 49-4-720 (2018).	X		

State	Statute	Juvenile Detention Required	Juvenile Detention is Possible but not Required	Adult Jail is Presumed or Required
Wisconsin	WIS. STAT. § 938.209 (2018).		X	
Wyoming ⁹⁸	N/A		X	
Washington, DC	D.C. CODE § 23-1322 (2016).	X		

¹ To address inconsistencies in juvenile justice policies and procedures from state to state and to improve outcomes for youth and community safety, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP) in 1974. The JJDP creates a federal-state partnership for the administration of juvenile justice and delinquency prevention. Most importantly, it sets forth federal standards to ensure a minimum level of safety and equitable treatment for youth who come into contact with the juvenile justice system. In order to be eligible for the funds provided by the JJDP, states must comply with four core protections for children: 1) Status offenders may not be held in secure detention; 2) With limited exceptions, youth may not be detained in adult jails and lock-ups; 3) When youth are placed in adult jails or lock-ups, they must be sight and sound separated from adults; and 4) States are required to assess and address the racial and ethnic disparities that occur at all points in the juvenile justice system.

² Zhen Zeng, Bureau of Justice and Statistics, U.S. Dept. of Justice, *Jail Inmates in 2016* (Feb. 2018), available at <https://www.bjs.gov/content/pub/pdf/ji16.pdf>.

³ Jessica Lahey, *The Steep Costs of Keeping Juveniles in Adult Prisons*, THE ATLANTIC (Jan. 8, 2016), <https://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201/>.

⁴ Juveniles in Adult Jails and Prisons, U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, <https://www.ojjdp.gov/ojstatbb/corrections/qa08700.asp?qaDate=2014> (last visited Mar. 26, 2019).

⁵ *Thirteen States Have No Minimum Age for Adult Prosecution of Children*, EQUAL JUSTICE INITIATIVE (Sept. 19, 2016), <https://eji.org/news/13-states-lack-minimum-age-for-trying-kids-as-adults>.

⁶ Juveniles in Adult Jails and Prisons, U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, <https://www.ojjdp.gov/ojstatbb/corrections/qa08700.asp?qaDate=2014> (last visited Mar. 26, 2019).

⁷ JEREE THOMAS, CAMPAIGN FOR YOUTH JUSTICE, RAISING THE BAR; STATE TRENDS IN KEEPING YOUTH OUT OF ADULT COURTS (2015-2017) 20-27 (2017), available at http://cfyj.org/images/StateTrends_Report_FINAL.pdf.

⁸ NEELUM ARYA, GETTING TO ZERO: A 50-STATE STUDY OF STRATEGIES TO REMOVE YOUTH FROM ADULT JAILS 11 (2018), available at <http://gettingtozero.us>.

⁹ CAL. WELF. & INST. § 207.1 and § 207.6 (2018).

¹⁰ COLO. REV. STAT. §19-2-508 (2017).

¹¹ 81 DEL. CODE ANN. 308 (2018).

¹² GA. CODE §15-11-565 (2016).

¹³ KY. REV. STAT. § 640.020 (2015).

¹⁴ MASS. GEN. LAWS CH. 119 § 68 (2017).

¹⁵ NJ. STAT. ANN. § 2A:4A-36 (2017).

¹⁶ N.M. STAT. § 32A-2-12 (2017).

¹⁷ N.Y. CRIM. PRO. L. § 510.15 (2017).

¹⁸ OHIO REV. CODE § 2152.26 (2018).

¹⁹ OR. REV. STAT. § 419C.130 (2017).

²⁰ VT. STAT. ANN. TIT. 33 § 5293 (2018).

²¹ VA. CODE § 16.1-249 (2018).

²² W. VA. CODE § 49-4-720 (2018).

²³ CAMPAIGN FOR YOUTH JUSTICE, CASE EXAMPLES: JURISDICTIONS THAT HAVE REMOVED YOUTH UNDER THE AGE OF 18 FROM ADULT JAILS 2 (2018), *available at* https://www.campaignforyouthjustice.org/images/factsheets/CFYJ_Jail_Removal_Research.pdf.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ The Prison Rape Elimination Act (PREA), unanimously passed by Congress in 2003, is a federal statute enacted to address sexual assault and victimization in prisons, jails, lockups, and other detention facilities—all of which are facilities that may house youth. The PREA regulations include a “Youthful Inmate Standard” to protect youth under age 18 in adult facilities, which includes youth transferred to the adult system and youth who reside in states with lower ages of criminal responsibility. Under the Youthful Inmate Standard, youth must be sight and sound separated from adult inmates in housing units. In areas outside of housing units, youth must also remain sight and sound separated, unless there is direct staff supervision. Further, agencies are required to avoid using isolation on youth in adult facilities in order to comply with these requirements.

³⁰ ALASKA STAT. § 47.12.240 (2016).

³¹ ARIZ. REV. STAT. § 8-305 (2016).

³² ARK. CODE ANN. § 9-27-336 (2016).

³³ 705 ILL. COMP. STAT. 405/5-410 (2018).

³⁴ IOWA CODE § 232.22 (2018).

³⁵ LA. CHIL. CODE ART. 306 (2018).

³⁶ ME. REV. STAT. TIT. 15 § 3205 (2017).

³⁷ MD. CODE CRIM. PROC. § 4-202 (2017).

³⁸ MICH. COMP. LAWS § 764.27a (2017).

³⁹ MINN. STAT. § 260B.176 (2018).

⁴⁰ MO. REV. STAT. § 221.044 (2018).

⁴¹ MONT. CODE § 41-5-206 (2017).

⁴² NEB. REV. STAT. § 43-250 (2018).

⁴³ NEV. REV. STAT. § 62C.030 (2017).

⁴⁴ N.H. REV. STAT. § 169-B:24 (2018).

⁴⁵ N.C. GEN. STAT. § 7B-2204 (2018).

⁴⁶ N.D. CENT. CODE § 12-46-13 (2017).

⁴⁷ OKLA. STAT. tit. 10A-2-5-204 (2018).

⁴⁸ 42 PA. CONS. STAT. § 6327 (2017).

⁴⁹ R.I. GEN. LAWS § 14-1-26 (2018); *In re Joseph*, A.2d 985 (R.I. 1990)

⁵⁰ S.C. CODE § 63-19-820 (2018).

⁵¹ S.D. CODIFIED LAWS § 26-7A-26 and § 26-11-1 (2018).

⁵² TENN. CODE § 37-1-134 (2017).

⁵³ TEX. FAM. CODE ANN. § 51.12(f) and § 54.02(p) (2017).

⁵⁴ UTAH CODE ANN. § 78A-6-113(9) - (12) (2018).

⁵⁵ WASH. REV. CODE § 13.04.030 (2017).

⁵⁶ WIS. STAT. § 938.209 (2018).

⁵⁷ Ken Daley, *City's juvenile detention center packed beyond capacity but Gusman denies transfer*, NOLA.COM (Feb. 16, 2016), http://www.nola.com/crime/index.ssf/2016/02/citys_juvenile_detention_cente.html.

⁵⁸ *Id.*

⁵⁹ Aaron Clark-Rizzio, *Guest Column: Looking out for vulnerable children*, THE ADVOCATE (Oct. 26, 2017, 6:00 p.m.), http://www.theadvocate.com/baton_rouge/opinion/article_4b6153ee-b9b9-11e7-85a5-6784489f893c.html?platform=hootsuite.

⁶⁰ *Id.*

⁶¹ Crime and Justice News, *UT, AR Still Refuse to Adopt U.S. Prison Rape Law*, THE CRIME REPORT (May 14, 2017), <https://thecrimereport.org/2017/05/14/ut-ar-still-refuse-to-adopt-u-s-prison-rape-law/>.

⁶² *Id.*

⁶³ ARIZ. REV. STAT. § 8-327 (2018).

- ⁶⁴ Jimmy Jenkins, *Arrests Down, But Juvenile Population Surges in Maricopa County Jail*, 91.5 KJZZ (Nov. 2, 2017, 10:27 AM), <http://kjzz.org/content/560361/arrests-down-juvenile-population-surges-maricopa-county-jail>.
- ⁶⁵ *Id.*
- ⁶⁶ ARIZ. S.B. 1308 (2016).
- ⁶⁷ ALA. CODE. § 12-15-208 (2018).
- ⁶⁸ CONN. GEN. STAT. §46b-127 (2015).
- ⁶⁹ FLA. STAT. §985.265 (2017).
- ⁷⁰ HAW. REV. STAT. §571-32 (2016).
- ⁷¹ IDAHO CODE §20-518 (2016).
- ⁷² IND. CODE §37-1-2 (2016).
- ⁷³ KAN. STAT. § 38-2332 (2018).
- ⁷⁴ MISS. CODE. ANN. § 43-21-301(6) and § 43-21-315 (2017).
- ⁷⁵ IND. H.B. 1108 (2013), available at <http://www.in.gov/legislative/bills/2013/PDF/HE/HE1108.1.pdf>.
- ⁷⁶ IND. S.B. 16 (2016), available at <http://iga.in.gov/legislative/2016/bills/senate/160>.
- ⁷⁷ No Place for Child, <https://www.noplaceforachild.com/> (last visited Apr. 2019).
- ⁷⁸ *State Spotlight: Challenging Juvenile Transfer in Florida*, CAMPAIGN FOR YOUTH JUSTICE (Mar. 14, 2019), <http://www.campaignforyouthjustice.org/campaigns/item/state-spotlight-challenging-juvenile-transfer-in-florida>.
- ⁷⁹ Anna Claire Vollers, *Why Alabama Locks Up Most Teens as Adults and Why That Could Change*, AL.COM (Nov. 3, 2017), http://www.al.com/news/index.ssf/2017/11/juvenile_justice_reform_kids_c.html.
- ⁸⁰ *Id.*
- ⁸¹ *See id.* (“But I feel like it’s my duty, my mission and it’s something I believe in that no kid should have to go through in (adult) prison. You’re not mentally or physically ready.”).
- ⁸² D.C. CODE § 23-1322 (2016).
- ⁸³ The District of Columbia Dept. of Corrections Treatment Facility Juvenile Unit Assessment, The Ridley Group & Associates, LLC (2013), available at https://doc.dc.gov/sites/default/files/dc/sites/doc/release_content/attachments/DOC%20CTF%20JUV%20ASSESSMENT%20REPORT.pdf.
- ⁸⁴ OHIO REV. CODE § 2152.26(F)(4)(b)-(c) (2018) (factors a court must consider in determining whether a youth can be held in an adult facility include: (i) The age of the person; (ii) Whether the person would be deprived of contact with other people for a significant portion of the day or would not have access to recreational facilities or age-appropriate educational opportunities in order to provide physical separation from adults; (iii) The person's current emotional state, intelligence, and developmental maturity, including any emotional and psychological trauma, and the risk to the person in an adult facility, which may be evidenced by mental health or psychological assessments or screenings made available to the prosecuting attorney and the defense counsel; (iv) Whether detention in a juvenile facility would adequately serve the need for community protection pending the outcome of the criminal proceeding; (v) The relative ability of the available adult and juvenile detention facilities to meet the needs of the person, including the person's need for age-appropriate mental health and educational services delivered by individuals specifically trained to deal with youth; (vi) Whether the person presents an imminent risk of self-inflicted harm or an imminent risk of harm to others within a juvenile facility; (vii) Any other factors the juvenile court considers to be relevant.).
- ⁸⁵ N.D. CENT. CODE §12-46-13 (2017).
- ⁸⁶ W. VA. CODE § 49-4-720(a) (2018).
- ⁸⁷ ACT 4 JJ, JUVENILE JUSTICE FEDERAL FUNDING CHART (2018), available at <http://www.act4jj.org/sites/default/files/resource-files/Historic%20Funding%20Chart%20-%20FY19.pdf>.
- ⁸⁸ John Kelly, *In Another Big Year for “Raise the Age” Laws, One State Now Considers All Teens as Juveniles*, THE CHRONICLE OF SOCIAL CHANGE (June 25, 2018), <https://chronicleofsocialchange.org/youth-services-insider/juvenile-justice-raise-the-age-vermont-missouri-state-legislation>.
- ⁸⁹ CARMEN DAUGHTERY, CAMPAIGN FOR YOUTH JUSTICE, ZERO TOLERANCE: HOW STATES COMPLY WITH PREA’S YOUTHFUL INMATE STANDARD 14-16 (2015).
- ⁹⁰ THOMAS, *supra* note 5 at 30.
- ⁹¹ *Id.*
- ⁹² *Id.*

⁹³ CHARLES PUZZANCHERA, MELISSA SICKMUND, AND ANTHONY SLADKY, NAT'L CENTER FOR JUVENILE JUSTICE, YOUTH YOUNGER THAN 18 PROSECUTED IN CRIMINAL COURT: NATIONAL ESTIMATE, 2015 CASES (2018), <http://www.cfyj.org/images/Transfer-estimate.pdf>.

⁹⁴ Caitlin Curley, *Juveniles Tried As Adults: What Happens When Children Go to Prison*, GENFKD (Nov. 11, 2016), <http://www.genfkd.org/juveniles-tried-adults-happens-children-go-prison>.


⁹⁵ See Lahey, *supra* note 3.

⁹⁶ See Curley, *supra* note 93.

⁹⁷ *Id.*

⁹⁸ The Wyoming code does not specify where youth transferred to the adult system are held pretrial, but advocates in the state report that transferred youth may be held in adult facilities.

CAMPAIGN FOR

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BECAUSE THE CONSEQUENCES AREN'T MINOR

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