



# STATE TRENDS: Updates from the 2013-2014 Legislative Session

*Highlighting the incredible work of advocates, families, youth, and policy makers to decrease the number of children entering into the adult criminal justice system*

CAMPAIGN FOR  
YOUTH JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR

**T**he Campaign for Youth Justice tracks legislative efforts across the country which highlights the incredible work of advocates, families, youth, and policy makers to decrease the number of children entering into the adult criminal justice system. Since 2005, *State Trends* began tracking legislative wins and identifying states ripe for reform. In this brief publication, we showcase movement across the country in the last year.

Reform efforts strengthened tremendously during the 2013-2014 legislative sessions. Building on efforts from the last decade, states continue to roll back harmful statutes and policies created in the 1990s that placed tens of thousands of youth in the adult criminal justice system.

These state victories are both a catalyst and product of positive movement in the greater criminal justice arena. Youth arrest rates continue to drop, in fact, the number of youth violent crime arrests in 2010 was less than any of the prior 30 years.<sup>i</sup> Further, the daily population of youth held in adult jails and prisons fell from nearly 7,500 to approximately 6,200 youth in 2011.<sup>ii</sup> Yet there are still tens of thousands of youth entering the adult criminal justice system each year because of a combination of state laws that allows for youth under 18 to be charged, convicted, sentenced, and incarcerated as an adult.

*State Trends* documents the continuation of four movements in justice reform efforts across the country to roll back transfer laws in the country, from arrest through

sentencing. In 2014, advocacy, research, operative Prison Rape Elimination Act (PREA) regulations, and fiscal analysis assisted in the introduction of several bills to remove youth from the adult criminal justice system and give youth an opportunity at more rehabilitative services. From 2005-2014 the following progress was made:

**Trend 1 (Removing Youth from Adult Jails/Prisons): Eleven states** (Colorado, Idaho, Indiana, Maine, Nevada, Hawaii, Virginia, Pennsylvania, Texas, Oregon and Ohio) have passed laws limiting states' authority to house youth in adult jails and prisons.

**Trend 2 ("Raise the Age"): Five states** (Connecticut, Illinois, Mississippi, Massachusetts, and New Hampshire) have expanded their juvenile court jurisdiction so that older youth who previously would be automatically tried as adults no longer go straight into the adult criminal justice system.

**Trend 3 (Direct File, Waiver, and Transfer Statutes): Fifteen states** (Arizona, Colorado, Connecticut, Delaware, Illinois, Nevada, Indiana, Utah, Virginia, Washington, Ohio, Maryland, Nebraska, Washington, DC and New York) have engaged in transfer reform making it more likely that youth will stay in the juvenile justice system.

**Trend 4 (Sentencing): Twelve states** (California, Colorado, Georgia, Indiana, Texas, Missouri, Ohio, Washington, Florida, Hawaii, West Virginia, and Iowa) have

changed their mandatory minimum sentencing laws to take into account the developmental differences between youth and adults, allow for post-sentence review for youth facing juvenile life without parole or made other changes to how youth are sentenced in the adult system.

In the 2013-2014 legislative session, nine states had legislative wins that align with these trends: Four states developed task forces in 2014--Maryland, Missouri, Nevada, and New York- to determine how youth are placed in the adult system and ways to increase rehabilitative opportunities. Also during this period, New Hampshire became the fifth state in the last ten years to “Raise the Age” of juvenile court jurisdiction to 18 years of age. Two states, Nebraska and Maryland, successfully passed legislation which allows more cases to originate in or transfer back to the juvenile court, while two states (West Virginia and Hawaii) abolished juvenile life without parole.

#### **TREND 1: States and Local Jurisdictions Remove Youth from Adult Jails and Prisons**

Over a decade ago, Congress unanimously passed the Prison Rape Elimination Act of 2003 (PREA) to protect incarcerated individuals from unfair, unjust, and unconscionable treatment. The law provides federal funding for research, programs, training, and technical assistance to states to address the issue, and, as part of that work, Congress created the National Prison Rape Elimination Commission to

develop national standards for eliminating abuse.

Implementation of these national standards has begun and includes a restriction on the placement of youth in adult jails and prisons. PREA’s “Youthful Inmate Standard” calls on states to limit contact between youth and adults in adult facilities by banning the housing of youth in the general adult population, prohibiting contact between youth and adults in common areas, and ensuring youth are constantly supervised by staff. States must also limit the use of isolation which causes or exacerbates mental health problems for youth.

In 2013, four states (North Carolina, Illinois, Massachusetts, and Maryland) began to seriously consider PREA implementation, including how to safely detain youth in adult jails and prisons. Some states, such as **Massachusetts**, decided that the safest—and easiest—solution would be to simply remove youth from adult jails and prisons.

This trend continued in 2014 with states such as **Nevada** contemplating whether the best way to implement the Youthful Inmate Standard is to remove youth from adult facilities and place them in juvenile detention centers, and **Texas** using PREA as an impetus to discuss raising the age of juvenile court jurisdiction from 17 to 18 years of age.

In 2014, **Ohio**’s jail standards were up for review through the administrative regulatory process. The prior version of the

standards had very little information about youth in adult jails, including youth ages 18-21 that remained under the juvenile court's jurisdiction. The new version of the jail standards, which was adopted in April 2014, states that youth should only be held in adult jails in "rare circumstances" and only after: 1) there is a court order to send the youth to the jail, 2) all other alternative placements, including the juvenile detention center, have been considered and rejected, and 3) the jail has provided information to the juvenile court on the conditions under which the youth will be held.

## **TREND 2: States Reexamine the Age of Juvenile Court Jurisdiction**

Five states looked at "Raising the Age" of juvenile court jurisdiction in 2014: Texas, New Hampshire, New York, North Carolina, and Wisconsin.

In 2014, **New Hampshire's** Governor Hassan signed a bill to raise the age of juvenile court jurisdiction to 18 for both felonies and misdemeanors.<sup>iii</sup> Bolstered by data, research, and strategic advocacy efforts, the "Raise the Age" bill contends that youth charged with criminal offenses will originate in the juvenile court with the opportunity for prosecutors to petition for a transfer to the adult criminal court.<sup>iv</sup>

During the interim legislative session, The **Texas** House Criminal Jurisprudence Committee held a public hearing to meet an interim charge: "Study the classification of 17-year-olds as adults in the criminal justice

system of Texas." The hearing gave an opportunity for prosecutors, psychologists, professors, and advocates to echo the same message: it is time to "raise the age". There seems to be little doubt that Texas will embark on raising the age, however, the legislator will now grapple with doing so as seamlessly as possible and including all youth in these efforts.

In April 2014, **New York's** Governor Cuomo announced the members of the Commission on Youth, Public Safety & Justice, which will provide concrete, actionable recommendations regarding youth in New York's criminal and juvenile justice systems by the end of the calendar year. In his 2014 State of the State address, the Governor proposed establishing the commission to "Raise the Age" and help to ensure young people become productive and successful adults.

**North Carolina** advocates continued to push for a "Raise the Age" bill for misdemeanors only during the 2014 session.<sup>v</sup> Backed by bipartisan support, The Young Offenders Rehabilitation Act, which would raise the age of juvenile court jurisdiction from 16 to 18 for misdemeanors only, passed the House of Representatives. While the bill did not receive a hearing in the Senate this session, passage in the House represents the policy's most significant progress to date.

Despite strong advocacy efforts, **Wisconsin** failed to pass legislation to raise the age of criminal majority for misdemeanor crimes.<sup>vi</sup>

Known as the Second Chance bill, this legislation had large bipartisan support with 54 co-sponsors and its senate companion bill had been recommended for passage unanimously by the Senate Transportation, Public Safety and Veterans and Military Affairs Committee. In the end, the bill was not scheduled for a floor vote in either house due to cost concerns. Counties expressed concern with a lack of adequate funding to the county-run juvenile systems to appropriately serve a possible influx of 17 year olds, therefore making it difficult to support the measure. While issues of cost are of concern in all jurisdictions, the lesson from the 2014 Wisconsin legislative session is that it is imperative for states to include a solution-focused fiscal analysis when contemplating placing kids back into the communities. Understanding the needs of the counties and developing more opportunities for funding to follow the youth will lead to stronger, more sustainable change at the state level.

### **TREND 3: States Examine Transfer Laws to Keep More Youth in Juvenile Court**

Maryland, Nevada, New York and Missouri each formed a task force during the 2014 legislative and interim sessions and each developed around the need to examine transfer statutes which allow youth to enter the adult system. Thus far, only Maryland's task force has completed its duties and developed recommendations which created legislation. Of the introduced legislation, **Maryland** advocates were able to modify some of the requirements for "reverse

waiver", making it possible for some youth to go back to the juvenile court.<sup>vii</sup> **Nevada** and **Missouri** are in the infancies of their respective task forces, but both are required to make recommendations to legislators for the 2015 sessions.

**Nebraska** passed legislation which incrementally allows certain youth charged with misdemeanors and felonies to originate in the juvenile court. The law states that by 2015, all cases in which a youth 16 years old or younger is accused of committing a misdemeanor will originate in the juvenile court. By 2017, the statute increases the age to 17 for purposes of this misdemeanor provision. Additionally, all youth under 14 years of age accused of committing a felony will have their cases originate in the juvenile court. Finally, youth under 18 years of age accused of certain low-level felonies (drug distribution) will begin in the juvenile court.<sup>viii</sup> Prosecutors retain their discretion on where to file traffic offenses and certain felonies for youth ages 14 and older, but youth must be represented by counsel at hearings considering transfer to or from the adult court.<sup>ix</sup>

The Nebraska bill alters the criteria used to consider where to file charges against youth and whether or not to transfer them. Grounded in adolescent development research, a number of criteria were added such as: the best interests of the youth; public safety; and the youth's ability to appreciate the nature and seriousness of his or her conduct. Criteria also were deleted:

the sophistication and maturity of the youth as determined by their home, school, and extracurricular activities, and emotional attitude; the availability of juvenile facilities for treatment and rehabilitation; and prior commitment to a youth residential treatment center.

Finally the Nebraska bill requires the state court administrator to submit an annual report to the state legislature and Governor that includes geographic and demographic information on: the filings and adjudications of youth in the juvenile court; youth in the adult court system, including youth placed in adult jails or prisons, or placed on adult probation; motions to transfer cases to and from juvenile and adult criminal court; youth on probation, including length of stay and placement type; legal representation of youth; and rates of recidivism. This comprehensive data will require the state to continue to make smart decisions on crime.

On the heels of last year's passage of **Indiana's** HB 1108 which allowed for more youth to stay in juvenile detention facilities when convicted as adults, Governor Pence signed into law legislation that allows for the juvenile court to retain jurisdiction over youth accused of gang related activity.<sup>x</sup> The particular provisions affecting juvenile court jurisdiction in HB 1006 were part of a larger criminal justice reform bill which passed in 2013 and required some additional language before going into effect July 2014. This bill revised the Indiana Criminal Code for the first time in over two decades.

Continuing to be a leader in criminal justice reform, **Illinois** introduced legislation that eliminates provisions that require automatic prosecution of minors as adults, mandatory and presumptive transfers to adult criminal prosecution.<sup>xi</sup> The bill also provides that all transfers to adult criminal prosecution are discretionary transfers.<sup>xii</sup> Illinois' short session did not allow time for the bill to make its way through the Assembly, however, the groundwork was laid for the subsequent session.

**Washington, DC** is undertaking justice reform to increase accountability for the unfettered discretion of federal prosecutors to direct file DC youth who are 16 and 17 years of age and commit certain felonies. In June of 2014, the Council of the District of Columbia introduced the Youth Offender Accountability and Rehabilitation Act of 2014 (YOARA).<sup>xiii</sup> YOARA reduces the contact that DC youth have with adult criminal justice system by 1) allowing for "reverse transfer" motions, 2) ending the "once-an-adult-always-an-adult," provision, and 3) prohibiting the pretrial detention of youth in adult facilities. Advocates in DC are optimistic that this bill will establish common-sense reform that would enhance public safety, ensure that fewer youth are exposed to the harmful environment in adult jail, and grant more youth access to quality educational and positive youth development programs.

**Florida** and **California** have begun exploring ways to reduce the number of youth that enter the system through prosecutorial

discretion. Both states have the largest number of youth cycling through the adult criminal justice system by the state's direct-file mechanism which allows prosecutors to bypass the juvenile courts completely.<sup>xiv</sup>

#### **TREND 4: States Rethink Sentencing Laws for Youth**

Two years after the pivotal Supreme Court decision, *Miller v. Alabama*, states are struggling with its application. Others either abolished juvenile life without parole (JLWOP) for new cases or determined that *Miller* applied retroactively. States such as **Hawaii** and **West Virginia** abolished juvenile life without parole in 2014, and several other states made the decision retroactive, like **Nebraska**, **Illinois**, and **Texas**.

Conversely, some states are interpreting *Miller* conservatively. The **Michigan** Supreme Court recently held that the *Miller* decision is not retroactive, thus affecting the approximately 350 inmates sentenced to die in prison for crimes they committed when they were children.

A split **Iowa** Supreme Court recently decided that Iowa judges should not automatically subject juvenile offenders to the state's mandatory minimum sentences for crimes such as murder, attempted murder, sex abuse, kidnapping, robbery or vehicular homicide without first considering several mitigating factors such as the offender's background such as age, maturity and family history. Just a year ago, the Iowa Supreme Court ruled in *State v. Ragland*<sup>xv</sup> that the U.S. Supreme Court's

decision in the *Miller* case applies retroactively to 38 Iowa inmates serving life in prison without parole sentences for first-degree murder committed as youth. In two other cases Iowa's Supreme Court ruled that extreme prison sentences that essentially amount to life without parole should be unconstitutional unless judges give offenders an individualized sentencing hearing.<sup>xvi</sup>

#### **ADDITIONAL FACTORS IN REMOVING YOUTH FROM THE ADULT SYSTEM**

##### *Youth Who Commit Violent Offenses*

In the nearly ten years of engaging in, and reporting on, reform efforts across the country, we have found that youth charged with violent offenses are often omitted from positive reform efforts--to the detriment of the movement. In discounting youth who commit crimes against the person or property, we are leaving them out of the opportunities these justice reforms seek to accomplish—better, safer, more cost effective rehabilitative opportunities that recognize that children are different than adults. Leaving out this small, yet significant population of youth offenders ignores what science and research tell us about adolescent development and a youth's amenability for rehabilitation.

In fact, youth younger than age 15 accounted for more than one-fourth of all juvenile arrests for the FBI's Violent Crime Index offenses and Property Crime Index offenses in 2010 (27% and 28%,



respectively).<sup>xvii</sup> Nearly half the states allow youth younger than 15 years of age to be prosecuted in the adult criminal justice system, while a handful allow for youth as young as 10.<sup>xviii</sup> Research tells us that these youth do benefit from rehabilitative treatments which can prevent chronic offending.

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### *Example: Florida*

For instance, Florida Department of Juvenile Justice data indicate less than 9% of the youth arrested are serious, violent, and chronic juvenile offenders. In examining over 363,000 youth records over a five year period from July 1, 2007 to June 30, 2012, 8.9% of the youth were serious, violent, and chronic. 55% of the youth had a history of a felony offense, classifying them as serious. 29% had a history of an “against person” felony offense classifying them as violent. 15% had a history of 4 or more referrals (arrests) in their lifetime, classifying them as chronic. Simply put, 85% of the youth are not chronic repeat offenders that are a consistent burden to the system as some falsely hold to be true. Only 8.9% met all three criteria (serious, violent, and chronic). Furthermore, 44% of the youth were not serious, not violent, and not chronic.<sup>xix</sup>

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### *Racial and Ethnic Disparities*

Remarkably, though sadly expectedly, racial and ethnic disparities are most pronounced the deeper you get into the system. For

example, the racial disparity in juvenile arrest rates for robbery (an offense which transfers thousands of youth to the adult system each year) was most pronounced for black youth, who were arrested at 10 times the rate for white youth in 2010.<sup>xx</sup> The same year, despite a drop in the number of youth judicially waived to the adult system the rate at which petitioned cases were waived to criminal court was 40% greater for black youth than for white youth.<sup>xxi</sup>

### *Role of the Judiciary*

According to the most recent data from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. courts with juvenile jurisdiction handled nearly 1.4 million delinquency cases in 2010. OJJDP’s recent bulletin, “Delinquency Cases Waived to Criminal Court, 2010” shows that more than half (54%) of these cases were handled formally (i.e., a petition was filed requesting an adjudication or waiver hearing) and of the petitioned delinquency cases about one percent resulted in judicial waiver to adult criminal court.<sup>xxii</sup> The number of delinquency cases judicially waived peaked in 1994 at 13,300 cases, more than double the number of cases waived in 1985. The study highlights how the decline in juvenile violent crime drove much of the decrease in judicial waivers throughout the 1990s. In 2011, juvenile courts waived an estimated 5,300 delinquency cases, nearly 60% fewer cases than in 1994.<sup>xxiii</sup> However, that does not equate to a 60% decrease in youth entering the adult criminal justice system overall.



Shockingly, DOJ states that **“part of the decline in judicial waivers can be attributed to the simultaneous and widespread expansion of nonjudicial transfer laws. As a result of these new and expanded laws, many cases that might have been subject to waiver proceedings in previous years were undoubtedly filed directly in criminal court by prosecutors, bypassing the juvenile court altogether.”**<sup>xxiv</sup> Fifteen states now allow for prosecutors to bypass the juvenile and family courts and initiate prosecution against those under the age of 18 in the adult criminal court.<sup>xxv</sup> Despite public opinion favoring an independent, unbiased judicial authority making an individual determination of whether someone under 18 should be tried as an adult, children as young as 10 can be directly filed in adult court in some jurisdictions without any opportunity to return to the juvenile system. Unfortunately, several states do not allow for any judicial determination once a prosecutor goes directly to the adult criminal court.<sup>xxvi</sup> Such decisions have shown to disproportionately impact youth of color.<sup>xxvii</sup>

## **GEARING UP FOR THE 2015 LEGISLATIVE SESSIONS**

There is no shortage of reform efforts occurring across the nation. While there are still nine states whose age of criminal responsibility falls below 18<sup>xxviii</sup>, two of those states are actively considering a “raise the age” effort (Texas and New York). As noted above, while raising the age is a critical step in reform, it is often just the first step. Great need still exists for the expansion of judicial review of transfer cases, jail and prison protections for youth under age 18, and sentencing that is both humane and rehabilitative in nature.

The Campaign for Youth Justice continues to support state advocates, families, and policy makers across the country to remove all youth from the adult criminal justice system and looks forward to a very active and successful 2015 legislative session.

<sup>i</sup> Charles Puzzanchera. *Juvenile Arrests 2010*. (Washington, D.C.: U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (Dec. 2013).

<sup>ii</sup> Todd D. Minton and Daniela Golinelli. *Jail Inmates at Midyear 2013*. (Washington, D.C.: U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics) (May 2014). E. Ann Carson and William J. Sabol, *Prisoners in 2011*. (Washington, D.C.: U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics) (Dec. 2012).

<sup>iii</sup> H.B. 1624, 136<sup>th</sup> Sess. (N.H. 2013).

<sup>iv</sup> *Id.*

<sup>v</sup> H.B. 725, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013).

<sup>vi</sup> A.B. 387, 101<sup>st</sup> Leg., Reg. Sess. (Wis. 2014).

<sup>vii</sup> S.B. 515, 434<sup>th</sup> Sess. Of Gen. Assemb., (Md. 2014).

<sup>viii</sup> L.B. 464, 103<sup>rd</sup> Leg., 1<sup>st</sup> Reg. Sess. (Neb. 2013).

<sup>ix</sup> Those felonies include class I (A,B,C,D), II, and III.

<sup>x</sup> H.B. 1006, 180<sup>th</sup> Gen. Assemb., 2<sup>nd</sup> Reg. Sess. (Ind. 2014).

<sup>xi</sup> H.B. 4538, 98<sup>th</sup> Gen. Assemb., 2<sup>nd</sup> Reg. Session (Ill. 2014).

<sup>xii</sup> *Id.*

<sup>xiii</sup> “B20-0825 - Youth Offender Accountability and Rehabilitation Act of 2014,” *District of Columbia Legislative Information System*, June 3, 2014, <http://lims.dccouncil.us/Legislation/B20-0825>.

<sup>xiv</sup> Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, (Washington, D.C.: U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (Sept. 2011).

<sup>xv</sup> *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013).

<sup>xvi</sup> *State v. Null*, 836 N.W.2d 41 (Iowa 2013); *State v. Pearson*, 836 N.W.2d 88 (Iowa 2013).

<sup>xvii</sup> Charles Puzzanchera. *Juvenile Arrests 2010*. (Washington, D.C.: U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (Dec. 2013).

<sup>xviii</sup> Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone. *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*. (Washington, D.C.: U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (Sept. 2011).

<sup>xix</sup> Florida Dept. of Juvenile Justice, *Juvenile Offender Seriousness Myths v. Facts*. Bureau of Research and Planning (Aug. 2013). Florida Department of Juvenile Justice. (2013). Serious, Violent, Chronic Analysis. Briefing Report. Available at: <http://www.djj.state.fl.us/docs/research2/briefing-report-svc-comprehensive.pdf?sfvrsn=0>.

<sup>xx</sup> Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone. *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*. (Washington, D.C.: U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (Sept. 2011).

<sup>xxi</sup> Charles Puzzanchera and Crystal Robson, *Delinquency Cases in Juvenile Court, 2010*. (Washington, D.C.: U.S. Dept. of Justice Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (Feb. 2014).

<sup>xxii</sup> Charles Puzzanchera and Sean Addie, *Delinquency Cases Waived to Criminal Court, 2010*. (Washington, D.C.: U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (Feb. 2014).

<sup>xxiii</sup> Adapted from *Juvenile Court Statistics 2011* (Forthcoming).

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

<sup>xxv</sup> States with prosecutorial discretion include: California, Arizona, Colorado, Montana, Wyoming, Nebraska, Oklahoma, Arkansas, Louisiana, Florida, Georgia, Virginia, Michigan, Vermont, and Washington, DC.

<sup>xxvi</sup> Louisiana and Washington, DC have no “reverse waiver” mechanisms which allow a criminal court judge to send the case to a juvenile or family court if determined more appropriate, thereby keeping all youth in the adult criminal justice system through prosecutorial discretion. Other states do not allow reverse waiver for certain offenses including drug, property or person.

<sup>xxvii</sup> See Michelle Weemhoff and Kristen Staley. *Youth Behind Bars: Exploring the Impact of Prosecuting and Incarcerating Kids in Michigan’s Criminal Justice System*. Michigan Council on Crime and Delinquency. (2014); Kanako Ishida, et. al. *Automatic Adult Prosecution of Children in Cook County, Illinois, 2010-2012* (April 2014). Evanston, IL: Juvenile Justice Initiative; Alex Peerman, et. al. *Capital City Correction: Reforming DC’s Use of Adult Incarceration Against Youth*, (May 2014). (Washington, DC: DC Lawyers for Youth, Campaign for Youth Justice).

<sup>xxviii</sup> Georgia, Louisiana, Missouri, Texas, New York, North Carolina, Michigan, Wisconsin, and South Carolina.



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