



# **Removal of Youth in the Adult Criminal Justice System: A State Trends Update**

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*on behalf of Campaign for Youth Justice*

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EXHIBIT C - JUVJUSTTASKFORCE  
Document consists of 35 pages.  
Entire exhibit provided.  
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- Juvenile Court founded in 1899 to create a separate justice system for children.
- Within 25 years, states created their own juvenile courts.
- Juvenile justice focused on individualized determinations on a case-by-case basis and rehabilitative approach.
- Still allowed for some kids to be placed in adult criminal court.
- Every year, juvenile courts in the U.S. handle an estimated 1.5 million cases.

# JUVENILE COURT

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## Over-reliance on incarceration as primary response to juvenile crime

- On any given day, over 42,000 youth in juvenile detention facilities, corrections facilities, group homes or shelters.
- Juvenile crime continues to decline, youth incarceration down.
  - The number of arrests of juveniles in 2011 was 31% fewer than the number of arrests in 2002
- Kids in the system who should not be there, “High need, low risk.”
- It costs between \$66,000 and \$88,000 to lock up an individual for 9 months.
- \$7.1 million dollars are spent every day in order to lock up youth in adult facilities.
- Alternatives to incarcerating youth not only reduce crime, but save money. Every \$1 spent on evidence-based programs can yield up to \$13 in cost savings.

# KEY ISSUES IN JUVENILE JUSTICE

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- Expand “reverse waiver” mechanism for youth in the adult criminal justice system allowing for a judge to decide whether prosecution in the criminal court is appropriate
- Remove “once an adult, always an adult” provision

# **Recommendations for Nevada**

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# In Nevada

Dept. of Justice data: Arrests of Juveniles under 18 per 100,000 juveniles ages 10-17, 2011

2011 Reporting Population Coverage	Violent Crime Index	Property Crime Index	Drug Abuse	Weapon
89%	250	1264	690	88

2008 Reporting Population Coverage	Violent Crime Index	Property Crime Index	Drug Abuse	Weapon
98%	337	1724	618	159

Violent Crimes include:

- Murder
- Robbery
- Forcible Rape
- Aggravated Assault

**Notes:** Arrest rates for jurisdictions with less than complete reporting may not be representative of the entire state. Although juvenile arrest rates may largely reflect juvenile behavior, many other factors can affect the magnitude of these rates. Arrest rates are calculated by dividing the number of youth arrests made in the year by the number of youth living in the jurisdiction. Therefore, jurisdictions that arrest a relatively large number of nonresident juveniles would have a higher arrest rate than jurisdictions where resident youth behave similarly. Jurisdictions (especially small ones) that are vacation destinations or that are centers for economic activity in a region may have arrest rates that reflect the behavior of nonresident youth more than that of resident youth. Other factors that influence arrest rates in a given area include the attitudes of citizens toward crime, the policies of local law enforcement agencies, and the policies of other components of the justice system. In many areas, not all law enforcement agencies report their arrest data to the FBI. Rates for such areas are necessarily based on partial information and may not be accurate. Comparisons of juvenile arrest rates across jurisdictions can be informative. Because of factors noted, however, comparisons should be made with caution.



# In Colorado

Dept. of Justice data: Arrests of Juveniles under 18 per 100,000 juveniles ages 10-17, 2011

2011 Reporting Population Coverage	Violent Crime Index	Property Crime Index	Drug Abuse	Weapon
91%	117	1257	665	83

2008 Reporting Population Coverage	Violent Crime Index	Property Crime Index	Drug Abuse	Weapon
88%	199	1853	763	123

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## Harsh Racial and ethnic disparities in the system

- System responds differently to youth depending on race, ethnicity.
- Harsher, more punitive towards youth of color.
- Youth of color more likely to be formally processed, more likely to be detained, more likely to be incarcerated, more likely to be tried in adult criminal court, and more likely to get a sentence of incarceration.
- Not based on offense rates, i.e. youth of color do not commit more crime.
- Limited efforts to change this, focused on data-driven reforms
- Federal requirement to “address” DMC (disproportionate minority contact).

# KEY ISSUES IN JUVENILE JUSTICE

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## Family Involvement

- The overwhelming majority (92%) of youth want to maintain contact with their family.
- Many youth who are incarcerated are unable to have regular contact with family. Thirty-nine percent of corrections and camp youth have family contact less than once a week.
- One third of youth who have no in-person visits indicate that this is due to time constraints or distance. In fact, the majority of all youth in custody (59%) say that it would take their families 1 hour or longer to travel to visit them. For more than one-fourth of youth (28%), their families would have to travel 3 hours or longer to see them.

# KEY ISSUES IN JUVENILE JUSTICE

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## Youth in adult court

- Youth who are charged as adults can be held pre-trial in adult jails where they are at risk of assault, abuse and death. An estimated 5,400 youth in adult jails on any day.
- Youth sentenced as adults can be placed in adult prisons. An estimated 1,800 youth in adult prisons on any day.
- ACLU/HRW estimate 95,000 youth in adult jails and prisons annually in the U.S.

# KEY ISSUES IN JUVENILE JUSTICE

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- The U.S. is an outlier among nations: U.S. has not adopted the Convention on the Rights of the Child (CRC), which says that children who are detained should be separated from adults and should not be subjected to torture or other inhumane forms of punishment.
- U.S. imposes prison sentences for children who have not been convicted of the most serious offenses (in violation of Article 40 of the CRC).
- U.S. does not ensure access to services to meet children's needs while in custody (in violation of Article 37 of the CRC).

# INTERNATIONAL CONTEXT

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- Research shows that prosecuting and incarcerating youth as adults does not promote public safety:
  - U.S. Department of Justice
  - Federal Centers for Disease Control and Prevention
  - Brookings Institution

# **OPPORTUNITY FOR CHANGE**

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- **Polling shows that the public:**
  - Rejects the placement of youth in adult jails and prisons.
  - Favors rehabilitation and treatment approaches such as counseling, education, treatment, restitution and community service.
  - Favors involving the youths' families in treatment, keeping youth close to home and ensuring youth are connected with their families.
  - Favors individualized determinations on a case-by-case basis by juvenile court judges in the juvenile justice system than automatic prosecuting in adult criminal court.
  - Supports requiring the juvenile justice system to reduce racial and ethnic disparities.

# **OPPORTUNITY FOR CHANGE**

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- **National Conference of State Legislatures report on juvenile justice shows that:**
  - During the past decade, juvenile crime rates have declined, and state legislatures are rebalancing approaches to juvenile crime and delinquency in order to identify methods that produce better results for kids at a lower cost.

## **STATE TRENDS**

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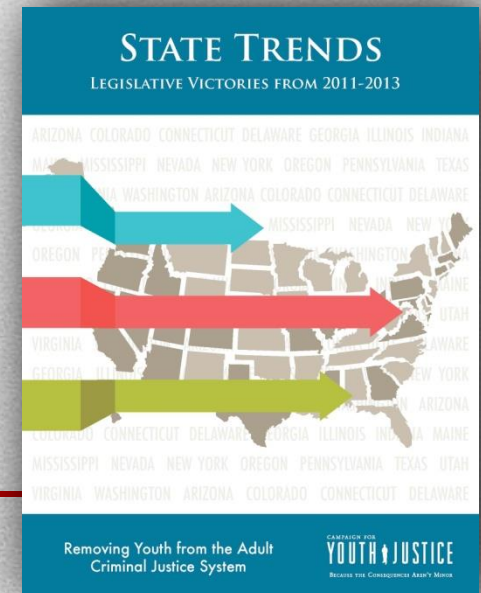
## State Trends

According to, “Trends in Juvenile Justice State Legislation 2001–2011,” a report released by the National Conference of State Legislatures (NCSL) in August 2012, a number of states have undertaken policy reforms in the last decade, including the removal of youth from the adult criminal justice system and from adult jails and prisons.

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- # YOUTH IN ADULT COURT



# Limiting states' authority to house youth in adult jails and prisons:

- Colorado
- Idaho
- Indiana
- Maine
- Nevada
- Ohio
- Hawaii
- Virginia
- Pennsylvania
- Texas
- Oregon



## TREND 1

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“As a matter of policy, the Department supports strong limitations on the confinement of adults with juveniles.”

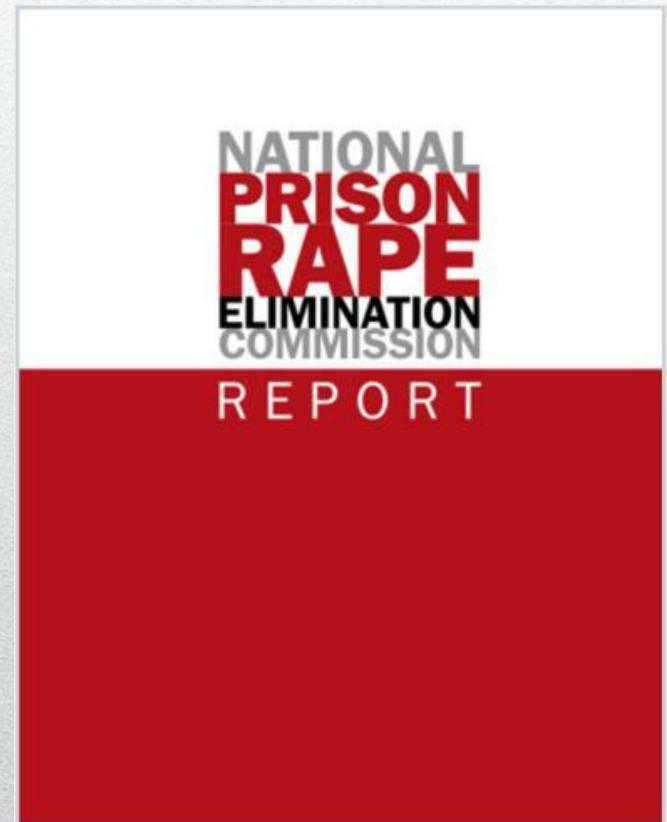
*–June 20, 2012 PREA Standards*

**U.S. Department of Justice  
PREA Regulations**

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# National Prison Rape Elimination Commission Report (June 2009)

- FINDING 7: Juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults.
  - To be effective, sexual abuse prevention, investigation, and treatment must be tailored to the developmental capacities and needs of youth.
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PREA regulations severely limit contact between youth and adults in adult facilities through three mechanisms:

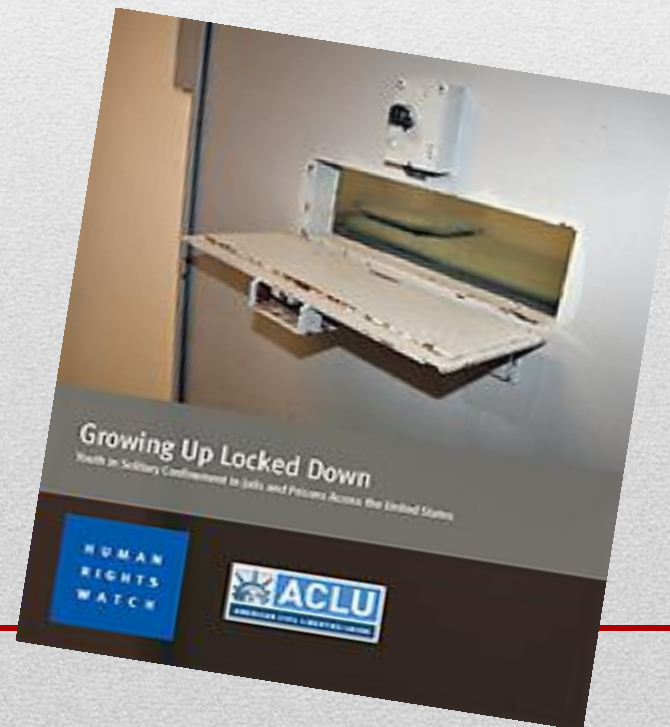
- (1) Banning any contact between youth and adult inmates in housing units;
- (2) Prohibiting contact between youth and adults in common areas OR if that not achievable, ensuring youth are constantly supervised by staff; and

## **PREA Regulations**

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(3) Limiting the use of isolation  
as a means to achieve  
separation

*See Human Rights  
Watch and  
ACLU's report:  
"Growing Up  
Locked Down:  
Youth in Solitary  
Confinement in  
Prisons & Jails"*





# Implementing PREA

- Creating an Interagency Memorandum of Understanding (MOU), agreement or contract between state agencies or local agencies to house youth in juvenile detention and/or correctional facilities.
  - Modifying state and local policies through executive orders or new regulations to remove youth from adult facilities.
  - Updating federal, state and local statutes, resolutions and ordinances to remove youth from adult facilities.
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- States updating state statutes to remove youth from adult jails and prison include:
  - Virginia (2010)
  - Texas (2011)
  - Oregon (2011)
  - Ohio (2012)
  - Colorado (2012)

# State Examples

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- According to National Institute for Corrections publication, “*You’re An Adult Now*,” youth are most at risk in adult jails and prisons:
  - According to research by the Bureau of Justice Statistics, 21% and 13% of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005 and 2006 respectively were youth under the age of 18.
  - Research also shows that youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.

# Rationale

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## Public Opinion Polling in 2011 shows that Americans:

- Strongly favor rehabilitation and treatment approaches, such as counseling, education, treatment, restitution, and community services (89%);
- Reject placement of youth in adult jails and prisons (69%);
- Strongly favor individualized determinations on a case-by-case basis by juvenile court judges in the juvenile justice system than automatic prosecution in adult criminal court (76%); and
- Support requiring the juvenile justice system to reduce racial and ethnic disparities (66%).

# Rationale

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- (1) Youth should never be automatically prosecuted in the adult criminal court.
- (2) Youth charged with non-violent offenses and first-time offenders should not be prosecuted in adult criminal court.
- (3) Youth should be removed from adult jails and prisons.
- (4) Youth should be treated in developmentally appropriate manner throughout the justice system.
- (5) Harsh sentences for youth, such as mandatory minimums, should be eliminated.

## **General Principles of Professional Associations**

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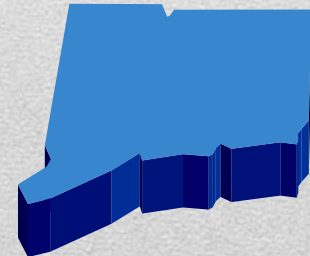
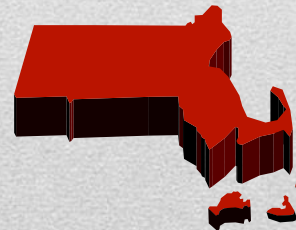
# Professional Associations Statements:

- The American Jail Association:
    - “The American Jail Association be opposed in concept to housing juveniles in any jail unless that facility is specially designed for juvenile detention and staffed with specially trained personnel.”
  - National Partnership For Juvenile Services:
    - “It is the position of NPJS that waived or transferred juveniles accused of committing a crime and requiring temporary holding in a secure setting be held in a juvenile detention pending judicial determination to the contrary.”
  - National Association of Counties:
    - “Counties are urged to remove juveniles from correctional facilities which detain accused or adjudicated adults.”
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**Expanded their juvenile court jurisdiction so that older youth who previously would be automatically tried as adults are not prosecuted in adult criminal court:**

- Connecticut
- Illinois
- Mississippi
- Massachusetts



**TREND 2**

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# **Changed their transfer laws making it more likely that youth will stay in the juvenile justice system:**

- Arizona
- Colorado
- Connecticut
- Delaware
- Illinois
- Maryland
- Nevada
- Utah
- Virginia
- Washington
- Ohio

## **TREND 3**

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## **Changed mandatory minimum sentencing laws, allowed for post-sentence review for youth facing juvenile life without parole, or other sentencing reforms**

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- California
- Colorado
- Georgia
- Indiana
- Missouri
- Ohio
- Washington
- Texas

## **TREND 4**

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- Expand “reverse waiver” mechanism for youth in the adult criminal justice system allowing for a judge to decide whether prosecution in the criminal court is appropriate
- Remove “once an adult, always an adult” provision

# **Recommendations for Nevada**

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## **Nev. Rev. Stat. § 62B.390(5)**

Reverse waiver for transferred youth:

- ONLY by prosecutorial discretion
- NEVER when the youth is charged with statutorily excluded offenses from juvenile court jurisdiction
- IF AND ONLY IF “exceptional circumstances” can be shown

If waived back, the juvenile court must then “determine whether the exceptional circumstances warrant accepting jurisdiction.”

### **Recommendation:**

- Remove the standard of “exceptional circumstances” and replace with “best interest” of the child AND of justice standards to enable a judge to have more discretion regarding transfer issues.

# **Nevada Should Expand Reverse Waiver**

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## Colorado:

- “Reverse transfer” allowed where judge decides judicial jurisdictions
  - Children age 14 to 15 granted juvenile court hearings for up transfer
  - Youth ages 16 to 17 granted adult court hearings for down transfer

## Montana:

- District Court must hold reverse waiver hearing unless the hearing is waived by the child
- ALL qualifications must be satisfied:
  - Preponderance of the evidence that the reverse waiver would “serve the interests of community protection”
  - District court prosecution is not warranted by “the nature of the offense”
  - Prosecution in youth court would be in the youth’s “best interests”

# Example of Reverse Waiver

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Under current NV law, youth who are prosecuted and convicted in the adult criminal court will remain in the adult court for any subsequent offenses, no matter how minor.

**Recommendation:**

- Allow a judge to determine whether *subsequent offenses* should be transferred to the adult system, as opposed to *automatically* prosecuting in the adult system, regardless of the offense

**Remove “Once an Adult,  
Always an Adult”**

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## Oregon:

- Children aged 16 or older who are transferred to adult court may be put in (“waived”) to whichever court the juvenile court deems most appropriate
- Exceptions:
  - Juvenile court given the option to change that in any case and at any time
  - MUST do so if the child is not convicted in the waived case that caused that order OR if the order is not supported by "specific, detailed, written findings of fact"

# **Example of a Judge's Discretion**

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