



STATEMENT SUBMITTED

BY THE EMERGING ADULT PROJECT AT THE JUSTICE LAB

TO THE

U.N. GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY

October 10, 2018

The Emerging Adult Project at the Justice Lab offers its strong support and commendation of the U.N.'s efforts to conduct the Global Study on Children Deprived of Liberty. Critically, this effort includes coverage of youth confined within the juvenile and adult criminal systems. We urge the drafters of the Global Study to consider the definition of “children” in light of recent developmental and sociological research and to recognize the importance of right-sizing the juvenile justice system by setting developmentally appropriate age ranges for juvenile jurisdiction, both at the lower and upper ends, to help address the over-incarceration of youth.

Justice depends on peaceful and healthy communities that help all their members to flourish in a climate of fairness and respect. With this as a guiding principle, the Justice Lab works for community-centered justice, in which incarceration is no longer used as a solution to problems that are often rooted in poverty and inequality.

Numerous studies have revealed that the United States incarcerates children in the juvenile and adult justice systems at shockingly high rates.¹ Although the conditions of confinement vary from more youth-appropriate, rehabilitative settings to more draconian, punitive adult prisons, the experience of any type of incarceration is traumatic: it causes harm to the youth, interferes with their healthy development, and separates them from their families and communities. Moreover, youth prisons are outdated and ineffective models for a fair and effective justice system. Although disparate efforts in the United States have begun to make some headway in closing them over the last decade, these initiatives are not enough. Similarly, treating children as adults and incarcerating them in adult jails and prisons is not only inhumane, counter-productive and costly, but does not produce a positive impact on public safety. Again, while some progress has been made—especially with a handful of prominent states increasing the age of juvenile jurisdiction to 18 thus ensuring that younger youth are not automatically tried and sentenced as adults—the problem is far from being adequately addressed.

A key challenge in the United States lies with individual state laws that establish the ages of jurisdiction for the juvenile justice system. While there are other important issues, these laws entail a critical impact on the frequency, duration and conditions of the loss of liberty of youth in conflict with the law.

Since the establishment of the first juvenile court in the United States in 1899, the age of jurisdiction of state juvenile justice systems has been in flux. On the lower end, the vast majority of states have not set a minimum age, relying on the courts (or common law) to establish such standards. Of those states that have historically set a minimum age, that age has generally varied from age 6 to 11. On the upper end, states have set the upper ages of jurisdiction generally between the 16th and 18th birthdays, with all but four states now (or soon) setting the age at 18. In all states, however, the laws allow for exceptions, when youth under 18 can be prosecuted, sentenced, and/or incarcerated with/as adults, usually when an alleged offense is considered to be more serious. In addition, most states also have provisions for the juvenile justice system to retain physical custody over some youths past their 18th birthdays, so long as their alleged offenses occurred *before* this birthday. But in all states, a youth who has allegedly committed a crime on or after his or her 18th birthday will be automatically tried and sentenced as an adult, and, if incarcerated, incarcerated with adults, in almost the same manner as a 40 or 50-year-old.

This has resulted in a population of particularly young children being deprived of their liberty in the United States, either in juvenile or adult correctional facilities. It has also resulted in many youth held in developmentally inappropriate settings – adult-like or actual adult jails and prisons – and often for extreme lengths of time.

Over the past three years, there have been a growing number of public policy discussions among non-governmental organizations, researchers, policy-makers, practitioners and advocates about the potential to produce better outcomes for youth, increase public safety and reduce the extreme rates of incarceration by shifting the age range of, or **“right-sizing,” the juvenile justice system: To raise the age of jurisdiction on both the lower end (minimum age of criminal responsibility) and the upper age limit (when all cases are automatically processed in the adult criminal justice system).**

Children that come in contact with the juvenile justice system are already a very vulnerable group, consisting at disproportionate rates of poor children of color and youth with a history of trauma, abuse, and neglect and from highly-impacted neighborhoods characterized by concentrated poverty and high police presence. Developmental psychologists, other social scientists and legal experts have been increasingly voicing concern about the capacity of young children to actually stand trial and participate in a constitutionally meaningful way in their own defense.ⁱⁱ In addition, there has been a growing body of research showing that subjecting very young children to confinement - even in a rehabilitation-focused juvenile system - deepens victimization, increases the likelihood of future criminal behavior, and harms a child’s long-term mental and physical health.ⁱⁱⁱ

This year, 2018, has seen historic legislation pass in two states – Massachusetts (April 2018) and California (September 2018) – raising the lower age of juvenile jurisdiction and criminal responsibility to age 12, the international minimum standard, a first in the United States. In addition, jurisdictions such as Cook County, Illinois, recently pushed up the minimum age at which a child can be detained (held pre-adjudication) from age 7 to 13, while California just increased the minimum age at which a child can be tried and sentenced as an adult from 14 to 16. We are hopeful that this flurry of legislative activity and success will be a harbinger for further reforms in other states to reduce the over-incarceration of youth.

On the higher end of the jurisdictional age range, there has been a trend over the last decade to use

the 18th birthday as the default demarcation between the juvenile and adult justice systems with 9 states passing legislation to raise the age from age 16 or 17 to the 18th birthday.^{iv} There are now only 4 states (Georgia, Michigan, Texas, and Wisconsin) that have not yet passed legislation to reach this international standard.

But recent research clearly shows that there is no magic birthday in which a youth becomes an adult and that there are a host of reasons that policy makers should consider raising the age of juvenile jurisdiction above the 18th birthday or otherwise applying the protective and rehabilitative aspects of the juvenile justice system to emerging adults, including increasing positive outcomes for the youth involved and improving public safety. Members of the Justice Lab have written extensively on this topic, including Schiraldi, Bradner and Western’s groundbreaking report, *Community-Based Responses to Justice-Involved Young Adults* which was released at the Great Hall at the U.S. Justice Department in September 2015, and the detailed [report](#) for Connecticut on the policy, legal and budgetary implications of Governor Malloy’s proposal to gradually raise the age of juvenile jurisdiction to 21.^v

Emerging adults,^{vi} ages 18 – 25 year old, have distinct developmental needs that are not being adequately met by the adult criminal justice system.^{vii} Emerging adults exhibit characteristics similar to younger adolescents that may result in them committing crimes (e.g. greater risk-taking and susceptibility to peer influence). On the other hand, criminological research shows that most young people who have a felony record acquired it before age 25 and will likely “age out” of criminal behavior after this time. Yet, in spite of this research, incarceration trends in the U.S. for emerging adults are disproportionately high. While emerging adults make up just 10 percent of the U.S. population, they comprised 29 percent of arrests,^{viii} and 21 percent of people admitted into adult prisons in 2012 across the country.^{ix} For young men of color, these trends are even more stark: in 2012, African American 18 and 19-year-olds were imprisoned at greater than 9 times the rate of their white counterparts, while overall, African Americans were incarcerated at six times the rate of whites. Emerging adults are also more likely to recidivate when they leave an adult correctional facility. A national study of 30 states revealed that 75.9 percent of those under 24 released in 2005 were rearrested within three years, compared to 69.7 percent of those 25 to 29 and 60.3 percent of those 40 and older. This pattern continued to hold at the 5-year mark after release.^x

As more people become aware of these unacceptably poor outcomes, leaders have become increasingly open to, and interested in, finding more effective alternatives. Consequently, some jurisdictions have begun to look at European countries as potential models, where 28 out of 35 countries provide developmentally appropriate alternatives, including special laws or procedures, for emerging adults charged with crimes. The Justice Lab hosted an educational trip for 20 justice leaders from Massachusetts in March, 2018, to see and learn, first hand, the laws and practices used in Germany, where the vast majority of 18, 19 and 20-year-olds, especially those convicted of the most serious offenses, are confined in juvenile prisons. Justice Lab staff also toured systems in Croatia and the Netherlands on that educational trip, publishing an article describing *Youth Justice in Europe* [\[link\]](#) upon their return.

States have begun to seriously question the wisdom of (1) excluding emerging adults from the rehabilitative, developmentally-appropriate juvenile justice system and (2) subjecting them to the greater risk of emotional and physical harm caused by the adult correctional systems and the greater barriers imposed by an adult conviction and sentence (e.g., impacts on education, housing and employment). Just this year, four states considered legislation to raise the age of juvenile jurisdiction

over 18. One state, Vermont, passed legislation making this a first in U.S. history: By 2020, Vermont’s juvenile justice system will include 18-year-olds and by 2022, the system will include 19-year-olds (up to their 20th birthday), allowing these youth to be confined in juvenile, rather than adult, jails and prisons.

Research indicates that by right-sizing the juvenile justice system – raising the age of jurisdiction, on both the lower and upper ends – the United States can help address the over-incarceration of youth and improve youth outcomes, increase public safety, ensure healthier and more intact families and communities and develop more effective alternatives.

Although these are reason enough to pursue the reforms, it should also be noted that right-sizing the system could produce significant cost savings to taxpayers. The cost to society when just one court-involved young person grows up to engage in a lifetime of serious and chronic crime is substantial: Factoring in lost wages, unpaid taxes, harm to victims and criminal justice expenditures, the estimated cost for one person is about \$1.4 million.^{xi} Research has found that evidence-based programs used in the juvenile justice system, such as multi-systemic therapy (which is also being adapted for the emerging adult population, called MST-EA), provides financial benefits to taxpayers as well as important benefits to victims – both tangible (e.g. property damage) and intangible (emotional harm and reduced quality of life). Researchers have calculated the cumulative benefits for each MST participant to range between \$75,100 to \$199,374 or, measured another way, each dollar spent on MST accrues a benefit of \$13.36.^{xii}

We urge the drafters of the Global Study to recognize the age of jurisdiction of juvenile justice systems, in the United States and elsewhere, as an important consideration when assessing the magnitude of the phenomenon of children being deprived of their liberty, documenting the negative impact of the deprivation (to the child, family, community, and public safety) and, most importantly, when providing “recommendations for laws, policies and practices to safeguard the human rights of the children concerned, and significantly reduce the number of children deprived of liberty through effective non-custodial alternatives, guided by the international human rights framework.” We must not only count our children, we must invest wisely in their futures.

Respectfully submitted,

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Endnotes

ⁱ See e.g., American Civil Liberties Union, “America’s Addiction to Juvenile Incarceration: State by State,” available at <https://www.aclu.org/issues/juvenile-justice/youth-incarceration/americas-addiction-juvenile-incarceration-state-state>.

ⁱⁱ See e.g., Fogel, M.H., Schiffman, W., Mumley, D., Tillbrook, C., and Grisso, T. (2013). “Ten Year Research Update (2001-2010): Evaluations for Competence to Stand Trial (Adjudicative Competence).” *Behav. Sci. Law* 31: 165-191 (2013); Grisso et al. (2003). “Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants.” *Law and Human Behavior*, Vol. 27, No. 4 (2003).

ⁱⁱⁱ See e.g., Dierkhising C.B., Ko S.J., Woods-Jaeger B., Briggs E.C., Lee R., Pynoos R.S. (July 2013). “Trauma histories among justice-involved youth: findings from the national child traumatic stress network.” *European Journal of Psychotraumatology*. 2013 Jul.4:1–12; Petrosino, A., Turpin-Petrosino, C., Guckenburg, S. *Formal System Processing of Juveniles: Effects on Delinquency*. Campbell Systematic Reviews, The Campbell Corporation; Woburn, MA: 2010.

^{iv} Laws that raise the upper age of juvenile jurisdiction to 18th birthday have already come into force in 6 of these 9 states as of October 2018, while 3 other states (NY, North Carolina, and Missouri) will raise the upper age of juvenile jurisdiction to 18th birthday gradually by 2021.

^v Schiraldi, V., Western, B., and Bradner, K. (2015). “Community-Based Responses to Justice-Involved Young Adults.” *New Thinking in Community Corrections Bulletin*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice. NCJ 248900; Chester, L. and Schiraldi, V. (December 2016). “Public Safety and Emerging Adults in Connecticut: Providing Effective and Developmentally Appropriate Responses for Youth Under Age 21.” Boston, MA: Harvard Kennedy School Malcolm Wiener Center for Social Policy Program in Criminal Justice Policy and Management, 2016. (Submitted to the Tow Youth Justice Institute, University of New Haven). Available at

https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/public_safety_and_emergin_g_adults_in_connecticut.pdf

^{vi} The term emerging adults invokes the critical developmental period in which a child who is dependent on parents or guardians for supervision and guidance (as well as emotional and financial support) transitions into a fully mature, independent adult who engages as a productive and healthy member of society. This population is also often described as “young adults” or “transition-age youth.”

^{vii} See, e.g., Siringil Perker, S. and Chester, L. (June 2017). “Emerging Adults: A Distinct Population That Calls for an Age-Appropriate Approach by the Justice System.” *Emerging Adult Justice Issue Brief Series*, Program in Criminal Justice Policy and Management, Harvard Kennedy School. Available at <https://www.hks.harvard.edu/centers/wiener/programs/criminaljustice/news-events/pcj-news/pcj-report-on-emerging-adult-justice-in-massachusetts>.

^{viii} United States Department of Justice, Federal Bureau of Investigation (October 2013). “Crime in the United States, 2012.” Data retrieved on 19 April 2017, from <https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/resourcepages/download-printable-files>.

^{ix} Carson, E.A., and Golinelli, D. (2014). “Prisoners in 2012: Trends in Admissions and Releases, 1991-2012.” U.S. Department of Justice, Office of Justice Programs Bureau of Justice Statistics. The Bureau of Justice Statistics stopped publishing “admission” statistics by age in 2013, and now publishes only year-end (December 31) population of correctional facilities by age. As a result, data from 2012 is the most recent year that is available for comparison of admission rates by age.

^x Durose, M.R., Cooper A. D., and Snyder H. N. (2014). “Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010.” Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. NCJ 244205. p. 12.

^{xi} Klietz, S.J., Borduin, C.M., and Schaeffer, C.M. (October 2010). “Cost-benefit analysis of multisystemic therapy with serious and violent juvenile offenders.” *Journal of Family Psychology*, v.24(5): p.657-66.

^{xii} Id.