Statement on Minimum Age of Jurisdiction

Youth Correctional Leaders for Justice Recommend That All States Set a Minimum Age of Juvenile Court Jurisdiction at 14 or Older

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In 2019, roughly 120,000 children under the age of 14 were placed under arrest – including 25,000 or so children under the age of 12 and 3,500 children under age 10. The federal Office of Juvenile Justice and Delinquency Prevention reports that 131,000 children under the age of 14, including 27,500 children under age 12, were referred to juvenile court on delinquency charges in 2018, the latest year for which data are available. The most recent national census of youth confined for delinquency, conducted in 2017, found that nearly 2,000 children under the age of 14 were being held in custody, including 545 children under the age of 12. Reflecting the glaring racial and ethnic disparities that pervade our nation's youth justice systems, the majority of these very young children referred to juvenile courts in 2018 were Black, Hispanic and/or Native American.

Unlike every other advanced nation on earth, the U.S. sets no minimum age of juvenile court jurisdiction below which children cannot be arrested or taken to court, and most of the states (28) likewise set no minimum age. As yet, no state has a minimum age older than 12, and only four have a minimum age older than 10. The United Nation's Committee on the Rights of the Child has urged all nations to set a minimum age of at least 14 for youth court jurisdiction, and two-thirds of the advanced nations (25 of 37) in the Organization for Economic Cooperation and Development adhere to a minimum age of at least 14.

As current and former administrators of youth justice agencies, we know how challenging it is – and how dangerous – to confine very young children away from their families and keep them safe in facilities populated by older and more mature adolescents. We are also acutely aware of the research showing that arresting, prosecuting and punishing young people in the legal system has severe negative consequences for these children, and actually harms our public safety.

Thankfully, there has been some progress in recent years: eight states have set or raised the minimum age since 2016, including California, Utah, and Massachusetts, which became the first states to set the minimum age as high as 12. But much more is needed. Following is a summary

of the key reasons why every state should enact legislation raising the minimum age of youth court jurisdiction to at least 14.

1. Children under the age of 14 should not be subjected to the legal system because, with their brains still in a state of early development, they are not culpable for their behavior in the same way as an adult or even an older adolescent. Recent advances in imaging technology have shown that the human brain does not finish developing until the mid-20s. Adolescents and especially pre-adolescent children exhibit significant deficits in their capacities to weigh consequences, control impulses, resist pressure, or consider the perspectives of others. As the National Juvenile Justice Network has explained, "Young children may understand they should not disobey parents, caregivers, or teachers, but they do not have the mental capacity necessary to fully grasp what it means to break the law or to fully understand the legal and moral implications of their actions." (NJJN Policy Platform on Minimum Age)

2. Children under age 14 lack the maturity to be tried fairly in a court of law. Children under 14 often lack the intellectual development to understand the court process or to participate effectively in their own defense – a core principle of our justice system. The U.S. Supreme Court has ruled that competency to stand trial is a constitutional right, with competency defined as defendants' "ability to consult with [their] lawyer with a reasonable degree of rational understanding [and] a rational as well as factual understanding of the proceedings against [them].'" (*Dusky vs. U.S.*) The most comprehensive study of children's competency found that "juveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding." (Grisso et al.) Research on brain science and adolescent development consistently finds striking developmental differences between youth aged 16 and older versus those 14 and below, leaving the younger children far less able to understand court proceedings and participate effectively in the court process. (Katner)

3. Arresting young children—most of whom are youth of color---and exposing them to the legal system damages their future well-being.

- Educational outcomes. Studies consistently find that arrest and formal processing in the legal system significantly reduces the likelihood of completing high school (Sweeten), and dramatically reduces the odds of attending college (Kirk & Sampson). Children arrested during middle school are far more likely than comparable peers to be held back in school, a powerful predictor of educational failure. (Hirschfield)
- Mental and Physical Health. Children involved in the legal system suffer physical and mental health problems at far greater rates than the general child population, and a wealth of research finds that involvement in the legal system – particularly the experience of confinement – exacerbates rather than improves children's well-being (American Academy of Pediatrics). In a 2020 scientific review of the likely impacts of raising the minimum age of youth court

jurisdiction, the Washington State Board of Health found "very strong evidence that involvement in the criminal legal system is linked to poor health outcomes, and evidence suggests that youth involved at a younger age may be at particular risk for poor health across the life course." (Wash. State Board of Health)

- Life Expectancy. Evidence even suggests that involvement in the legal system leads to early death. Indeed, one recent study showed that youth referred to the legal system were 50 percent more likely to die prematurely than comparison youth in the same community. (Aalsma et al)

4. Exposing young children to the legal system – making them endure the humiliation of an arrest, placing them in handcuffs, taking them to court, and possibly removing them from home and locking them in a detention center – can cause serious trauma with lasting negative consequences. Nationally, 90 percent of all court-involved children and youth have suffered at least one type of serious trauma (physical or sexual abuse, emotional abuse, neglect, serious illness or injury, witnessing community violence, loss of a loved one). Seventy percent meet the diagnostic criteria for a mental health disorder, including 30 percent who suffer with post-traumatic stress disorder (Dierkhising et al). Given these serious emotional and psychological challenges, exposing young children to the legal system is likely to be traumatic, reopening emotional wounds and exacerbating mental health symptoms. Confinement in a detention center, correctional institution or other out-of-home facility is especially dangerous for young children. A federal survey found that abuse in youth facilities is highly correlated with age: more than one-fourth of confined children under 13 suffered abuse in their facilities versus, about twice the share of youth ages 17 and above. (OJJDP: Juvenile Offenders and Victims 2014) A 2018 review found that incarceration before age 13 is associated with "substantially worse physical and mental health outcomes during adulthood, including worse adult general health, functional limitations, depressive symptoms, and suicidality." (Barnert et al)

5. In the absence of an appropriate minimum age standard, the procedures for determining which young children are mature enough for formal court processing have proven inconsistent and discriminatory – treating low-income youth of color more harshly than their more affluent white peers. A study examining practices employed in California to determine young children's capacity to understand the law (and willfully commit a crime) and their competence to stand trial found that "many youth do not receive high quality evaluations." This study, conducted before California raised the minimum age in 2018, also found that this problem was "disproportionately impacting youth of color." (NJJN, citing Abrams et al 2018). A second study examining these issues in six large urban counties across the nation found that "youth can fall through the cracks" in states without an appropriate minimum age (or with a very young minimum age threshold) "based on the whims of counties without clear or consistent guidelines." (Abrams et al, 2019)

6. Arresting children under 14 and sending them into the legal system heightens the risk of future offending and dramatically increases the likelihood of future arrests. Research studies consistently find that youth who've been arrested (and become known to authorities) are far more likely than their comparable peers to be arrested again in the future, especially if their cases are formally processed in juvenile court, even after controlling for self-reported offending behavior and other relevant factors (Liberman et al, Wilson & Hoge). Indeed, one recent study found that youth who had contact with police by eighth grade were five times as likely as their peers with similar backgrounds and self-reported behaviors to be arrested by 10th grade and 11 times more likely to be arrested by age 20. (Crutchfield et al, McGlynn-Wright et al.) Research also finds that young people who have delinquency cases formally adjudicated in juvenile court are more likely to engage in lawbreaking than comparable youth whose cases are diverted from court. (Petitclerk et al, Robertson, Liberman et al)

7. Having a record of arrest and adjudication in the legal system imposes serious "collateral consequences" on children that can permanently limit their opportunities for success. Though the vast majority of arrests of children under 14 are for minor offenses such as trespassing, vandalism, disorderly conduct, simple assault (fighting), or drug/alcohol violations (OJJDP Statistical Briefing Book), these children are likely to face lifelong limitations. The confidentiality protections historically associated with juvenile courts have been substantially weakened in recent decades (Juvenile Law Center). College and job application forms still regularly ask applicants about prior arrests, and procedures to seal and expunge juvenile records are often inadequate. A March 2021 study by the Council of State Governments found that children in all of 12 states examined suffered damaging collateral consequences from juvenile arrest and court involvement (CSG).

8. Criminalizing young children has been denounced by several leading professional organizations. In a July 2020 policy statement, the American Academy of Pediatrics called on states to enact laws establishing a minimum age for juvenile prosecution of at least 12 years. (AAP Statement) Likewise, the Society for Adolescent Health in Medicine endorsed a minimum age of 12 for being charged or punished in the legal system. (SAHM) The American Bar Association has also endorsed a minimum age for juvenile court jurisdiction. (ABA)

9. Arresting and prosecuting children under age 14 contradicts international standards of law. Meanwhile, most advanced nations prohibit prosecution of children under the ages of 14 or 15, and criminalization of children under 10 is virtually unknown in other advanced nations. The United Nations Convention on the Rights of the Child, which has been signed by every nation on earth except the United States, encourages each nation to establish a minimum age of criminal responsibility. (UN Convention on the Rights of the Child) In 2019, the UN updated the Convention with a statement urging every nation to establish the minimum age of 14 years-old or higher. (General Comment 24) This UN statement notes that "the most common minimum age of criminal responsibility internationally is 14." Among the 36 other nations in the Organization for Economic Cooperation and Development, only two (India and Indonesia) set

the minimum age below 10, while many set the minimum age at 15 or higher (Czech Republic, Denmark, Finland, Greece, Iceland, Norway, Poland, Portugal, Sweden). (OECD Social Family Database)

10. It is much more effective and developmentally appropriate to address the behavior problems of young children outside of the legal system. Overwhelmingly, child development and youth justice scholars agree that the most effective interventions for behaviorally troubled children provide support and assistance to the children and their families through community organizations, mental health providers, and – when necessary – the child welfare system.

In 2003, a federal study group of leading scholars issued a report on very young offenders, finding that the research "strongly indicate[s] that the first step toward obtaining effective treatment is to provide families with access to mental health and other services." Few scholars surveyed by this federal study group (only 3 to 6 percent) expressed any confidence in the traditional legal system to provide effective responses for very young children. (Loeber et al) In the years since, an avalanche of new evidence on brain science and adolescent development has emerged to reinforce those findings, making clear that arrests and legal system involvement seriously harm young children and damage public safety by increasing their odds of future contact with the system. As one recent study succinctly concluded, "Diversionary programs and supportive services are more effective than traditional juvenile justice systems at reducing rates of recidivism and keeping communities safe." (Loyola Policy Clinic).

For all these reasons, we immediately call upon states across the nation to raise the minimum age of juvenile court jurisdiction to 14.