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EXPLAINER

Treating Kids Like Kids: "Raise the Age" Laws Align Juvenile Justice with Neuroscience and Common Sense

January 2023

Kaia's Law

In 2019, six-year-old Kaia Rolle was arrested at her Florida school. A traumatic body camera video of the incident captured her desperate cries as she pleaded with the officer not to handcuff her. Despite her obvious distress, the young girl was left alone in the back of a police cruiser, before being booked, photographed and fingerprinted. At the juvenile intake facility, a step stool was required for Rolle to be visible in her mugshot. Her crime? Throwing a temper tantrum.

Rolle's ordeal prompted Florida lawmakers to raise the minimum age of arrest, prohibiting anyone under the age of seven from being detained, unless they have committed a serious felony.



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Age of Criminal Responsibility

Competency to stand trial is a constitutional right established by the U.S. Supreme Court. A suspect's age is directly related to their ability to understand both the consequences of their actions and the legal process that will decide their fate. In the juvenile context, there are two important age boundaries to consider:

1) The upper boundary, or "ceiling," refers to the oldest age a minor can be considered delinquent under juvenile court jurisdiction.
2) The lower boundary, or "floor," refers to the youngest age a child can be charged in juvenile court with a delinquent act.

States must mark where childhood ends and criminal responsibility begins by specifying age boundaries in statute. These lines have shifted over time, alongside science and public opinion. The tough-on-crime policy environment of the 1990s led states to prosecute more juveniles as adults. Today, lawmakers from across the ideological spectrum have begun to shift back in the other direction.

Raising the Ceiling

Research on adolescent brain development has proven that the human brain does not finish maturing until well into adulthood. In particular, the prefrontal cortex, responsible for decision-making, executive function and impulse control continues to develop until age 25. Most children naturally grow out of delinquent behavior. Incarceration can be counterproductive to this process, as one study estimated that youth in adult correctional facilities are 34 percent more likely to recidivate than those within the juvenile system.

Armed with these facts, lawmakers in almost every state have raised the age of juvenile court jurisdiction. Historically, many juvenile offenders as young as 16 and 17 were automatically charged as adults. After a flurry of "Raise the Age" reforms, now a total of 47 states define juvenile court jurisdiction to include persons up to at least age 18. Michigan and New York have continued to raise the age so that a young adult can remain under the purview of juvenile courts until they turn 19. In 2022, Vermont went one step further, extending juvenile court jurisdiction to anyone under 20. All states have transfer provisions that allow juveniles to be prosecuted as adults for more serious offenses, regardless of their age.

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The Floor: Minimum Age of Juvenile Court Jurisdiction by State

Source: National Juvenile Justice Network, Indiana HB 1359

23 states:
(None Specified)
Alabama, Alaska, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Michigan, Missouri, Montana, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, Wyoming

1 state:
Florida

1 state:
Washington

16 states:
Arkansas, Arizona, Colorado, Connecticut, Kansas, Louisiana, Minnesota, Mississippi, Nevada, North Carolina, North Dakota, Pennsylvania, South Dakota, Texas, Vermont, Wisconsin

1 state:
Nebraska

6 states:
California, Delaware, Indiana, Massachusetts, New York, Utah

2 states:
New Hampshire, Maryland

Contact us

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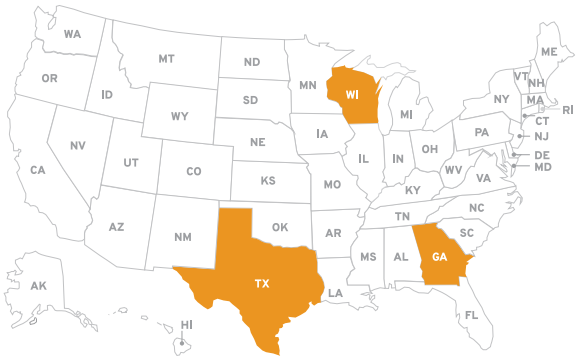
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Every state except Georgia, Texas and Wisconsin define juvenile court jurisdiction to include persons up to age 18.

Source: NCSL



Raising the Floor

In contrast to older kids, the lower end of the age spectrum has received relatively little attention from policymakers. Twenty-four states still don't have any age limits at all when it comes to prosecuting juveniles. Recent "Raise the Floor" reforms have set a minimum age for juvenile court jurisdiction. For example, a new Maryland law requires community-based services or state child welfare agencies to handle the cases of preteens who get in trouble, rather than sending them to court. Such laws generally carve out exceptions for instances in which the juvenile is suspected of a serious violent or sexual offense.

Invest Instead of Arrest

The traditional justice system is simply not equipped to handle young children. Most children under 12 years of age do not meet the U.S. Supreme Court's competency standard because they lack the cognitive capacity to participate in their own defense. Yet in nearly one-half of states, children of any age are presumed to understand the justice system well enough to stand trial.

Despite projections that raising the age would have a negative impact on state budgets, the opposite has proven true. When Connecticut raised the age at which minors could be punished as adults in 2007, a fiscal note anticipated it would cost an additional $100 million per year. Instead, Connecticut's juvenile justice budget shrunk by $2 million. Prior to recent juvenile justice reforms in Maryland, 90 percent of preteen delinquency cases there were dismissed. Charging thousands of kids with minor infractions—only to inevitably drop the charges later—is an extravagant and costly government overreach.

Locking up preteens is not only less effective and more costly than deflecting them into community treatment, but it also can cause profound physical and mental damage. Research indicates that youth incarceration severs social ties and postpones educational milestones critical to future success. A 2022 report in Michigan found that juvenile detention resulted in a 31 percent decline in the likelihood of graduating high school and a 25 percent increase in the likelihood of being arrested as an adult. Furthermore, secure lock-ups are a physically dangerous environment, with even brief detentions resulting in abuse.

For these reasons and more, we must stop traumatizing youngsters like Rolle with harsh criminal interventions. Rather, conservatives and liberals should work together to address the root causes of juvenile delinquency and provide young people with an opportunity to turn their lives around. Investing in youth instead of arresting them ultimately creates a safer and more just society for everyone.