

NO PLACE FOR A CHILD:

ALTERNATIVES FOR CHILDREN UNDER 12 IN
CONNECTICUT'S JUVENILE JUSTICE SYSTEM

BY CARL JIANG¹



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This report was written under the supervision of Lauren Ruth, Ph.D., Research and Policy Director at Connecticut Voices for Children.

If you have questions about this research, contact Dr. Ruth at lruth@ctvoices.org or 203-498-4240 x 112.

INTRODUCTION

Marcus, an eleven-year-old boy with a history of behavioral health challenges, appears in juvenile court with a charge of sexual assault. The incident that Marcus is accused of allegedly happened on a school bus when Marcus was seven years old. Marcus’s attorney argues that Marcus is not competent to stand trial, so the court requests that a clinical team evaluate Marcus’s competency. After 21 days, the clinical team reported that they did not believe Marcus is competent to stand trial but that with an intervention he could reach the court’s standard of competency. Marcus participated in a 90-day intervention to restore his competency and then underwent additional assessments and court hearings. The clinical team ultimately found him to be “not competent and not restorable.” Instead of immediately dismissing his case, the judge ordered Marcus to continue counseling under court supervision. In all, Marcus experienced almost a year of court involvement.²

This scene is not merely hypothetical; this is a simplified telling of a case that happened under current juvenile justice law in the State of Connecticut and it is a possibility within the majority of states around the country. Connecticut permits the arrest of children as young as seven. In 2016, our state subjected almost 500 children age 12 and under to this process.³

In this report, Connecticut Voices for Children explains the impact of court involvement on children, reviews laws surrounding minimum age for court involvement, and proposes how to better meet the needs of children who become involved in the justice system. In Section I, we compare scientific, legal, and public policy evidence suggesting that children under 12 are dissimilar from older youth who engage in behaviors that now qualify as delinquency. Section II reviews international policy regarding the involvement of children in the justice system and identifies potential diversionary tools Connecticut could borrow from the international context. Section III discusses recent juvenile justice system reforms in Connecticut and whether raising the minimum age aligns with these reforms. Section IV explores reforms other states have implemented to treat children outside of the court system as alternatives to court involvement, including California and Massachusetts. Finally, Section V sets out specific recommendations for how Connecticut can divert younger children to age-appropriate services that treat the underlying problems these children and families face.

I. RESEARCH ON CHILDREN IN THE JUSTICE SYSTEM

Involvement with the juvenile justice system has serious, long-term harmful consequences for children, their families, and their communities. The damaging consequences of arresting, processing, and detaining children as young as seven are systemic and cut across developmental, legal, and policy dimensions. Section I summarizes the academic literature that discusses why such consequences occur.

A. Child Development and Justice Involved Children and Youth

Studies in developmental neuroscience and child psychology suggest that young children think and act differently than older youth. This research explores why children below the age of 12 are neither legally culpable for their actions nor assisted in any way through involvement in the formal juvenile justice system.

Studies demonstrate that children before early and mid-adolescence are neurologically immature.⁴ Pre-teen children have not yet developed the cognitive ability to respond rationally to situations that require careful, analytical reasoning. They are more likely than adults to act impulsively and engage in risk-seeking behavior, and are less likely to plan for the future.⁵ This can be attributed to the distinct stages of childhood and adolescent neurological development. By early adolescence (age 10-14) children achieve gains in “deductive reasoning and abstract thinking,” which allow them to weigh hypothetical scenarios and learn empathic, emotional tools.⁶ This period is a particularly sensitive time for neurocognitive development. For example, one study on youth tackle football’s effect on cognitive brain development found the brain experiences key aspects of behavioral and cognitive growth between ages 10 to 12.⁷ When children playing tackle football experienced repetitive head impacts, their “neuropsychiatric and executive function[s]” became delayed in ways not present in teenage youth who did not experience brain injury during this time.⁸ Finally, by mid-adolescence (age 15-17), teens’ capacities to engage in abstract problem-solving and deliberative, logical thought roughly approximates that of adults.⁹ These studies support the proposition that there are distinct behavioral and cognitive differences among children, pre-teen, and older youth.

This research has important implications for assessing the effectiveness of formal court interventions to assist children and pre-teen youth. Developmental psychologists have argued that a child’s immaturity creates similar deficits of “understanding, impairment of judgment, and inability to assist counsel” in court proceedings as does *mental illness*.¹⁰ According to the Model Penal Code’s test for insanity, used by a variety of states including Connecticut, mental defects excuse a person from responsibility for their criminal conduct “if at the time of such conduct...he lacks substantial capacity to either appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.”¹¹ In light of this framework, there are several explanations for treating analogously a young child and a diminished adult in the legal context.

First, children generally fail to appreciate the importance of legal rights. Children treat rights as something authority figures can give and take away. As a result, young children are unable to meaningfully exercise their due process protections upon arrest. Research suggests that even adolescents do not understand that rights are an “absolute entitlement they can exercise without adverse consequences.”¹² The leading research, by Thomas Grisso, found that most children simply do not understand a Miranda warning sufficiently well to invoke or waive their rights in a “knowing and intelligent” manner.¹³ Of the components of the Miranda warning, children most frequently misunderstood that they had the right to consult with an attorney and to have one present when police questioned them.¹⁴ Without access to these protections, children and adolescents become increasingly at-risk of having their constitutional rights violated.

Second, comparing developmental studies with legal competency studies brings forth the question of whether children can be considered legally competent. Legal competency refers to the ability of a person to have a factual understanding of legal proceedings and “be able to consult with his or her lawyer with a reasonable degree of rational understanding.”¹⁵ Studies report that “many children younger than age 13 or 14 are [legally] incompetent” and that, corresponding to their increased brain development, most youth age 14 to 15 and older are legally competent.¹⁶ Of particular significance, studies have found that ages 12 to 14 represent a “transitional period vis-à-vis competence.”¹⁷ Moreover, children with a history of behavioral health challenges, who are behind grade-level or who have intellectual and developmental disabilities, are unlikely to be legally competent even after childhood.¹⁸ Given that the definition of legal competency requires that an individual is able to conform their conduct to the law, and that children under 12 have less ability to control impulses, these children have diminished capacity to conform conduct to the law.

Lastly, studies show that children of color and children belonging to other marginalized groups are more likely to have adverse experiences with law enforcement and so expect law enforcement officials will punish them if they exercise their legal rights and are therefore less willing to do so.¹⁹ Research found young children under police interrogation, along with members of other traditionally marginalized communities (e.g., women and African Americans), “speak less assertively and use indirect patterns of speech to avoid conflict.”²⁰ This discomfort with authority has been shown to increase acquiescence to police suggestions and are likely attributed to and reinforced by the disparities in arresting and confining youth of color.²¹

These factors support the claim that children below the age of 12 (due in large part to their still developing brains) possess neither the logical, emotional, or moral reasoning to be held legally responsible for committing an offense under the traditional justice system. Further, this incapacity is exacerbated if the child has suffered from trauma through having witnessed or experienced a disturbing event such as separation from loved ones, violence, or instability, or if the child is from a minority group.

B. Supreme Court Decisions and Justice Involved Children and Youth

United States Supreme Court case law is still developing opinions on how the court should consider children. However, a number of Supreme Court decisions responding to youth who have committed crimes support a developmental approach to understanding juvenile culpability in legal cases.

UNITED STATES AND CONNECTICUT SUPREME COURT DECISIONS

Recent U.S. and Connecticut Supreme Court decisions concerning increased due process protections for children have relied on evidence from developmental and neuroscience research. These decisions demonstrate an understanding that considerations of criminal culpability must take into account child and adolescent neurocognitive development.

In *Roper v. Simmons*, 543 U.S. 551, 570 (2005), the U.S. Supreme Court held that the Eighth and Fourteenth Amendments prohibited the death penalty for offenders under age 18. A significant aspect of Simmons' defense drew from new findings in developmental neuroscience. Specifically, recent brain imaging evidence suggested that certain regions of the brain responsible for decision-making and impulse control were less developed in youth than adults, rendering youth less culpable than adults.²² While the *Roper* majority did not directly cite this science, the Court held that a child's likelihood to engage in "immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.'" ²³ Furthermore, the Court found that a child's inherent vulnerability and "comparative lack of control" leads to a corresponding lack of culpability.²⁴

Similarly, in *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court relied on *Roper*'s reasoning to find that the Eighth Amendment prohibits a sentence of life without parole for juveniles who did not commit homicide. Justice Kennedy, writing for the majority, also used amicus briefs (documents submitted to the Court by interested parties of the lawsuit) that cited new developments in brain science. Justice Kennedy pointed to new evidence from the American Medical Association and American Psychological Association that show portions of the brain that control behavior "continue[s] to mature through late adolescence."²⁵

In *Miller v. Alabama*, 567 U.S. 460 (2012), which extended the *Graham* decision to abolish mandatory life without parole regardless of offense for youth under the age of 18, the Supreme Court synthesized the rationales of *Roper* and *Graham*. Justice Sotomayor, writing for the majority, found that young age contains "hallmark features," including "immaturity, impetuosity, and failure to appreciate risks and consequences."²⁶ This line of decisions concerning juvenile culpability, according to the Court, rested "not only on common sense—on what 'any parent knows'—but on science and social science as well."²⁷ Importantly, the Court noted, "The evidence presented to us in these cases indicate that the science and social science supporting *Roper*'s and *Graham*'s conclusions *have become even stronger*." (Emphasis added.)²⁸ The Court drew on these scientific developments to critique traditional justifications of the formal criminal justice system. The Court found that theories of punishment, including retribution, deterrence, and incapacitation,²⁹ all fail to consider a child's cognitive immaturity and their ability to mature over time.³⁰

Additionally, there are several Connecticut Supreme Court decisions concerning differences in sentencing decisions for children.³¹ Notably, in *State v. Riley*, 315 Conn. 637 (2015), the Connecticut Supreme Court cited *Miller*, *Graham*, and *Roper* in holding that a 17-year-old convicted of murder and sentenced to 100 years imprisonment should be entitled to a new sentencing hearing. Specifically, the Court found that when judges are given discretion in imposing a sentence, they must give "due weight" to the mitigating factors described in *Miller*.³² This means judges should consult the "ever growing body of authoritative evidence establishing constitutionally significant differences between adult and juvenile brains"³³ and be "require[d] ... to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." (Emphasis added.)³⁴

Most recently, the U.S. Supreme Court in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), applied *Miller*'s holding retroactively for youth already serving life sentences without parole. The Court found that *Miller* established a new substantive constitutional rule. According to the Court, a substantive rule prohibits "'a certain category of punishment for a class of defendants because of their status or offense,'" ³⁵ instead of a procedural

rule that merely “regulate[s] only the manner of determining the defendant’s culpability’.”³⁶ This distinction is important insofar as it treats youth “whose crimes reflect the transient immaturity of youth” as a separate class of individuals entitled to retroactive constitutional protections.³⁷

The reasoning of these U.S. and Connecticut Supreme Court decisions provide firm support for reconsidering the way children under the age of 12 are treated within Connecticut’s court system. First, all of these cases rely on a child’s immaturity and lack of development to distinguish their moral and legal culpability from adults. Second, *Roper*, *Graham*, *Miller*, and *Riley* show a growing reliance on neurocognitive science and child psychology that favors the lessening of juvenile culpability. In fact, the *Miller* Court explicitly acknowledged evidence of less culpability in children has only grown over time and the *Riley* Court applied this reasoning to a Connecticut youth convicted of an offense. Lastly, *Montgomery* recognized that immature children represent a separate, protected class entitled to strong constitutional protections. *Montgomery*’s reasoning favors a robust and clear separation of pre-teen children from older youth as opposed to an *ad hoc* assessment of a child’s culpability on a case-by-case basis. Therefore, the reasoning of these decisions show children under the age of 12, who by definition have not obtained the logical reasoning necessary for legal blameworthiness, should be treated dissimilarly from their older counterparts.

PROCEDURAL JUSTICE

Distinguishing developmental differences between younger children and youth within the courts is not only consistent with U.S. and Connecticut Supreme Court precedent, it also affirms procedural justice principles, which posit a causal relationship between a child’s perception of fairness and their likelihood to reoffend.³⁸

Procedural justice is rooted in the notion that people are more likely to perceive the law as legitimate and to comply with it when they believe the procedures used by legal actors are “fair, unbiased, and efficient.”³⁹ When people experience the criminal justice system as acting justly, they are much more likely to obey the law without the threat of external sanctions.⁴⁰ As a result, procedural justice stands in contrast to a traditional punitive system, where sanctions are the primary form of motivating compliance with the law.

These findings bear out in the context of children, where social science has shown that perceptions of fair treatment and due process enhance youth’s perceptions of law, while unfair treatment causes negative reactions, anger, and defiance of legal norms.⁴¹ One study that drew a sample of children (ages 10-16) from two racially and socio-economically contrasting neighborhoods in New York City found rejection of “legal and social norms underlying law increases with age,” with cynicism of legal institutions beginning to grow at age 12.⁴² Studies that may explain this phenomenon have found children’s perceptions of fair procedures are rooted in the degree to which the child was given the opportunity to express his or her feelings or concerns, the neutrality and fact-based quality of the decision-making process; whether the child was treated with respect and politeness; and whether the authorities appeared to be acting out of benevolent and caring motives.⁴³

Given evidence that children under 12 are unable to understand their Miranda rights or access their right to counsel, it is not surprising that young children who are arrested, charged, and confined are not likely to experience the justice system as fair, unbiased, and efficient. When young children interact with the justice system through a lens of punishment and an emphasis on fear-based corrective behavior, they are more likely to believe such a system is designed against their best interests and react in rebellious ways.⁴⁴ Instead, children may benefit far more from the alternative mechanisms described in Section V to capture the positive effects of procedural justice.

C. Public Policy and Justice Involved Children and Youth

Several decades of research, including peer-reviewed studies, show that formally processing children and youth in the juvenile justice system does not prevent future crime.⁴⁵ Instead, formal adjudication increases the likelihood of future criminal behavior.⁴⁶ There are numerous factors accounting for this relationship that illustrate the critical importance of preventing our younger children from being subjected to the formal justice system.

The children and youth processed through the juvenile court system are typically society's most vulnerable. They are significantly more likely to have histories of child abuse or neglect, learning disabilities, and/or underlying, behavioral health conditions.⁴⁷ The National Child Traumatic Stress Network found that up to 90 percent of court-involved youth report past exposure to some type of adverse childhood experience, often occurring within the first five years of life.⁴⁸ Adverse childhood experiences (ACEs) describe a set of experiences that are significantly more likely to lead to lasting and sometimes life-threatening health ailments in adulthood. These experiences include: emotional, physical, and sexual abuse; witnessing household violence; household substance abuse; household mental illness; and having an incarcerated household member.⁴⁹ Allowing victimized children to undergo court proceedings and/or confinement is likely to further reinforce their victimization and negative behaviors no matter the age.⁵⁰

These concerns are exacerbated by the well-documented, substantial racial and ethnic disparities in the rates of arrest, charging, and confinement of children and youth. Nationally in 2011, Black youth were almost 3 times more likely to be arrested for a drug offense, 2.5 times more likely to be arrested for a property crime, and 2.7 times more likely to be arrested for violating curfew laws than similarly situated white youth.⁵¹ States also detain Black youth at higher rates than similarly situated white youth,⁵² and these disparities are compounded in subsequent case processing and disposition during juvenile adjudication.⁵³ In 2014, Black youth were found to be 4.6 times as likely to be incarcerated as white youth and Latino youth found to be 1.8 times as likely.⁵⁴ Connecticut data demonstrate similar disparities that will be discussed more fully later in this paper.

One contributing explanation for these disparities are the implicit biases found in law enforcement. Implicit bias is defined as “the automatic association of stereotypes and attitudes toward particular groups”⁵⁵ and is prevalent in the criminal justice context.⁵⁶ For example, a recent study determined that white police officers tend to overestimate the age of Black children and attribute criminality toward them in ways not found with white children.⁵⁷ The study measured the implicit biases of a largely white sample of police officers and undergraduate students, with significant age-estimation errors appearing particularly when participants guessed the age of Black boys.⁵⁸

A child's involvement in the juvenile justice system has harmful, criminogenic (or crime-promoting) effects related to experiences while travelling through the formal justice process. Studies show that early contact with the justice system negatively impacts children's future behavior, with negative behaviors increasing inversely with the age of first contact.⁵⁹ Children who are stopped by police report “high rates of distress, perceived injustice, hopelessness, and dehumanization.”⁶⁰ Aggressive physical contact during an arrest and subsequent stigma associated with this type of interaction with law enforcement can leave lasting and negative influences on children.⁶¹ This finding is supported by studies that report children who have merely witnessed the arrest of a family member are far likelier to experience post-traumatic stress symptoms—symptoms that emerge when environmental triggers bring back memories, emotions, and/or physical responses associated with experiencing a traumatic event—than children who had not witnessed an arrest.⁶² Being placed in detention is also a harmful experience for children because they are separated from their families, face “substantial deficiencies” in social services and healthcare, and can experience excessive use of solitary confinement and physical restraint.⁶³ Furthermore, children can experience various types of abuse during their detention, ranging from seeing or experiencing sexual and physical violence to neglect.⁶⁴ One study drawn from a sample of formerly incarcerated children reported “nearly all youth (96.8%) experienced at least one type of abuse during incarceration.”⁶⁵

The combination of abuse, insufficient care, and other adverse effects of the formal juvenile justice system hinder children's healthy development, as the justice process has been shown also to have a detrimental effect on their psychosocial maturity.⁶⁶ Psychosocial maturity is defined as "how likely a person is to make an antisocial or a pro-social decision (i.e. the difference between robbing a store and not robbing a store)."⁶⁷ Psychosocial maturity enables children to control their impulses, delay gratification, resist peer pressure, and engage in cost-benefit analysis.⁶⁸ According to a 2015 United State Department of Justice (DOJ) study that followed 1,300 serious juvenile offenders for seven years, youth whose antisocial behavior continued from adolescence into early adulthood had "lower levels of psychosocial maturity in adolescence and deficits in their development of maturity compared with other antisocial youth."⁶⁹ Antisocial behavior, defined broadly, consists of harmful or hostile acts in defiance of social norms and/or the rights of others, including "taking something from another person by force, using a weapon...stealing a car or motorcycle to keep or sell," etc.).⁷⁰ Consequently, the lack of psychosocial maturity was correlated with an increased likelihood to commit future crimes. Contrary to popular myths that confinement may increase a child's maturity or "scare straight" children who have engaged in delinquent behavior,⁷¹ adolescents with difficulty regulating their behavior are more likely to commit crime regardless of how they perceive the justice system.⁷² Absent the appropriate restorative and therapeutic interventions to help these youth develop the reasoning and skillset necessary to regulate their impulses, those who become involved with the justice system at an early age are more likely to become chronic offenders into adulthood.

II. INTERNATIONAL MINIMUM AGE OF CRIMINAL RESPONSIBILITY

In considering whether to implement alternatives to the formal juvenile justice system for children under 12, Connecticut should evaluate international best practices. This section compares Connecticut's minimum age of juvenile court jurisdiction to countries around the world and reviews alternative measures countries with higher minimum ages have implemented in lieu of formal court processes.

The United States is an outlier compared to much of the world in its juvenile justice policy. Article 40 of the United Nations Convention on the Rights of the Child (CRC) stated that all countries set a minimum age of criminal responsibility (MACR) below "which children shall be presumed not to have the capacity to infringe the penal law."⁷³ Article 4 of the Beijing Rules (adopted by the UN General Assembly four years before the CRC) specified that this MACR be no younger than 12, and encouraged countries not to lower their MACR to age 12 if they were set higher.⁷⁴ The U.S. has not ratified the CRC⁷⁵ and has left the nonfederal age of criminal responsibility to the jurisdiction of the states.⁷⁶

The most recent research demonstrates that out of 193 countries surveyed,⁷⁷ only 24 countries in the world have a minimum age where children are considered criminally responsible at age seven,⁷⁸ as they are in Connecticut. In total, only 72 countries (37 percent) set an age lower than 12 or do not have a MACR.⁷⁹ This means that the overwhelming majority of countries (165 of 193, or 86 percent) have a MACR higher than Connecticut. Connecticut's MACR is half of the most common minimum age (14), and notably lower than the median minimum age (12) and mean minimum age (11.3).⁸⁰

According to cross-national studies on juvenile justice policy, countries with higher MACRs implement several best practices to differentiate between children and older adolescents and adults.⁸¹ First, approximately half of all countries use special law enforcement procedures when dealing with children.⁸² These procedures include special police officers and youth-specific police training programs. For example, France has over 100 specialist "juvenile brigades,"⁸³ while the Netherlands uses a Youth Police section with social workers.⁸⁴ These practices enable law enforcement officials to be more knowledgeable about and attentive to a child's developmental and emotional needs, making it far less likely the police will traumatize a child. Second, countries with higher MACRs often institute a continuum of methods to divert young people from court proceedings. These tactics range from true diversion (no interaction with the formal justice system) to alternatives-to-detention.⁸⁵ Out of

51 countries surveyed by the United Nations in 1998, 19 countries allowed diversions by the police.⁸⁶ One example of a police-led diversion is a 'police caution', or an informal warning to youth and parents, which serves as an alternative to arrest. These cautions are often paired with a restorative action (e.g., apology to victim or other reparation).⁸⁷ Instead of formally adjudicating youth, countries may also use informal hearings such as Family Group Conferences (FGCs) or Children's Hearings.⁸⁸ During these informal hearings, decisions are not made by legal professionals but by lay members of the community or the child's family.⁸⁹ Research shows that FGCs decrease juvenile recidivism and lead to greater family, offender, and victim satisfaction when compared to juvenile justice cases in the formal court system.⁹⁰ These indicators of a successful program might be attributed to the core values of FGCs, which include (1) building on family strengths, (2) reflecting cultural practices of the community, (3) involving both the family and community in the resolution of the dispute, and (4) viewing the community as a resource for the family.⁹¹

FGC's exemplify restorative justice values. Instead of determining individual culpability and doling out proportional punishment in the traditional punitive system,⁹² restorative justice is concerned more broadly with relationships between offenders, victims, and communities.⁹³ Restorative justice's aim is to shift the focus of offending from a violation of the law to a violation of human relationships.⁹⁴ This means the primary objective of restorative philosophy is to mend the broken relationship and heal the victim, not to cause harm to the perpetrator of the offense. Such programs have been empirically shown to be successful in increasing participant satisfaction and decreasing recidivism when compared to the traditional justice system.⁹⁵

The law enforcement procedures and diversionary programs described above allow countries with high MACRs to avoid the criminogenic and disproportionately negative effects of the formal justice system on vulnerable children, and particularly vulnerable children of color. Studies find that countries that have lower custody rates have fidelity to Article 37 of the CRC, which states that custody should only be used as a last resort "when it can be proved that the child is dangerous in the community and cannot be controlled or dealt with in any other way."⁹⁶ Instead of using punitive sanctions, these countries use more restorative justice processes, community-based alternatives, and alternative sentencing measures (e.g., probation).⁹⁷ Correspondingly, these alternatives may also be more likely to capture the benefits of procedural justice principles, since restorative justice "mirrors the concern in procedural justice research with developing informal and formal legal procedures that have the effect of strengthening the influence of social values on people's law-related behavior."⁹⁸ As a result, these motivations may increase a person's likelihood to engage in law-abiding behavior.⁹⁹

III. IMPLICATIONS FOR CONNECTICUT

As Connecticut continues to engage in a period of large-scale justice system reforms, making the system fully grounded in safety, dignity, best practices, and rehabilitation, Connecticut should examine whether exposing children to the justice system aligns with these goals. This section summarizes Connecticut's recent history of juvenile justice reforms and how children in Connecticut are impacted by the justice system.

A. Recent Juvenile Justice Reforms

In 2007, Connecticut enacted historic legislation to divert older youth from the adult criminal justice system by raising the maximum age of juvenile jurisdiction from 16 to 18.¹⁰⁰ Implemented gradually, Connecticut fulfilled this legislation's mandate in 2012 when 17 year-olds came under the jurisdiction of the juvenile justice system.¹⁰¹ When the legislation was first proposed, its opponents argued that new juvenile arrests would overburden the state's juvenile justice system and lead to increased costs and public harm.¹⁰² Subsequent research has shown these concerns were unfounded. In fact, there continues to be significant reductions in the number of youth being arrested and entering the juvenile justice system. According to Connecticut National Uniform Crime Reporting (UCR) data, arrests of youth under 18 dropped by 56 percent between 2008 and 2016.¹⁰³ This decline enabled the closure of the very costly Connecticut Juvenile Training School (CJTS) in 2018, effectively shuttering Connecticut's "only high-security prison for young men and boys."¹⁰⁴ In fact, Connecticut's overall spending on juvenile justice has not increased despite implementation of an array of new youth services and programs.¹⁰⁵ This finding lends support to Connecticut's ability to enact cost-neutral reforms.

The decline of youth in the juvenile justice system can be explained in part by Connecticut's development of a continuum of targeted, high quality non-residential services for at-risk youth. For example, in 2012 alone, 955 children and youth on probation supervision participated in intensive evidence-based family therapy programs and 652 in evidence-based cognitive behavioral therapy.¹⁰⁶ These programs teach skills related to behavior management, including moral reasoning, drug refusal, emotional regulation and self-awareness.¹⁰⁷

Connecticut has also increased its investment in diverting status offending youth (youth who commit acts not considered criminal if committed by an adult) away from the court system and detention. In 2007, Connecticut adopted a plan to handle the majority of Family With Service Needs (or FWSN) cases through a newly permitted network of Family Support Centers that would provide specialized services for these youth.¹⁰⁸ Instead of being committed to secure detention for violating probation or disobeying a judicial order, these centers contact families within three hours of a case being filed and provide them with an array of services.¹⁰⁹ Due in part to these changes, the number of youth with status offenses who were rearrested or convicted of crimes fell by more than 70 percent since 2006.¹¹⁰ The process of removing all FWSN offenses from juvenile court in favor of these therapeutic programs began in July 2018.¹¹¹

In addition to Family Support Centers for Family With Service Needs (or FWSN) youth, the state also expanded its use of Juvenile Review Boards (JRB).¹¹² These JRBs, comprised of community volunteers, police, school personnel, and/or local agency staff, are targeted to assist youth who have admitted to committing minor offenses. Subsequent to meeting with the youth and their family, JRBs select an appropriate sanction, such as participation in substance abuse programs, writing a letter of apology, or repairing any damage they may have caused to the community. JRBs, like other restorative justice and diversionary programs, have positive effects on offending youth—including reducing recidivism.¹¹³

Another potential factor contributing to the decline in the number of youth in the juvenile justice system was Connecticut's investment in new initiatives to reduce its racial and ethnic disparities. An assessment of racial and ethnic overrepresentation, completed in 2009 using data from 2005 to 2007, showed that disparities had dramatically increased in Connecticut's juvenile justice system over that time period.¹¹⁴ Specifically, the study found disparities in court referrals, pre-trial detentions, and the use of secure juvenile facility confinement.¹¹⁵

Importantly, the presence of other factors aside from race and ethnicity (e.g., age of offender, type of offense, risk assessment, prior referrals) did not neutralize this disparity.¹¹⁶ As a result, the study's results strongly suggested that the disparity was due to bias and not to differences in the behaviors of youth of different races and ethnicities. In response, Connecticut's Juvenile Justice Advisory Committee (JJAC) has conducted trainings for thousands of police officers on Disproportionate Minority Contact (DMC) since 2007.¹¹⁷ A 2008 evaluation showed this training increased participants' knowledge and attitudes about youth development and issues of racial and ethnic disparity.¹¹⁸ However, significant disparities remain. In fiscal year 2017, an examination of 839 youth admitted to detention in Connecticut found 80 percent were non-white.¹¹⁹ Prior to the closure of CJTS, 90 percent of the youth admitted to that facility in 2017 were children of color.¹²⁰

B. Current Practice

Despite improvements in Connecticut's juvenile justice system over the past decade, troublesome trends for youth under age 12 persist under the formal justice system.¹²¹

Young children (especially children of color) are still subjected to the damaging effects of arrest and pretrial proceedings despite being charged with low level offenses. According to data provided by the Judicial Branch's Court Support Services Division, 141 youth under age 12 were referred to court in 2018.¹²² The vast majority of court referrals in 2018 (71 percent) were for 11-year-olds and approximately 80 percent of these referrals were for misdemeanor offenses (such as loitering on school grounds or petty theft) and the majority of felony charges were for lower-level D felonies (such as threatening or criminal mischief). In 2018, approximately 70 percent of children under the age of 12 referred were children of color.

Different courts across the state also differ in their referral rates. Since 2010, Waterbury has referred more children to the juvenile justice system than any other court in seven out of 10 years. In 2018, 22.7 percent of children referred (32 of 141) came from Waterbury's court. This suggests disparities in how courts handle children across the state based on where the child lives.

Furthermore, these young children are not always offered the diversionary services, which reduce recidivism and costs of the juvenile justice system, that are made available to older youth. This gap in services occurs even while most children are not formally prosecuted. Among all court referrals in 2018, 26 percent of children under the age of 12 (40 children) had judicial handling and 57 percent of youth (88 children) had non-judicial handling (referral to diversionary services). Around a fifth of the cases (27 cases, 17 percent) were not accepted. According to data from 2017-2019, the vast majority of children under the age of 12 were not prosecuted, were discharged, or had their cases not accepted/dismissed during that time period. Unfortunately, Connecticut's current juvenile justice process subjects children to the trauma of arrest without providing the necessary benefits or services to that child and their family that might address the underlying issues associated with the child's actions that triggered the arrest.

IV. COMPARATIVE STATE POLICY

After considering the research on child development, legal competency, and international policy, California and Massachusetts have chosen to remove children from their court systems by raising the minimum age of their juvenile court jurisdiction to age 12. This section sets out the rationale these states have used in raising the age and provides recommendations for how Connecticut may use their findings.

Given emergent research on child development and neuroscience, raising the minimum age of juvenile court jurisdiction is a relatively recent movement. As of January 2020, the majority of U.S. states (30) do not have any minimum age in statute.¹²³ However, 23 U.S. states and territories do specify a minimum age for delinquency adjudication.¹²⁴ Of these 23 U.S. states and territories with a minimum age, 19 have an age higher than Connecticut¹²⁵ and at least five other states have protections for youth under the age of 12.¹²⁶ Two of these states with a minimum age of 12 are California and Massachusetts.¹²⁷

CALIFORNIA

California shares similarities to Connecticut in its juvenile justice adjudication rates.¹²⁸ In 2017, there were 637 children under age 12 in California who were arrested, processed, and referred to probation.¹²⁹ The vast majority of these cases were for minor violations, with 66 percent referred for misdemeanor and status offenses.¹³⁰ In order to decrease the number of youth interactions with the juvenile justice system, advocates for raising the age in California relied on a 2010 report conducted by the Santa Clara County Juvenile Justice Commission.¹³¹ The Commission found that children 12 and under were not public safety threats but rather children who needed therapeutic care and social services.¹³² In fact, a majority of the children were involved with child welfare agencies.¹³³ Consequently, the report recommended that the county's policy "should be that children 12 years old and younger not be detained in Juvenile Hall when arrested."¹³⁴

In light of these findings and similar proposals to raise the minimum age of juvenile court jurisdiction,¹³⁵ the California Senate introduced Bill 439 in February 2017.¹³⁶ It sought to raise the minimum age of juvenile court jurisdiction to age 12. On April 4, 2017, the Senate Committee on Public Safety conducted a hearing to determine the bill's validity.¹³⁷ This hearing noted that children do not "meet the standards of capacity and competency under state law" to qualify for formal adjudicatory processes.¹³⁸ Furthermore, the Pacific Juvenile Defender Center, writing in support for the bill, pointed to the collateral consequences that probation caused for young children.¹³⁹ Not only does the court process result in "youth missing school," they argued, courts also "impose multiple probation conditions that require substantial time, effort and resources to fulfill."¹⁴⁰ As a result, such consequences deter a child's successful academic performance and create lasting stigmas through adulthood.¹⁴¹

On June 12, 2017, the Assembly Committee on Public Safety conducted a similar hearing on the Senate bill.¹⁴² The Public Safety Committee recognized the convergence of social science, brain science, and Supreme Court jurisprudence in supporting raise the age legislation. The Committee also cited a co-sponsor of the bill, the National Center for Youth Law, to describe potential fiscal benefits for raising the minimum age. They argued that young offenders are characterized by "high rates of case dismissal, meaning that counties are spending wastefully on these cases."¹⁴³ The fiscal benefits of raising the minimum age were further noted by the Assembly Committee on Appropriations in June, 27, 2018.¹⁴⁴ According to the Appropriations Committee's analysis, county probation departments and juvenile courts could accrue significant savings from the reduction of juveniles who come under their supervision.¹⁴⁵

A modified raise the age bill, which included an exception for serious crimes such as rape and murder, eventually passed both the Senate and Assembly.¹⁴⁶ Gov. Jerry Brown signed the bill into law on September 30, 2018.¹⁴⁷

MASSACHUSETTS

Massachusetts's approach to passing raise the minimum age legislation was similar to California in several respects. In July 2016, the Massachusetts Senate successfully passed an array of juvenile justice reforms, but these reforms failed in the House.¹⁴⁸ As a result, Citizens for Juvenile Justice (CfJJ), a statewide youth advocacy organization, convened a Juvenile Justice Reform Coalition to bring other interested organizations together on behalf of vulnerable youth.¹⁴⁹ Their research revealed that in 2016, 154 children under the age of 12 in Massachusetts had open delinquency cases.¹⁵⁰ Similar to Connecticut and California, most of these cases were for low-level offenses, such as simple assault or destruction of property.¹⁵¹ Furthermore, CfJJ used constitutional arguments concerning legal competency and policy arguments concerning the impact of probation on a child's ability to access necessary services to raise the minimum age.¹⁵² CfJJ also pointed to a variety of states that, notwithstanding an explicit statute, de facto bar youth under age 12 from the formal justice system, including Ohio and Florida.¹⁵³

CfJJ and other organizations were ultimately and overwhelmingly successful in their advocacy.¹⁵⁴ On April 13, 2018, Gov. Charlie Baker signed S. 2371 into law.¹⁵⁵ The eventual omnibus bill covered a wide array of issue areas, including juvenile justice, diversion programs, penalties for certain crimes, and decriminalization of certain low-level offenses, among others.¹⁵⁶ S. 2371 was a "clean" bill, raising the age from seven to 12, without any the use of carve-outs or exceptions for certain categories of crime.¹⁵⁷

In outlining a strategy for the passage of the bill, CfJJ pursued both stand-alone and omnibus legislation. They relied on four central strategies: (1) a focus on youth voices and youth organizing to shed light on the issue, (2) the inclusion of multiple related priorities in their omnibus bill, including those that focused on "education, mental health, medical and other nonjustice-related fields,"¹⁵⁸ (3) a pursuit of multiple legislative champions, and (4) an expansion of their advocacy to include adult justice reforms.

V. RECOMMENDATIONS

This section sets out two strategies to reduce the impact of Connecticut’s current juvenile justice system on children and pre-teen youth.

A. Pass a “clean” bill to raise the minimum age of juvenile court jurisdiction to age 12.

Connecticut’s current age of minimum juvenile court jurisdiction—age seven—has detrimental consequences for children. As explained in this proposal, these consequences include:

- Increasing disproportionate minority contact of children during arrest and through detention;
- Reinforcing traumas felt by victimized children with histories of child abuse, learning problems, and/or underlying behavioral health conditions during arrest and through detention;
- Stunting emotional and social development in children and increasing their likelihood to offend as adults
- Subjecting children to formal court processes who research suggests are not legally competent
- Conflicting with United States and Connecticut Supreme Court precedent and the United Nations Convention on the Rights of the Child
- Decreasing the legitimacy and respect of the formal court process by youth; and
- Imposing damaging collateral consequences on children such as school absences and stringent probation conditions.

In response to these harms, Connecticut should pass a “clean” bill (without carve-outs for specific offenses) to raise the age of minimum juvenile court jurisdiction from age seven to age 12. Children under the age of 12, regardless of the specific offense they are charged with having committed, have not reached a level of neurocognitive development necessary to be held legally culpable for their actions. Thus, children under 12 are legally incompetent to stand trial. Additionally, raising the minimum age would reduce existing trends of disproportionate minority contact with regard to court referrals.

If Connecticut passed a clean bill to raise the age, it would also join the majority of countries around the world and align itself with Article 40 and Article 37 of the United Nations Convention on the Rights of the Child.

B. Ensure that diversionary and/or community programs sufficiently serve children under 12 who commit a legal offense and that services are accessible, age-appropriate, trauma-informed, and tied to procedurally-just practices.

While passing a clean raise the age bill would contribute toward aligning Connecticut’s current juvenile justice system with that deemed most appropriate by most countries in the world and with child development research, it requires a corresponding investment in diversionary and community programs designed to address the diverse factors that led to the child’s troublesome actions. Instead of formally processing youth through the current juvenile justice system, younger children could instead be referred for services directly by police officers, schools, or community programs. As current data suggests, Connecticut children under 12 are largely committing misdemeanors and not violent felonies

Fortunately, Connecticut already has a wide array of high-quality non-residential supports and services for at-risk youth, including therapy programs, Family Support Centers, and Juvenile Review Boards. For children who need intensive services, the Connecticut Children’s Behavioral Health Plan (managed by the Department of Children and Families) provides an avenue to connect children and family to intensive services. However, these programs are not being used to their full capacity for youth under the age of 12. Connecticut should expand these programs and emphasize their use for these children.

Such expansion would reap enormous benefits for these children and their communities. For example, in the international context, the use of restorative justice processes and community-based alternatives have demonstrated

stronger success rates in rehabilitating youth and deterring future recidivism than a traditional, punitive system. Furthermore, children are more likely to see such programs as fair, unbiased, and efficient, because they incorporate youth voices, appear more neutral, and treat children with greater respect and politeness. Therefore, through such expansion Connecticut too would gain the benefits of such programs.

CONCLUSION

Elementary school-aged children are being arrested, charged, and detained in Connecticut. These children, many of whom are children of color and many of whom have suffered from a variety of adverse childhood experiences, are further traumatized once inside the formal justice system. This system not only serves to increase the likelihood these youth will engage in criminal behavior in the future, but it reinforces the misunderstanding that such youth can be morally or legally culpable for their actions. It is time for Connecticut to acknowledge what the majority of countries around the world already acknowledge: social science, neuroscience, and legal reasoning affirm that children under the age of 12 should be not processed through the juvenile court process but rather should be diverted to age-appropriate, trauma-informed services to address their underlying needs

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