JUVENILE JUSTICE IN A DEVELOPMENTAL FRAMEWORK

A 2015 Status Report

MacArthur Foundation

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A Letter from Julia Stasch

Protecting children and youth, giving them the best possible chance to become successful adults, is one of the world's most complex challenges. Here in the United States the challenge presents itself in many forms, and nowhere more acutely than in the juvenile justice system.

The MacArthur Foundation began engaging in juvenile justice in 1996, after studying what we viewed as an alarming trend in American society. Nearly a century after the creation of the juvenile justice system, the lines that set it apart from the criminal justice system had become increasingly blurred, and young offenders were being treated as if they were adults. Laws had been passed that allowed the prosecution of more youth in adult criminal court; youth were receiving harsher and more punitive sanctions; juvenile proceedings were losing the protection of confidentiality, and more. These changes carried high individual and societal costs that, at the time, received little public scrutiny.

We were also struck by the racial disparities of the juvenile justice system. The fact is, *all* adolescents do things that could, in theory, land them in the system. Most are not caught, and if caught are not prosecuted. Those with a good support system escape serious punishment. But youth of color—even when they committed offenses no different than their more privileged counterparts—were, and continue to be, more likely to be caught up in the system, and to be treated more harshly by it.

In many respects, the juvenile justice system had strayed from fairness, equality, and humanity—ideals integral to the concept of justice. This undermined respect for the law and its institutions—police, courts, corrections—and eroded public safety. The Foundation saw an opportunity to address many of these issues, and in doing so, to improve the well-being of children, youth, families, and communities.

In entering the field, we adopted what was then an unorthodox approach—one that emphasized research on development during adolescence, the transitional period when a person is no longer a child but not yet an adult. There was already a growing body of scientific evidence on the inherent developmental differences between adolescents and adults. Research in neuroscience was also beginning to show that adolescence is as critical a stage in brain development as infancy and early childhood, a period during which the brain is far more responsive to experiences, good and bad, than anyone had previously imagined. We believed this research could be strengthened and applied to juvenile justice, making justice more rational, more fair, and more effective.

The Foundation pursued multiple strategies—not only research but policy and practical applications—with many national, state and local partners. And while we have not seen the progress we would like on all fronts or in all states, we have seen important advances, from landmark Supreme Court decisions citing developmental research, to state laws and local policies and programs that treat youth in supportive, age-appropriate ways while holding them accountable for their actions. We have seen significant drops in youth confinement, and a growing recognition across the political spectrum of what it means to be "smart on crime." These successes are evidence that change can happen—that it *does* happen—when research and resources are focused on what might seem to be an overwhelming problem.

The MacArthur Foundation was not alone in tackling this challenge. The positive changes you will read about in this report—and in particular, the developmentally focused legislation now seen in virtually every state—have been guided by strong leadership at all levels and from a wide range of professions: legal and child welfare practitioners; academics in fields ranging from child psychiatry to law; national and state organizations; child and youth advocates; legislators, government agencies, and public officials at the federal, state, and local levels; and other foundations that have supported research and model programs. We are grateful for the expertise, the persistence, and the collaborative spirit that have made this progress possible.

Julia Stasch

President, John D. and Catherine T. MacArthur Foundation

Abstract

Advances in the understanding of adolescent development have provided a foundation for progress in juvenile justice reform, including changes in state legislation. In accord with the Supreme Court's recognition of a basic principle—that children are different from adults, and the justice systems that deal with them must be shaped by those differences—state after state has to some degree adopted developmentally appropriate legislation. These reforms mark a dramatic change from the harsh and punitive laws enacted in the 1980s and 1990s.

This report defines developmentally appropriate best practices in nine key juvenile justice policy areas and examines which states (and the District of Columbia) have, as of mid-2015, incorporated those practices into their juvenile justice statutes. The policy areas are status offense rules, age limits for juvenile court jurisdiction, transfer to adult court, access to counsel, competency to stand trial, courtroom shackling, solitary confinement, juvenile records, and sex offender registration.

We find that in every one of these policy areas, some states have incorporated best practices into legislation. In addition, every state has taken steps in some policy areas to legislate best practices. At the same time, the analysis shows that there is considerable room for improvement in all policy areas and by all states. While a great deal of reform is taking place in the courts and in local programs, much of that progress is not yet reflected in state legislation.

The MacArthur Foundation and Juvenile Justice

The John D. and Catherine T. MacArthur Foundation has been a leader in juvenile justice since 1996, when it established a multidisciplinary, multi-institutional Research Network on Adolescent Development and Juvenile Justice. Members of that network conducted some of the most influential research on the behavioral and neurological factors that make adolescents different from adults.

In 2004 the Foundation launched Models for Change, a multi-state initiative that provides research-based tools and techniques aimed at making juvenile justice more fair, effective, rational, and developmentally appropriate. The initiative supports a network of government and court officials, legal advocates, educators, community leaders, and families working together to ensure that youth who make mistakes are held accountable and treated fairly throughout the juvenile justice process. The efforts now reach some 40 states and more than 100 jurisdictions, and include partnerships with national juvenile justice research, reform, and advocacy organizations whose work on "best practices" has paved the way for far-reaching legislative reform.

For more information visit www.modelsforchange.net.

Introduction

Kuntrell Jackson was barely 14 years old when he and two older youth tried to rob an Arkansas video store in 1999. In the course of the failed robbery, one of the older youth shot and killed a store clerk. Though he never held the weapon, Kuntrell was tried as an adult, convicted of capital murder, and given the mandatory sentence of life without parole—a sentence that offered no opportunity for consideration of Kuntrell's individual characteristics or circumstances, and offered little hope for rehabilitation.[1]

In 2012, Kuntrell's appeal, consolidated with that of Evan Miller, another 14-year-old who received a similar mandatory sentence in Alabama, was heard by the United States Supreme Court. Delivering the majority opinion, which reversed the original sentence, Justice Elena Kagan wrote:

> *Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors….And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.* [2]

This case, known as *Miller v. Alabama,* was the fourth in ten years in which the Supreme Court based a decision upon new knowledge concerning adolescent brain and psychological development.[3] With these decisions, the highest court in the land defined a framework that reaches far beyond those specific cases. The Court affirmed a basic principle of juvenile justice: children are different from adults, and the justice systems that deal with them must be shaped by those differences. This principle has profoundly changed the lens through which policymakers, judges, and practitioners view juvenile justice, and has turned isolated efforts into a nationwide wave of reform.

The current reforms are taking place in the context of several decades of changing attitudes and shifting practices. During the late 1980s and early 1990s, the U.S. experienced rising juvenile crime rates and widespread fear. Citizens demanded that legislators get "tough on crime" and make youth serve "adult time for adult crime." And legislators complied, passing laws that treated many young people not as juveniles but as adult criminals.

As public fears subsided—and especially in the wake of the Supreme Court decisions—those laws began to be rolled back. Increasingly, now, developmental considerations are reflected in reforms in state legislation and in policies and practices at every jurisdictional level, touching on every point of contact that adolescents have with the law. States across the country have passed laws that address status offenses, raise the maximum age of jurisdiction for their juvenile courts, and narrow the circumstances under which young offenders can be tried in adult courts. Many states and jurisdictions have adopted new courtroom rules, revised harsh sentencing and confinement practices, and reconsidered policies that affect young people long after their sentences are completed.

These reforms, and many others, aim to fulfill the core mission of the nation's juvenile justice systems: to keep communities safe by holding young offenders accountable, reducing their risk of reoffending, and helping them grow into responsible adults.[4]

* * * * *

The trends described above have been documented in reports by the National Conference of State Legislatures,[5] the National Juvenile Justice Network,[6] and others. This report is something different. It is a status report on state legislation in nine key areas of juvenile justice policymaking, showing which states have incorporated the science of adolescent development

into their juvenile statutes. It is a snapshot that illustrates, from the perspective of state laws, where the country stands after 15 years of reform—and how much work remains to be done.

We chose to focus exclusively on state legislation because of the uniquely important role it plays in juvenile justice. Just as the Supreme Court decisions have influenced the states, state legislation sets expectations for state and local policies and practices, and provides a legal framework for shaping them. Conversely, state legislation often reflects and builds on practices and model programs that have been tested on the ground. Legislation is also a common denominator: all states have a set of juvenile justice statutes, a legal framework governing state and local policies and practices. It provides a solid benchmark against which states can measure their own progress in the years ahead, while showing them what other states have accomplished. In this way, the report can serve as a tool for self-examination, a basis for state comparisons, and a nudge toward healthy competition among the states to meet higher standards.

Of course, legislation doesn't tell the whole story of juvenile justice, and our list of key issues is not meant to be exhaustive or comprehensive.† Much of the current wave of reform is taking place in the courts and in local programs and practices—and often those changes go beyond what is mandated in legislation. For example, one policy area we considered for this report—but ultimately did not include—is that of evidence-based practices: practices that have been shown through research to be effective in reducing recidivism and improving outcomes for young people who come in contact with the juvenile justice system. We soon realized that states that are adopting these practices widely often have not embodied them in legislation, while states that do have such statutes may not consistently apply them.

Nevertheless, state legislation is a key measure of reform, fundamentally altering practices with far-reaching repercussions. And it can tell us a great deal about progress overall. Readers of this report will see that in each policy area, at least some states have adopted developmentally appropriate legislation; and every state has several successes to its credit.

Readers can also view the report as a guide to best practices in the policy areas it covers. In describing those practices as embodied in law, and elucidating their relationship to adolescent development, we hope to provide essential information for all Americans who share the goals of protecting communities and helping young people become responsible adults.

The report suggests that as we reach for these goals, there is much to celebrate and much more that remains to be done. It is the Foundation's hope that every state will take this opportunity to acknowledge its strengths and its shortcomings, to explore how other states have met the challenges they faced in implementing reform, and to find ways to press forward with policies that treat youth fairly, hold them accountable in developmentally appropriate ways, and protect public safety.

One final word in introducing this report. While its focus is on legislation, readers should never forget that we are talking about *people*—youth involved in the justice system and all of us who live in the world with them. It is no secret that many of the young people who come in contact with the law are children whom other social institutions have failed. Their experiences have given them little reason to trust the social rules and laws that are meant to ensure our safety. A fair and effective juvenile justice system may be society's last opportunity to acknowledge the potential of these youth and help them become successful, law-abiding members of their communities.

† *For a broader view, see the report of the National Conference of State Legislatures: "Trends in Juvenile Justice State Legislation 2011-2015." http://www.ncsl.org/documents/cj/Juvenile_Justice_Trends.pdf*

Perspective: Reform and Backlash

Why is there a separate justice system for young people? Where did this idea come from, and how did it evolve to its present state? A brief look at the origins of the juvenile justice system and the changes it has undergone will help put the current era of reform in perspective.[7]

American society has a complex relationship with its children, alternating between fear *for* them and fear *of* them. That ambivalence is reflected in the country's attitude toward juvenile justice. In the eighteenth and early nineteenth century, children were generally treated as adults in courts, and often were sent to jail and prison with them. By the middle of the nineteenth century, reformers had established "houses of refuge" where unruly children would be remolded into solid citizens—though often these devolved into abusive environments.[8]

The late nineteenth century saw waves of immigrants arrive in the U.S. and settle in crowded, chaotic neighborhoods; their children were often feared by more established populations. Reformers of the era believed juvenile delinquency was rooted in this "impoverished social context," and saw the answer in a benevolent state that would provide children with protection and rehabilitation—though this sometimes meant removing children from "unfit families" and sending them to reform schools or shipping them across the country to work.[9] The approach was controversial, but the "child-savers" of Jane Addams's Hull House were persuasive; they helped shape legislation that established the first juvenile court—in Cook County, Illinois, in 1899.

For all its apparent contradictions and shortcomings, the new system was groundbreaking, built on principles that foreshadow today's reforms: the idea that children are different from adults; that they are less responsible for their actions and thus not deserving of adult punishments; and that society has an interest in protecting them and investing in their futures. The model spread quickly, in the U.S. and abroad—from Canada and Great Britain to Russia, Poland, Japan, and beyond.[10] By 1925 all but two U.S. states had a separate justice system for children, focused on the offender rather than the crime and on rehabilitation rather than punishment.[11]

Perspective: Reform and Backlash

Gradually, though, this model—often referred to as the first wave of reform—began to erode. At the time the child-centered model lacked scientific support, and skeptics questioned its effectiveness. The paternalism and informality that characterized the juvenile courts was challenged because, in the words of Justice Abe Fortas in 1966, it offered children the worst of both worlds: "neither the protections afforded to adults nor the solicitous care and regenerative treatment postulated for juveniles."[12] A year later the Supreme Court stepped in with a partial solution, extending to juveniles the key Constitutional protections against self-incrimination, the right to confront witnesses, and the right to counsel.[13, 14] This recognition of children's due process rights is often considered the second wave of reform.

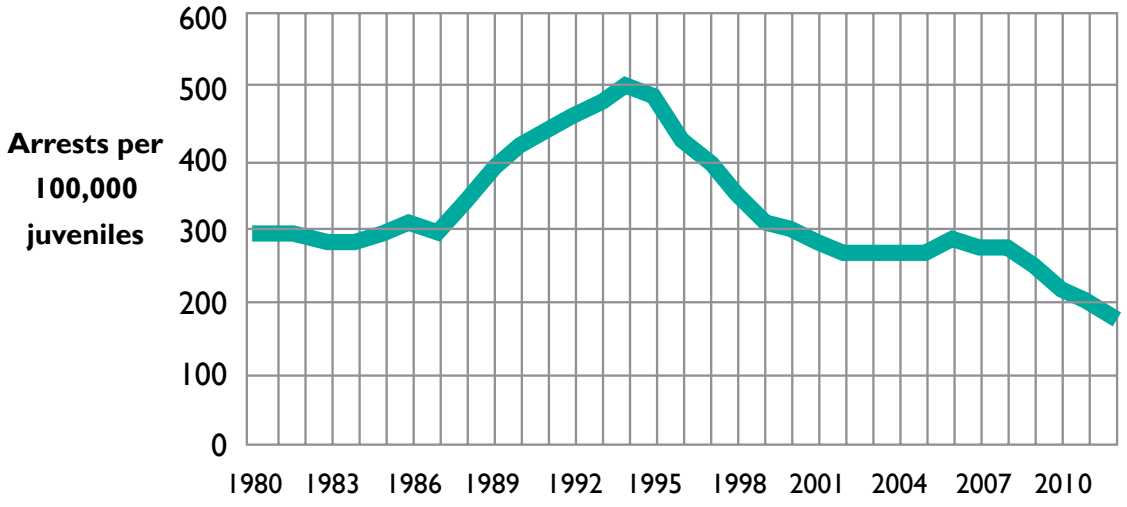
Two decades later, violent crime among youth began to climb steeply, seriously undermining what remained of the rehabilitative model. Between the mid-1980s and the mid-1990s, the rate of arrests of youth for violent offenses increased by two-thirds. The rise was accompanied by extensive media coverage, often focusing on minority youth engaged in violent crime, which enflamed the public.[15] Many people will recall the term "super-predators," coined by John Dilulio, then a professor at Princeton, in 1995. He wrote of "hardened and remorseless juveniles," a "demographic time-bomb" that would spread from inner cities to upscale suburbs and rural communities, unleashing "an army of young male street predators." The only viable solutions he saw at the time were mass incarceration and religion.[16]

Dilulio's words both echoed and fueled the moral panic sweeping the nation in the mid-1990s. Although by 1995 juvenile crime rates were dropping precipitously, public perception and political discourse lagged behind. The idea that children and adolescents should be treated differently from adults had lost currency, and in a third wave of reform—this time a backlash—policymakers began enacting harsh, punitive laws. The reaction reached every corner of the country. For example:[18]

- 45 states made it easier to try juvenile offenders, even those under 10 years of age, in the adult system—sometimes at the discretion of a prosecutor, and sometimes automatically because of their age and their offense (including, in some states, for nonviolent crimes).
- 32 states gave criminal and juvenile courts new sentencing options and guidelines, including mandatory minimum sentences and life without parole.
- 47 states weakened the traditional confidentiality of juvenile records.

And the number of incarcerated youth soared, from 167 per 100,000 population in 1979 to 356 per 100,000 in 1997.[19] Some people even called for the abolition of the juvenile justice system.[20]

Violent Crime Rates among Juveniles, 1980-2012[17]



Note: Rates represent the number of arrests per 100,000 youth aged 10 to 17 in the general U.S. population. The federal government's violent crime index includes murder, non-negligent manslaughter, forcible rape, robbery and aggravated assault.

A New Century Offers New Opportunities for Reform

As early as the 1990s, researchers and advocates were questioning both the fairness and the effectiveness of increasingly punitive policies. These laws came with high costs, and offered little benefit in public safety. In the twenty-first century, as juvenile justice professionals and the public realized that the dire predictions of youth violence were not coming to pass, the panic subsided and support for harsh policies declined, preparing the way for a new, fourth wave of reforms.

For example, since 2001, 28 states have passed legislation to roll back changes that had restricted the jurisdiction of the juvenile courts and put more youth in the adult system.[21] In response to the Supreme Court decisions mentioned earlier, some states are reconsidering the sentence of life without parole for juveniles. Quite a few states addressed competency to stand trial and mental health issues for juveniles brought before the court, and at least nine states passed laws requiring that juveniles be represented by qualified counsel. In addition, a number of states enacted laws allowing expungement or protecting the confidentiality of juvenile records.[22]

Plummeting crime rates beginning in the mid-nineties helped win support for these reforms—from the public and, perhaps even more remarkably, from policymakers across the political spectrum. But this was not the only factor driving the new wave of reform. There were other important motivators, ranging from the utilitarian to the humane—and strongly influenced by the burgeoning science of adolescent development.

A better understanding of adolescence.

Perhaps the most important driver of recent reforms in juvenile justice has been advances in the understanding of adolescent development, first through behavioral studies and then reinforced by neuroscientific research. Adolescence is now understood to be a period during which the brain is not only maturing but extraordinarily malleable—and extraordinarily vulnerable; the adolescent brain responds to experiences to a degree that is rivaled only during the first three years of life, and will not come again.[23] This suggests that adults have a responsibility to provide young people with experiences that facilitate positive development, and to protect them from harmful experiences.

The advances in behavioral science and neuroscience provided a conceptual underpinning and credibility for multiple reforms that have occurred during the past fifteen years or so. The linking of these scientific advances to juvenile justice policy and practice owes a great deal to the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice (see sidebar, page 4).[24] The result has been a growing embrace of policies and practices that are informed by the knowledge about adolescent development discussed in the next chapter of this report.

Human costs.

Reform is also driven by a growing recognition of the negative psychological and social effects of punitive policies on the youth involved and on their communities. The harsh policies of the 1990s did not improve young lives, reduce recidivism, or make communities safer. Instead, they made it all the more difficult for young offenders to become successful adults. Not incidentally, the burden has been borne disproportionately by young people of color, who are overrepresented throughout the system, especially at the "deep" end—incarceration.[25] Many juveniles received inadequate education in confinement and had difficulty returning to school. As a result, they were less likely than their peers to graduate or to find legitimate employment and housing.[26] It's no surprise, then, that they were likely to reoffend. The most sophisticated analyses suggest that compared to community-based options, incarceration may actually increase recidivism as much as 26 percent, leaving communities even less safe.[27]

Economic concerns.

Cost-effectiveness is an aspect of juvenile justice reform that has brought together all parts of the political spectrum. Incarceration is enormously expensive. The Justice Policy Institute (JPI) found that in 2011 the average

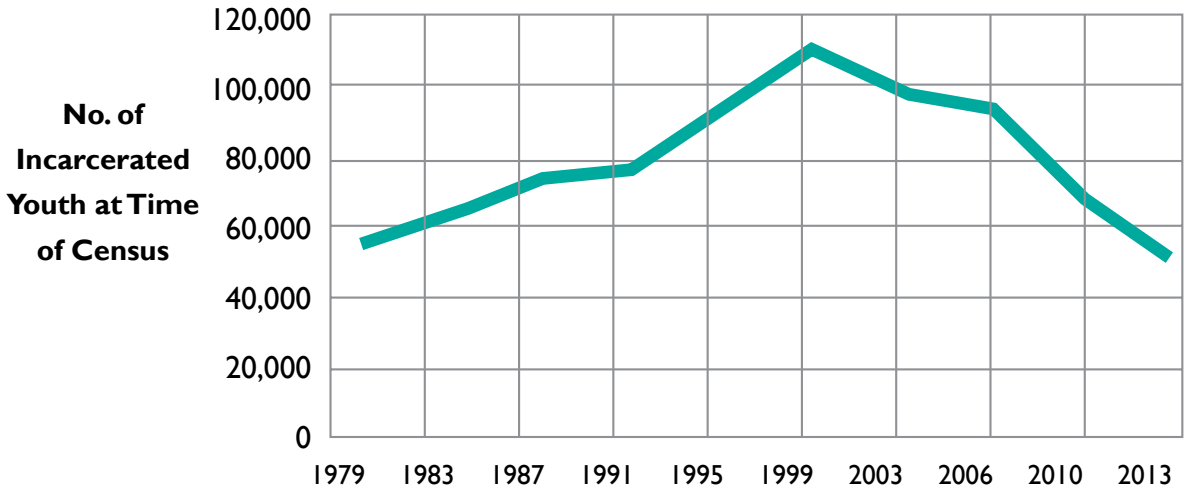
direct cost of the most expensive incarceration option was close to $149,000 per year for each youth. (In New York the cost was nearly $353,000.) And the long-term costs are much higher. JPI estimated the costs of recidivism, lost future earnings and tax revenue, higher spending on public programs like Medicare and Medicaid, and litigation and liability costs associated with assaults on youth in custody at $8 billion to $21.5 billion in 2011.[28]

Much of the cost, both direct and long-term, is incurred by the states, many of which have been running serious budget deficits since the early 2000s. They look to reforms in part to help reduce the cost of a system that relies heavily on expensive court processing and incarceration and fails to capitalize on the propensity of youth to outgrow delinquency and respond to rehabilitative programs. There are many reforms—diverting youth with minor charges from the system, reducing solitary confinement, eliminating sex offender registries for youth, and favoring evidenced-based community programs over incarceration, to name just a few—that are developmentally appropriate, socially positive, and cost-effective.

More effective interventions.

By the late 1990s and early twenty-first century, a growing body of research was providing evidence that certain community-based programs were not only less costly than confinement but far more effective in reducing reoffending.[29] These diversion programs are varied, and include Multidisciplinary Treatment Foster Care, Functional Family Therapy, Aggression Replacement Trainings, and Multi-Systemic Therapy. The programs share several elements that are key to their success: involving parents (or parental figures), limiting contact with antisocial peers, and providing youth with opportunities and structures for healthy development as well as tools for countering negative influences in their own environments.[30] The cost savings these programs can offer was made clear in a Washington State study, which found that tested and proven alternative programs, implemented with fidelity to their design, would save taxpayers about $25,000 to $31,000 per youth.[31]

Juvenile Incarcerations in the U.S.[32]



Adolescent Development:

What We've Learned and Why It Matters

Any parent can tell you: adolescents are different from adults. The past two decades of research have brought scientific validity and depth to that common knowledge.

It was behavioral researchers who first mapped the developmental changes in adolescents' emotional and cognitive abilities, their thought processes and behaviors, their vulnerabilities and potential for change.[33] These findings were soon validated by neuroscientists who documented age-related changes in brain structure, circuitry, and functioning.[34] Most significantly, they see changes in the prefrontal cortex, which is involved in executive functions such as self-control and planning, from adolescence into early adulthood.[35]

These characteristics have major implications for what a juvenile justice system needs to take into account if it is to be appropriate, fair, and effective in dealing with young offenders.

Adolescents are less culpable than adults.

The U.S. legal system has long held that punishment should be based not only on the harm caused by a crime, but also on the culpability—the blameworthiness—of the offender. A person's state of mind and factors that are outside of his or her control, such as mental illness or duress, may be considered mitigating factors. Developmental immaturity is a similar factor. Adolescents tend to be impulsive, reckless, attracted to novel and risky activities—especially when they are in a group of other adolescents. These are not individual character flaws but, as behavioral and brain studies have shown, natural (and transitory) aspects of adolescent development. They do not excuse criminal behavior; adolescents still need to be held accountable for their acts. But they warrant treating juveniles differently from adults when they enter the justice system.[36]

Adolescents are less competent than adults.

The law requires that adult defendants be competent—able to understand the trial process, assist in their defense, and make decisions such as whether to submit to police interrogation, testify in their own defense, or accept a plea agreement. Strong evidence shows that adolescents, especially those age 15 and under, are as poorly prepared to do these things as adults with serious mental illness. This isn't simply a question of life experience. Adolescents don't put facts together and draw conclusions the way adults do; they're more inclined to defer to authority figures and less likely to recognize the risks inherent in the choices they make.[37] This suggests that at all points of contact with the system, young people require the assistance of counsel with special expertise in juvenile justice and adolescent development.

Adolescents can and do change.

From puberty into the mid-twenties, the brain undergoes dramatic changes—in the growth of neurons, synapses, and brain regions, and in the connections among different groups of neurons. Those connections grow in number, effectiveness, and specialization.[38] While this malleability makes adolescents highly vulnerable, it also gives them a tremendous capacity to change. In fact, change—in character, personality traits, and especially behavior—may be the most salient characteristic of adolescence. Studies such as "Pathways to Desistance," a major longitudinal study of adolescent offenders, have shown that the vast majority of adolescents will cease their involvement in delinquent or criminal behavior on their own—a natural consequence of brain development shaped by learning and experience.[39] Others will respond to various kinds of interventions, and can learn to make responsible choices. For many young offenders, the best response will be solutions that avoid involvement with the juvenile justice system and its sometimes harmful effects. Helping adolescents mature means knowing when to intervene with which youth and, when intervention is necessary, matching them with the most appropriate and effective interventions.[40]

Adolescents need support for healthy development.

Adolescents don't mature in a vacuum, but in a complex social context; their behavior is a result of the interactions between their environmental influences and normal emotional, psychological, cognitive, and brain development. Scientists point to three essential environmental conditions for healthy adolescent development: the involvement and concern of a parent or parental figure; a prosocial peer group (and limited contact with anti-social peers); and activities in which they can learn critical thinking and decision-making.[41] Successful interventions, whether preventive or corrective, need to support adolescents' development across all these realms—a goal that is more easily achieved in community-based programs, but is not impossible to achieve in confinement.

Adolescents are more vulnerable to psychological damage.

While the brain changes that take place in adolescence are highly adaptive for learning, they also increase adolescents' vulnerability; as more than one scientist has put it, "moving parts get broken." Negative or traumatic experiences can throw behavioral and brain development off course, with lifelong consequences for the individual and for society.[42] Thus experiences such as courtroom shackling, solitary confinement and isolation, barriers to family contact, and time in an adult prison can be particularly harmful to adolescents, their prospects for a healthy transition to adulthood, and their respect for the law.[43]

Putting Developmental Knowledge to Use

"Delinquent youth and society have convergent interests that can be realized through interventions that support the development of young offenders into law-abiding adults."

- Reforming Juvenile Justice, a Developmental Approach[44]

A skeptic might expect all this new knowledge to be discussed only among academics, or collected in reports that sit on shelves gathering dust. But for once, the skeptic would be wrong.

The explosion of knowledge about adolescent development, about the pathways into and out of delinquency, and about the positive or negative outcomes of different responses to juvenile offending has in fact inspired a wide range of reforms that benefit both young people and the public at large. Because the reforms are embedded in developmental knowledge, young people are better able to reach their potential and become responsible members of society, decreasing recidivism and making communities safer and healthier—a range of positive returns that is both broad and deep.

The reforms have come from multiple directions and have addressed many different aspects of juvenile justice. At the national level, four Supreme Court decisions since 2005 addressed constitutional issues arising in the punishment and interrogation of juvenile offenders. In *Roper v. Simmons* (2005) the Court prohibited the death penalty for juveniles; in *Graham v. Florida* (2010) it barred the sentence of life without parole (LWOP) for juveniles convicted of a non-homicide offense; in *Miller v. Alabama* (2012), discussed in the introduction to this report, it banned the use of mandatory LWOP sentences for juveniles convicted of homicide; and in

Putting Developmental Knowledge to Use

J.D.B. v. North Carolina (2011), it ruled that a child's age must be considered by law enforcement in determining whether Miranda warnings need to be given during police interrogations.

By declaring in these cases that the Constitution requires that our laws recognize the differences between adolescents and adults, the Supreme Court added authority and momentum to a developmental approach that is influencing legislation, policies, practices, and judicial decisions across the country. These are a few examples drawn from the 2011-2015 report of the National Campaign to Reform State Juvenile Justice Systems, a 37-state initiative aimed at changing juvenile justice policies to enhance public safety, improve outcomes for youth, and reduce costs to the taxpayer.†[45] (Only the states covered by the Campaign are included in the following totals.)

- Family and juvenile courts in 18 states are now more likely to hear cases formerly processed in the adult system, to evaluate a youth's competency to stand trial, and to consider the youth's development and maturity in sentencing.
- Fourteen states have increased the use of diversion and community-based programs, resulting in fewer youth being incarcerated.
- Ten states have raised their standards for youth placement facilities, increased mental and behavioral health services, and taken steps to keep young offenders closer to their own communities.
- Nine states have increased juveniles' access to counsel and in other ways made the legal process fairer for adolescents.
- Eight states have stopped automatically referring adolescents to the juvenile justice system because they are truant, defiant, or act out in school.

In legislation, some states have applied the developmental framework fairly broadly. For example, Pennsylvania and New Mexico have enacted what we consider to be best practices in, respectively, 11 and 9 of our designated policy or sub-policy areas. Other states have also looked at the bigger picture.†† Georgia rewrote its juvenile code in 2013, with an eye on moving funding from incarceration to community-based programs and practices to reduce recidivism; they then added additional reforms in 2014 and 2015. Nevada has passed multiple bills in recent months, addressing a broad range of policies, from the age of jurisdiction to the use of solitary confinement. Kentucky passed legislation to reduce the use of secure confinement, increase proven community-based options, and strengthen probation supervision.[46] And Hawaii enacted a law aimed at reducing secure confinement, strengthening community supervision, and focusing resources on practices proven to reduce recidivism.[47]

Some states have also raised the age of criminal court jurisdiction for all or some offenses, an extremely important step for juvenile justice; barred the sentence of life imprisonment without parole for all juvenile offenders; increased the confidentiality of juvenile records; adopted evidence-based screening and assessment tools for juvenile offenders; addressed issues of racial disparities in the juvenile justice system; and improved reentry and aftercare services.[48,49]

† *The MacArthur Foundation is a lead funder of the campaign.*
†† *Some of the reforms mentioned here are not reflected in this status report, either because the legislation falls outside the criteria of our selected policy issues, or because the laws were enacted after our cutoff date for analysis.*

The Status of State Legislation

Ten years after the Supreme Court turned a spotlight on adolescent development, what can we say about how the developmental framework has shaped juvenile justice across the country? It's relatively easy to point to examples of reforms that are grounded in the new knowledge of adolescence, and NCSL's review of recent trends suggest they are not isolated examples. Until now, though, no one has looked at how broad the effect has been on state legislation, and how much work still needs to be done.

This report uses the most current information on state legislation to examine nine of the most significant areas of juvenile justice policy.* It provides a snapshot of the states at one point in time—a benchmark that states can use to examine their own progress now and in the future, to see what other states have accomplished in specific policy areas, and to think about what their next steps might be. It is by no means a complete picture of juvenile justice reform.** The policy areas examined here are a subset of the many important juvenile justice policies, and legislation is just one indicator of a state's performance. But legislation plays a critical role in setting expectations and shaping policies and practices in the courts and on the ground, and can offer a clear, consistent basis for comparison among the states and over time.

Which policies we examined…and why.

This report examines nine key juvenile justice policy areas that should be informed by and reflect the new knowledge of adolescent development. We have grouped them into categories based on important goals within the developmental framework:

Goal 1: Minimize contact with the system.

- Status offense rules

Goal 2: Keep youth in the appropriate justice system.

- Age limits for juvenile court jurisdiction
- Transfer to adult court

Goal 3: Protect youth inside the courtroom.

- Access to counsel
- Competency to stand trial
- Courtroom shackling

Goal 4: Adopt developmentally appropriate confinement practices.

- Solitary confinement

Goal 5: Remove obstacles to reintegration with the community.

- Juvenile records
- Sex offender registration

We chose these nine policy issues for several reasons. They are areas in which laws and regulations, at their best, reflect a developmental approach—the idea that adolescents should be treated differently from adults, and that the system should help them realize their potential while holding them accountable for their offenses. They touch on multiple developmental realities discussed earlier in this report: adolescents' reduced culpability, their lower competency, their greater capacity to change, their need for environments that support maturation, and their higher vulnerability to psychological harm. And they address multiple points of contact and potential contact with the system, from determining who is treated as a juvenile, to pre-court and courtroom decisions, to confinement and after-effects. Each of these points presents an opportunity—and a responsibility—to ensure that a youth is being treated fairly, is being considered as an adolescent rather than an adult, and is receiving the most appropriate response.

There were also practical considerations for the choices. These are all areas addressed by state legislation, where the policy, if it exists, is spelled out in clear language. This helps to ensure objectivity and provides consistency across the policy areas and the states. It also means that the report is unable to cover all relevant policy areas, including one of the most significant—racial and ethnic

* *Current as of July 15, 2015.*

** *For additional information and data on the states, a good place to start is the website of Juvenile Justice GPS, http://www.jjgps.org.*

disparities—because state statutes don't explicitly address this issue. However, because youth of color and other minority populations are overrepresented throughout the juvenile justice system, any reforms that reduce harm and improve outcomes will have a disproportionate impact on these young people.

How we analyzed state performance.

To assess how well states are doing in adopting developmentally appropriate mandates, we reviewed existing legislation for each of the 50 states and the District of Columbia.†

For each of the nine key policy areas, we first identified types of state legislation that should be heavily informed by current knowledge of adolescent development. For some of those policy areas, we also identified more specific provisions. Under "access to counsel," for example, we examined state laws covering waiver of counsel and the presumption of indigence.

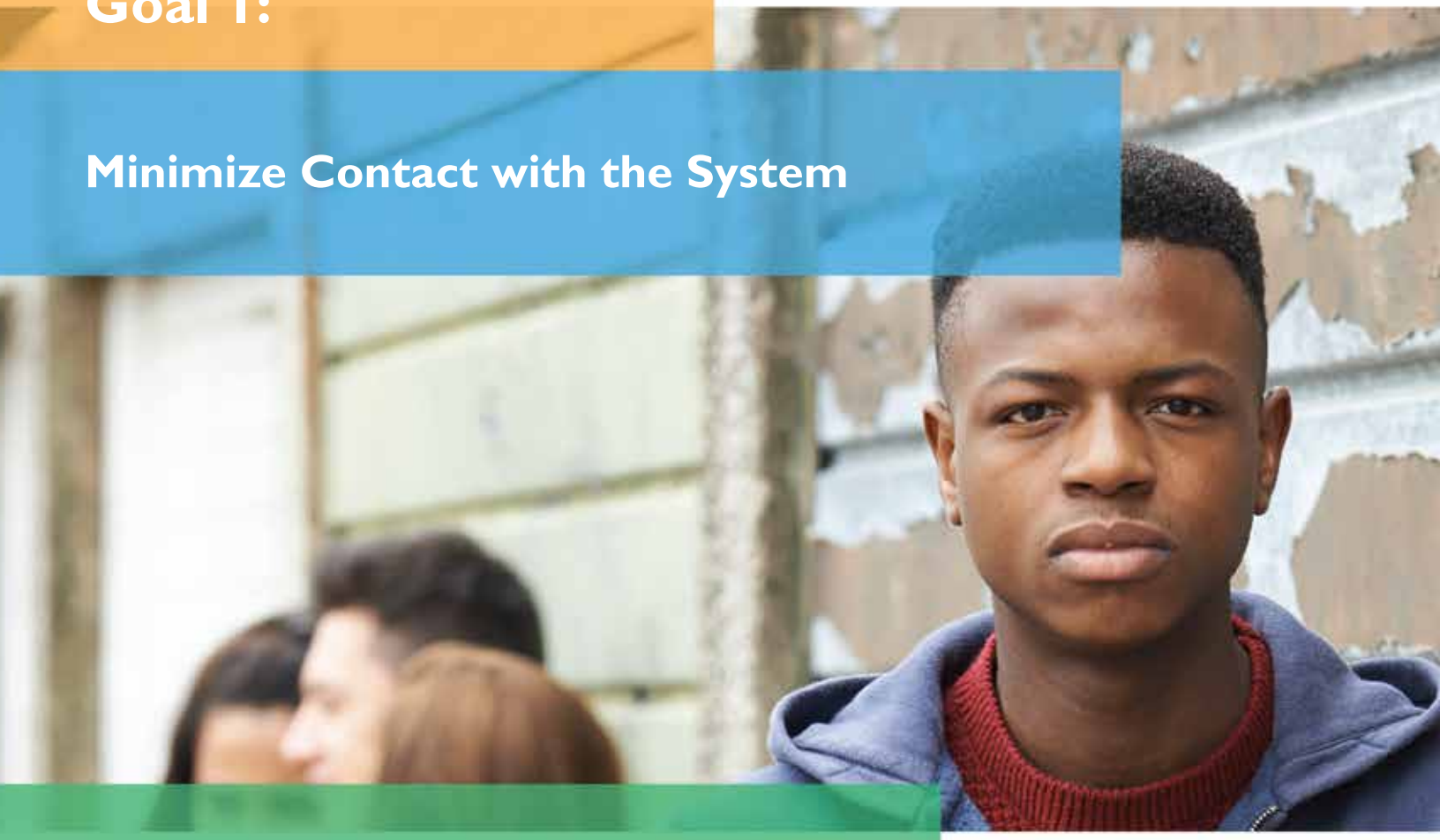
Next, in consultation with experts in each of the nine policy areas, we identified practices specified in state legislation that are most consistent with our knowledge of adolescent development. The tables in the sections that follow capture the findings of an intensive review and analysis of state laws. That analysis was designed to identify which states, in each policy area, have mandated these "best practices" as of July 15, 2015.†† The results in each of the policy-area tables provide a snapshot of the states, through mid-2015, that have incorporated adolescent development considerations into their juvenile justice legal frameworks.

† In the analysis that follows, "states" includes the 50 U.S. states and the District of Columbia.

†† The primary review and analysis of state laws in this report was conducted for the MacArthur Foundation by the Juvenile Law Center. Assistance on specific policy areas was provided by staff of the National Center for Juvenile Justice, the National Conference of State Legislatures, and Impact Justice.

Goal 1:

Minimize Contact with the System



The juvenile justice system was designed not primarily to punish young offenders but to hold them accountable for their actions while providing them with opportunities for rehabilitation. To do that, the system must take care not to respond in ways that contribute to further delinquency and put the youth or society at greater risk of harm. That means, in part, keeping adolescents from needlessly falling deeper into the juvenile or criminal justice system, where the risk of recidivism and long-term harm is likely to increase.[50]

This is not to say the system should give youth a pass on delinquent behavior, but rather that it should be fair, humane, and effective. Nowhere is this more important than in dealing with minority youth. Racial and ethnic disparities increase at each decision point in the system, from arrest to detention;[51] therefore, policies that minimize contact with the system will reduce disparities overall.

One major way that states can work toward this goal is by ensuring that youth are not incarcerated for non-criminal offenses. (Another way is by using evidence-based practices to provide youth with appropriate supervision and early, effective interventions. But as we noted earlier, this policy area generally is addressed in practice rather than through legislation.)

Policy: Status Offense Rules

The policy issue.

Status offenses are behaviors that are prohibited by law only when the individual is a minor. The most common status offense is truancy—skipping school—which accounts for more than a third of all status offenses. That's followed by liquor law violations, "ungovernability" (essentially, children who act out and whose parents feel they can't handle them), running away, and curfew violations. Status offenses are not considered criminal acts, and ideally the problems of these youth would be handled

in their schools, through social services, or with other community resources. But in 2013, 109,000 status offense cases were handled by juvenile courts; youth in 7,300 of those cases spent time in detention before adjudication; and 3,800 youth were given longer-term placements in a residential facility.[52]

That shouldn't be happening. The federal Juvenile Justice and Delinquency Prevention Act (JJDPA), passed in 1974, attempted to reduce youth confinement by offering strong incentives for states *not* to confine adolescents for status offenses. In 1980, however, the JJDPA was amended to allow states to incarcerate status offenders if they violated a "valid court order" or VCO—that is, if they ignored a judge's orders. (This amendment is commonly known as the VCO exception.) So if a youth disobeyed a judge and failed to appear in court, continued skipping school, or ran away once again—regardless of the reason—he or she might well be ordered into confinement. And many were. In fiscal 2014, the Office of Juvenile Justice and Delinquency Prevention received reports of more than 7,400 such cases, including 4,400 from the states of Washington, Kentucky, and Arkansas.[53]

"I was locked up ten different times within a two-year period. Inside juvie I met other girls like myself who were there for prostitution, running away, and truancy. All of us were from the same neighborhoods, poor families, and seemed to have the same disposition of trauma, anger mixed with hopelessness. We were not violent girls. We were girls who were hurting."

- Nadiyah S.[56]

The developmental view.

Most people, at some time or another during their adolescence, commit what are technically considered status offenses: skipping school with a group of friends; sneaking a beer, or two, or more; staying out past curfew. Those who are reported to the courts for these acts are, in one sense, just exhibiting typical teenage risk-taking behavior, testing limits, ignoring the possible long-term consequences. Like other adolescents, they are still developing socially and emotionally, forming their identities, and seeking independence and autonomy, factors that play heavily in status offenses.

In many cases, though, young people caught up in the system because of status offenses are those who have acted out repeatedly or extremely. Their behaviors can be traced back to deeper problems, such as disrupted family relationships or unidentified mental health issues—problems that need quick and expert response, often involving multiple resources. Juvenile courts can be slow to respond, and they have neither the resources nor the expertise to deal with teenagers' underlying problems. Without other options, judges too often confine these troubled teens with youth who have committed much more serious offenses. Deprived of healthy supports and vulnerable to their environment, they are likely to get worse instead of better.[54] For example, research shows that status offenders confined with seriously delinquent youth are at increased risk of developing anti-social perspectives and affiliating with gangs.[55]

In addition, the VCO exception takes status offenses to a higher level, criminalizing adolescent behavior that is not in fact criminal, stigmatizing youth who may already be deeply troubled, alienating them further from their families, and penalizing them in ways that will have repercussions for years to come.

What these young people need is not confinement but evidence-based interventions that can help them and their families improve their lives.

Results.

We consider best practice to be legislation that prohibits the pretrial detention of status offenders. Although many states avoid such confinement in practice, and some put limitations on it, only 14 states—just over a quarter of the total—expressly and completely prohibit it in legislation. As a result, the table does not count states such as California, which deserves recognition for prohibiting detention for violations related to truancy (the most common status offense), though its laws don't expressly bar detention for other kinds of status offenses.

14 states prohibit the confinement of status offenders for violating a valid court order

State	Does Not Permit Detention of Status Offenders
Alabama	
Alaska	
Arizona	■
Arkansas	
California	
Colorado	
Connecticut	
Delaware	■
District of Columbia	■
Florida	
Georgia	
Hawaii	
Idaho	
Illinois	
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	■
Maryland	■
Massachusetts	■
Michigan	
Minnesota	■
Mississippi	
Missouri	
Montana	■
Nebraska	
Nevada	
New Hampshire	■
New Jersey	■
New Mexico	■
New York	■
North Carolina	
North Dakota	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	■
Rhode Island	
South Carolina	
South Dakota	
Tennessee	
Texas	
Utah	■
Vermont	
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	
Total Number of States	**14**

Goal 2:

Keep Youth in the Appropriate Justice System

The concept of a "juvenile court" may suggest there is a universally understood legal definition of a "juvenile." In fact, that is far from the case. Each state sets its own age boundaries for juvenile court, and in some cases those boundaries are defined by the offense as well as the age of the offender. Over the years, states have repeatedly redefined their juvenile court age limits. In addition, all states have mechanisms for transferring to criminal court some cases that would normally fall within their juvenile court boundaries.

In the late 1980s and 1990s, nearly every state expanded their options for processing young offenders as adults—a trend that many states are now beginning to reverse.[57] Still, in 2013 the cases of 4,000 youth under 18 were sent to the criminal justice system by judicial waiver alone—and half of these were for non-violent offenses.[58] Moreover, the racial disparities that affect youth of color throughout the juvenile justice system are magnified when it comes to trying youth as adults: African-American youth (to take just one example) comprise 30 percent of those arrested but 62 percent of those tried as adults.[59]

Regardless of their offense or where they are tried, the developmental characteristics and needs of all these young people remain those of adolescents. With few exceptions—which must be determined on an individual basis—adolescent offenders should remain in the jurisdiction of juvenile courts.

Policy: Age Limits for Juvenile Court Jurisdiction

The policy issue.

The upper age limit—something set by every state—is the oldest age at which a person's crime can be considered delinquent and addressed in juvenile rather than adult court. Some states also set a lower age boundary, below which the child's conduct would not be considered delinquent but might warrant intervention by child welfare or social service agencies. The United Nations has recommended that the upper age boundary should be no lower than 17, and the lower boundary 12. Nevertheless, nine U.S. states currently set the upper limit at 15 or 16, and the few states that specify a lower limit set it at ages ranging from ten years to as low as six.[60,61]

An estimated 137,000 adolescents a year are sent directly to criminal court when charged with a crime, based only on the age-of-jurisdiction laws.[62] Once there, they are treated as adults and are subject to adult sentencing laws. If convicted they are sent to adult prisons, usually without the protections, educational and rehabilitative services, and specially trained staff of juvenile facilities. When they are released, they carry an adult criminal record, which can severely limit their employment and educational opportunities.†

The developmental view.

Adolescents are developmentally ill-prepared to deal with criminal court, much less prison. Many do not understand the concept of a legal right, or the meaning of the right to remain silent, or any part of their Miranda rights. They are less able to trust, communicate with, and assist their attorneys, or to make decisions that will affect their entire life. They are less knowledgeable about the legal process, and their reasoning abilities are less mature.[63] The rigid, adversarial system simply is not designed—and the lawyers and judges in it are not trained—to deal with the thinking and behavior of adolescents, putting these youth at a disadvantage compared to adults in the same courts.[64]

Adolescents' reduced culpability is another consideration. A fundamental principle of our justice system is proportionality, which holds that punishment should be based not only on the harm caused by the crime, but also on the culpability of the offender. Yet youth in criminal court are generally subject to the same penalties—including mandatory minimum sentences—provided by law for adults.

Perhaps most important, sending youth to adult prisons subjects them to both immediate and long-term harms. It deprives them of the education and training they will need to enter the work force or continue their schooling, as well as the supportive programs and services they

† *For more on these limitations, see the section on juvenile records.*

need to mature. It either isolates them* or puts them in daily contact with adults who have long histories of offending and staff whose main goal is to maintain order. It puts them at risk of sexual and physical abuse, long-term mental health problems, and suicide. And it leaves them ill-prepared to reenter society as healthy, productive adults.[65,66] For these reasons, 35 states allow juvenile courts to retain jurisdiction over some juveniles for several years beyond the age limits for original jurisdiction—most to age 21. This "extended jurisdiction" allows the juvenile justice system to provide these youth with the most appropriate sanctions and rehabilitative services and to reduce the likelihood that they will reoffend.

11 states set the lower age limit for juvenile court jurisdiction at 10 or higher. 42 states set the upper age limit at 17.

State	Lower Age Limit 10 or Higher	Upper Age Limit of 17
Alabama		■
Alaska		■
Arizona		■
Arkansas	■	■
California		■
Colorado	■	■
Connecticut		■
Delaware		■
District of Columbia		■
Florida		■
Georgia		
Hawaii		■
Idaho		■
Illinois		■
Indiana		■
Iowa		■
Kansas	■	■
Kentucky		■
Louisiana	■	
Maine		■
Maryland		■
Massachusetts		■
Michigan		
Minnesota	■	■
Mississippi	■	■
Missouri		
Montana		■
Nebraska		■
Nevada		■
New Hampshire		■
New Jersey		■
New Mexico		■
New York		
North Carolina		
North Dakota		■
Ohio		■
Oklahoma		■
Oregon		■
Pennsylvania	■	■
Rhode Island		■
South Carolina		
South Dakota	■	■
Tennessee		■
Texas	■	
Utah		■
Vermont		■
Virginia		■
Washington		■
West Virginia		■
Wisconsin	■	
Wyoming		■
Total Number of States	**11**	**42**

* *The harms of isolation are discussed in the section on solitary confinement.*

Results.

We examined state laws that establish both lower and upper age limits for juvenile court jurisdiction. For the upper age limit, we consider the best practice to be the inclusion of youth through age 17; in accordance with recent U.S. literature on the issue, the lower limit should be set at age ten.[68]

The vast majority of states (42) meet the criterion for the upper age limit—more than for any other policy. Massachusetts is a good example of a state that did this expeditiously: in 2013 they raised the age of jurisdiction to include 17-year-olds, through legislation that simply changed a few words in the statutes, allowing it to take effect without delay.

Unfortunately, several states explicitly allow children as young as 6 or 7 to be processed in the juvenile justice system, and only 11 set the lower limit at age 10 or higher. Viewed more hopefully, many of the states that don't meet the criteria for the lower age limit have raised their upper age limit to 17. This suggests that these states are aware of adolescent limitations, and once they turn their attention to the lower age limit and understand what it means to have a pre-adolescent child in the juvenile justice system, they may well reconsider their standards.

"Being in a facility surrounded by people who are doing bad…that's all they talk about, that's how they live. You are surrounded by it every day. All they do is talk about their cases or smoking meth or robbing."

- Allison Wessling, charged as an adult at 17 with being an accomplice to an older cousin's felonies and sentenced to time in the Spokane County Jail[67]

Policy: Transfer to Adult Court

The policy issue.

Adolescents who fall within the age boundaries of a juvenile court may still be moved to criminal court for prosecution by a process known as transfer. Historically, youth were transferred out of juvenile court only after a hearing in which a judge determined this was appropriate for a particular youth, usually an older adolescent who had committed a very serious crime and was deemed to pose a risk to public safety.[69] But as juvenile violent crimes increased and the public took a more punitive approach to youth, nearly every state adopted methods to more easily bring juveniles into adult jurisdiction.

Today, in addition to lowering the age of jurisdiction for juvenile court, there are a variety of ways adolescents can end up in criminal court without an individualized hearing. *Statutory* or *legislative exclusion*, also called *automatic transfer*, requires that cases involving certain crimes go straight to criminal court, regardless of the offender's age. *Prosecutorial discretion,* also known as *direct file,* gives prosecutors the authority to prosecute certain juveniles in criminal court. *Once an adult, always an adult* laws say that once a youth has been tried or convicted as an adult, he or she must be tried in criminal court for any future offenses.[70]

Recently, some states have begun to move away from this expansion of transfer policies. Between 2011 and 2015, at least 14 states limited their transfer and waiver criteria or placed more emphasis on the maturity and risk potential of the individual youth. In addition, a number of states allow a juvenile who is being prosecuted as an adult to petition to have the case transferred to juvenile court for adjudication or disposition, a process known as *reverse transfer.*[71]

The developmental view.

The developmental concerns around sending adolescents to criminal court have been discussed in the section on jurisdictional age limits, above. But two additional points are relevant here. First is the importance of hearings that consider each possible transfer case individually, to determine whether the adolescent is in fact sufficiently mature and legally competent to stand trial, and will not benefit from supervision or confinement in the juvenile justice system. All adolescents are not developmentally alike. For example, age makes a difference; studies have shown that a significant proportion of younger adolescents, simply by virtue of their developmental age,

are as likely to be found incompetent as seriously mentally ill adults. The same is not true of older teens.[72] But even adolescents of the same age can differ significantly in their level of maturity.

A second consideration is the finding by multiple studies that young offenders transferred to criminal court have higher rates of recidivism than those who were retained in the juvenile justice system.[73] This is likely linked to several factors, including the lack of educational programming and rehabilitative services in jails and prisons, the exposure to older and more hardened criminals, and the long-term detrimental effects of a criminal record on education and employment.

Results.

We looked at two policies that indicate the extent to which a state has incorporated an understanding of adolescent development into its transfer laws:

- **Who decides whether the youth should be transferred?** We consider best practice to be legislation that allows criminal prosecution only at the court's discretion, following an individualized hearing. This could take place after a youth is charged in juvenile court, with the juvenile court judge deciding whether criminal prosecution is appropriate; or, if the youth is originally charged as an adult, the criminal court judge would determine, in all cases, whether to retain the youth there or return him or her to juvenile court (reverse transfer).† In other words, transfer should be an individualized process—not mandatory or automatic or defined by law for certain offenses. And only the judge, not the prosecutor, should make the decision to prosecute a young offender in criminal court.
- **The age at which offenders may be transferred.** We define the best practice to be legislation that allows transfer only of youth age 16 and over, regardless of the offense and regardless of whether it is a first offense.

Nineteen states meet the standard for the process of transfer, requiring an individualized hearing by the court. Two states, South Dakota and Utah, set the age for transfer to criminal court at 16.

It's interesting—and puzzling—that while 42 states set 17 as the upper age boundary for juvenile court jurisdiction, only two set the bar as high as age 16 for transfer. However, other states that don't meet our criteria have made inroads in other ways. For example, Nevada in 2013 raised the age for direct file on murder charges from 8 to 16. Illinois in 2015 passed legislation eliminating automatic transfer for 15-year-olds accused of any crime, and for older juveniles accused of anything less than the most serious crimes. And New Jersey raised the age of transfer from 14 to 15 for most crimes. More than 30 states now prohibit transfer for a first misdemeanor, and 12 states allow for a reverse transfer hearing to bring the youth back to juvenile court.

"While in jail, Paul has…been picked on, harassed, and physically attacked by adult inmates.…I'm scared I will get a call that my son has died in jail…He needs role models, mentors, and programs to help him find his way both in jail and out…With an adult criminal record and the inability to complete his education, who will hire Paul?…What will he do with the rest of his life?"

- Beth, mother of Paul, a youth in an adult correctional facility[74]

† *Reverse transfer, also called reverse waiver, is less optimal because it generally places the burden of the argument on the youth. However, it is far superior to the many states that allow automatic transfer to the adult system without a hearing or any judicial review.*

19 states allow transfer only at the court's discretion, with an individualized hearing. 2 states allow transfer only of youth age 16 and older.

State	Transfer Only at Discretion of the Court	Transfer Allowed Only for Youth 16 and Older
Alabama		
Alaska		
Arizona		
Arkansas	■	
California		
Colorado	■	
Connecticut		
Delaware	■	
District of Columbia		
Florida		
Georgia		
Hawaii	■	
Idaho		
Illinois		
Indiana		
Iowa	■	
Kansas	■	
Kentucky		
Louisiana		
Maine	■	
Maryland		
Massachusetts		
Michigan		
Minnesota		
Mississippi	■	
Missouri	■	
Montana	■	
Nebraska	■	
Nevada		
New Hampshire	■	
New Jersey		
New Mexico		
New York		
North Carolina		
North Dakota		
Ohio		
Oklahoma	■	
Oregon		
Pennsylvania	■	
Rhode Island		
South Carolina		
South Dakota	■	■
Tennessee	■	
Texas	■	
Utah		■
Vermont	■	
Virginia		
Washington		
West Virginia		
Wisconsin		
Wyoming	■	
Total Number of States	**19**	**2**

Goal 3:

Protect Youth Inside the Courtroom

There are many points at which a young person may have contact with the juvenile justice system, as this report richly illustrates. At the center of them all is the courtroom. And while the juvenile courtroom may resemble a criminal court, the adolescents who appear there are very different from adult criminals. Policies and procedures that apply to adults in criminal court are not always sufficient to protect the rights and meet the developmental needs of adolescents, and may increase the risk of unfair and harmful outcomes for youth.

Three areas where juveniles, because of their developmental stage, should have special protections in court are policies regarding access to counsel, competency to stand trial, and the practice of shackling.

Policy: Access to Counsel

The policy issue.

By the mid-1960s it had become clear that juvenile courts were providing children neither the care and treatment nor the legal protections that the system had promised. In a landmark decision, *In re Gault* (1967), the Supreme Court ruled that youth facing delinquency proceedings must be afforded many of the same due process rights as adults—in particular, the right to counsel. (Other protections included the right not to incriminate oneself and the right to confront witnesses.)

While a juvenile's right to counsel applies in principle to every state, there are a number of ways that state laws, by ignoring developmental considerations, can undermine that right. First, many states make it easy for either the youth or a parent, without legal consultation, to waive that right—something a confused and frightened teenager, a harried parent, or a parent who believes their child should be punished might find it expedient to do. In fact, prosecutors often recommend waiving counsel in order to expedite cases. Second, some states require proof of indigence before they will provide a court-appointed lawyer, putting enormous pressure on cash-strapped families, especially those who are not strictly indigent.[75] Some states require a fee just to apply for a determination of indigence, or disqualify a youth if their parents' income exceeds the federal poverty standard.[76] It is easy to see how such a family might feel coerced to waive their right to counsel, or might persuade their child to do so.

The developmental view.

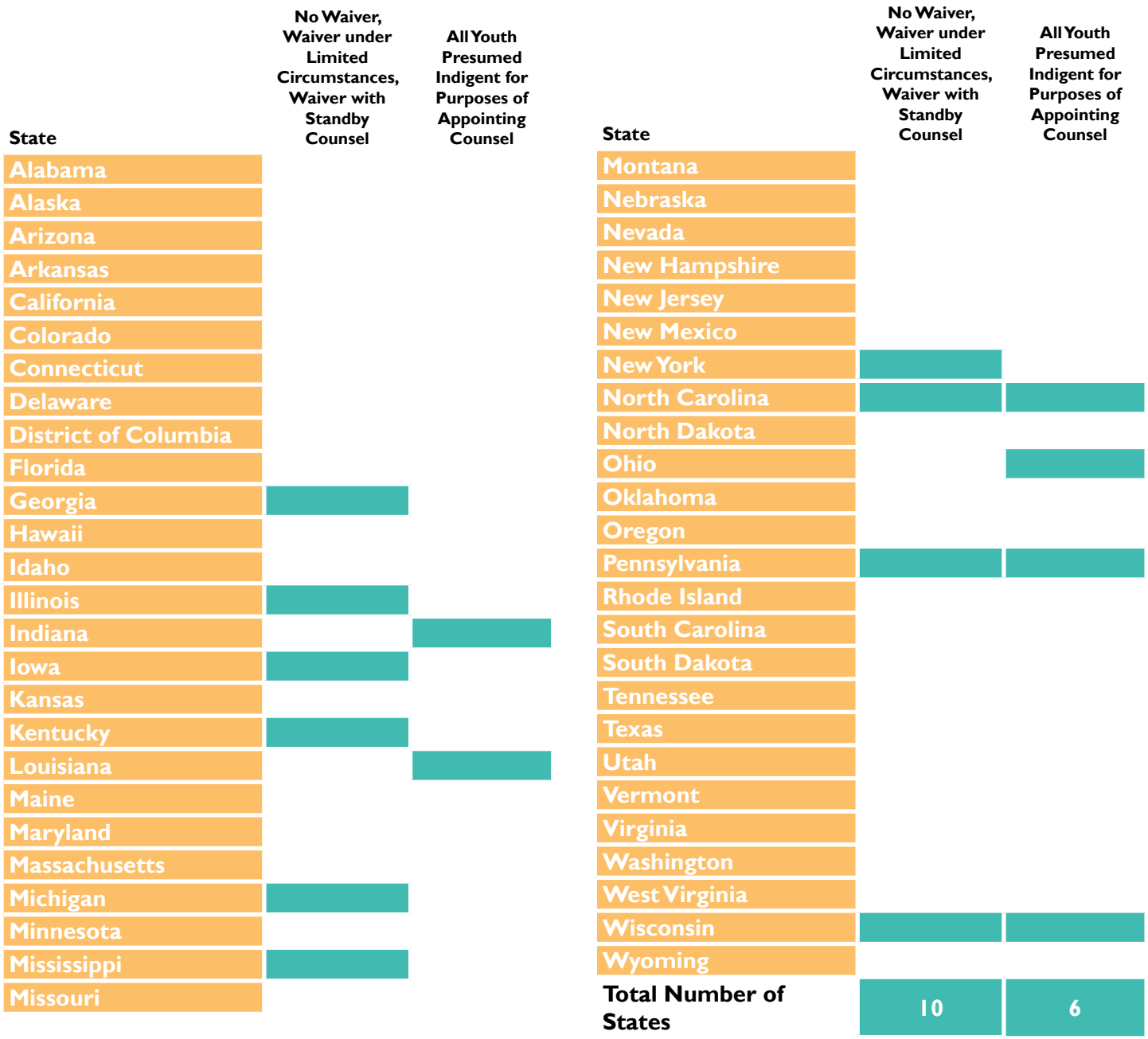
Appearing in court and making decisions that can determine the direction of one's entire life is an intimidating experience even for an adult. For an adolescent it can be both frightening and incomprehensible. Adolescents tend to make impulsive decisions, don't consider long-term consequences, and are highly susceptible to coercion, especially by authority figures. They need attorneys—ideally attorneys with specialized knowledge and expertise in juvenile justice and adolescent development—for many purposes: to help them understand what is happening and make good decisions, to prepare a defense and navigate the system, to make sure their voices are heard and their rights protected, to keep their rehabilitative needs in focus, to ensure they are not unreasonably punished, and to move the process along in a timely and appropriate manner.[77] Waiver of counsel puts all that at risk, and should be allowed, if at all, only with tight restrictions.

> *"I've never been to court before. The judge says I should get a lawyer, but should I really talk to him? How do I know if I can trust him? Why should I believe he's really gonna help me? I don't know what to do."*
>
> - Xavier M., 14-year-old charged with auto theft[80]

Adolescents are also still very much dependent on their parents. But parents' interests at times conflict with those of the child; some parents may be reluctant (as well as unable) to spend money for a lawyer, or to spend the time

required to find and work with one.[78] They may think an attorney will only delay the process. And they may not understand exactly why legal help is so important. For these reasons, all juveniles should be presumed indigent, regardless of their parents' financial situation, and an attorney appointed for them as early as possible in the process—preferably from the time of arrest—and available through post-dispositional matters.[79]

10 states prohibit waiver of counsel, allow it only under limited circumstances, or allow it if a standby counsel is appointed. 6 states presume juveniles are indigent for the purpose of appointing counsel, regardless of parents' income.



Results.

We examined two types of legislation dealing with access to counsel:

- **Waiver of counsel** addresses whether and under what circumstances juveniles can waive their right to counsel. States adopting best practices regarding waiver meet one of three criteria. Some prohibit waiver completely. Some allow it in very limited circumstances—for example, when the youth is above a certain age, or for hearings where there is no risk of detention or placement. And some allow it at the court's discretion, but require the court to appoint a standby counsel to attend the hearing and assist the youth if needed.
- **Presumption of indigence** looks at whether juveniles are appointed counsel regardless of their parents' ability or willingness to pay. The best practice in our view presumes that all juveniles are indigent for the purpose of appointing counsel.

This policy area is among those given the least attention by the states. Ten states meet the criteria for waiver of counsel, while only six presume indigence. Three states—North Carolina, Pennsylvania, and Wisconsin—meet the criteria on both policies. Some states have made progress not captured in the table. For example, Colorado recently passed an omnibus bill that defines and strengthens the right to counsel, creates a process for when and how it can be waived, makes it easier for youth to get court-appointed counsel, and establishes a person or entity to be in charge of juvenile public defense.

Policy: Competency to Stand Trial

The policy issue.

One due process right that the *Gault* decision did not speak to is the requirement that a juvenile defendant be found competent to stand trial. Competency, in the legal world, is an individual's mental ability to understand and participate in legal proceedings—to grasp the nature of the charges against them and the roles of the people involved in the proceedings, and to make decisions about how to plead and whether to testify on their own behalf.[81] For adults, questions of an individual's competency generally focus on the effects of mental illness or intellectual disability.

While the issue of how a juvenile's competency differs from an adult's has been raised increasingly since the 1990s, most states have not specifically addressed it in their juvenile statutes. Instead, they simply apply adult criminal competency standards to juveniles.[82] In the past decade, however, 23 states and the District of Columbia have enacted juvenile competency statutes.[83]

The developmental view.

In contrast to adults, juveniles need not be mentally impaired in order to be incompetent. Their developmental immaturity alone makes it difficult for them to understand and manage the complex legal issues and abstract concepts of the juvenile justice system, and raises serious concerns about their competency.[84] Studies have shown that a significant portion of adolescents, especially those under age 15, are neither psychologically nor cognitively equipped to participate and assist in their own trials.[85]

States should take developmental maturity into account and set separate standards for determining the competency of a juvenile defendant.

> *How is it you can be put in an extremely difficult situation, which you have no experience in, and be expected to make adult decisions, when you really don't understand consequences?"*
>
> - Juvenile lifer, Illinois[86]

Results.

We consider best practice to be a competency statute specifically for youth. Thirty states meet this standard, including Oregon, which otherwise has adopted relatively few of the legislative reforms covered in this report. The high count makes competency the second-most-adopted of the policy areas we examined. Oklahoma recently passed juvenile-specific competency legislation, but is not recognized in the table because the law doesn't take effect until 2016. (*table on following page*)

30 states have a juvenile-specific competency statute.

State	Has Juvenile-Specific Competency Law
Alabama	
Alaska	
Arizona	■
Arkansas	■
California	■
Colorado	■
Connecticut	■
Delaware	■
District of Columbia	
Florida	■
Georgia	■
Hawaii	
Idaho	■
Illinois	
Indiana	
Iowa	
Kansas	■
Kentucky	
Louisiana	■
Maine	■
Maryland	■
Massachusetts	
Michigan	■
Minnesota	■
Mississippi	
Missouri	■
Montana	
Nebraska	■
Nevada	
New Hampshire	■
New Jersey	
New Mexico	■
New York	
North Carolina	
North Dakota	
Ohio	■
Oklahoma	
Oregon	■
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	■
Tennessee	■
Texas	■
Utah	■
Vermont	■
Virginia	■
Washington	
West Virginia	■
Wisconsin	■
Wyoming	■
Total Number of States	**30**

Policy: Courtroom Shackling

The policy issue.

Adolescents in handcuffs. In leg irons attached to waist-chains. Chained to furniture. This is a familiar scene in courtrooms across the country. Although the Supreme Court has outlawed the shackling of adults in jury trials, saying it undermines the presumption of innocence, it's done to children of all ages—in some places automatically—regardless of the charges, regardless of whether they have been found guilty, and regardless of the risk they pose. Even though the vast majority of youth in the system are charged with non-violent crimes, proponents of shackling justify it as a means to protect people in the courtroom, or the youth themselves, or to prevent escape. In reality, the harm it does—to the youth and to the juvenile justice system—usually outweighs those justifications.[87]

Some states and jurisdictions have placed limitations on the use of shackling, in some cases requiring an individualized assessment and finding by the court before shackling can be used. The regulations are not always adhered to, but they are at least a place to start.[88] The issue is included here to capture the need to treat youth with respect and to prevent the automatic perception of guilt, as well as the developmental considerations discussed below.

The developmental view.

Developmental science, as described earlier in this report, confirms that adolescents are more susceptible than adults to psychological damage. This is a period when young people are forming their identities, their moral values, their trust or distrust of authority, and their image of society and their place in it.[89] Indiscriminate shackling is not only shameful and humiliating in the moment; it sends the lasting message that society views these youth "as criminals, as people from whom society must be protected, as people not to be trusted to behave in court, and as individuals presumed guilty at the very first appearance."[90] Shackled youth begin to see themselves as criminals, which is not only damaging to their still-developing identity, but can seriously undermine their respect for the law and legal authority and thwart the rehabilitative goals of the juvenile justice system.

Shackling also undermines what people in the field refer to as "legal socialization," the developmental process through which children internalize society's rules and become law-abiding adults.[91] Young people who believe they are treated unfairly are less willing and able to cooperate with their attorneys and other legal authorities, and they may carry this attitude with them into the adult world. They are, in fact, traumatized by the experience. This is especially damaging to those who have already suffered trauma, and to youth of color, who may experience it as overt racism.[92]

No youth should be shackled unless it is determined to be absolutely necessary for this individual, at this time, in this place.

> *"What I still think about today…is the humiliation and shame I felt being in public view, weighed down by loud, metal shackles. I felt as if everyone looked at me as if I were some crazed criminal or an animal, not what I really was, a 12-year-old child. The dehumanizing experience shaped not only how others saw me, but how I saw myself for many years."*
>
> - Skye Gosselin, recalling her experience in court at age 12 (for missing a previous court date) and 14 (for violating probation by skipping school)[93]

Results.

We looked at two components of shackling statutes: whether an individualized finding is always required before shackling is permitted, and whether the youth has an opportunity to be heard on the issue. We recognize that there may at times be a real threat of violence from a youth in court. Therefore the best practice is not complete banning of shackling, but the requirement of an individualized finding in all cases; the law must also give the youth, through his or her attorney, a voice in the decision. Fourteen states meet at least one of the criteria, and most of these (ten) meet both. Several states have adopted the model statute crafted by the National Juvenile Defender Center.[94]

14 states require an individualized finding by the court before a youth can be shackled. 10 states require that the youth have a voice in the process.

State	Requires a Finding Be Made by the Court	Youth Has an Opportunity to Be Heard
Alabama		
Alaska	■	
Arizona		
Arkansas		
California		
Colorado		
Connecticut	■	■
Delaware		
District of Columbia	■	■
Florida	■	
Georgia		
Hawaii		
Idaho		
Illinois		
Indiana	■	
Iowa		
Kansas		
Kentucky		
Louisiana		
Maine		
Maryland		
Massachusetts	■	
Michigan		
Minnesota		
Mississippi		
Missouri		
Montana		
Nebraska	■	■
Nevada	■	■
New Hampshire	■	■
New Jersey		
New Mexico	■	■
New York		
North Carolina	■	■
North Dakota		
Ohio		
Oklahoma		
Oregon		
Pennsylvania	■	■
Rhode Island		
South Carolina	■	■
South Dakota		
Tennessee		
Texas		
Utah		
Vermont		
Virginia		
Washington	■	■
West Virginia		
Wisconsin		
Wyoming		
Total Number of States	**14**	**10**

Goal 4:

Adopt Developmentally Appropriate Confinement Practices

The punitive era of the 1980s and '90s brought an increased use of harsh sentences and confinement practices, in both the criminal and juvenile justices systems. One of the most egregious is the use of solitary confinement that keeps juveniles in isolation as long as 23 hours a day, sometimes for months or years. That practice is prohibited by international law, as is the use of sentences of life without parole for juveniles.[95,96] (We have not included life without parole in this report because, as of this writing, many states were still working to bring their policies in line with Supreme Court decisions on the issue.)

The developmental framework provides multiple reasons why juveniles should not be kept in solitary confinement.

Policy: Solitary Confinement

The policy issue.

Solitary confinement means placing a youth alone in a locked room or cell, for up to 23 hours a day, for hours, days, weeks, or longer. Often these cells are small, unfurnished, dirty, windowless, and cold. The youth has no ordinary social interaction, may have an hour or less of recreational time a day, and often receives little or nothing in the way of counseling, rehabilitation, or educational and vocational programs.[97] As law professor Tamara Birckhead has written, "If a parent were to confine her child under similar conditions, it would be abuse; yet when the government does so, often for weeks and months without due process, it is condoned."[98]

There are two primary reasons why correctional institutions place youth in solitary confinement: as punishment, or as a method of managing the environment. As punishment, solitary may be imposed, with little due process, for rules violations as minor as horseplay. "Management" covers a range of issues, but most often it means staff believe a youth poses a danger to himself/herself or others.[99] While many states place a variety of restrictions on the use of solitary confinement for youth,† those rules are frequently ignored in practice.[100]

The developmental view.

Solitary confinement can take a heavy toll on youth and adults alike. However, because their brains are so malleable, adolescents are highly vulnerable to psychological damage from being held in isolation. Those with mental disabilities or a history of trauma are especially vulnerable,[101] but all youth can be affected, developing symptoms of paranoia, anxiety, and depression even if the period of isolation is brief.[102] They may harm themselves, lash out, and lose touch with reality.[103] Extended periods in solitary put adolescents at high risk of suicide.[104]

The harms of isolation don't end when the youth is released. Adolescents don't have the resilience of adults, and they need support for healthy development. Along with the psychological trauma of isolation, solitary confinement interferes with adolescents' social and physical development. Deprived of proper exercise and nutrition, contact with loved ones, adequate mental health care, and educational and rehabilitative programming, adolescents will find it difficult to return to their communities and make a successful transition to adulthood.[105]

Perhaps the least talked about aspect of harm from solitary confinement is what it does to a youth's outlook on the world, and on the legal system in particular. Adolescents have very strong feelings about what is and isn't fair—and they view isolation as extremely unfair.[106] (See the discussion of "legal socialization" in the section on shackling, above.)

For all these reasons, punitive solitary confinement should not be allowed for youth. Nonpunitive solitary confinement should be brief, serving a "cooling off" function when a youth is engaging in behavior that creates an imminent risk of serious harm.

† *The Council of Juvenile Correctional Administrators, through its Performance-Based Standards (PbS), has addressed practices relating to solitary confinement. Facilities involved with PbS have cut in half the average time youth spend in isolation. See the brief "Reducing Isolation and Confinement," http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf*

Results.

We examined legislation dealing with two aspects of this issue: whether a state allows juvenile justice officials to impose solitary confinement for punitive purposes, and how long a youth may be kept in solitary confinement of any type. In our analysis, punitive solitary is defined as confinement used as punishment or discipline, in an area where no other people (other than guards or correctional staff) are present and the youth is unable to leave the area, regardless of whether there is a physical lock. Best practices prohibit confinement for punitive purposes, and limit any type of isolation to 4 hours or less.† Solitary confinement may in practice be used in ways that violate the statutes prohibiting or restricting it. However, clear statutory language has the potential to restrict the practice and offers a mechanism for comparing state performance.

"It was dehumanizing. It felt like I wasn't even a person in society. Nobody could see me. I couldn't see nobody. So it feels like you not even there."

- Tanisha Denard, in detention for failing to appear in court on truancy charges. She spent 2½ weeks in solitary for refusing to socialize or eat.[107]

Nineteen states prohibit punitive solitary confinement. Only two mandate a four-hour limit—one of the lowest totals for any of the policies we examined. Both of the latter states, Delaware and Pennsylvania, meet both criteria for best practices.

States vary dramatically in the length and conditions they impose on solitary confinement. In some states, like California, a youth can spend 23 hours a day in isolation, sometimes for months. Other states, such as Maine and Colorado, have relatively short time limits and allow youth to leave isolation for meals and educational activities. DC has perhaps the strongest legislation in this category, allowing disciplinary "time-outs" of no more than one hour. Statutes may also require supervisory approval, detailed reporting, and monitoring by mental health professionals, and they may specify that the youth must be released as soon as confinement is no longer necessary to protect the safety of himself/herself or others. All of these variations are important and make a difference to youth; however, their complexity does not lend itself to comparison in this report.

† *These best practices are based on those laid out in the PbS guidelines mentioned above, and the juvenile detention assessment standards of the Juvenile Detention Alternatives Initiative.*

19 states prohibit the use of solitary confinement for punitive purposes. 2 states set a time limit of 4 hours on each episode of solitary confinement.

State	Does Not Allow Punitive Solitary Confinement	Places a Limit of 4 Hours or Less on Each Solitary Confinement
Alabama		
Alaska	■	
Arizona	■	
Arkansas	■	
California		
Colorado	■	
Connecticut	■	
Delaware	■	■
District of Columbia		
Florida	■	
Georgia		
Hawaii		
Idaho		
Illinois	■	
Indiana		
Iowa		
Kansas		
Kentucky		
Louisiana		
Maine		
Maryland	■	
Massachusetts	■	
Michigan		
Minnesota		
Mississippi		
Missouri		
Montana		
Nebraska		
Nevada		
New Hampshire	■	
New Jersey		
New Mexico	■	
New York	■	
North Carolina		
North Dakota	■	
Ohio		
Oklahoma	■	
Oregon		
Pennsylvania	■	■
Rhode Island		
South Carolina		
South Dakota		
Tennessee		
Texas		
Utah	■	
Vermont	■	
Virginia		
Washington		
West Virginia	■	
Wisconsin		
Wyoming		
Total Number of States	**19**	**2**

Goal 5:

Remove Obstacles to Reintegration with the Community

Virtually all young offenders will sooner or later return to their communities—some almost immediately, others after years of incarceration. How successfully they make the transition to life outside "the system" depends not only on the kind of support they receive, but on the obstacles that might stand in their way.

Major studies have shown that most children will age out of offending, and most offending by adolescents is not an indicator of the kinds of adults they will become. Yet some policies fail to take this into account, putting unnecessary obstacles in the way of youth who can and should make a successful return to community life. Worse still, the policies can reach far beyond a young offender's teenage years, with serious consequences for their reintegration into the community and their successful transition to adulthood. Two such policy areas concern juvenile records and sex offender registration.

Juvenile systems that aim to reduce future offending and help young people become successful members of their communities should protect juvenile records and eliminate sex offender registration for adolescents.

Policy: Juvenile Records

The policy issue.

A trail of paper or electronic records is started as soon as a youth is arrested, and it continues to accumulate as he or she passes through the system. The earliest juvenile courts recognized that keeping both the process and the records out of the public eye—avoiding the stigma of delinquency and the consequences of a criminal record—was essential to the goal of rehabilitation.

More than half of all states today do *not* maintain strict confidentiality of juvenile proceedings or records, and many do not provide a process for the sealing of records and their ultimate destruction after a case is closed. They may permit disclosure when the information is requested by law enforcement, schools, employers, landlords, government agencies, researchers, the media, crime victims…even the general public. In the digital age, it has become easier than ever to obtain and share this information.

Research shows that making juvenile records available to the public does not make communities safer.[108] It does, however, stand in the way of young people's reintegration into the community and limits their future opportunities.

The developmental view.

Adolescence is "a transient and volatile stage of life."[109] Young people by nature act impulsively, make bad decisions, take risks, and give little thought to long-term consequences. Yet, also by nature, nearly all adolescents will mature out of this stage and will grow into adulthood without any further contact with the law.[110]

Most adolescents who make bad decisions are never touched by the law. But for those who are caught, the path to readjustment once they have served their sentence may be strewn with roadblocks. Juveniles who acquire a public record face social stigma and much more. They encounter barriers to employment—by individual employers and by entire fields of work, from legal and health care professions to school bus driver and beautician. There may be restrictions on their access to housing and public benefits, on joining the military, and on higher education. Yet education, employment, and stable housing are precisely what young people need if they are to gain the skills, experiences, and psychological maturity for a healthy transition to adulthood.

> *"The juvenile justice system was created to rehabilitate youthful offenders, and it does. And so if you're going to acknowledge that we are different, then acknowledge that we can change and grow."*
>
> - Dina Lexine Sarver, who was accepted into nursing school but can't work as a nurse because of her juvenile record. [111]

Goal 5: Remove Obstacles to Reintegration with the Community

Policies affecting access to juvenile records and proceedings should recognize that adolescents are less culpable than adults and that they are likely to mature out of delinquent behavior.

18 states keep juvenile court proceedings and records closed to the public until the record is eligible for sealing or expungement. 20 states have a procedure for the complete sealing of records. 28 states have a procedure for expungement, the physical destruction of the record.

State	Keeps Proceedings and Records Closed to the Public	Provides for Complete Sealing	Provides for Expunge-ment
Alabama	■		■
Alaska	■	■	
Arizona			■
Arkansas			■
California	■	■	
Colorado			
Connecticut	■		■
Delaware	■		
District of Columbia		■	
Florida			■
Georgia		■	
Hawaii		■	
Idaho		■	
Illinois			■
Indiana		■	■
Iowa			■
Kansas			
Kentucky		■	
Louisiana			■
Maine			
Maryland	■	■	■
Massachusetts			
Michigan		■	
Minnesota			■
Mississippi			■
Missouri		■	■

State	Keeps Proceedings and Records Closed to the Public	Provides for Complete Sealing	Provides for Expunge-ment
Montana			■
Nebraska	■		
Nevada			
New Hampshire			
New Jersey			■
New Mexico	■	■	
New York	■	■	
North Carolina	■		■
North Dakota	■	■	■
Ohio	■		■
Oklahoma			■
Oregon		■	■
Pennsylvania			■
Rhode Island	■		■
South Carolina	■		■
South Dakota			
Tennessee			■
Texas	■		■
Utah	■	■	
Vermont	■	■	
Virginia			■
Washington			■
West Virginia		■	
Wisconsin		■	■
Wyoming	■	■	
Total Number of States	**18**	**20**	**28**

Results.

We examined three aspects of juvenile records protection:

- **Confidentiality** is a general policy that keeps proceeding and records closed to the public until the record is eligible for sealing or expungement. We define best practice as not making these accessible to the public in any form.
- **Sealing** means permanently closing records to public view. We define best practice as legislation that provides for complete sealing. (We do not include partial sealing, in which some individuals or entities may have access to the records.) The best of these statutes make sealing automatic, but we do not require that for the purposes of this report.
- **Expungement** is the physical destruction of records. It goes one step beyond sealing, since the records are gone and can no longer be unsealed or reopened. Best practice is legislation that provides for expungement. As with sealing, we prefer but do not require automatic expungement.

Eighteen states meet our criterion for confidentiality, 20 for complete sealing of records, and 28 for expungement. The expungement total is the third highest of any policy. Two states, Maryland and North Dakota, include all three best practices in legislation.

Because we excluded partial sealing from our count of best practices, some positive data is not included in the tables. It's important to note that every state provides at least some form of sealing (either partial or complete) or expungement, and 17 states offer both. In addition, while most states require the youth to request sealing, a few have made sealing automatic for certain adjudications, at the end of court proceedings or after the youth reaches a certain age. Washington is perhaps the most recent state to pass such legislation.

Policy: Sex Offender Registration

The policy issue.

All states require youth who are convicted of sex offenses in adult court to register as sex offenders, and this information is available to the public. The overwhelming majority require the same for children adjudicated in juvenile court, at least for certain offenses or certain youth. As a result, thousands of young people are now listed in online, publicly accessible registries—*sometimes for life*—for actions that range from truly serious sex offenses to exchanging nude selfies and streaking.[112,113] The fact that this punishment may continue beyond the youth's 18th birthday, with lifelong consequences, often is not known to the judges and prosecutors who impose it.[114]

Research has failed to show that these laws prevent future sex crimes. Rigorous studies have not found a relationship between juvenile sex crimes and later adult sex crimes,[115] and in fact, studies have shown that only a very small percentage of juveniles convicted of sex offenses—even violent sex offenses—will reoffend.[116] Registration can, however, carry extremely harsh consequences, including banishment from public schools, parks, movie theaters, and even the youth's own neighborhood.[117]

The developmental view.

Sex offender registries were created in response to truly horrifying crimes by adult pedophiles and serial rapists. But adolescents are different. They are not fixed in their sexual offending behavior the way adults are, do not tend to eroticize aggression, and are not aroused by child sex stimuli, making them much less dangerous than adult sex offenders.[118] Some of the sexual behaviors by youth that lead to a sex offense conviction are a normal part of a young person's development, such as genital play or consensual sexual intercourse—acts that would be legal for adults.[119] Yet many laws disregard developmental differences, merely extending adult rules to adolescents.

Youth listed on sex offender registries are routinely harassed in their schools and communities. They often are barred from living near schools and day care centers—or even with their own brothers and sisters—and in many cases are banned from certain professional licenses. They can end up unemployed and homeless, and, because of the enduring stigma, may have a hard time establishing healthy adult relationships.[120]

Goal 5: Remove Obstacles to Reintegration with the Community

Policies addressing youth who commit sexual offenses should take account of the differences between adolescents and adults, especially regarding these behaviors, and should focus on helping young people make a healthy transition to adulthood.

> *"I didn't really understand sex then, or what it meant to be sexually appropriate with someone, to respect their boundaries. I made a mistake, but it was a child's mistake, not an adult's mistake, and I think the distinction matters."* [121]
>
> - Sharon D., now 23, convicted at age 10 of fondling her 4-year-old sister

Results.

State laws requiring registration by juveniles who commit certain sex offenses impose a varying array of conditions on those requirements. We did not attempt to differentiate among those conditions because we believe that *any* type of registration is the significant characteristic separating states that do and do not treat youth differently from adults on this issue. Policy that takes the developmental framework into account will recognize that registration serves neither the youth nor the public, and will not require juveniles to register as sex offenders.

By that standard, just 12 states are in alignment with best practices. However, this is another issue with many nuances that aren't captured in our table. Consider Michigan, which before 2011 required children as young as 9 to register as sex offenders, putting thousands of juveniles on its registry. Four years ago, after years of work by child advocates, that statute was significantly modified, removing from the registry all those who committed the offense before they were 14 and many of those age 14 to16; others under 16 will go on a non-public registry. Illinois has taken another tack, allowing offenders to petition to be removed from the registry. And Oklahoma has established a process that makes it very difficult to place a youth on the registry. These are all positive steps, but they fall short of our strict criterion.

12 states do not require juveniles to register as sex offenders.

State	Does Not Require Registration
Alabama	
Alaska	■
Arizona	
Arkansas	
California	
Colorado	
Connecticut	■
Delaware	
District of Columbia	■
Florida	
Georgia	■
Hawaii	■
Idaho	
Illinois	
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	■
Maryland	
Massachusetts	
Michigan	
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	■
Nevada	
New Hampshire	
New Jersey	
New Mexico	■
New York	■
North Carolina	
North Dakota	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	■
Rhode Island	
South Carolina	
South Dakota	
Tennessee	
Texas	
Utah	
Vermont	■
Virginia	
Washington	
West Virginia	■
Wisconsin	
Wyoming	
Total Number of States	**12**

Where We Are and What Lies Ahead

Current status gives cause for optimism.

During the 1990s, what would now be called developmentally appropriate best practices were out of favor in state legislatures across the nation. This report shows how far the states have come in twenty years—and how much further they can go. As of July 15, 2015, every state had adopted some developmentally informed legislation, and all had done this across multiple policies. For more than half the policies we analyzed, at least one-fourth of the states have mandated best practices through legislation; for some policies it's over 50 percent. While performance has been uneven, the adoption of developmentally appropriate state laws is undeniable and widespread. And in addition to legislation, other reforms have been implemented through court rulings and local policies and programs throughout the country.

Any state can do it.

We found great variation among the states in their adoption of best practices. But a careful reading of the tables reveals an important lesson: high performance is not limited to any particular kind of state.

Consider two states that have incorporated many of the best policies in their statutes: Pennsylvania and New Mexico. They could scarcely be more different: in population size and density, in demographics, and in poverty rates, to name just a few dimensions. Yet both states excel in multiple areas of reform.

Many states, of course, have a long way to go. But even states that have adopted relatively few best practices can excel on individual policies. Michigan, for example, has done so with its juvenile-specific competency statute, and Illinois with its decision to raise the upper age of jurisdiction to 17 and roll back automatic transfer.

Any policy can be improved.

Just as there is variation across states, so there is across policies. Some developmentally appropriate policies—the upper age of jurisdiction, juvenile-specific competency

State Policies	Number of States with Best Policy	Percent of States with Best Policy
Status Offense Rules: VCO Exception	14	27%
Age of Jurisdiction: Lower Limit	11	22%
Age of Jurisdiction: Upper Limit	42	82%
Transfer: Court Discretion	19	37%
Transfer: Minimum Age	2	4%
Access to Counsel: Waiver Restriction	10	20%
Access to Counsel: Presumption of Indigence	6	12%
Competency: Juvenile-Specific	30	59%
Shackling: Finding Required	14	27%
Shackling: Youth Can Be Heard	10	20%
Solitary Confinement: Punitive Not Allowed	19	37%
Solitary Confinement: Four-Hour Limit	2	4%
Juvenile Records: Confidentiality	18	35%
Juvenile Records: Complete Sealing	20	39%
Juvenile Records: Expungement	28	55%
Sex Offender Registration: Not Required	12	24%

laws, the availability of expungement—have been much more widely adopted than others, such as the minimum age of transfer, the four-hour time limit on solitary confinement, and the presumption of indigence.

The extent of the variation in the final table suggests that some policies will prove more challenging than others to implement. But the fact that all of the best practices in this report were adopted by some states shows that they are in fact achievable.

Accelerating the pace.

This report captures one point in a policymaking journey whose length and trajectory no one can predict, but that—judging by achievements over the past 20 years—is clearly on a positive course. Our analysis of current state legislation is at once encouraging, sobering, and aspirational. It shows that every one of these nine policy areas represents an opportunity for the majority of states to pass developmentally appropriate legislation. And it says to all states: you can—you *need*—to do much more, to move much faster.

For thousands of young people touched by the country's many juvenile justice systems, legislation in key policy areas is already making a huge difference. We encourage the states to make that difference for all of them.

What Lies Ahead?

The growing acceptance of the developmental framework in juvenile justice—grounded in science and informed by fair and humane values—bodes well for the future of reform. The question is, how far can we see into that future?

Social reforms tend to be cyclical—they rise and fall and rise again in a new form, responsive to changing times and different contexts. That has been the case with juvenile justice no less than other reforms: the paternalistic approach of the early rehabilitative model ceded to due process rights, which in turn were countered by punitive laws, until those laws themselves began to be overtaken by the developmental model that continues to evolve today.

It's tempting to see the current wave of reforms as the last—a wave that will continue gathering momentum indefinitely. But social dynamics suggest that change is inevitable. Today's reforms will certainly encounter challenges and roadblocks—economic, ideological, cultural, practical. Rising or falling crime rates, changing demographics, lack of fidelity to proven program models or (conversely) lack of flexibility in programs and practices—all these and many other factors could undermine specific reforms.

What can and *should* survive, though, are the princiles underlying the reforms—as forensic psychologist Thomas Grisso describes them, "the guidance provided by a developmental perspective, and the use of scientific evidence to formulate and evaluate the shape of juvenile justice interventions in young people's lives."[122] These principles have established a strong and just foundation for the future of America's juvenile justice system.

Endnotes

1 "EJI Wins New Sentencing for 14-Year-Old Who Was Sentenced to Die in Prison". (Montgomery, Alabama: Equal Justice Initiative, April 26, 2013). http://www.eji.org/node/767 and http://voiceofdetroit.net/wp-content/uploads/2011/11/Kuntrell-Jackson-v-State-of-Arkansas.pdf

2 Miller v. Alabama, No. 10–9646, slip op. at 15 (U.S. June 25, 2012). http://www.supremecourt.gov/opinions/11pdf/10-9646g2i8.pdf

3 In addition to this case, Miller v. Alabama, the others are Roper v. Simmons, 2005, which banned death sentences for juveniles; Graham v. Florida, 2010, which also addressed life without parole; and J.D.B. v. North Carolina, 2011, which held that age must be considered in deciding whether to give Miranda warnings during police interrogation.

4 This frame informs the National Academy of Sciences' publication: Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie Schuck, eds., Reforming Juvenile Justice: A Developmental Approach. (Washington, D.C.: National Academies Press, 2013): 31-45. http://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach.

5 Sarah Brown, "Trends in Juvenile Justice State Legislation" (Washington, D.C.: National Conference of State Legislatures, June 2015). http://www.ncsl.org/documents/cj/trendsinjuvenilejustice.pdf; and Sarah Brown, "Trends in Juvenile Justice State Legislation 2011-2015" (Washington, D.C.: National Conference of State Legislatures, 2015). http://www.ncsl.org/documents/cj/Juvenile_Justice_Trends.pdf.

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7 For a detailed treatment of the waves of juvenile justice reform since the late 1800s, see: Bonnie, Johnson, Chemers, and Schuck, eds., Reforming Juvenile Justice: A Developmental Approach, 31-45.

8 Margaret K. Rosenheim, Franklin E. Zimring, David S. Tanenhaus, and Bernardine Dohrn, eds., A Century of Juvenile Justice (Chicago: University of Chicago Press, 2002): 15-17.

9 Bonnie, Johnson, Chemers, and Schuck, eds., Reforming Juvenile Justice: A Developmental Approach, 31.

10 Donald J. Shoemaker, "Juvenile Justice," Encyclopedia Britannica. http://www.britannica.com/topic/juvenile-justice

11 Melissa Sickmund and Charles Puzzanchera, "Juvenile Offenders and Victims: 2014 National Report." (Pittsburgh: National Center for Juvenile Justice, February 2015): 84.

12 Kent v. United States, 383 U.S. 541 (1966), 555-556

13 re Gault, 387 U.S. 1 (1967).

14 H. Ted Rubin, "Return Them to Juvenile Court" (Washington, D.C.: Campaign for Youth Justice). http://www.campaignforyouthjustice.org/documents/ReturnThem.pdf.

15 Karen Callaghan and Frauke Schnell, eds., "Super-Predators or Victims of Societal Neglect? Framing Effects in Juvenile Crime Coverage," Framing of American Politics (Pittsburgh: University of Pittsburgh Press, 2005): 148-166. http://pcl.stanford.edu/common/docs/research/gilliam/2003/superpredators.pdf.

16 John J. Dilulio, Jr., "The Coming of the Superpredators," The Weekly Standard, November 27, 1995, 24.

17 "Juvenile Arrest Rate Trends," U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201.

18 Howard Snyder and Melissa Sickmund, "Juvenile Offenders and Victims: 1999 National Report" (Washington, D.C.: National Center for Juvenile Justice, September 1999): 88-89. https://www.ncjrs.gov/html/ojjdp/nationalreport99/toc.html.

19 "Implementing Juvenile Justice Reform: The Federal Role." (Washington, DC: National Academies Press, 2014), 10.

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