FOSTER AN ENVIRONMENT FOR
Respecting Children’s Rights

Children are still developing and may make mistakes as they are growing toward adulthood. There is considerable research that shows that adolescents’ decision-making skills are at a much lower as compared to those of adults.\textsuperscript{356} Children and adolescents should not be treated like adults because they do not have the same mental capacity of adults. Despite this, some courts and prosecutors routinely administer adult consequences\textsuperscript{357} to children by issuing harsh sentences and requiring incarceration for childhood behaviors. We must adopt policies that ensure that children reach their full potential and are not placed off track for childhood mistakes.

Sadly, these adult penalties have even entered into our schools. Schools should be institutions of learning and safe spaces for children. Instead, they are too often places in which children may be funneled into the criminal justice system. Children of color have suffered the most from this approach, with wide racial disparities in how children are suspended, expelled, and referred to the criminal justice system.\textsuperscript{358}

\textsuperscript{356} See, e.g., Laurence Steinberg, The Science of Adolescent Brain Development and Its Implications for Adolescent Rights and Responsibilities (2014) (describing how neuroscience has confirmed that there are physical differences between the brains of adults and adolescents, which affects decision-making).


Ensuring that children are treated appropriately for their age

The juvenile justice system has made inroads, leading to a 45 percent reduction in juvenile incarceration since the 1990s. However, additional work needs to be done to ensure that young people are not treated as adults in the criminal justice system; alternatives to incarceration are fully developed; facilities are rehabilitative and appropriate for all children, specifically by ensuring that juvenile facilities for girls are examined through a gender-specific lens and developed to accommodate their needs; and young people are not exposed to abusive conditions when incarcerated. In 2012 the U.S. Supreme Court found that mandatory life without parole was unconstitutional as it violated the Eighth Amendment. The ruling in *Miller v. Alabama* required both states and the federal government to consider the particular circumstances of the juvenile defendant in determining an individual's sentence. The 2016 case *Montgomery v. Alabama* ensured that that decision was applied retroactively.

**Congress, the DOJ, and state legislatures** should:

- Strengthen the Juvenile Justice and Delinquency Prevention Act, which focuses on the prevention and control of crime conducted by young people and improving the juvenile justice system;
- Support evidence-supported programs with technical support, incentive grants, and information sharing;
- “Expand flexibility in funding, so that local jurisdictions may spend funds now used for housing some of their youths in large state youth lockups on less costly community-based programs supported by research. Effective community-based models include multi-systemic therapy, victim-offender mediation, mentoring, vocational programs, and

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group homes modeled after those in Missouri for youths that require a residential setting;\(^{365}\)

- De-incentivize programs that have been proven ineffective at reducing the rate of juvenile offenses, such as “Scared Straight” and boot camps programs;\(^{366}\)
- Eliminate the automatic transfer of young people into adult courts;\(^{367}\)
- Abolish life without parole for offenses committed before the individual was 18 years of age;\(^{368}\)
- “Approve standards recommended by the National Prison Rape Elimination Commission addressing the prevention, detection, and response to sexual misconduct in facilities that incarcerate adults and youth”;\(^{369}\)
- “Collect better data about pregnant girls in the juvenile justice system, and support provisions in the reauthorization of the JJDPA [Juvenile Justice and Delinquency Prevention Act] to improve data collection regarding this population”\(^{370}\)
- Issue guidelines and trainings on best practices for juvenile justice administration and facilities;
- “Implement evidence-based practices to increase the effectiveness of juvenile probation and parole, such as graduated sanctions that respond to each violation of the rules of supervision with a swift, sure, and commensurate sanction. Graduated incentives should also be employed to reward exemplary conduct. Research has demonstrated graduated responses are far more effective because they send a clear message at the time of the behavior rather than waiting for relatively minor violations to pile up and then applying the ultimate sanction—revocation to a youth lockup”;\(^{371}\)
- Create a national mechanism by which juvenile records are automatically expunged or sealed once the child turns 18;


\(^{366}\) Ibid.

\(^{367}\) Ibid.


\(^{369}\) Soler, supra note 364, at 483, 538-41.

\(^{370}\) Ibid.

\(^{371}\) Right on Crime, supra note 365.
Require the collection of publicly available data, disaggregated by race, religion, sex, gender, gender identity/expression, age, housing status, sexual orientation, HIV status, ethnicity, sexuality, immigration status, national origin, and religious affiliation, on the juvenile justice system at various points;

Adopt protocols for promptly addressing racial, ethnic, gender, and other unwarranted disparities that the disaggregated data reveal.\footnote{372}

**Congress and state legislatures** should:

- Require collaboration between the juvenile justice system and the child welfare systems;\footnote{373}
- Develop and fund gender-specific programs that enhance girls' cultural strengths, promote trauma recovery, and provide information on female health and contraception;\footnote{374}
- Provide mental health services that are sensitive to various genders and gender expressions and sexualities;
- Fund services for LGBTQ youth and youth who have left their homes and reauthorize the Runaway and Homeless Youth Act programs for $165 million for financial year 2017;\footnote{375}
- Develop independent monitoring systems for facilities;\footnote{376}

\footnote{372}{To ensure that the system is fair, it is important that there is routine data collection that is supported by protocols for addressing disparities. For example, Native American youth appear to suffer from unfair application in juvenile justice matters as revealed by their disproportionate treatment and confinement. See Lakota People's Law Project, supra note 30, at 7. “The national average for new commitments to adult state prisons by Native American youth is almost twice (1.84 times) that for white youth. In the states with enough Native Americans to facilitate comparisons, Native American youth were committed to adult prison from 1.3 to 18.1 times the rate of white youth.”}


Develop racial impact strategies to eliminate racial disparities in the juvenile justice system.  

Raising the age of criminal responsibility

We all want safer, more just communities for our children. But the criminal justice system has at times treated children like adults. “Adolescents are children, and prosecuting and placing them in the adult criminal justice system doesn’t work for them and doesn’t work for public safety.”  

We know that adolescents are still developing with limited ability to properly judge their actions. We also know that they are highly amenable to change and rehabilitation. Yet, those who are tried and sentenced as adults, who spend critical years of maturation and personal development in incarcerated, are more likely to recidivate after their sentence and more likely to engage in a lifelong relationship with the criminal justice system. According to the federal Centers for Disease Control, young people transferred to the adult criminal justice system have approximately 34 percent more re-arrests for felony crimes than youth retained in the youth justice system. Around 80 percent of youth released from adult prisons reoffend, often going on to commit more serious crimes. What’s more, when given lengthy sentences, youths are more likely to commit suicide. Some states routinely try 16- and 17-year-olds as adults. Each year in New York alone, which prosecutes all people over 16 as adults, over 50,000 16- and 17-year-olds face the possibility of prosecution as adults in criminal court—the vast majority for low-level crimes (75.3 percent are misdemeanors). Fourteen states have no minimum age for trying children as adults. Children as young as eight have been prosecuted as adults. Some states set the minimum age at 10, 12, or 13.

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378 Raise the Age NY, Get The Facts, http://raisetheagency.com/get-the-facts (accessed 7 July 2016);  
379 Child Trends Data Bank, Young Adults in Jail or Prison (2012), http://www.childtrends.org/?indicators=young-adults-in-jail-or-prison;  
380 Robert Hahn et al., Centers for Disease Control and Prevention, Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: Report on Recommendations of the Task Force on Community Preventive Services (Nov. 30, 2007), http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm;  
382 They are also more likely to be raped and assaulted in adult prisons and exhibit the aggression that accompanies victimization. Vincent Shiraldi & Jason Zeidenberg, The Risks Juveniles Face When They Are Incarcerated With Adults, Justice Policy Institute (1997), http://www.justicepolicy.org/images/upload/97-02_rep_riskjuvenilesface_jj.pdf;  
383 Raise the Age NY, supra note 378;  
Extensive research has shown that the relevant parts of the brain that govern “impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable” do not reach maturity until the early or mid-twenties. Contrary to the arbitrary designation of 18 as the age of maturity, experts place the “biological” age of maturity between 22 and 25 years of age.  

To remedy this situation, Congress and state legislatures should:

- Raise the age of criminal responsibility in adult court to at least 18 years of age in every jurisdiction in the country including instituting a minimum age for processing in adult criminal court where none exists;  
- Progressively raise the age of juvenile court jurisdiction to at least 21 years old with additional, gradually diminishing protections for young adults up to age 24 or 25.

Eliminating unfair sex-related registries for youth

Everyone deserves a chance to grow and change over time. Yet young people who have been convicted of a sex crime while children may find themselves paying for the consequences of their conduct for the rest of their lives through mandatory registration on sex-related registries. Due to laws written to consider the age of the victim but not the age of the person who committed the act, youth are often disproportionately punished for normal or experimental sexual behavior. Child registrants include kids who played games of “doctor” with other children, high school streakers and flashers, and teens who had consensual sex with near-age peers. Children can be placed on registries for sex-related acts they commit when they are as young as 8, 10, and 12 years old.


387 Ibid.
Young people who commit sex-related offenses need support to understand the impacts of their actions, and interventions to address the root causes. Registration and notification do not rehabilitate or reduce recidivism, and instead destroy children, families, and communities. These registries often require continuous registration and may have onerous restrictions that prevent these young people from moving on with their lives. There are currently 39 states that place children on registries. The U.S. Supreme Court has recently highlighted the importance of eliminating life sentences for children. Our former Communications Institute Fellow Nicole Pittman has committed herself to getting children off registries for sex-related offenses in the United States.

To eliminate unfair registries, Congress and state legislatures should:

- “Explicitly exempt all persons who were below the age of 18 at the time of their offense from all sex offender registration, community notification, and residency restriction laws”,

- Amend legislation so that youth adjudicated delinquents in juvenile court are no longer required to register for sex-related offenses under any circumstances;

- Immediately relieve young people currently required to of the duty to register;

- Expunge all records relating to the registration status of young people;

- Terminate all ongoing registration and notification requirements and restrictions upon the act’s effective date.

388 See Montgomery v. Louisiana, 577 U.S. ___ (2016) (holding that all young people sentenced to mandatory life without parole sentences are entitled to challenge the constitutionality of their sentences).


390 These requirements were devised following consultation with the Center for the Youth Registration.


392 Ibid.

393 Ibid.

394 Ibid.

395 Ibid.
Provide an avenue for individuals who believe that he or she should have been removed from the duty to register under the new law, but are still being required to register, to petition the court for relief of the duty to register. 396

Alternatively, they should:

- Eliminate the practice of placing youth adjudicated of sex-related offenses in juvenile court on registries for sex-related offenses;
- Remove youth under 18 convicted in adult court of sex-related offenses from registries, unless an evidence-based assessment indicates they are a high risk of committing sexual harm in the future; and
- Use a public health response to sex-related offenses that recognizes that treatment and prevention are more appropriate responses for persons accused of sex-related offenses, 397 including comprehensive sexuality education. 398

Until youth registration is fully eliminated in all 50 states:

Judges, defense attorneys, and prosecutors should ensure that there is proper consideration concerning the possibility, requirements, and term of registration.

Police should eliminate the use of flyers or any form of publicized information about people on the registry in order to protect people on the registry for sex-related offenses from undue harassment.

Preventing the "school to prison pipeline"

The tendency for overcriminalization has entered into schools. 399 Many schoolchildren have been funneled into the criminal justice system due to overly punitive school disciplinary

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396 Ibid.
397 Ibid.
398 Ibid.
399 Catherine Y. Kim et al., The School-to-Prison Pipeline: Structuring Legal Reform (2010).
approaches and zero tolerance policies. There has been a trend of criminalizing schoolchildren for ridiculously minor acts of misconduct. For example, a Florida 5-year-old was handcuffed and charged with battery on a police officer in 2012, while a San Mateo 7-year-old special education student was sprayed with pepper spray for climbing on furniture while at school in 2011. New York City, Houston, and Miami all employ more school police officers than they do school counselors.

There should be a concerted effort to replace these policies, which inappropriately channel large numbers of young people into the criminal justice system. The substantial investment in school policing should be replaced by culture and discipline strategies, such as restorative justice, that have been proven effective at keeping young people in school and keeping schools safe, as well as an increase in social services, school counselors, and school activities that enrich the environment in our nation’s schools.

The Department of Justice should:

- Eliminate the funding of police officers in schools and invest in school-wide restorative justice program to improve school safety;
- Require that police officers deployed in schools enter a memorandum of understanding with the school district outlining the nature of school policing.


407 For model Memorandum of Understanding language, please see Ibid.
Require that school-based law enforcement officers, including school police and school resource officers, who deployed pursuant to federal funding be trained to respect students’ constitutional and other rights.\textsuperscript{408}

Local government and school administrations should require the following:

- Adoption of policies that prioritize education over penalization, facilitating the repeal of overly punitive school discipline policies that push schoolchildren into the criminal justice system;\textsuperscript{409}

- Elimination of “zero tolerance” policies, which reflect “a philosophy or policy that mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the gravity of behavior, mitigating circumstances, or situational context in schools”;\textsuperscript{410}

- That referrals to law enforcement should be viewed as a last resort and used only when needed to ensure public safety;\textsuperscript{411}

- Maintenance by schools of publicly available data on student disciplinary measures and referrals to law enforcement agencies, disaggregated by students’ race, gender, sexuality, nationality, and eligibility for free or reduced lunch;\textsuperscript{412}

- Implementation of restorative justice practices by school districts to eliminate harsh disciplinary procedures and avoid criminalization in the classroom.\textsuperscript{413}

\textsuperscript{408} Kim & Geronimo, supra note 405.

\textsuperscript{409} Ibid.


\textsuperscript{411} Ibid.

\textsuperscript{412} Ibid.

\textsuperscript{413} Ibid.
For more information on respecting the rights of children in the criminal justice system, check out:

The **Justice Policy Institute (JPI)**, a think tank dedicated to reducing society's reliance on incarceration with a particular focus on reforming the juvenile justice system.

**Equal Justice Initiative (EJI)**, which provides legal representation to indigent defendants and incarcerated individuals denied fair treatment by the criminal justice system with a focus area on ensuring the rights of children involved in the justice system.

**Raise the Age NY**, a campaign designed to increase public awareness of the need to implement a “comprehensive approach to raise the age of criminal responsibility in NYS so that the legal process responds to all children as children.”

Vincent Shiraldi, Bruce Western, and Kendra Bradner, who advocate for appropriate, community-based responses to justice-involved young adults in their 2015 report, *Community-Based Responses to Justice-Involved Young Adults*.

Our 2014 Communications Institute Fellow Nicole Pittman of Impact Justice, who discusses the harms of placing children on registries for sex-related offenses in her 2013 report, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*.

**Dignity in Schools Campaign (DSC)**, which “challenges the systemic problem of pushout in our nation’s schools and works to dismantle the school-to-prison pipeline” through advocacy, organizing, and leadership development.

**Restorative Justice Training Institute**, which provides training and resources to schools and youth-focused organizations.

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