



**Children Charged as Adults and Held in Adult Jails and Prisons
List of Issues Submission to the
U.N. Human Rights Committee**

January 14, 2019

I. Reporting Organization

1. The Campaign for Youth Justice is a national initiative based in Washington, D.C. focused entirely on ending the practice of prosecuting, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system.
2. Every year in the United States (U.S.), at least 76,000 young people are put into the adult criminal justice system, most of them for non-violent offenses.¹ In 22 states and the District of Columbia, children as young as seven can be prosecuted as adults. Each year between 30,000 to 66,000 youth are held in adult jails and prisons.²
3. The strategic goals of CFYJ are to reduce the total number of youth prosecuted in the adult criminal justice system and to decrease the harmful impact of trying youth in adult court, with a focus on youth from over-represented communities. The campaign utilizes both federal and state-level strategies for youth justice reform. We strongly believe that any movement must involve those who are most impacted by the laws and policies. Thus, we seek to empower those affected by encouraging them to use their voices and experiences to affect meaningful change.

II. Issue Summary

4. In the United States, there is no constitutional provision or national law prohibiting states from subjecting children under age 18 to the adult criminal justice system, imposing adult criminal sentences, or incarcerating children in adult prison facilities. As a result, on any given day nearly 5,000 children are detained in adult jails and prisons.³
5. The majority of children tried in the adult criminal justice system are charged with low-level, non-violent offenses.⁴ In nine states, 17 year olds are still automatically tried and sentenced as adults no matter the charge.⁵ Five of those states have passed laws to end this practice, but these laws have not yet been fully implemented.⁶ In states like Michigan, where 17-year-olds are tried as adults and prosecutors have discretion to transfer younger children, the majority of children in prison have committed property crimes and an increasing number are sent to prison for probation violations.⁷

6. International law recognizes that children in conflict with the law have the right to special protection because of their youth, capacity for change, and the long term detrimental impact that adult criminal punishments can have during a crucial time in their development. Indeed, numerous studies repeatedly show that brain development continues until children reach their mid-twenties and the effects of incarceration can delay development or cause long-term damage.⁸ In addition to the human rights violations inherent in trying and imposing criminal punishments on children, once in the adult system, children in adult jails and prisons face disproportionately high rates of physical and sexual abuse and solitary confinement.

III. Concluding Observations and ICCPR Legal Framework

7. Subjecting children to adult criminal punishments violates the International Covenant on Civil and Political Rights (ICCPR), including Articles 7, 10(3), 14(4), 24, and 26.
8. In the Human Rights Committee's concluding observations on the fourth periodic report of the United States' compliance with the ICCPR, the Committee urged the U.S. to ensure that juveniles are separated from adults during pretrial detention and after sentencing, and end of the practice of trying juveniles in adult court, including encouraging states that automatically exclude 16- and 17-year-olds from juvenile court jurisdiction to change their laws.⁹

IV. Current U.S. Government Policy or Practice

9. State Laws. Currently, all 50 states allow children to be transferred to adult courts in some manner.¹⁰ These laws result in approximately 76,000 children being tried as adults each year.¹¹ While some youth are given judicial waiver hearings before being transferred to adult courts, the age, individual circumstances, and offense are not subject to individualized judicial consideration for the vast majority of children tried as adults.¹²
10. In the past few years, states have steadily raised the age of criminal responsibility, including New York and North Carolina, the last two states that automatically excluded both 16- and 17-year-olds from juvenile jurisdiction.¹³ Now only four states retain laws that exclude 17-year-olds from juvenile court jurisdiction, automatically trying them as adults: Georgia, Michigan, Texas, and Wisconsin.¹⁴ In May of 2018, Vermont became the first state in the country to raise the age of criminal responsibility above 18.¹⁵ With very few exceptions, by the year 2022, all children 19 and under will be treated as juveniles.¹⁶ Children also end up in adult criminal proceedings because of state laws that require juveniles to be tried as adults for certain crimes, give prosecutors discretion to file cases directly in criminal courts for certain crimes, or allow juveniles to be transferred after a judicial waiver proceeding.¹⁷ Between 2015 and 2017, several states passed laws to limit methods of transfer.¹⁸ California voters, for example, passed Proposition 57 in November 2016, which eliminated the possibility for prosecutors to "direct file" youth to adult criminal

courts and requires every youth to have a transfer hearing in front of a juvenile court judge.¹⁹ “Since 2003, more than 10,000 youth [in California] were prosecuted in adult court—nearly 70 percent of them were direct filed” by prosecutors.²⁰ Still, many states, like Maryland and Iowa, allow for a broad range of offenses to result in youth being automatically excluded from juvenile court.²¹

11. By far, the vast majority of the children who are criminalized and incarcerated in adult facilities are racial and ethnic minorities. Indeed, while there are troubling racial disparities throughout the U.S. prison system, the disparities are the most extreme among the youngest prisoners. For instance, while Black youth only comprise 14% of the total youth population, they comprise 47.4% of the youth who are transferred to the adult court by juvenile court judges.²²
12. Federal Response. At the end of 2018, Congress passed and the President signed into law a reauthorization of the main statute that addresses juvenile justice at the federal level: the Juvenile Justice and Delinquency Prevention Act (JJDP A).²³ The Juvenile Justice Reform Act of 2018 made several critical updates to the JJDP A, including strengthening the jail removal and sight and sound separation core protections. When the new law goes into effect, these core protections will keep youth awaiting trial in criminal court out of adult jails and lock-ups and will ensure sight and sound separation in the limited circumstances where they are held in adult facilities.²⁴ States will have three years after the date of enactment to implement these new requirements.²⁵ These new requirements will not apply to 17-year-olds in states that have not raised the age of criminal responsibility. Currently, 47 states elect to participate in the JJDP A.
13. At the end of 2018, Congress also passed and the President signed into law the First Step Act, which abolishes the use of solitary confinement for youth in federal facilities.²⁶
14. The federal Prison Rape Elimination Act (PREA) also creates national standards requiring that individuals under 18 be separated from adult inmates in housing units.²⁷ The law created the National Prisons Rape Elimination Commission (PREA Commission) to examine the extent of the problem of sexual assault in detention facilities and directed the U.S. Department of Justice to promulgate national standards to prevent, detect, and respond to sexual abuse in detention facilities. The PREA Commission found that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”²⁸ Accordingly, the PREA regulations include a “Youthful Inmate Standard” to protect youth under age 18 in adult facilities, which includes youth transferred to the adult system and youth who reside in states with lower ages of criminal responsibility. The Youthful Inmate Standard was strengthened by Congress in 2016 with the passage of the Justice for All Reauthorization Act of 2016 (JFA).²⁹ Under the JFA, states were given up to six years to comply fully with PREA (including the Youthful Inmate Standard), or risk financial penalties. By 2017, governors from 19 states certified

compliance, 29 states and the District of Columbia made assurances, and only two states (Utah and Arkansas) were non-compliant and elected to forgo federal funds rather than come into compliance with the PREA standards.³⁰

V. Human Rights Committee General Comments

15. The Committee's General comment No. 17 addresses article 4 of the ICCPR, rights of the child. The Committee states that, "if lawfully deprived of their liberty, accused juvenile persons shall be separated from adults and are entitled to be brought as speedily as possible for adjudication; in turn, convicted juvenile offenders shall be subject to a penitentiary system that involves segregation from adults and is appropriate to their age and legal status, the aim being to foster reformation and social rehabilitation."³¹ The comment also directs states to indicate in their reports the age of criminal responsibility and that the age "should not be set unreasonably low."³² State parties should also report on actions taken to remove discrimination "in every field."³³
16. The Committee's General comment No. 21 reminds State parties that they should be providing information in their reports regarding the treatment of accused juveniles and juvenile offenders.³⁴ The Committee notes that, under article 10, "juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status insofar as conditions of detention are concerned, such as shorter working hours and contact with relatives, with the aim of furthering their reformation and rehabilitation."³⁵ It further urges that, while article 10 does not specify the age of a juvenile, it suggests that all persons under the age of 18 should be treated as juveniles.³⁶
17. In the Committee's General comment No. 35, the Committee notes that "[p]retrial detention of juveniles should be avoided...[.]"³⁷

VI. Other Human Rights Bodies Recommendations

18. Both the U.N. Committee against Torture (CAT) and the Committee on the Elimination of All Forms of Racial Discrimination (CERD) have issued Concluding Observations to the United States recommending that it ensure juveniles are not transferred to adult courts and are separated from adults during pretrial detention and after sentencing.³⁸ They have also recommended that it abolish life without parole and solitary confinement for juveniles.
19. In December 2014, the CAT expressed concerns regarding the "notable gaps in the protection of juveniles in the State party's criminal justice system."³⁹ The Committee recommended, among other things, that the State party ensure that youth under 18 are held separately from adults, prohibit the use of solitary confinement, and use alternatives to incarceration.⁴⁰

20. In August 2014, the CERD expressed concern about “racial disparities at all levels of the juvenile justice system, including the disproportionate rate at which youth from racial and ethnic minorities are arrested in schools and are referred to the criminal justice system, prosecuted as adults, incarcerated in adult prisons, and sentenced to life imprisonment without parole.”⁴¹ It recommended that the U.S. “ensure that juveniles are not transferred to adult courts and are separated from adults during pretrial detention and after sentencing.”⁴²
21. In September 2018, the Inter-American Commission on Human Rights (IACHR) issued a report on United States children in the adult criminal justice system.⁴³ The report makes several recommendations, including adopting federal legislation to establish a uniform definition of a child as any person under 18, to raise the age of criminal responsibility to 18 or older in order to ensure that no child is subject to the adult criminal justice system, and to ensure no child is detained in an adult facility.⁴⁴

VII. Recommended Questions

1. Please provide information as to whether the State party will take steps to ensure that juveniles are not transferred to adult courts, but are tried in juvenile courts with specific juvenile protections.
2. Please provide information regarding the State party’s plan to provide support to states in implementing the Juvenile Justice Reform Act of 2018, particularly in regards to the jail removal and sight and sound separation core requirements.
3. What additional alternative measures is the State party taking to ensure that institutionalization of children under the age of 18 is a last resort and that children in conflict with the law receive proper social services from specialized professionals as well as additional rehabilitation services necessary for recovery?
4. What efforts is the federal government undertaking to ensure that all state and local prisons and jails comply with the Prison Rape Elimination Act?

VIII. Suggested Recommendations

1. The State party should ensure that children under 18 are not criminally tried in adult courts and are separated from adults during pretrial detention and after sentencing and encourage states to consider raising the extended age of juvenile court jurisdiction.

2. The State party should ensure states have the support they need to swiftly implement the Juvenile Justice Reform Act of 2018, including extending the jail removal core protection and the sight and sound core protection of the Juvenile Justice and Delinquency Prevention Act to youth charged as adults.

3. The State party should require that states track the frequency and mechanisms by which children are tried in the adult criminal justice system and develop nationwide statistical data on children in the adult system that is disaggregated by race, ethnicity, disability, gender and sexual orientation. The State party should improve data collection and reports on incidents of violence against children in adult facilities. Such reports should pay particular attention to intersections of age, race, ethnicity, disability, gender, and sexual orientation and should address factors that may discourage or inhibit children from reporting violence.

¹ CHARLES PUZZANCHERA, MELISSA SICKMUND, & ANTHONY SLADKY, NAT'L CENTER FOR JUVENILE JUSTICE, YOUTH YOUNGER THAN 18 PROSECUTED IN CRIMINAL COURT: NATIONAL ESTIMATE, 2015 CASES (2018), available at <http://www.campaignforyouthjustice.org/images/Transfer-estimate.pdf>.

² NEELUM ARYA, GETTING TO ZERO: A 50 STATE STUDY OF STRATEGIES TO REMOVE YOUTH FROM ADULT JAILS (2018), available at https://drive.google.com/file/d/1LLSF8uBlrcqDaFW3ZKo_k3xpk_DTmItV/view.

³ ZHEN ZENG, JAIL INMATES IN 2016, APPENDIX TABLE I, U.S. DEPT. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS (Feb. 2018), available at <https://www.bjs.gov/content/pub/pdf/ji16.pdf>.

⁴ Wendy Sawyer, *Youth Confinement: The Whole Pie*, PRISON POLICY INITIATIVE (Feb. 27, 2018), <https://www.prisonpolicy.org/reports/youth2018.html>.

⁵ John Kelly, In Another Big Year for “Raise the Age” Laws, One State Now Considers All Reens as Juveniles, *The Chronicle of Social Change* (June 25, 2018), <https://chronicleofsocialchange.org/youth-services-insider/juvenile-justice-raise-the-age-vermont-missouri-state-legislation> (noting Georgia, Michigan, Texas, and Wisconsin still automatically charge 17-year-olds as adults).

⁶ *Id.*

⁷ J. Shook and R. Sarri, *Trends in the Commitment of Juveniles to Adult Prisons*, 54 WAYNE L. REV. 1725 (2008).

⁸ ROBERT L. LISTENBEE, JR., REPORT OF THE ATTORNEY GENERAL’S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 171 (2012), available at <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>; AMERICAN CIVIL LIBERTIES UNION, ALONE & AFRAID CHILDREN HELD IN SOLITARY CONFINEMENT AND ISOLATION IN JUVENILE DETENTION AND CORRECTIONAL FACILITIES (June 2014), available at <http://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf>.

⁹ U.N. Human Rights Comm., *Concluding Observations on the fourth periodic report of the United States of America*, ¶ 23, U.N. Doc. CCPR/C/USA/CO/4 (April 23, 2014).

¹⁰ JEREE THOMAS, CAMPAIGN FOR YOUTH JUSTICE, RAISING THE BAR: STATE TRENDS IN KEEPING YOUTH OUT OF ADULT COURTS (2015-2017) 29 (2017), available at http://www.campaignforyouthjustice.org/images/StateTrends_Repot_FINAL.pdf.

¹¹ PUZZANCHERA ET AL., *supra* note 1.

¹² JEREE THOMAS, CAMPAIGN FOR YOUTH JUSTICE, YOUTH TRANSFER: THE IMPORTANCE OF INDIVIDUALIZED FACTOR REVIEW (2017), available at http://www.campaignforyouthjustice.org/images/20180314_CFYJ_Youth_Transfer_Brief.pdf.

¹³ Joanna Walters, *New York Raises Age of Criminal Responsibility in ‘Lightening Rod’ Reform*, THE GUARDIAN (Apr. 10, 2017), <https://www.theguardian.com/us-news/2017/apr/10/new-york-raises-age-of-criminal-responsibility-teens-adult-prison>; John Holland, *North Carolina Last State to Raise the Age for Adult Court for Juvenile*, JUVENILE JUSTICE INFO. EXCHANGE (June 20, 2017), <https://jjie.org/2017/06/20/north-carolina-last-state-to-raise-the-age-for-adult-court-for-juveniles/>; Marcy Mistrett, *New York and North Carolina are the Last States to Raise the Age of Which Children Can Be Funneled Through Their Adult Jails and Prisons*, CAMPAIGN FOR YOUTH JUSTICE (July 21,

2017), <http://www.campaignforyouthjustice.org/campaigns/item/new-york-and-north-carolina-are-the-last-states-to-raise-the-age-of-which-children-can-be-funneled-through-their-adult-jails-and-prisons>.

¹⁴ Kelly, *supra* note 5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Thomas, *supra* note 9 at 30.

¹⁸ *Id.* at 28-37.

¹⁹ *Id.* at 37.

²⁰ LAURA RIDOLFI, MAUREEN WASHBURN, FRANKIE GUZMAN, THE PROSECUTION OF YOUTH AS ADULTS: A COUNTY-LEVEL ANALYSIS OF PROSECUTORIAL DIRECT FILE IN CALIFORNIA AND ITS DISPARATE IMPACT ON YOUTH OF COLOR 2 (2016), available at <https://youthlaw.org/publication/prosecution-youth-adults/>.

²¹ Thomas, *supra* note 8 at 41.

²² JEREE THOMAS AND MEL WILSON, THE COLOR OF YOUTH TRANSFERRED TO THE ADULT CRIMINAL JUSTICE SYSTEM: POLICY & PRACTICE RECOMMENDATIONS 1 (2018), available at http://www.campaignforyouthjustice.org/images/pdf/Social_Justice_Brief_Youth_Transfers.Revised_copy_09-18-2018.pdf.

²³ The Juvenile Justice Reform Act of 2018, H.R. 6964, 115th Cong. (2018).

²⁴ ACT 4 JUVENILE JUSTICE, OVERVIEW OF THE JUVENILE JUSTICE REFORM ACT OF 2018 2 (Dec. 2018), available at <http://www.act4jj.org/sites/default/files/resource-files/JJDPAA%20Reauthorization%20Summary%20December%202018.pdf>.

²⁵ *Id.*

²⁶ First Step Act of 2018, S. 3649, 115th Cong. (2018); Press Release, Juvenile Law Center, With Senate Passage of First Step Act, Youth Solitary Confinement in Federal Detention One Step Closer to Being Abolished (Dec. 18, 2018), available at <https://jlc.org/news/senate-passage-first-step-act-youth-solitary-confinement-federal-detention-one-step-closer>.

²⁷ 42 U.S.C. § 15601 (2013).

²⁸ United States (2009). *National Prison Rape Elimination Commission Report*. Washington, D.C.: National Prison Rape Elimination Commission.

²⁹ Justice for All Reauthorization Act, Pub. L. No. 114-324. (2016) 130 Stat. 1948.

³⁰ U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, FY 2017 LIST OF CERTIFICATION AND ASSURANCE SUBMISSIONS FOR AUDIT YEAR 3 OF CYCLE 1 (2017), available at <https://www.bja.gov/Programs/17PREAAssurancesCertifications.pdf>.

³¹ U.N. Human Rights Comm., *General Comment No. 17, Article 24 (Rights of the Child)* ¶ 2, U.N. Doc. CCPR/C/GC/27 (Sept. 29, 1989).

³² *Id.* at ¶ 4.

³³ *Id.* at ¶ 5.

³⁴ U.N. Human Rights Comm., *General Comment No. 21, Article 10 (Humane Treatment of Persons Deprived of Their Liberty)* ¶ 13, U.N. Doc. CCPR/C/GC/21 (Mar. 13, 1993).

³⁵ *Id.*

³⁶ *Id.*

³⁷ U.N. Human Rights Comm., *General Comment No. 35, Article 9 (Liberty and Security of Person)* ¶ 37, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).

³⁸ U.N. Committee against Torture, *Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America* ¶ 23-24, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014) [hereinafter CAT, *Concluding Observations*]; U.N. Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America* ¶ 21, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014 [hereinafter CERD, *Concluding Observations*]).

³⁹ CAT, *Concluding Observations*, *supra* note 35 at ¶ 23.

⁴⁰ *Id.*

⁴¹ CERD, *Concluding Observations*, *supra* note 35 at ¶ 21.

⁴² *Id.*

⁴³ Press Release, Inter-American Commission on Human Rights, IACHR Presents Report on the Situation of Children in the Adult Criminal Justice System in the United States (Sept. 27, 2018), available at http://www.oas.org/en/iachr/media_center/PReleases/2018/213.asp.

⁴⁴ Inter-American Comm'n on H.R., *The Situation of Children in the Adult Criminal Justice System* 141, OAS/Ser.L/V/II. 167 (Mar. 1, 2018), available at <http://www.oas.org/en/iachr/reports/pdfs/Children-USA.pdf>.