

CAMPAIGN FOR

YOUTH JUSTICE

# ZERO TOLERANCE

How States Comply With PREA's Youthful Inmate Standard



**EXECUTIVE SUMMARY**



# ZERO TOLERANCE: HOW STATES COMPLY WITH PREA'S YOUTHFUL INMATE STANDARD

## BACKGROUND

The United States' extraordinary use of adult correctional facilities to house youth presents numerous concerns, including serious, long-term costs to the youth offender and to society at large. Science and research conducted over the last 20 years confirm what common sense tells us: kids are different. Despite evidence based research highlighting the harms of placing youth in adult facilities and the long term costs of incarceration to youth and society, 1200 youth are in state prisons on any given day across the country.

The Prison Rape Elimination Act (PREA), unanimously passed by Congress in 2003, addresses sexual assault and victimization in prisons, jails, lockups, and other detention facilities — all of which are facilities that may house youth. The law created the National Prison Rape Elimination Commission (PREA Commission) to examine the extent and scope of the problem and directed the Department of Justice (DOJ) to promulgate national standards to prevent, detect, and respond to sexual abuse in detention facilities. With respect to the treatment of youth offender, the PREA regulations state that “as a matter of policy, the Department [of Justice] supports strong limitations on the confinement of adults with juveniles.”

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.” Accordingly, the PREA regulations include a “Youthful Inmate Standard” to protect youth in adult facilities. Specifically, the Youthful Inmate Standard provides that youthful inmates, which the standards define as “any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail,” must be housed separately from adult inmates in a jail or prison, but may be managed together outside of a housing unit if supervised directly by staff.

This report explores how states house youth under 18 in prisons in the new age of PREA compliance and enforcement. Furthermore, this report highlights national trends in juvenile arrests, crimes, and incarceration of children in the adult system. With evidence of the decreasing number of youth entering the adult system, the recommendations focus on how states can successfully remove all youth from adult prisons.

## KEY FINDINGS

- The federal PREA standards have become the emerging standard of care for the housing of youth in adult facilities. States such as Alabama, Hawaii, Missouri, Nevada, Pennsylvania, Indiana, and North Carolina have revised their administrative regulations to align with PREA's Youthful Inmate Standard. Yet, the majority of states still permit the housing of youth in adult facilities, often times with no special housing parameters. Once youth are sentenced in adult court to an adult prison term, few jurisdictions have enacted safeguards to protect youth's physical, mental and emotional health. Additionally, programs and behavioral responses in adult facilities rarely are adjusted to meet the needs of adolescent populations.
- State laws vary widely as to the regulations and parameters for housing youth in adult prisons. In fact, some states have no regulations or parameters governing the treatment of youth sentenced as adults. While other states have fully removed youth from their prison systems — like West Virginia, Maine, California, and Washington — the overwhelming majority of states allow youth to be housed in adult prisons. In fact 37 states housed youth under 18 years of age in their state prisons in 2013.

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- The number of youth incarcerated in the adult prison system has decreased 70% since 2000. Over 5,000 youth were held in state prisons in 1995, though the United States is experiencing a continued decline in the number of youth incarcerated in adult prison systems in recent years. At yearend 2013, states held 1200 youth in adult prison on any given day.

Data Source: Carson, E.A. (2014). Prisoners in 2013. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

YEAR	STATE PRISONERS UNDER 18	YEAR	STATE PRISONERS UNDER 18
2000	3,892	2007	2,283
2001	3,129	2008	2,717
2002	3,038	2009	2,743
2003	2,740	2010	2,295
2004	2,477	2011	1,790
2005	2,208	2012	1,325
2006	2,364	2013	1,188

- While rapidly declining crime rates and youth arrests have contributed significantly to these declines, state and local reforms have also led to the reduction of youth housed in adult prisons. Eleven states in the last decade have passed laws and policies limiting the states' authority to house youth in adult jails and prisons.<sup>1</sup>
- Placement of youth in adult prisons disproportionately falls on youth of color. Youth of color are placed in adult prisons at much higher rates than their white peers. African American youth are particularly harmed. While they represent only 17% of the overall youth population, they make up 58% of those incarcerated in adult prisons. This disproportionality extends to Latino and Tribal youth, who also continue to be vastly over represented in adult prisons compared to their white peers.
- Housing youth with adults comes with severe consequences. Youth in adult prisons report alarming rates of sexual abuse by both staff and other inmates according to the federal Bureau of Justice Statistics. Specifically, three-quarters of youthful inmates aged 16 and 17 that reported sexual abuse (75.5%) were victimized more than once by staff and less than 1 in 10 reported the staff sexual misconduct to anyone.<sup>2</sup> Additionally, two-thirds (65.5%) of those youth that reported abuse were victimized more than once by other inmates and an estimated 79% reported experiencing physical force or threat of force.<sup>3</sup> Youth convicted of sexual crimes or youth who identify as non-heterosexual report much higher victimization. Simply put, youth in adult facilities face extreme dangers when housed in facilities ill-equipped to protect them.

Data also indicates that youth are more likely to recidivate when they are held with adults. "According to both the U.S. Centers for Disease Control and Prevention and the Office of Juvenile Justice and Delinquency Prevention, youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime."<sup>4</sup>

<sup>1</sup> Colorado, Idaho, Indiana, Maine, Nevada, Hawaii, Virginia, Pennsylvania, Texas, Oregon, and Ohio

<sup>2</sup> Beck, A. (2013). *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011 – 12*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

<sup>3</sup> Id.

<sup>4</sup> Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to Adult Justice System* (2007).

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## RECOMMENDATIONS TO STATE POLICYMAKERS

The Prison Rape Elimination Act provides a unique opportunity to rethink the housing of youthful inmates in adult prisons. As states move forward with compliance with the Youthful Inmate Standard of PREA, consideration of the removal of youth from adult prisons is a viable option. As demonstrated by the states surveyed for this report, many state Departments of Corrections have no policies to protect youth who enter their facilities, thus increasing the chances of victimization, injury and trauma. As juvenile arrests continue to decrease and juvenile confinement in juvenile facilities decreases, now is the chance to consider moving youth from adult prisons into facilities build for, and programmed for, youth.

In light of these opportunities, state policymakers should take the following actions:

### **1) Update state statutes to prohibit the placement of youth in adult prisons.**

State laws could be updated now to reflect the original intent of the JJDP law in accordance with the American Correctional Association's policy to "support the adoption of legislation in each state that authorizes correctional authorities to place people under the age of majority who are detained or sentenced as adults in an appropriate juvenile detention/correctional system or youthful offender system distinct from the adult system."

### **2) Promote placement of youth in juvenile justice facilities as an alternative to adult prisons for youth sentenced as adults.**

State policymakers should work together to ensure that youth who receive adult sentences can be placed in juvenile facilities, rather than adult prisons. State policymakers could produce state policies that promote the placement of youth in juvenile justice facilities as an alternative to adult prisons through Memorandums of Understanding, contracts or regulations (depending on the state).

### **3) Implement "model approaches" to removing youth from prisons.**

State policymakers and juvenile justice agencies could take steps now to implement model approaches to removing youth from adult prisons. These approaches could be shared through state and county associations of policymakers such as the National Governors Association, the National Council of State Legislatures, the National Association of Counties, and the American Correctional Association. Best practices could be showcased at national meetings and documented in publications of these prestigious associations.

### **4) Initiate new data collection efforts and research on youth in the adult criminal justice system.**

States and counties could collect data on an on-going basis on youth in the adult criminal justice system and in particular, youth in adult prisons. New data collection efforts would include the following information about youth in the adult criminal justice system: age, race, ethnicity, gender, offense, pre-trial detention, transfer mechanism, sentencing outcome, and placement pre- and post-trial in jails, prisons or juvenile facilities. Since there are few state analyses on the impact of trying youth in the adult criminal justice system, state and county policymakers could work with local universities, researchers and other experts to conduct extensive research on the effectiveness of the practice of prosecuting youth as adults in criminal courts in their states and counties; the status of youth in adult jails and prisons; and the provision of developmentally-appropriate services and programs for youth in adult jails and prisons.

*The Campaign for Youth Justice (CFYJ) is a national organization dedicated to ending the practice of prosecuting, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system.*

*Please contact the Campaign for Youth Justice ([www.cfyj.org](http://www.cfyj.org)) for more information, including support for implementation of evidence-based practices to promote a rehabilitative and humane justice system for youthful offenders.*

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