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Legislative Reforms in Juvenile Detention and the Justice System





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INTRODUCTION

Juvenile justice policy requires balancing rehabilitation, accountability and public safety, while also preserving the rights of youth. Juvenile justice reaches into courts, corrections, child protection, education, mental health and children’s services. State legislative responsibility for juvenile justice includes facilitating collaboration within justice systems, promoting public safety and improving outcomes for young people. A considerable amount of juvenile justice activities and laws across the country in recent years have sought to rebalance approaches in juvenile justice systems. These efforts are demonstrated in the area of juvenile detention reform.

Detention is an important and decisive phase in the juvenile justice process. It is the point at which—after a juvenile has been arrested—courts decide whether to confine a young person pending his or her court

hearing or placement into a correctional or treatment facility, or allow the youth to remain at home.

Confined juveniles include those in detention or reception centers, training schools, ranches, camps and farms.

On any given night, approximately 24,000 juveniles are held in detention and an estimated 300,000 young people are admitted to detention facilities nationwide every year. A young person’s stay in a detention facility is usually short, averaging 20 days or less. Many young people may spend only a few nights in detention, but its effects can have long-lasting consequences for both public safety and youth development.

Some secure detention settings may expose young people to an environment that resembles adult jail. According to the Office of Juvenile Justice and Delinquency Prevention’s (OJJDP) *Journal of Juvenile Justice*, young people placed in pretrial detention are more likely to be formally charged, found delinquent and committed to youth corrections facilities than

The Juvenile Detention Alternatives Initiative

In 1992, the Juvenile Detention Alternative Initiative (JDAI) was founded by the Annie E. Casey Foundation to address the efficiency and effectiveness of juvenile detention. At the time JDAI was launched, state laws and practices had moved away from the traditional emphasis on rehabilitation in the juvenile justice system toward a tougher, more punitive treatment of youth, including treating kids like adults. Today, research on neurobiological and psychosocial factors and the effects on adolescent development have led to laws that distinguish juvenile from adult offenders.

JDAI is dedicated to public safety, so its focus is to ensure that the right youth—but only the right youth—are detained, and only for as long as needed. As a multiyear initiative, JDAI works with jurisdictions and sites across the country to create and test new ways to establish a more effective, efficient and fairer juvenile justice system. JDAI fundamentally modifies the way all stakeholders in the juvenile justice system—including prosecutors, judges, law enforcement, defense attorneys and elected officials—handle juvenile

cases. The focus shifts from locking young people up in secure detention to keeping them in their communities and addressing underlying issues that may have led to criminal behavior. Since its inception, JDAI has repeatedly demonstrated that jurisdictions can safely reduce reliance on secure detention.

JDAI is operating in more than 250 counties nationwide, spread across 39 states and the District of Columbia. The JDAI model has proliferated with increasing speed and now reaches more than one-fourth of the total U.S. youth population.

In 2012, Annie E. Casey expanded the focus of JDAI to include not only the front end of juvenile justice system, but the post-disposition (“deep” end) of the juvenile justice system as well. Post-disposition is longer term incarceration of juvenile offenders in a correctional facility or training school. The goal of JDAI’s expansion is to decrease reliance on juvenile incarceration nationwide and minimize the use of training schools and other large-scale juvenile correctional facilities.

those who are allowed to remain at home pending adjudication. Detention can interrupt a young person’s education and harm youth who have mental health needs or have a history of trauma. A 2013 study of youth in Cook County, Ill., found that youth sent to detention were 13 percent less likely to graduate from high school and 22 percent more likely to end up in adult prison than comparable youth placed on home confinement or into an alternative supervision program.

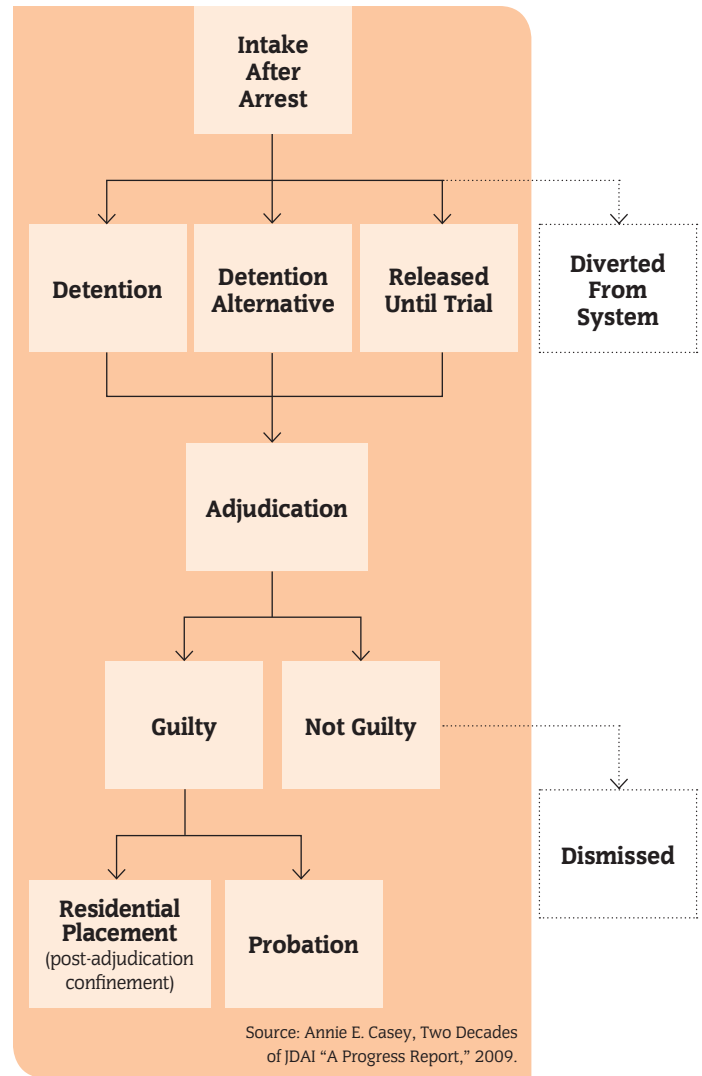
In recent years, state legislators have been re-examining and amending juvenile detention policies to reduce unnecessary reliance on secure confinement and improve public safety.

Policymakers have passed laws that aim to avoid detention at the outset; provide detention alternatives; reduce disproportionate minority contact, or interaction, with the juvenile justice system; improve conditions of confinement; and save states money by reducing detention populations, which frees up funds for more effective public safety solutions.

AVOIDING DETENTION AT THE OUTSET AND ALTERNATIVES TO DETENTION

The primary purpose of secure detention is to ensure that a young person appears in court and to minimize the risk of re-arrest while current charges are pending. A rise in serious juvenile crime in the late 1980s and early 1990s led to state laws and policies that moved away from the traditional emphasis on rehabilitation in the juvenile justice system and led to the number of youth held in detention to increase dramatically. During the past decade, juvenile crime rates have declined and policymakers are rethinking juvenile justice policy, including alternatives to secure detention. For example, in **New Jersey**, a new law clarifies that a young person can be detained in pretrial detention only if:

- Detention is necessary to secure the presence of the juvenile at the next hearing and there is evidence of the juvenile’s willful failure to appear for past dates.
- The physical safety of the community would be threatened if the juvenile was not detained.



There are alternatives to secure detention that allow a juvenile court judge to have options available other than secure detention or sending a young person home. Alternatives include supervised release programs such as home detention, electronic monitoring, day and evening reporting centers, and local treatment programs. These programs have an increased level of supervision to ensure that the juvenile returns to court and stays arrest-free pending disposition of the case. A few states, such as **Delaware**, enumerate detention alternatives in statute and can include: release on the child’s own recognizance; release to parents, guardian or other willing member of the child’s family; release on bail, with or without conditions; release with restrictions on activities, associations, movements and residence; or release to a non-secure detention alternative such as home detention, daily monitoring, intensive home-based services with supervision, foster placement or a non-secure resi-

dential setting.

Another recent trend in detention policy is the creation and use of risk assessment instruments to guide decisions regarding the necessity of confinement. Risk assessment used at detention screenings analyzes a young person’s level of risk and individual treatment needs, and helps determine who should be held in secure detention and who should be released until trial. In 2003, **New Mexico** established juvenile risk assessment instruments to determine whether a juvenile requires detention. **Colorado** passed a similar law in 2007.

More recently, in 2013, **Georgia** enacted sweeping juvenile justice legislation that limited which offenses were eligible for detention and put in place programs that focus on early intervention and effective alternatives to automatic detention. The law prohibits residential commitment for all status offenders and certain misdemeanants. Misdemeanor offenders may receive

out-of-home placement only if their history includes four prior adjudications, one of which was a felony. Status and low-level offenders are diverted from detention into specialized community-based programs aimed at managing matters that may include dysfunctional families, anger issues, and drug and alcohol abuse. Similarly, **Maryland** revised its juvenile code in 2013 to prohibit the detention of youth whose most serious offense is possession of marijuana, disorderly conduct, prostitution, drug possession or theft, except in very rare circumstances.

In 2014, **Kentucky** adopted comprehensive juvenile justice legislation, which included provisions preventing juveniles who committed low-level offenses from entering the formal justice system. Kentucky also created an enhanced pre-court diversion process for status offenders and juveniles accused of minor offenses and with little to no history of prior offenses. Before a case goes to a county attorney, court-designated workers must use risk assessment tools to screen and assess youth and make referrals to appropriate services. Monitoring and case management is an integral part of the diversion process to ensure that eligible youth successfully use services and complete the diversion program. Filing a case in court remains an option for those failing to complete the requirements.

Reform legislation in Georgia and Kentucky also resulted in fiscal benefits to the states, which are discussed in the upcoming section, “The Cost Savings of Detention Reform” (pg. 6).

COMMUNITY-BASED ALTERNATIVES

Once a young person is in the juvenile justice system, alternatives to secure detention can still be employed. In 2013, **New York** passed the “Close to Home Initiative,” which allows juveniles who have committed non-serious crimes to be placed in residential facilities closer to their homes, instead of in secure facilities hundreds of miles away. It keeps youth closer to their families, creating positive connections to their communities while they receive the services and support they need. The program was designed to provide a continuum of services—including diversion, supervision, treatment and confinement—to ensure the most appropriate level of care while maintaining public safety.

The **Nebraska** Legislature passed a 2013 law providing \$14.5 million for two years for juvenile justice re-

Colorado HB 1139

In Colorado, a juvenile who is to be tried as an adult in a criminal proceeding will not be held in an adult jail or pretrial facility unless a judge finds, after a hearing, that adult jail is appropriate. In determining this, the judge must consider the:

- age of the child;
- whether, in order to provide physical separation from adults, the juvenile would be deprived of contact with other people or would not have access to recreational or educational facilities;
- the juvenile’s current emotional state, intelligence, and developmental maturity, including any emotional and psychological trauma;
- whether detention in a juvenile facility will adequately serve the need for community protection;
- whether detention in a juvenile facility will negatively impact the functioning of the juvenile facility;
- the relative ability of the available adult and juvenile detention facilities to meet the needs of the juvenile, including the juvenile’s need for mental health and educational services;
- whether the juvenile presents an imminent risk of harm to himself or herself or others within a juvenile facility;
- the physical maturity of the juvenile; and
- any other relevant factors.

Colo. Rev. Stat. Ann. §19-2-508, CO HB 1139, passed in 2012.

form. The law expands the Nebraska Juvenile Service Delivery Project statewide, which provides services to juveniles and families in the juvenile court system. An emphasis is placed on pre-filing diversion, where small counties are given additional probation resources, and state offices provide technical assistance to counties to help them expand and improve community-based alternatives to incarceration. The reforms were important given that, according to the Annie E. Casey Kids Count report, Nebraska had the third-highest rate of youth incarceration in the country.



REFORMS FOR YOUTH IN DETENTION

State laws are also limiting the length of stay for youth in detention facilities. A recent **Mississippi** law provides that non-violent juveniles accused of a first offense may be committed to detention centers, pre-adjudication, for no more than 10 days. States are also statutorily limiting detention and confinement post adjudication. In 2009, **Georgia** decreased from 60 days to 30 the maximum time a court can order a juvenile to serve in a detention center. And a **North Dakota** law limits to four days in a one-year period the total detention period of a child involved in a juvenile drug court.

States also have enacted provisions limiting when juveniles can be held in adult detention. In 2012,

Ohio enacted sweeping changes to its juvenile justice policies, including adding a presumption that young adults up to age 21 who are sent to adult court, or who turn 18 while under the juvenile court's jurisdiction, should be placed in juvenile, rather than adult, detention facilities. **Minnesota** law provides that even if a child is certified as an adult, the child must be detained in a juvenile detention facility pending the outcome of the case.

THE COST SAVINGS OF DETENTION REFORM

Detaining juveniles in secure detention is a significant cost to taxpayers. While some young people need to be confined, many communities spend millions of dollars to detain status offenders and non-

violent juveniles who could be safely placed elsewhere. Depending on the region, confining one youth in secure detention can cost from \$100 to \$300 per night and up to \$65,000 annually. Detention alternatives can be less costly, on a daily basis, than secure confinement. And by reducing the number of youth in detention, states can redirect resources to more effective methods of preventing juvenile crime and to improving conditions of detention facilities.

As previously referenced, in the last two years, **Georgia** and **Kentucky** have enacted expansive changes to their juvenile justice codes. By doing so, both states expect to reduce spending on detaining juveniles accused of minor crimes and, instead, be able to fund more effective community-based solutions.

In FY 2013, the Georgia Department of Juvenile Justice (DJJ) was appropriated \$300 million, nearly 60 percent of which paid for out-of-home secure and non-secure facilities. Despite the average cost of \$90,000 per bed, per year, recidivism had not gone down. In fact, more than 50 percent of adjudicated youth were re-adjudicated delinquent or convicted of a crime within three years of release. Many of these youth started out with a low-risk of re-offending and were accused of minor criminal offenses.

The new Georgia law provides that the most expensive resources, such as out-of-home facilities, be targeted only where they have the greatest impact on public safety, while less costly alternatives be available to those who committed low level offenses and those less likely to reoffend. The law requires the use of risk assessments before detaining a juvenile in a secure facility and whenever the court is considering confinement as a disposition for a juvenile. Additionally, it created a two-class felony system that allows restrictive custody for some offenders, but accounts for both offense severity and risk level, so lower-level offenders are not held in custody for longer periods of time. These new initiatives are expected to save Georgia nearly \$85 million through 2018 and avoid the need to open two additional juvenile residential facilities.

Kentucky's 2014 legislation was developed by the legislature's Task Force on the Uniform Juvenile Code, which spent a year analyzing Kentucky's juvenile justice data, programs and policies. The task force found that more than half of the Kentucky Department of Juvenile Justice's (DJJ) budget is spent on secure and non-secure residential facilities, even though a ma-

majority of the DJJ's youth population was not placed in those facilities. The task force's findings also revealed the beds cost approximately \$87,000 annually and the most common offenses for youth who were placed in them were misdemeanors and status offenses.

Armed with this information, the Kentucky General Assembly passed a law that requires data collection to better study juvenile recidivism, improves funding for evidence-based programming, and requires the development of a risk and needs assessment tool. Also, it changes how the state addresses status offenders and creates the juvenile justice oversight counsel to manage the implementation of reforms. These reforms are projected to reduce DJJ's out-of-home population by more than one-third and save the state as much as \$24 million over five years. Those savings are expected to be re-invested at the local level to increase services to juveniles and their families for community-based sanctions and treatment programs shown by research to be effective at reducing recidivism.

DISPROPORTIONATE MINORITY CONTACT

Minority youth come into contact with the juvenile justice system at every stage, and at a higher rate, than their white counterparts, including in secure detention. According to the Office of Juvenile Justice and Delinquency Prevention, in 2010, all minorities combined comprised about 40 percent of the nation's youth, yet they accounted for nearly 70 percent of the population in secure detention facilities. African-American youth are nearly five times more likely to be confined in detention than their white peers, and Latino and American Indian youth are two to three times more likely to be confined. Various explanations

Connecticut

For years, the Court Support Services Division (CSSD) in Connecticut has been providing detailed disproportionate minority contact data reports to local jurisdictions on a quarterly basis. These reports turned out to be an important tool to combat disparities in the juvenile system.

After determining that a previous law change requiring a court order to detain youth accused of serious offenses had helped reduce racial disparities, the state enacted a new law in 2011 requiring a court order to detain a youth for any crime.

Source: Richard Mendel, *Juvenile Justice Reform in Connecticut* (Washington, D.C.: Justice Policy Institute, 2013), http://www.njjn.org/uploads/digital-library/Juvenile_justice_reform_in_CT-collaboration-commitment_JPI_Feb2013.pdf.



By The Numbers

In 2010, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) released findings from its Survey of Youth in Residential Placement (SYRP). The SYRP is one tool OJJDP uses to provide updated statistics on youth in custody. SYRP's findings are based on interviews with a nationally representative sample of 7,073 youth in custody. Among other findings, the SYRP revealed that different races and ethnicities tended to be held in different types of programs— more black/ African-American youth in placement are in corrections programs compared with other races/ethnicities (42 percent versus 31 percent or less of other races/ethnicities), more Hispanic youth in placement are in camp programs (17 percent versus 7 percent), and more white youth are in residential treatment programs (20 percent versus 9 percent).

Source: Andrea J. Sedlak and Karla S. McPherson, "Conditions of Confinement," *Juvenile Justice Bulletin* (May 2010), <https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf>.

have emerged for this, ranging from jurisdictional issues, certain police practices and pervasive crime in some urban areas.

In the past 20 years, policymakers in many states have looked to address and remedy the complex problem of overrepresentation of minorities in their juvenile justice systems. **Washington** was the first state to pass legislation in 1993 to link county funding to programs that address overrepresentation of minority youth, improve data collection, and implement cultural and ethnic training. Other states followed with similar efforts.

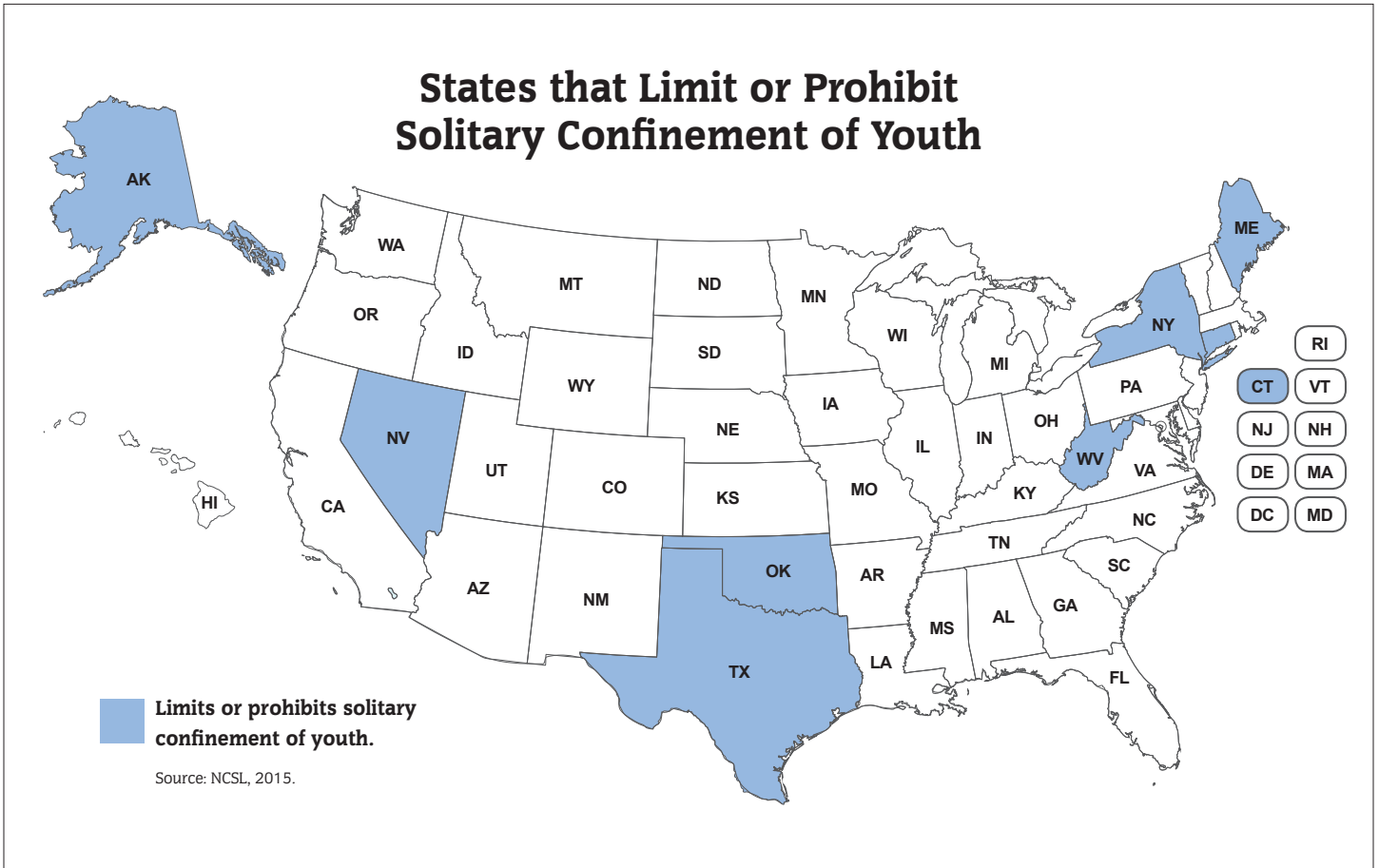
A few states, such as **Georgia**, **Minnesota** and **New Mexico** address racial and ethnic disparities in the purpose clauses of their juvenile acts. For example, Minnesota's states:

"It is the policy of the state of Minnesota to identify and eliminate barriers to racial, ethnic, and gender fairness within the criminal justice, juvenile justice, corrections and judicial systems, in support of the fundamental principal of fair and equitable treatment under law."

In 2011, **Texas** established an interagency council to address the disproportionate involvement of minority children in the juvenile justice, child welfare and mental health systems.

Iowa became the first state in 2007 to require a "minority impact statement" for proposed legislation related to crimes, sentencing, parole and probation. Similar to fiscal impact statements, the new requirements seek to provide greater understanding of the implications of proposed laws for minorities. **Connecticut** passed a similar law in 2008, requiring racial and ethnic impact statements for bills and amendments to increase or decrease the pretrial or sentenced population of state correctional facilities. Connecticut also requires judicial and executive entities to report to the legislature and governor every two years on progress in addressing disproportionate minority contact in the juvenile justice system. **Colorado** amended its law in 2013 to provide that if a proposed legislative measure creates a new offense, increases or decreases a classification, or changes an element of an offense, a fiscal note must include data

States that Limit or Prohibit Solitary Confinement of Youth



on affected gender and minority offender and victims' populations.

To obtain better data and better understand the issues surrounding minorities in the justice system, **Illinois** passed a law in 2013 that requires collection of ethnic and racial data on each person arrested or committed to the Department of Juvenile Justice at different, specified contact points, including at arrest or booking, upon imprisonment and upon a certain transfer. The law also requires the Department of Corrections to include such data in an annual report.

IMPROVING CONDITIONS OF CONFINEMENT

Approximately 24,000 youth are locked up in some form of secure detention on any given day. When juveniles are committed to detention and correctional facilities, their immediate safety—and well-being long term—may be affected by the conditions of confinement.

Eight states—Alaska, Connecticut, Maine, Nevada, New York, Oklahoma, Texas and West Virginia—have passed laws or established rules that limit or prohibit the use of solitary confinement for youth in detention facilities. For example, **Connecticut** law states that

no child at any time be held in solitary confinement, but “seclusion” may be used periodically if authorized and the young person is checked every 30 minutes. **Nevada** law allows “corrective room restriction” only if other less restrictive options have been exhausted and the restriction cannot last more than 72 consecutive hours. **Maine** law does not include seclusion or segregation in its list of allowable punishments in a juvenile facility. Punishments may consist of warnings, restitution, labor at any lawful work and loss of privileges.

In June 2014, the Juvenile Detention Alternatives Initiative announced a revised Detention Facility Standards prohibiting the “the use of room confinement for discipline, punishment, administrative convenience, retaliation, staffing shortages, or reasons other than as a temporary response to behavior that threatens immediate harm to a youth or others.”

To ensure and confirm that safeguards and other policies in juvenile confinement are followed, some states have created ombudsmen programs to conduct independent inspection and monitoring. In 2014, the **Illinois** legislature passed, with considerable majori-

ties in both houses, a bill that creates the Office of Independent Juvenile Ombudsman within the state's youth prison system. Its duties include reviewing and monitoring Illinois Department of Juvenile Justice (IDJJ) operations and compliance with statute. The job also entails advocating for the rights of youth and helping them obtain needed services, and investigating and resolving complaints made by or on behalf of youth in state youth prisons and those released to aftercare before final discharge. **South Dakota** has a similar law, requiring the governor to appoint a designated facilities monitor whose primary responsibility is to protect the rights of youth in juvenile correctional facilities. In 2010, **Louisiana** enacted legislation requiring licensing of juvenile detention facilities. The Department of Children and Family Services worked with representatives from juvenile justice, public safety and corrections organizations to develop uniform licensing standards. By July 1, 2013, all juvenile detention facilities in the state were licensed and inspected. Before 2013, facilities in Louisiana

were required only to meet fire marshal and health department approvals. Now, juvenile detention facilities have requirements ranging from staff training, child-to-staff-member ratios, and nutrition and health services, to policies for visitation, behavior management, education and recreation. Each facility will be subject to inspection at least once a year in order to maintain its license.

CONCLUSION

The legislative trends in juvenile detention reflect lawmakers' efforts to reduce the over-reliance of secure confinement, promote collaboration in the justice system, address racial and ethnic disparities, and improve conditions of confinement in detention and corrections facilities. State policies and practices across the country are helping to bring to scale local detention alternatives and to sustain successful efforts to reduce further juvenile incarceration. These actions seek to better serve youth in the juvenile justice system and reduce costs.



REFERENCES

- Aizer, A., and J. Doyle. "Juvenile incarceration, human capital and future crime: Evidence from randomly-assigned judges," *NBER Working Paper 19102*. Cambridge, Mass.: National Bureau of Economic Research, 2013, www.udes.edu.ar/files/UAEconomia/Seminarios/2013/Aizer_2013.pdf.
- Advocates for Children of New Jersey. *Kids Count Special Report: Measuring Change in New Jersey's Treatment of Young Offenders*. Newark, N.J.: Advocates for Children of New Jersey, 2012, http://acnj.org/downloads/2012_10_24_KidsCountSpecialReport.pdf.
- Mendel, Richard A. *Juvenile Detention Alternatives Initiative, Progress Report 2014*. Baltimore, Md.: The Annie E. Casey Foundation, 2014, <http://www.aecf.org/m/resourcedoc/aecf-2014JDAIProgressReport-2014.pdf>.
- The Pew Charitable Trusts. "Georgia's 2013 Juvenile Justice Reform." *Issue Brief* (July 2013), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes/content-level_pages/reports/Georgia20201320Juvenile20Justice20Reform20Summary20BriefJuly2013pdf.pdf.
- "Kentucky's 2014 Juvenile Justice Reform." *Issue Brief* (July 15, 2014), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/07/kentuckys-2014-juvenile-justice-reform>.
- Sedlak, Andrea J., and Karla S. McPherson. "Conditions of Confinement." *Juvenile Justice Bulletin* (May 2010), <https://www.ncjrs.gov/pdffiles1/ojdp/227729.pdf>.

STATUTES

Conn. Gen. Stat. Ann. §46b-133 (2012)
Del. Code Ann. tit. 10, §1007 (2012)
La Rev. Stat. Ann. §15:1110 (2014)
Me. Rev. Stat. Ann. tit. 34-A §3032 (2006)
Minn. Stat. Ann. §260B .002 (2009)
Nev. Rev. Stat. §62B.215 (2013)
N.J. Rev. Stat. §2A:4A-20 (1982)
S.D. Codified Laws Ann. §26-11A-25 (2014)

ADMINISTRATIVE REGULATIONS

Conn. Agencies Regs. §17a-16(d)(1), 17a-16-11

LEGISLATIVE BILLS

2012 Arizona SB 1184
2013 Colorado SB 229
2008 Connecticut HB 5933
2012 Florida SB 524
2009 Georgia HB 245, 2013 GA HB 242
2013 Illinois SB 1598, 2014 IL SB 2352
2014 Kentucky SB 200
2012 Minnesota HB 229
2002 Mississippi HB 974
2013 Nebraska LB 561
2009 North Dakota SB 2159
2013 New York SB 4519
2012 Ohio SB 337
2012 Pennsylvania SB 817

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