



Incapable of Criminal Intent: The Case for Setting a Minimum Age of Criminal Responsibility in Illinois

Executive Summary

Currently in Illinois, children of any age can be arrested, charged, and adjudicated delinquent. This approach is out of line with most of the world, and many other states, which have set ages under which children cannot be held criminally responsible. It is inconsistent with developmental science, which overwhelmingly finds that children are limited in their ability to understand the consequences of their actions and to plan for the future. Growing understanding of the brain development of children and adolescents explains both limitations on culpability, defined as an individual's blameworthiness or responsibility for a criminal action, and limitations on competency, defined as the ability to make critical decisions regarding one's own legal defense. Data and research consistently show that bringing children into justice systems fails to protect public safety and is counterproductive to reducing recidivism rates; supportive services and diversionary programs are more effective than traditional juvenile justice systems at reducing recidivism and keeping communities safe.

As the first state to establish a juvenile court system, Illinois was a national leader in prioritizing rehabilitation for children and adolescents. Over the last 110 years, the state's laws and policies have, at times, reflected the research, literature, and practice that sets forth how to treat children who come to the attention of the justice system in developmentally appropriate ways. At other times, we have trailed behind.

Legislation and Policy Clinic

Civitas ChildLaw Center
Loyola University Chicago
25 East Pearson, Suite 1107
Chicago, Illinois 60611

The Clinic, housed within the Civitas ChildLaw Center, involves students in work on policy and advocacy projects that impact systems affecting children and families, including child protection, juvenile justice, health, and immigration.

Prepared by:

Lead Researcher: Eve Rips,
Clinical Teaching Fellow

Research support team: Y'Noka Bass, Alexandrya Black, Brittany Christianson, Theodore Gelderman, Brianna Hill, Crystal Lowery, Michelle McGough, Legislation and Policy Clinic students

Director: Anita Weinberg, Curt and Linda Rodin Clinical Professor of Law and Social Justice

The recommendations in this report are those of the Civitas ChildLaw Center at Loyola University Chicago School of Law and do not reflect the official position of Loyola University Chicago.

In the Summer of 2020, Governor J.B. Pritzker, Lieutenant Governor Juliana Stratton, and the Illinois Department of Juvenile Justice announced the rollout of the 21st Century Illinois Transformation Model, aimed at reforming juvenile justice by increasing community investment, improving intervention services, providing increased reentry support, and moving youth from large prison-like facilities to smaller regional centers. This move represents a significant step forward in recognizing the importance of age-appropriate responses. As Illinois develops a new vision of juvenile justice, it is an opportune moment to also rethink how the state responds to children when they first come into conflict with the law.

Thirty years after the adoption by the United Nations of the Convention on the Rights of the Child, which sets out an international standard for the fair treatment of children and which champions the importance of setting a minimum age of criminal responsibility, it is time for Illinois to do the same. At a moment when the devastating harm of over criminalization of Black and brown communities is receiving increased national attention, it is also time for a closer examination of the disparate racial impact of Illinois' response to children in conflict with the law.

Illinois should set a minimum age of criminal responsibility at 14, so that children ages 13 and under cannot be arrested or charged in either juvenile or adult criminal systems. The state should support healthy childhood development by providing children with supportive services in lieu of traditional juvenile justice responses. Age-appropriate responses that focus on restorative and rehabilitative efforts not only decrease the rates of recidivism, but also allow for more purposeful and reasoned responses to children in need. By setting a minimum age of 14, Illinois would position itself as a national leader in responding to the needs of children in conflict with the law.

Key Findings

- **Setting a minimum age of criminal responsibility is in keeping with research which finds that children are less culpable and less competent to stand trial than adults.** The regions of the brain that govern the ability of children to plan for the future and to fully understand the consequences of their actions develop gradually over the course of childhood and adolescence. As a result, children do not understand the impact of their actions in the same way that adults do. This means that children are less culpable for their actions than their older peers. It also means that children are less competent to stand trial and to participate in their own defense.
- **Diversions programs and supportive services are more effective than traditional juvenile justice systems at reducing rates of recidivism and keeping communities safe.** When children commit offenses at a young age, it may mean that they need additional support. Studies show that diversionary programs which provide services designed to address the root causes of a child's behavior are more effective than juvenile justice systems at reducing rates of reoffending. Services such as family therapy, drug

counseling, and mental health supports can help address the underlying causes that lead to children coming into conflict with the law.

- **Children under age 14 are arrested at comparatively low rates, particularly for the most serious felonies.** Children between the ages of 10 and 13 years accounted for 9 percent of juvenile felony arrests in Illinois in 2018. For the most serious classes of felonies, children between the ages of 10 and 13 accounted for only 6.4 percent of juvenile arrests.
- **Children under age 14 who are arrested are disproportionately likely to be African American.** Black adolescents make up 53.5 percent of arrests of 14 through 17-year-olds, and make up 62.2 percent of arrests of children ages 10 through 13, despite being 15% of the population of 10-17 year olds in Illinois.
- **Minimum age laws are common, both within the United States and internationally.** Currently 22 states have set minimum age laws under which children cannot be held responsible in juvenile court. In 2018, California and Massachusetts both set 12 as their minimum age, and in 2020, Utah joined them in setting a minimum age of 12. On an international stage, the United Nations has encouraged countries to set 14 as their minimum age of criminal responsibility, and 118 countries have set a minimum age of 12 or higher.

Recommendations

- **Illinois should set 14 as its minimum age of criminal responsibility.** The state should follow the United Nations' guidance by setting 14 as the minimum age of criminal responsibility, and prohibiting arresting, charging, or convicting children ages 13 and under. To ensure adequate time to prepare alternatives to our current juvenile justice system, a minimum age should be passed with a delayed effective date that gives at least a year to ensure appropriate services and resources are available and accessible.
- **Illinois should support additional services and interventions for children in conflict with the law.** When children commit serious offenses at a young age, it can be a sign that they need additional support. An appropriation or shift of existing financial resources should be made at the same time as a minimum age law is passed, in order to provide support for alternative services including mental health counseling and drug rehabilitation, and to support restorative justice programs. Providing children with services that help support healthy development, rather than bringing children into the juvenile justice system, is a win-win: it both helps set the individual child on a positive path, and helps keep communities safe by reducing recidivism rates.

- **Illinois should collect more robust data on available services for children in conflict with the law.** Current data limitations make it difficult to know where gaps in services exist. To better understand where additional services are needed, Illinois should build a more comprehensive system for tracking availability of alternative supports, availability of residential treatment placements, and capacity of crisis response networks, including the Comprehensive Community-Based Youth Services (CCBYS) program. More comprehensive data collection would make it easier to plan for age-appropriate alternatives to our current juvenile justice system.

Introduction

*“There can be no keener revelation of a society’s soul than the way it treats its children”
- Nelson Mandela*

In October of 2019, prosecutors charged a nine-year-old boy from Peoria, Illinois with five counts of homicide and arson. The charges alarmed juvenile justice advocates throughout Illinois. At a hearing in Woodford County, the Chicago Tribune reported that the defendant’s “feet only touched the ground if he slid forward in his chair, and his head barely reached above the top of his seat.”¹ The judge read the first count of first-degree murder. When the judge asked the boy if he understood, he shook his head no. When the judge asked what the boy didn’t understand, the nine-year-old answered that he didn’t understand “[w]hat I did.”² The majority of the hearing consisted of the judge explaining to the boy the nature of the charges against him, and defining terms such as “arson” and “alleged.”³

Two decades ago, a seven-year-old and an eight-year-old in Chicago faced charges for the murder of an 11-year-old girl named Ryan Harris. The age of the defendants shocked criminal justice advocates and members of the general public across the country. Following their probable cause hearing, the New York Times reported that “[t]he 8-year-old’s lawyer had him stand on a chair at one point so a witness could see him better” and that “[t]he 7-year-old spent most of the hearing drawing hearts, a house and a rainbow with colored pens on one of his lawyer’s yellow legal pads.”⁴ The state later dropped charges against both children due to exonerating evidence.⁵ In the years since, the two boys have lived in the shadow of the charges they faced at a young age, and were both subsequently involved in the justice system.⁶ The younger of the two boys, Romarr Gipson, received a 52-year sentence for a shooting that happened when he was 15. After his sentencing, Gipson’s attorney in his civil case against the City relating to the earlier charges argued that “[i]n a way, you could almost call it a Pygmalion effect. You accused the kid falsely. You treated him like he’s capable of a rape and a murder. So, you give him a sense of -- why should I bother being good?”⁷ Although the Harris case spurred much discussion about possible reforms to how Illinois interacts with children and adolescents who are in conflict with the law, the state ultimately made no substantive changes as to how we treat our children.⁸

Elsewhere, treatment of children in conflict with the law has evolved.⁹ Twenty-two states have a minimum age of criminal responsibility, under which children cannot be brought into juvenile court.¹⁰ In 2018 and 2019, Massachusetts and North Dakota raised their minimum ages,¹¹ and California set a minimum age for the first time.¹² In 2020, Utah set a minimum age for the first time.¹³ The National Conference of State Legislatures' bipartisan Juvenile Justice Principles Work Group released a set of principles in 2018 which included a recommendation that states "[s]et the minimum age of juvenile court jurisdiction to an age at which the average youth is able to understand consequences, be held responsible, and change behavior with appropriate interventions."¹⁴

On an international stage, in 2007, the United Nations Committee on the Rights of the Child recommended that countries set 12 as the absolute minimum age for holding children criminally responsible, and recommended that countries consider setting it at an even higher age.¹⁵ In 2019, in response to scientific studies, the Committee amended its initial guidance; it now recommends a minimum age of criminal responsibility of at least 14. The Committee also commends member states that have set a minimum age of 15 or 16.¹⁶ The U.S. is currently one of only five nations that does not have a national minimum age of criminal responsibility.¹⁷ As standards regarding how to respond to children who are in conflict with the law evolve, Illinois should make sure its approach is aligned with the growing body of research on what works best to support these children. By providing more effective approaches for children in lieu of traditional juvenile justice responses, we will both help encourage the healthy development of children and help keep our communities safe by lowering recidivism rates.

This paper is divided into four sections:

- I. Section one sets out why it is critical to treat children differently. It describes research on brain development, which shows that children are limited in their ability to reason, control impulses, and understand the consequences of their actions. These limitations impact children's culpability, and need to be considered in determining their competency to stand trial. They also illustrate why children are better served by community support and early intervention programs than by justice systems.
- II. The second section reviews what happens to a child when he or she comes into conflict with the law, including data on rates of arrest and detention of Illinois children and adolescents, and provides an overview of the evolution of Illinois laws related to children and adolescents in conflict with the law.
- III. In the third section, the paper summarizes minimum age laws across the United States and internationally. This analysis includes profiles of minimum age laws in Massachusetts, California, and Canada.
- IV. Finally, the paper concludes with recommendations for Illinois stakeholders, advocates, and policy makers, to help the state establish a minimum age law.

A note on terminology:

Throughout this paper we use “children” to refer to anyone under the age of 14, and “adolescents” to refer to anyone between the ages of 14 and 17. “Minimum age of criminal responsibility” is an age under which children or adolescents may not be brought into either juvenile or adult criminal systems. For example, if a state sets 12 as a minimum age of criminal responsibility, a 12-year-old could still be charged with a crime, but a child under 12 years of age could not. “Children in conflict with the law” refers to anyone under the age of 14 who comes into contact with criminal or juvenile systems as a result of being suspected of or accused of committing an offense. We use person-first language, such as “children in conflict with the law,” throughout. By listing individual identity before involvement with juvenile or criminal systems, person-first language emphasizes that an individual is more than just his or her encounters with justice systems.

I. Why Treat Children Differently?

Children are distinct from adolescents when it comes to understanding the consequences of their actions and planning for the future.¹⁸ This section explores the research underlying this statement. It then presents three main arguments in support of a minimum age of criminal responsibility:

- Children lack the competence to stand trial;
- Children may not be fully culpable for their own actions; , and
- Setting a minimum age would help support the healthy development of children, thereby helping to keep communities safe.

A. The Science: Children’s Minds are Different

Lawmakers and courts have paid increasing attention in recent years to research on how adolescents are different from adults. For example, research on differences in brain development between adolescents and adults helped inform Supreme Court decisions in three key cases: *Roper v. Simmons*,¹⁹ *Graham v. Florida*,²⁰ and *Miller v. Alabama*.²¹ The cases collectively struck down the death penalty and mandatory life without parole for juveniles. Less attention, however, has been paid to the distinction between children and adolescents, and the ways individuals gradually

change throughout childhood and adolescence.²² This is true even though people tend to instinctively treat children and adolescents very differently outside the legal system.

In the broadest terms, neuroscience and behavioral research on brain development suggests that the regions that control the brain's *executive functions* develop slowly from birth into an individual's early 30s. "Executive functions" is an umbrella term that refers to mental processes that help individuals plan, focus attention, and handle multiple tasks at once. While many regions of the brain play a role in the ability to plan for the future and to understand the impact of one's actions, *cortical regions* play a particularly critical role.²³ Cortical regions are involved in higher processing of information and are important to a child's ability to consider or comprehend their actions.²⁴

Because of the gradual development of the cortical region, children, more than adolescents, struggle on a range of tasks that measure ability to regulate one's own behavior, including tasks that look at ability to plan for the future and at ability to suppress responses that are inappropriate to a specific task.²⁵ This is relevant to children's interaction with the justice system because it ultimately impacts their ability to control their behavior, to participate in legal proceedings, and to understand formal juvenile justice system responses.

B. How Science Should Inform a Minimum Age of Criminal Responsibility

Growing understanding of the brain development of children and adolescents explains both limitations on culpability, defined as an individual's blameworthiness or responsibility for a criminal action, and limitations on competency, defined as the ability to make critical decisions regarding one's own legal defense. This section begins by providing a legal framework for the ways in which children are both less culpable and less competent to stand trial than older peers. It then focuses on alternative interventions designed to hold children accountable in meaningful ways that simultaneously keep communities safe and provide age-appropriate responses to children in conflict with the law. Research consistently shows that supportive services and diversionary programs are more effective than traditional juvenile justice systems at reducing recidivism and keeping communities safe.²⁶

1. Children are Less Culpable

Gradual development of the systems that control executive functioning throughout childhood and adolescence mean that children face serious limitations when it comes to their ability to understand the impact of their actions on others and on their future selves. Research from the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice found that children and adolescents age 15 and under have not fully developed the ability to recognize the risks inherent in different choices and to think about the long-term consequences of their actions.²⁷ Legal systems should respond to children in age-appropriate ways: just as our understanding of adolescent brain development has informed policy and legal decision-making in

response to adolescents in conflict with the law, these findings should shape how we think about responding to children.

The idea that children and adolescents are less blameworthy has played a key role in recent trends in juvenile justice. According to the American Psychological Association (APA), “developmentally immature decision-making, paralleled by immature neurological development, diminishes an adolescent’s blameworthiness.”²⁸ This understanding played an important role in the Supreme Court’s decision in *Graham*, which found that “because ‘[t]he heart of the retribution rationale relates to an offender’s blameworthiness,’ ...’ the case for retribution is not as strong with a minor as with an adult.”²⁹

2. Children are Less Competent to Stand Trial

For similar reasons, children and adolescents also face limitations on their competency to stand trial, both because of limited ability to understand their criminal punishment, and because of difficulties comprehending the court process. The Supreme Court found in *Graham* that “the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment.” To participate in their defense, defendants must be able to “have a rational as well as factual understanding of the proceedings against [them]” and must have sufficient present ability to consult with a lawyer.³⁰ As with culpability, many of the reasons why adolescents face competency challenges are further amplified when dealing with children, who can struggle to understand both the nature of the proceedings and the potential punishments they face.

Individuals ages 15 and younger face significant challenges in their ability to “consider the long-term, and not merely the immediate, consequences of their legal decisions.”

*-MacArthur Foundation
Research Network*

The MacArthur Foundation also found that “juveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding.”³¹ Their research demonstrates that understanding of criminal proceedings evolves gradually as children grow up: Children ages 11 to 13 showed poorer understanding of trial matters and poorer reasoning and understanding of how information applies to legal defense than did 14 and 15 year-olds, and both groups were more likely to be impaired in competency-relevant activities than individuals ages 16 and older.³² Outside of a court proceeding itself, the study also found that individuals ages 15 and younger face significant challenges in their ability to “consider the long-term, and not merely the immediate, consequences of their legal decisions.”³³

3. Healthy Development of Children Helps Keep Communities Safe

In addition to concerns about children’s culpability and competency to stand trial, holding children criminally responsible is counterproductive when it comes to helping support the development of children and keeping communities safe. Children who commit crimes often are in need of help addressing the underlying causes of their misbehavior.³⁴ Formal responses through the juvenile delinquency system, however, do not effectively hold them accountable, nor are they the most effective way to help children or keep their communities safe.

“[I]ncorrigibility is inconsistent with youth.”

-*Miller v. Alabama*

Beginning in 2005, the Supreme Court rejected determinations that children are likely to be permanently dangerous to society.³⁵ By 2012, in ruling that mandatory sentences of life without parole for juveniles convicted of homicides violated the Eighth Amendment, the Court in *Miller v. Alabama* stated that “‘deciding that a juvenile offender will forever be a danger to society’ would require ‘making a judgement that [he] is incorrigible’ – but ‘incorrigibility is inconsistent with youth.’”³⁶

Children who commit serious offenses often have histories of child maltreatment and important unaddressed behavioral health conditions.³⁷ Children in conflict with the law are also more likely to have experienced trauma, such as community violence, domestic violence, and traumatic loss. Currently, 90 percent of all justice-involved children and adolescents report previous exposure to a traumatic event, 70 percent meet criteria for a mental health disorder, and 30 percent meet the criteria for post-traumatic stress disorder (PTSD).³⁸

For populations of children who have experienced trauma, involvement with justice systems can trigger traumatized responses and lead to recidivism.³⁹ The process of arresting children can in-and-of-itself cause trauma, and can lead to labeling effects wherein children are more likely to think of themselves as prone to delinquent behavior, and to decreased educational outcomes.⁴⁰ Juvenile justice systems do not decrease delinquency, and in fact may have the opposite effect. In 2010, the Campbell Collaboration conducted a meta-analysis looking at 29 different studies involving 7,304 children and adolescents who were eligible for diversionary programs over a 35 year period.⁴¹ Researchers found that involvement in the juvenile justice system does not appear to have a crime control effect and may, in fact, increase delinquency.⁴² The authors found that almost all studies on juvenile justice systems showed a negative impact on future offending, as measured by prevalence, incidence, severity, and self-report outcomes.⁴³ Furthermore, when children and adolescents are put through a diversion program, they are provided with more intensive services, which could potentially lead to a more rehabilitative effect.⁴⁴ This is borne out by the fact that studies which compared traditional juvenile systems to diversion programs saw

much larger differences than studies that compared traditional juvenile justice systems to doing nothing.⁴⁵

Research suggests that what does work when it comes to supporting the development of children who are in conflict with the law and keeping communities safe is a combination of early intervention and multisystem programming aimed at providing coordinated interventions for children.⁴⁶ In 1998, the Department of Justice's Office of Juvenile Justice and Delinquency Prevention launched a Study Group on Very Young Offenders.⁴⁷ The Study Group was charged with looking at best practices in responding to children ages seven through 12 who commit serious offenses. As part of their work, they surveyed more than 100 practitioners who work with children in conflict with the law. The survey found strong support for prevention and early intervention over conventional juvenile justice responses among practitioners.⁴⁸ Seventy one percent of those surveyed reported effective early intervention programs available in their communities that they believed reduced risk of future offending, while only three to six percent of practitioners surveyed reported that current juvenile justice, mental health, and child welfare programs were reducing risk of future offending.⁴⁹ The Study Group also conducted a meta-analysis of research on children who are arrested or charged at a young age, and found that studies support targeted, multi-systemic programs for children in conflict with the law.⁵⁰ The Study Group concluded that studies on children who are in conflict with the law "strongly indicate that the first step toward obtaining effective treatment is to provide families with access to mental health and other services."⁵¹

"The first step toward obtaining effective treatment is to provide families with access to mental health and other services"

-OJJDP Study Group on Very Young Offenders

II. Illinois' Response to Children in Conflict with the Law

Understanding the demographics of the state's children in conflict with the law, as well as how the state's response to these children has evolved over time, can help inform the decision to establish a minimum age of criminal responsibility. This section begins by reviewing the data available on children in conflict with the law in Illinois. It then describes the evolution of Illinois' response to children in conflict with the law, and highlights the increasing role that the understanding of childhood and adolescent brain development has played in that evolution.

A. Children in Conflict with the Law in Illinois

Children under 14 are arrested at relatively low rates in Illinois, and rarely commit the most serious classes of felonies. Children under 14 also comprise a small percentage of the children and teenagers who are admitted to short-term locked juvenile detention facilities following arrest. When children in Illinois are arrested, they are disproportionately likely to be African American; Illinois has even higher racial disproportionality in arrest rates of children ages 10 through 13 than it does for arrests of adolescents ages 14 to 17. This section looks first at what arrest data in Illinois can tell us about children in conflict with the law, and then at what we can learn from detention data.

1. Arrests in Illinois

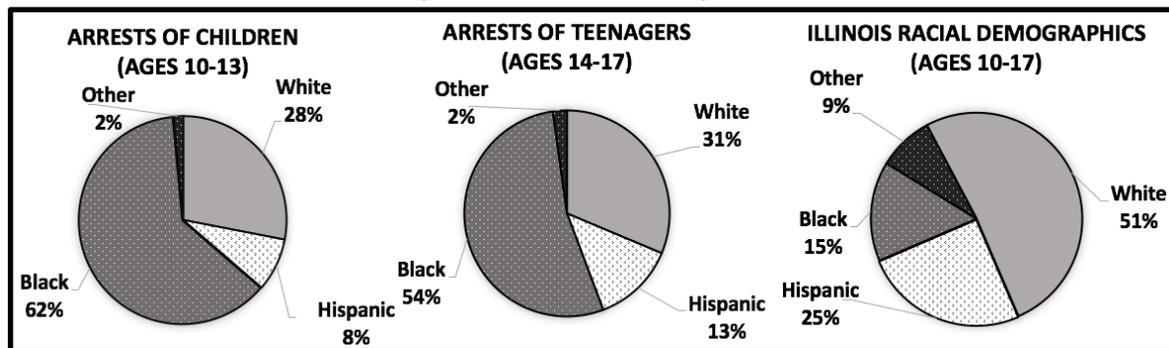
When children are arrested, they can be handcuffed, transported against their will, and interrogated.⁵² While access to statewide data on children in conflict with the law in Illinois is limited, the data that does exist indicates that children in Illinois under 14 years are arrested at comparatively low rates.⁵³ See Figure 1.

Figure 1: Total Juvenile Arrests in Illinois by Age (2018)⁵⁴

Category	10-12	13	14	15	16	17
Felony	166	340	743	1238	1794	2056
Misdemeanor	321	573	1229	1827	2384	2497
Total	487	913	1972	3065	4178	4553

While African American populations are overrepresented in arrest rates across the juvenile and criminal justice systems, the disparity is particularly stark in arrests of children ages 10-13 in Illinois. See Figure 2, below. African Americans represent 62.2 percent of arrests of children, 53.5 percent of arrests of adolescents, and 15 percent of Illinois' population between the ages of 10 and 17.⁵⁵

Figure 2. Racial Composition of Children and Adolescents Arrested in Illinois Compared to Racial Composition of Cook County and Illinois⁵⁶



Children 10 through 13 years of age represent a small percentage of all children and adolescents who are arrested, both for felonies and for misdemeanors. See Figures 3 and 4 below.

Figure 3: Felony Arrests by Age in Illinois (2018).⁵⁷

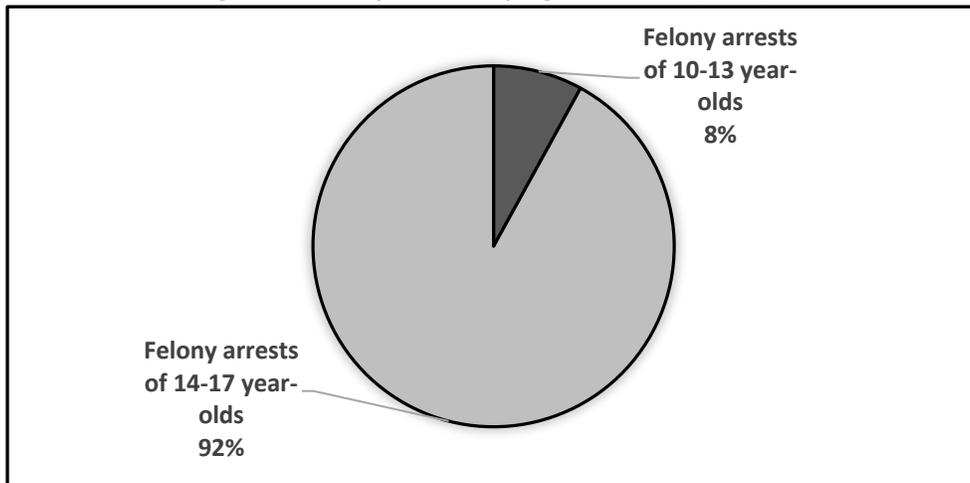
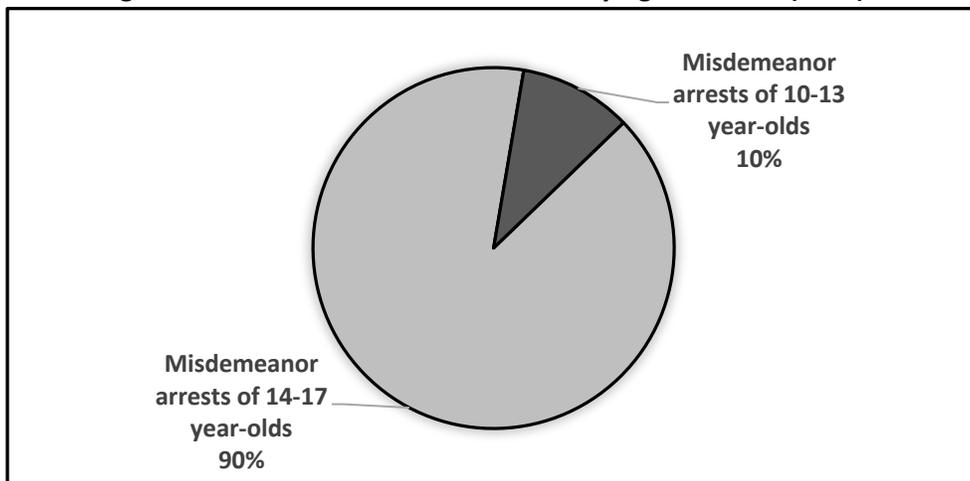
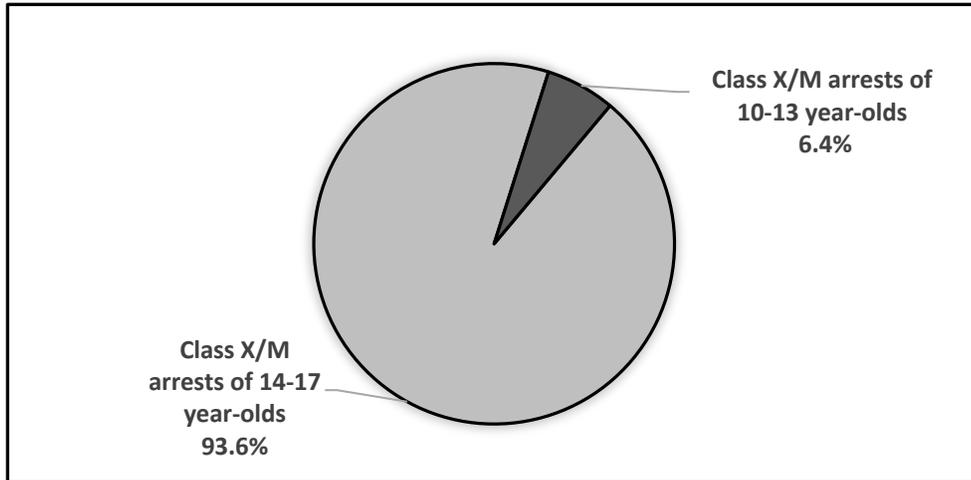


Figure 4: Juvenile Misdemeanor Arrests by Age in Illinois (2018)⁵⁸



In Illinois, the most serious categories of felonies are Class X and Class M.⁵⁹ Of all juveniles arrested for Class X or Class M felonies, only 6.4% (47 children total) were ages 10 through 13.⁶⁰ See Figure 5, below.

Figure 5: Juveniles Arrested for Class X or Class M Felonies by Age (2018)⁶¹



2. Juvenile Detention in Illinois

While state law requires that children and adolescents must be held separately from adults, children ages 10 and over may be kept in locked jail-like cells.⁶² A small percentage of children in Illinois who are admitted to juvenile detention facilities are between the ages of 10 and 13. In 2018, 10 to 13-year-olds accounted for 581 of the 9,014 times that children were held in juvenile facilities.⁶³ This amounts to 6.4 percent of detention admissions.⁶⁴ Most children ages 10 to 13 who were detained were held for charges related to battery (including aggravated battery and domestic battery) or to failure to appear in court. As with arrest rates, African American children and adolescents are disproportionately represented in the juvenile detention system, comprising 58.3 percent of detention admissions for all juveniles. Racial disproportionality among children is even more stark: among 10 to 12-year-olds, African-American children accounted for nearly 67 percent of admissions in that age group.⁶⁵

Figure 6: Juvenile Detention Admissions by Age, 2018⁶⁶

Age	10	11	12	13	Total juvenile detention
Number of admissions	8	11	105	457	9,014

B. Evolution of Illinois' Response to Children in its Justice System

Over a century ago, Illinois was a national leader in transforming juvenile justice. The state recognized that children who commit delinquent acts should be rehabilitated rather than punished, and therefore should not be subjected to adult criminal courts. This resulted in the establishment of the Cook County Juvenile Court, the first of its kind in the nation. In more recent years, Illinois law has evolved to reform the juvenile justice system based on an increasing understanding of the role age and brain development play in juvenile behavior. Today, while juvenile justice systems and adult criminal systems share many similarities, statutes that articulate the purposes of juvenile systems frequently focus on the ideals that make juvenile systems unique, such as serving a parent-like function or providing “care and guidance” to juveniles who commit offenses.⁶⁷ Juvenile systems use terminology that is distinct from that used in adult criminal systems, typically referring to “adjudications” rather than “convictions.”⁶⁸ Despite this, juvenile systems continue to function in many ways as quasi-criminal in nature.⁶⁹

Before the enactment of the Illinois Juvenile Court Act in 1899, all children and adolescents in the United States were tried as adults.⁷⁰ Courts, including those in Illinois, also recognized the centuries-old common law defense of infancy, also known as *doli incapax*, which loosely translates to “incapable of criminal intent,” and which creates levels of competency for children under the age of 14.⁷¹ In Illinois, children under the age of 10 were considered unfit to stand trial and incapable of forming criminal intent.⁷² After the passage of the 1899 Juvenile Court Act, the state designated children and adolescents as delinquent rather than criminal, and put the focus of juvenile courts on rehabilitation and turning children and adolescents under age 16 into productive citizens, rather than on punishment.⁷³ Over time, the state’s approach to responding to older adolescents in conflict with the law first grew more punitive, and then saw a gradual swing back, in part because of increased understanding of child and adolescent brain development. See Figure 7, below.

Over the last two decades, in addition to considering the place of adolescents in the criminal justice system, Illinois has started to reassess what should happen to children ages 13 and younger when they come to the attention of the justice system. In 1998, in part in response to the arrest and charges brought against the two young boys in the Ryan Harris case, the Cook County State’s Attorney convened a group to examine issues of juvenile competency, including questions about whether there should be a minimum age of criminal responsibility, and whether young children understand their rights in justice proceedings.⁷⁴ That group proposed “civil prosecution” as an alternative to charging young children in the juvenile justice system. Under the proposal, police would be allowed to take a child under the age of 10, suspected of committing a criminal offense, into civil custody. The child would face civil punishment for his or her actions, rather than juvenile or criminal prosecution.⁷⁵ Ultimately, Illinois did not adopt the proposal for civil prosecution, in part because of concerns that setting a floor at age 10 for prosecution might unintentionally be perceived as an implicit endorsement of charging 10, 11, or 12-year-olds.⁷⁶

Figure 7: Evolution of the Maximum Age of Illinois Juvenile Court Jurisdiction, 1970 to Present

<p>1970's and 1980's</p> <p>1982</p>	<ul style="list-style-type: none"> • The late 1970's and 1980's saw a growing conservative perspective on juvenile justice, reflected across the country, that emphasized stricter punishments for children and adolescents.⁷⁷ • Passage of an automatic transfer scheme which required that adolescents ages 15 and older, charged with certain offenses, be automatically transferred to adult criminal court.⁷⁸ Included in the law: murder, rape, sexual assault, and armed robbery.⁷⁹
<p>1990's</p>	<ul style="list-style-type: none"> • 1990, 1995, 1998, and 2000, saw a series of additional automatic transfer requirements.⁸⁰
<p>2005</p> <p>2010</p> <p>2013</p> <p>2015</p>	<ul style="list-style-type: none"> • After two decades of expanding the range of offenses for which children and adolescents could be automatically transferred, the list of automatic transfer offenses is reduced.⁸¹ • The age at which children can be charged as adults for misdemeanors is raised from age 17 to 18, but 17-year-olds charged with felonies can still be tried as adults.⁸² • Juvenile courts are given jurisdiction over 17-year-olds charged with felonies.⁸³ • The minimum age for automatic transfer is raised from 15 to 16. Only 16 and 17-year-olds may be automatically transferred, and only for first degree murder, aggravated criminal sexual assault, or aggravated battery with a firearm.⁸⁴

More recently, Illinois advocates and decision-makers have taken steps to protect children from interventions that are in conflict with what we know about child and adolescent development. In September of 2018, the Cook County Board of Commissioners voted unanimously to raise the minimum age of detention in Cook County from age 10 to age 13, meaning that children under 13 could no longer be detained in Cook County.⁸⁵ Proponents of the Ordinance sought to build a policy that better reflected research on child and adolescent brain development.⁸⁶ The Ordinance renewed focus on alternative services and resources for children and adolescents who come into conflict with the law. In October of 2019, an Illinois appellate court found the Ordinance unconstitutional because it conflicted with the express limitations of the Juvenile Court Act; the legal status of the Ordinance remains in limbo.⁸⁷ In 2019, legislation was introduced in the Illinois General Assembly that would have raised the minimum age for detention statewide. The bill passed out of the House Judiciary – Criminal Committee, but proposed amendments and requests for fiscal notes delayed the bill from advancing to a full floor vote.⁸⁸

Although progress has been slow and at times non-linear, Illinois has demonstrated a willingness to use the growing body of research on childhood and adolescent brain development to inform its policymaking that impacts children in conflict with the law.⁸⁹

III. Children in Conflict with the Law Elsewhere

As Illinois begins to consider setting a minimum age of criminal responsibility, the approaches taken in some other states and countries can serve as models. This section first looks at minimum age laws in the United States, and examines the recent passage of minimum age laws in both California and Massachusetts. It then looks at minimum ages of criminal responsibility internationally, with Canada as an example.

A. Minimum Age Laws in the United States

Twenty-two states currently set a minimum age of criminal responsibility.⁹⁰ See Figure 8, below. These range from as young as six in North Carolina, meaning that children ages five and under cannot be charged in juvenile or criminal court,⁹¹ to 12-years old in California, Massachusetts, and Utah, meaning that children ages 11 and under cannot be charged in juvenile or criminal court.⁹² Massachusetts and California’s laws went into effect in 2018; Utah’s became effective in 2020. Several of the states with minimum ages carve out exceptions for certain crimes such as murder or sexual offenses. For example, in Vermont, where the minimum age is 10, a child under 10 can still be tried in juvenile court for murder.⁹³ In California, children under the age of 12 cannot be adjudicated unless they commit a homicide or sexual offense, in which case they can be tried in juvenile court.⁹⁴ In Nevada, the minimum age of criminal responsibility is eight years old; children between the ages of eight and 10, however, can be charged and prosecuted in juvenile court for murder or a sexual offense.⁹⁵

Figure 8: Statutory Minimum Age of Criminal Responsibility by State¹⁰⁰

Age	State
6	NC
7	CT, MD, NY
8	AZ, WA
9	-
10	AR, CO, KS, LA, MN, MS, ND, NV ⁹⁶ , PA, SD, TX, VT ⁹⁷ , WI
11	NE
12	CA ⁹⁸ , MA, UT ⁹⁹

State Profile: Massachusetts

In April of 2018, the Massachusetts legislature passed, with almost unanimous support, an extensive criminal justice overhaul bill that included raising the minimum age of criminal responsibility from seven to 12 years of age.¹⁰¹ The bill also mandated bail reform, increased use of diversion programs, increased availability of expungement of juvenile records, and other significant criminal justice reforms.¹⁰² Supporters of the bill included the Massachusetts Sheriffs' Association, the Council of State Governments Justice Center, Greater Boston Legal Services, and Citizens for Juvenile Justice.¹⁰³ Under the new law, Massachusetts cannot arrest or prosecute a child under 12 for committing an act that otherwise would be considered a crime.¹⁰⁴ By setting a minimum age of criminal responsibility of 12 years old in Massachusetts, bill sponsors sought to prevent children from ever getting involved in the criminal justice system.¹⁰⁵

“There’s an indisputable link between the age in which a child enters our criminal justice system and the likelihood of a child remaining in the system throughout their life.”

*- Claire Cronin,
Massachusetts House Sponsor*

In an interview about the bill, one of the bill’s sponsors, stated that “[t]here’s an indisputable link between the age in which a child enters our criminal justice system and the likelihood of a child remaining in the system throughout their life. So we’ve taken so many steps that will slow down that trajectory, and I think we’ll see on that end very, very big gains.”¹⁰⁶ Advocacy for the minimum age of criminal responsibility relied in part on the 2010 study by the Campbell Collaboration which found that juvenile system processing does not appear to control crime, and in fact appears to increase delinquency.¹⁰⁷

While the new law raises the age at which children can be arrested and prosecuted, it does not provide additional support or guidance for alternatives to juvenile justice involvement for the children who have committed offenses.¹⁰⁸

State Profile: California

California's law setting a minimum age of criminal responsibility at 12 went into effect in September of 2018.¹⁰⁹ The bill's co-sponsor, Senator Holly Mitchell, argued that "[t]he vast majority of young children in California who've been accused of an offense are exhibiting behaviors or minor behaviors that did not require any justice involvement," and that "involvement with the juvenile justice system can be harmful to a child's health and development."¹¹⁰ The law carves out exceptions for cases where a child under 12 is alleged to have committed a murder or a sexual offense.¹¹¹

In early 2018, researchers from UCLA, the Children's Defense Fund, and the National Center for Youth Law published an analysis of California Department of Justice data and found that in 2015, children ages 11 and younger represented just .8 percent of the total number of referrals to probation in California, where probation can precede a decision and plays an intake function for the juvenile justice system.¹¹² Of those referrals, only 100 were brought to the attention of the court, and of those 100, only 59 were pursued in court.¹¹³ From 2010 to 2015, no child under the age of 12 had been adjudicated delinquent for homicide, manslaughter, or rape.¹¹⁴ Following the study, National Center for Youth Law drafted the bill with the Children's Defense Fund, the Burns Institute, and the Youth Justice Coalition.¹¹⁵ Laura Abrams, one of the study authors from UCLA, observed that "people have an assumption that juvenile court is potentially a helpful intervention for young children ... But in most cases, the charges aren't sustained or they're dismissed, so the family doesn't get any help at all."¹¹⁶

Under the law, counties have one year to establish a protocol for responding to a child who is too young to be sent to juvenile court, but who commits what would otherwise have been a criminal offense.¹¹⁷ The protocols must include guidance for law enforcement.¹¹⁸ California's Department of Justice releases a more comprehensive set of statewide data on children in conflict with the law than Illinois currently makes available.¹¹⁹ That data, paired with the emphasis on supportive services and alternative programs, helped in building a model that is aimed at adequately supporting the small number of children who commit serious offenses and who can no longer be adjudicated delinquent under California law.

Minimum Age Laws in Practice: Santa Clara County

In response to the California law, Santa Clara County officials developed a protocol for responding to children ages 11 and under who engage in behavior that would previously have been considered criminal.¹²⁰ The protocol serves as one potential model for other counties. In Santa Clara, when a child under 12 commits an offense, law enforcement may not arrest the child. Instead, law enforcement is expected to release the child to his or her parents or guardians.¹²¹ If parents or guardians are unavailable, the County works with a local community-based organization, the Bob Wilson Center, to provide support 24 hours a day. In cases where abuse or neglect is suspected, law enforcement is required to contact the Department of Children and Family Services.¹²² If the child is considered to be a serious threat to him or herself or to others, procedures for involuntary confinement may be followed. In cases where children need services, the County works with local agencies and community-based organizations to ensure that the child receives needed support.¹²³

B. International Minimum Age of Criminal Responsibility

The vast majority of countries have a minimum age of criminal responsibility. See Figure 9, below. This is in part due to the international norms established by the United Nations. To address ongoing concerns about the treatment of children, the UN adopted the Convention on the Rights of the Child (CRC) in 1989.¹²⁴ Over a decade ago, the Committee on the Rights of the Child, which is responsible for implementation of the Convention on the Rights of the Child, determined that a minimum age of criminal responsibility below the age of 12 is not internationally acceptable.¹²⁵ At the time, the Committee also recognized that a minimum age of 14 or higher would contribute to a more responsive justice system, and strongly encouraged setting a minimum age over 12. It discouraged the use of flexible minimum ages of criminal responsibility that allow children under 12 to be found criminally responsible based on maturity or understanding of the consequences of a crime.¹²⁶ Instead of harsh punitive responses to children, the Committee on the Rights of the Child asserted that countries should focus on rehabilitation and restorative justice, thereby enabling children to develop to their fullest potential.¹²⁷

In 2019, the United Nations released Comment No. 24 which set forth guiding principles on the CRC and on the minimum age of criminal responsibility around the world.¹²⁸ The Comment encouraged nations to adopt 14, rather than 12, as a minimum age of criminal responsibility, and discouraged nations from carving out exceptions to a minimum age of criminal responsibility for more serious crimes.¹²⁹ The Comment encouraged countries to set a minimum age of criminal responsibility because “exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.”¹³⁰

The United States is among only five countries that have not established a minimum age of criminal responsibility.¹³¹ It is the only UN member nation that has not ratified the Convention on the Rights of the Child.¹³² Nevertheless, the Supreme Court has considered it when making decisions related to the wellbeing of children in conflict with the law.¹³³

Every European country save one has a minimum age of criminal responsibility in their laws, and 91 percent of those countries have a minimum age at 12 or older.¹³⁴ Almost 60 percent of African countries,¹³⁵ more than 50 percent of the countries in Asia,¹³⁶ and almost two thirds of the countries across North and South America¹³⁷ have established a minimum age of criminal responsibility at age 12 or older.

Figure 9: Minimum Age Laws by Region¹³⁸

Continent	Countries with a minimum age of criminal responsibility at 12 or higher
Europe	40
Africa	33
Asia	26
North America	14
South America	10
Oceania	0
Total	123

Country Profile: Canada

Canada set a minimum age of criminal responsibility at 12 over 30 years ago with passage of its Youth Offenders Act. Before that it was seven.¹³⁹ In 2004, Canada passed the Youth Criminal Justice Act and emphasized its focus on rehabilitation, reintegration, and enhanced procedural protections for children who come into conflict with the law.¹⁴⁰ Although children under 12 cannot be charged with crimes in Canada, it is up to each province to decide how they will respond to a child who is alleged to have committed an act that would otherwise be considered a crime.¹⁴¹

IV. Recommendations

When children engage in behaviors that are risky or harmful, arrest, detention and delinquency proceedings are not the answer. These approaches do not meaningfully hold children accountable, provide opportunities for positive growth and learning, or protect public safety. Children are fundamentally different from adults. Scientific research demonstrates that children are incapable of fully understanding the consequences or harms caused by their actions, and therefore are less criminally culpable than adults. Moreover, children are limited in their ability to understand the trial process, to testify in their own defense, and to comprehend the ramifications of a plea agreement. Cumulatively, this hinders children's competence to stand trial. Because of these developmental limitations, research demonstrates that detention and juvenile processing are not effective ways to interact with children in conflict with the law. Rather, age-appropriate responses that focus on restorative and rehabilitative efforts not only decrease the rates of recidivism, but also allow for more purposeful and reasoned responses to children in need. Stakeholders should also be deeply concerned that children age 13 and under have the highest racial disparities in arrest rates in the juvenile justice system. By setting a minimum age of 14, Illinois would position itself as a national leader in responding to the needs of children in conflict with the law.

A. Set a minimum age of criminal responsibility at 14

Illinois should follow the recommendations of scientific authorities and of the United Nations by setting a minimum age of criminal responsibility at 14. Children ages 13 and under should not be arrested, charged, or brought into juvenile court. Research suggests that children and adolescents ages 15 and under face limitations in their abilities to participate in their own defense and to understand the consequences of their actions, and that children 13 and under are *severely* limited. The juvenile justice system, like adult criminal systems, fundamentally rests on principles of competency and culpability. Setting the minimum age at 14 would ensure that children so young that they face the most severe limitations in both competency to stand trial and culpability receive age-appropriate responses.

B. Support different interventions for children in conflict with the law

In order to ensure adequate availability of supportive services for children in conflict with the law, Illinois should pass a minimum age with a delayed effective date, and should ensure that when legislation is passed that sets a minimum age, the state also appropriates funds or shifts funds in order to provide alternative supports and diversionary programs when needed. Moving forward, the state needs to redirect children to pathways that both support their healthy development and the safety of their communities.

Children in conflict with the law are best served through community-based interventions, not detention or the juvenile justice system.¹⁴² These supports may include family therapy, substance abuse counselling, and mental health supports. These programs can provide children with opportunities and structures for healthy development, and can help in addressing the root causes of misbehavior. In order to ensure that children are provided with the services that they need, in the period after a minimum age law is passed but before it becomes effective, each county should be responsible for developing a protocol for how to provide support for children in conflict with the law, as well as a process for selecting service providers. Each county should be able to make referrals to, at a minimum, qualified providers of family therapy, substance abuse counseling, and mental health supports. A county's abilities to receive funds appropriated for service provision by the state should be contingent on developing a protocol for referrals to services in a timely manner. Given high rates of exposure to trauma among children in conflict with the law, all services should be provided in a manner that reflects the principles of trauma-informed care outlined by the Substance Abuse and Mental Health Services Administration (SAMHSA), and supported in Illinois through a senate resolution from 2019, which encourages the use of trauma-informed practices statewide.¹⁴³

In addition, Illinois should be exploring restorative responses in lieu of justice system processing for individuals who fall under the minimum age. The United Nations defines restorative processes as "any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by the crime, together participate actively in the resolution of matters arising from that crime, generally with the help of a facilitator," and specifies that "[r]estorative processes may include mediation, conciliation, conferencing and sentencing circles."¹⁴⁴ Restorative approaches can promote healing, strengthen community bonds, and resolve conflict.¹⁴⁵

By providing children with services and other interventions that help support healthy development, rather than bringing children into the juvenile justice system, Illinois will both help set individual children on a positive path, and help keep communities safe by reducing recidivism rates. This should serve as one important step in a broader movement for the state toward approaches to justice that are developmentally-appropriate, trauma-informed, and grounded in public health principles.

C. Collect more robust data about services provided to children in conflict with the law in Illinois

Illinois needs a robust system for identifying the availability of alternative interventions and services and for evaluating their effectiveness. Improved statewide data regarding alternative supports, residential treatment placements, and crisis response networks will shed light on gaps in needed services. This data should be broken down by county, in order to better understand where additional services are most needed.

We need better statewide data on the following supports and services, broken down by county:

- The availability of alternative supports,
- The availability of residential treatment placements,
- The availability of supports provided through the Comprehensive Community-Based Youth Services (CCBYS) program,¹⁴⁶
- The capacity of other crisis response networks,
- The availability of crisis workers to respond at all times of the day, and
- Recidivism rates for this population.

Conclusion

The way that Illinois treats children in conflict with the law is currently out of touch with research on what best supports healthy development and keeps communities safe. Children understand the impact of their actions in a fundamentally different way from adults. An intuitive understanding of this idea has been part of criminal justice systems for centuries, reflected in the historic concept of *doli incapax*, under which children were presumed to be incapable of criminality. Modern developments in psychology and neuroscience affirm this understanding, and helped lead the United Nations to recommend that children under age 14 should not be held criminally responsible. It is time for Illinois to stop criminalizing children, and to instead provide age-appropriate responses that help foster healthy development. When we arrest, handcuff, charge, lock up, or in other ways subject children to criminal systems they cannot yet fully comprehend, for behaviors for which they are not fully culpable, we set off a cycle of trauma and recidivism that leaves children, families, and communities alike at risk.

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¹ Peter Nickeas, “9-Year-Old Boy —Feet Barely Touching Floor from His Chair— Hears Judge Explain Murder Charges Brought against Him in Central Illinois Fire That Killed 5,” *Chicago Tribune*, October 22, 2019, <https://www.chicagotribune.com/news/breaking/ct-illinois-9-year-old-boy-murder-charges-20191021-ddhtxpjvvhzxflezydaq43z6y-story.html>.

² Nickeas, “9-Year-Old-Boy.”

³ *Ibid.*

⁴ Pam Belluck, “Chicago Boys, 7 and 8, Charged In the Brutal Killing of a Girl, 11,” *The New York Times*, August 11, 1998, <https://www.nytimes.com/1998/08/11/us/chicago-boys-7-and-8-charged-in-the-brutal-killing-of-a-girl-11.html>.

⁵ “Onetime Suspect in Ryan Harris Murder Case Gets 52 Years for Shooting,” *CBS News* online, June 15, 2012. <https://chicago.cbslocal.com/2012/06/15/onetime-child-suspect-in-ryan-harris-murder-gets-52-years-for-shooting>.

⁶ “Onetime Suspect in Ryan Harris Murder Case.”

⁷ Monica Davey, “Falsely Accused of Murder at Age 7, a 15-Year-Old Is Back in Court on New Charges,” *The New York Times*, June 19, 2006, <https://www.nytimes.com/2006/06/19/us/falsely-accused-of-murder-at-age-7-a-15yearold-is-back-in-court-on-new.html>.

⁸ Michael Howlett et. al., “Final Report of the Juvenile Competency Commission,” August, 2001, copy on file with the authors. *See also* Diane Geraghty, “The Youngest Felons: A Proposal for Civil Prosecution of ‘Tender Age’ Children Accused of Serious Crimes.” *Children's Legal Rights Journal* 21, no. 4 (2001): 2-14 (discussing proposed reforms to treatment of children in conflict with the law in response to the Ryan Harris case).

⁹ *Infra*, Section III.

¹⁰ *Infra*, Figure 8. “Minimum age of juvenile court jurisdiction” is used more frequently in the United States, while “minimum age of criminal responsibility” is more frequently used in international contexts.

¹¹ Shira Schoenberg, “Gov. Charlie Baker Signs Landmark Massachusetts Criminal Justice Overhaul, Despite Concerns.” *Mass Live*, April 13, 2018, https://www.masslive.com/politics/2018/04/gov_charlie_baker_signs_landma.html; Tom Stromme; “North Dakota Senate Passes Bill to Raise Age of Culpability,” *The Bismarck Tribune*, February 27, 2019, https://bismarcktribune.com/news/local/crime-and-courts/north-dakota-senate-passes-bill-to-raise-age-of-culpability/article_237c5ece-152f-53a9-82e7-e726f2b83a3f.html.

¹² Maureen Washburn, “SB 439 Becomes Law, Ending the Prosecution of Children Under 12,” *Center on Juvenile and Criminal Justice*, October 23, 2018. <http://www.cjcr.org/news/12289>.

¹³ Utah HB 262 (2020).

¹⁴ Anne Teigen, “Principles of Effective Juvenile Justice Policy,” *National Conference of State Legislatures*, January 2018. http://www.ncsl.org/Portals/1/Documents/cj/JJ_Principles_122017_31901.pdf.

¹⁵ General Comment No. 10 (2007): Children’s rights in juvenile justice,” Committee on the Rights of the Child, 10-12. <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

¹⁶ “General Comment No. 24, replacing General Comment No. 10” United Nations Committee on the Rights of the Child, 9, <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>.

¹⁷ *Infra*, Section III.

¹⁸ Adolescents can also face challenges in planning for the future that can impact both competency and culpability. Making this distinction does not negate the importance of reforms in the juvenile justice system for adolescents.

¹⁹ *Roper v. Simmons*, 543 U.S. 551, 569 (2005), citing to *Johnson v. Texas*, 509 U.S. 350 (1993), for the claim that “as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, [a] lack of maturity and an underdeveloped sense of responsibility are found in children and teenagers more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions” and citing to *Thompson v. Oklahoma*, 487 U.S. 815 (1988), for the claim that “The susceptibility of juveniles to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’”

²⁰ *Graham v. Florida*, 560 U.S. 48, 68 (2010), finding that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence” and citing to *Roper* for the proposition that “[j]uveniles are more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults.”

²¹ *Miller v. Alabama*, 576 U.S. 460, 471 (2012), finding that “*Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, ‘they are less deserving of the most severe punishments.’ *Roper*, 543 U.S. at 575 held that juvenile death sentencing violated the cruel and unusual punishment principles established in the Eighth Amendment. Similarly, *Graham*, 560 U.S. at 74 reinforced this principle in holding that life without parole for a juvenile violated, on its face, the cruel and unusual punishment prohibition of the Eighth Amendment.

²² Elizabeth S. Scott, “The Legal Construction of Adolescence,” *Hofstra Law Review* 29, no. 2 (2000): 547–98.

²³ Anne L. Kramers-Olen, “Neuroscience, Moral Development, Criminal Capacity, and the Child Justice Act: Justice or Injustice,” *South African Journal of Psychology* 29, no. 4 (2015): 470.

²⁴ Kramers-Olen, “Neuroscience,” 470.

²⁵ Beatriz Luna, Aarthi Padmanabhan, and Kristen O’Hearn, “What Has fMRI Told Us About the Development of Cognitive Control Through Adolescence?” *Brain and Cognition* 72, no.1 (2010): 101–113; Katerina Velanova, Mark Wheeler, and Beatriz Luna, “Maturational Changes in Anterior Cingulate and Frontoparietal Recruitment Support the Development of Error Processing and Inhibitory Control,” *Cerebral Cortex* 18, no.11 (2008): 2505–2522.

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- ²⁷ Thomas Grisso et. al., “Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants,” *Law and Human Behavior* 27, no. 4 (2003): 333-363.
- ²⁸ *Roper*, 543 U.S. at 617 (citing to the APA’s amicus brief).
- ²⁹ *Graham*, 560 U.S. at 71, citing to *Tison*, 41 U.S. at 149 and *Roper*, 543 U.S. at 571.
- ³⁰ *Dusky v. United States*, 362 U.S. 402 (1960). See also *McManus v. Neil*, 779 F.3d 634, 656 (7th Cir. 2015).
- ³¹ Grisso et al., 29.
- ³² *Ibid.*, 11.
- ³³ *Ibid.*, 25.
- ³⁴ Additionally, some children who come into the juvenile justice system, like the children charged with Ryan Harris’s murder, are actually innocent of the offenses that they are charged with.
- ³⁵ *Roper*, 543 U.S. at 571.
- ³⁶ *Miller*, 567 U.S. at 472, citing to *Graham*.
- ³⁷ Loeber, 9.
- ³⁸ Carly Dierkhising et. al., “Trauma histories among justice-involved youth: findings from the National Child Traumatic Stress Network,” *European Journal of Psychotraumatology* 4, no. 10 (2013): 1-12. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3714673/>.
- ³⁹ Dierkhising, “Trauma histories among justice-involved youth,” 1-12.
- ⁴⁰ Kim Gilhuly, Megan Gaydos, Holly Avey, “Reducing Youth Arrests Keeps Kids Healthy and Successful: A Health Analysis of Youth Arrest in Michigan,” Health Impact Partners, 2017, https://humanimpact.org/wp-content/uploads/2018/10/HIP_MichYouthArrests_2017.06.pdf (discussing arrest leading to further trauma); Akiva M. Liberman, David S. Kirk, and KiDeuk Kim, “Labeling Effects of First Juvenile Arrests: Secondary Deviance and Secondary Sanctioning,” Urban Institute, 2014 Manuscript, <https://www.urban.org/sites/default/files/publication/33701/413274-Labeling-Effects-of-First-Juvenile-Arrests-Secondary-Deviance-and-Secondary-Sanctioning.PDF> (discussing labeling effects); David S. Kirk and Robert J. Sampson. "Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood." *Sociology of Education* 86, no. 1 (2013), 36-62 (discussing educational outcomes).
- ⁴¹ Petrosino, “Formal System Processing of Juveniles: Effects on Delinquency,” 6. The studies included in the meta-analysis excluded more serious offenses, because the studies the Campbell Collaboration used compared traditional juvenile systems with diversionary programs, and the diversionary programs included were typically not available to children and teenagers who committed more serious offenses, such as violent crimes or sex crimes. *Ibid.*, 6.
- ⁴² *Ibid.*
- ⁴³ *Ibid.*
- ⁴⁴ *Ibid.*
- ⁴⁵ *Ibid.*, 6.
- ⁴⁶ Loeber, “Child Delinquency: Early Intervention and Prevention,” 14.
- ⁴⁷ *Ibid.*, 3.
- ⁴⁸ *Ibid.*, 9-10.
- ⁴⁹ *Ibid.*, 10.
- ⁵⁰ *Ibid.*, 11. Michigan does not have a minimum age of criminal responsibility, which allows for comparisons between conventional juvenile processing and alternative diversion programs.
- ⁵¹ *Ibid.*, 10.
- ⁵² 705 ILCS 405/5-401 *et seq.*
- ⁵³ While law enforcement is required to report felony juvenile arrests, reporting data on juvenile misdemeanors is discretionary. In addition, data on arrests of children under age 10 is not tracked. Also, as a result of the Illinois Criminal Identification Act of 2017, many juvenile arrest records are sealed or expunged, and therefore no longer reflected in the data. Finally, the state does not publish juvenile arrest

data when fewer than 10 children can be counted in order to avoid possible identification of specific individuals.

⁵⁴ Loyola University Chicago Legislation & Policy Clinic Analysis of 2018 data from the Illinois Criminal Justice Information Authority.

⁵⁵ Loyola University Chicago Legislation & Policy Clinic Analysis of 2014-2018 data from the Illinois Criminal Justice Information Authority and the American Community Survey.

⁵⁶ *Ibid.*

⁵⁷ Loyola University Chicago Legislation & Policy Clinic Analysis of 2018 data from the Illinois Criminal Justice Information Authority.

⁵⁸ *Ibid.*

⁵⁹ Class X felonies include serious offenses such as Aggravated kidnapping, 720 ILCS 5/10-2; Aggravated battery with a firearm, 720 ILCS 5/12-4.2(a)(1); Aggravated battery of a child, 720 ILCS 5/12-4.3(a); and Aggravated criminal sexual assault 720 ILCS 5/12-14. Class M is a term used to refer to first degree murder.

⁶⁰ Loyola University Chicago Legislation & Policy Clinic Analysis of 2018 data from the Illinois Criminal Justice Information Authority.

⁶¹ *Ibid.*

⁶² 705 ILCS 405/5-501.

⁶³ Loyola University Chicago Legislation & Policy Clinic Analysis of 2018 data from the Illinois Juvenile Monitoring System.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.* Of the 124 juvenile detention admissions of children ages 10 to 12 years old: White, non-Hispanic children accounted for 17.4 percent of admissions, Hispanic children of any race accounted for 4.8 percent, and children who were listed as multi-racial or other accounted for 10.5 percent of admissions.

⁶⁶ Loyola University Chicago Legislation & Policy Clinic Analysis of 2018 data from the Illinois Juvenile Monitoring System.

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⁷² Joan Gittens, *Poor Relations – The Children of the State in Illinois, 1818-1990* (Urbana and Chicago, University of Illinois Press, 1994), 108-109.

⁷³ Fox, "The Early History of the Court," 29-39.

⁷⁴ Michael Howlett et. al., "Final Report of the Juvenile Competency Commission." *See also* Diane Geraghty, "The Youngest Felons".

⁷⁵ Howlett, "Final Report of the Juvenile Competency Commission." *See* Appendix D - Minors Requiring Civil Prosecution.

⁷⁶ Diane Geraghty (A. Kathleen Beazley Chair in Children's Law; Professor of Law and Director, Civitas ChildLaw Center; Co-director of the Center for Criminal Justice Research, Policy and Practice) in discussion with the authors, October, 2018.

⁷⁷ Stephanie Kollmann, Raising the Age of Juvenile Court Jurisdiction, Illinois Juvenile Justice Commission, 12-13,

https://www.dhs.state.il.us/OneNetLibrary/27897/documents/CHP/Reports/JuvenileJustice/IJJC_Raising_the_Age_Report_w_covers.pdf.

⁷⁸ Kanako Ishida, Elizabeth Clarke, and David Reed. “Automatic Adult Prosecution of Children in Cook County, Illinois. 2010-2012: Over 30 Years of Poor Outcomes from ‘Automatic’ Adult Prosecution of Children,” Juvenile Justice Initiative, April 2014, 5-6. <https://jjjustice.org/wp-content/uploads/Automatic-Adult-Prosecution-of-Children-in-Cook-County-IL.pdf>.

⁷⁹ *Ibid.*, 5-6.

⁸⁰ Kollmann, 13.

⁸¹ Illinois Public Act 94-0574.

⁸² The bill initially proposed would have moved all 17-year-olds to juvenile court. Opponents raised concerns related to safety, probation caseload sizes, and financial costs, leading to the political compromise of treating teenagers charged with misdemeanors and felonies differently. *Ibid.* 6. In explaining the final language while calling for a Senate concurrence on House amendments, Senate President John Cullerton stated that the language “represented a compromise. It increases from seventeen to eighteen years the age in which offenders can be tried in adult court, but it only applies to misdemeanors. That was done in an effort to accommodate the opponents, who were county governments, who felt it was going to be too costly.” IL S. Tran. 2008 Reg. Sess. No. 175, 46.

In response to concerns about handling some 17-year-olds in the juvenile system and treating others as adults, the General Assembly charged the Illinois Juvenile Justice Commission with studying the effects of the 2010 law, and determining if felony-charged 17-year-olds should also be included in the juvenile court. 20 ILCS 505/17a-9.

In February of 2013, the Commission recommended raising the age at which a teenager could be charged as an adult for a felony, stating “[c]urrent legal and scientific trends are clear: by putting all felony-charged 17-year-olds in criminal court by default, Illinois is becoming a national outlier, is ignoring research findings about adolescent development and behavior, and is squandering the potential of many of its youth.” Kollmann, “Raising the Age of Juvenile Court Jurisdiction,” 60.

⁸³ Illinois Public Act 98-0061.

⁸⁴ Illinois Public Act 99-0258.

⁸⁵ Rachel Hinton, “Preteens Accused of Crimes Won't Be Locked up at Cook County Juvenile Center.” September 12, 2018, <https://chicago.suntimes.com/2018/9/12/18354566/preteens-accused-of-crimes-won-t-be-locked-up-at-cook-county-juvenile-center>.

⁸⁶ Hinton, “Preteens Accused of Crimes.”

⁸⁷ *In re Mathias H.*, 2019 IL App (1st) 182250.

⁸⁸ “Bill Status of HB1468.” Illinois General Assembly - Bill Status for HB1468. Illinois General Assembly. Accessed December 1, 2019.

<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1468&GAID=15&DocTypeID=HB&LegId=115878&SessionID=108&GA=101>.

⁸⁹ For example, the Cook County Board of Commissioners listened to arguments stating that “The American Pediatric Association has found that even one night in detention can have lifelong impacts on kids.” Cook County Board of Commissioners, Criminal Justice Committee hearing, September 11, 2018, http://cook-county.granicus.com/MediaPlayer.php?view_id=2&clip_id=2165.

⁹⁰ Child Safety: Definitions, A.R.S. § 8-201(15)(a)(iv) (2019); Juvenile Code: Definitions, A.C.A. § 9-27-303(15) 2019); Jurisdiction of the Juvenile Court, CA WEL & INST § 601 and 602 (2018); The Colorado Juvenile Justice System: General Provision, C.R.S.A. § 19-2-104(1)(a) (2019); Juvenile Matters: General Provisions, C.G.S.A. § 46b-120(1)(A)(i) (2019); Kansas Juvenile Justice Code: General Provisions, K.S.A. § 38-1602(a) (2006); Children’s Code: Definitions, La. Child. Code art. § 804(3) (2011); Determination of Jurisdiction, MD. Code, Cts. & Jud. Proc., § 3-8A-05(d) (2017); Delinquent children, Definitions,

M.G.L.A. ch. 119, § 52 (2018); Right of Representation by Public Defender, M.S.A. § 611.14 (2012); Exclusive original jurisdiction; exceptions; children under 13, Miss. Code Ann. § 43-21-151(3) (2019); Crimes and Punishment: Persons capable of committing crimes, N.R.S. § 194.010(a) (2015); Jurisdiction and Preliminary Procedures: Definitions, N.Y. Fam. Ct. Act § 301.2 (2019); Juvenile Code: Definitions, N.C. Gen. Stat. § 7B-1501(7) (2017); Juveniles, NDCC § 12.1-04-01(2019); Judiciary and Judicial Procedure, 42 Pa. C. S. A. § 6302 (2018); Delinquent Children, SDCL § 26-8C-2 (2019); Juvenile Justice Code: Definitions, Tex. Fam. Code § 51.02(2)(A) (2015); Utah HB 262 (2020); 33 V.S.A. § 5102 (2)(c) (2019); People capable of committing crimes--capability of children, Wash. Rev. Stat § 9A.04.050 (2019); Jurisdiction over juveniles alleged to be delinquent, W.S.A. § 938.12(1) (2019).

⁹¹ Juvenile Code: Definitions, N.C. Gen. Stat. § 7B-1501(7) (2017).

⁹² Protection and Care of Children, and Proceedings Against Them, M.G.L.A ch. 119, § 52 (2018); Jurisdiction of the Juvenile Court, SB 439 (2018).

⁹³ Juvenile Proceedings: Definitions and provisions of general application, 33 V.S.A. § 5102 (2)(c)(iii) (2019).

⁹⁴ CA WEL & INST § 601 and 602 (2018).

⁹⁵ Crimes and Punishment: Persons capable of committing crimes, N.R.S. § 194.010(a) (2015).

⁹⁶ See note 83 for statutory citations. “Age” refers to the age under which a child cannot be tried for a crime.

⁹⁷ Under Nevada law, no child under the age of eight can be charged with any crime. A child between the ages of eight and 10 can be charged with murder or sexual offenses. N.R.S. § 194.010(a) (2015).

⁹⁸ Children under the age of 10 can be charged for murder in Vermont. 33 V.S.A. § 5102 (2)(c)(iii) (2019).

⁹⁹ Children under the age of 12 can be charged for murder or certain sexual offenses in California. CA WEL & INST § 601 and 602 (2018)

¹⁰⁰ Children under 12 can be charged for murder, or certain aggravated offenses including aggravated kidnapping, burglary, robbery, kidnapping, sexual assault or discharge of a firearm in Utah. HB 262 (2020).

¹⁰¹ Steve LeBlanc, “Gov. Baker Signs Sweeping Criminal Justice Overhaul Bill.” *WBUR News*, April 6, 2018. <https://www.wbur.org/news/2018/04/13/baker-criminal-justice-law>.

¹⁰² Steve Brown, “7 Key Provisions of the Criminal Justice Bill,” *WBUR News*, April 6, 2018, <http://www.wbur.org/news/2018/04/06/criminal-justice-reform-bill-key-provisions>; Steve LeBlanc, “Gov. Baker Signs Sweeping Criminal Justice Overhaul Bill.”

¹⁰³ Susan Petroni, “Baker-Polito Administration Signs Criminal Justice Reform Laws, Proposes Additional Reforms,” April 13, 2018, <https://framinghamsource.com/index.php/2018/04/13/baker-polito-administration-signs-criminal-justice-reform-laws-proposes-additional-reforms/>.

¹⁰⁴ Mass. Gen. Laws ch. 69 §73 (2018).

¹⁰⁵ Brown, “7 Key Provisions of The Criminal Justice Bill.”

¹⁰⁶ *Ibid.*

¹⁰⁷ “Raising the Lower Age of Delinquency to the 12th Birthday: Better Options of Juvenile Court Jurisdiction for Very Young Children” (Boston, MA: Citizens for Juvenile Justice, 2017), <https://static1.squarespace.com/static/58ea378e414fb5fae5ba06c7/t/5a04b8e98165f5b5f41a4d53/1510258923075/FACT+SHEET+Juvenile+Court+Can+Still+Have+Jurisdiction.pdf>. For further discussion of the Campbell study, see section III (B)(2) of this report.

¹⁰⁸ *Ibid.*

¹⁰⁹ Maureen Washburn, “SB 439 Becomes Law.”

¹¹⁰ Judith Fenlon, Jeremy Loudonback, and Alex Briscoe, “California Bill Would Deem Youth 12 Under Too Young for Court,” *The Chronicle of Social Change*, July 10, 2019, <https://chronicleofsocialchange.org/justice/juvenile-justice-2/california-bill-would-deem-youth-12-under-too-young-for-court/31616>

¹¹¹ Ca. S.B. 439.

¹¹² Laura S. Abrams et al., “Is a Minimum Age of Juvenile Court Jurisdiction a Necessary Protection? A Case Study in the State of California,” *Crime & Delinquency* 65, no. 14 (2018), 1976–96, <https://doi.org/10.1177/0011128718770817>. In California, a referral to probation does not mean a child’s case will always be petitioned. After a referral to probation is made, a DA assesses the case and decides whether to move forward.

¹¹³ Abrams et al., “Is Minimum Age of Juvenile Court,” 9-10.

¹¹⁴ *Ibid.*, 9.

¹¹⁵ Michael Harris (Attorney and Senior Director of Legal Advocacy & Juvenile Justice, National Center for Youth Law) in phone interview with Brianna Hill and Eve Rips, December 2018.

¹¹⁶ Fenlon, “California Bill Would Deem Youth 12 Under Too Young for Court.”

¹¹⁷ Ca. S.B. 439.

¹¹⁸ Darya Larizadeh (Policy Attorney, National Center for Youth Law), July 2019.

¹¹⁹ Advocates relied in particular on data about low arrest rates for children accused of serious offenses. Unlike Illinois, California allows the release of data with fewer than 10 individuals in a set, making it possible for researchers and advocates to make claims like “a total of two children were arrested” for a given offense or county. Michael Harris phone interview.

¹²⁰ “SB 439 Implementation Guide,” National Center for Youth Law, Accessed December 17, 2019, 13, <https://youthlaw.org/wp-content/uploads/2019/09/SB-439-Implementation-Guide-2019-FINAL.pdf>.

¹²¹ “SB 439 Implementation Guide,” 13.

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ “Convention on the Rights of the Child,” OHCHR. Accessed November 18, 2019.

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. The Convention on the Rights of the Child became effective September 2, 1990, when the required number of nations ratified it. The CRC is a treaty which enumerates children’s rights, including their rights to be free from abuse, neglect, discrimination, and exploitation, their rights to develop their full potential, and their rights to participate in their communities. The CRC also set global standards on juvenile justice policy by providing and encouraging alternatives to incarceration, prohibiting the death penalty and life imprisonment, ensuring liberty interests, and protecting procedural rights. The CRC also set global standards on juvenile justice policy by providing and encouraging alternatives to incarceration, prohibiting the death penalty and life imprisonment, ensuring liberty interests, and protecting procedural rights.

¹²⁵ General Comment No. 10 (2007).

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ “General Comment No. 24, replacing General Comment No. 10” United Nations Committee on the Rights of the Child, 9, <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>.

¹²⁹ The Comment encouraged countries to establish a high minimum age of criminal responsibility to in line with other recent legal developments for children, specifically, banning capital punishment for children and imposing life sentences without the possibility of parole.

¹³⁰ *Ibid.*

¹³¹ International comparative information on the minimum age of criminal responsibility provided by the Department of Justice Constitutional Development in support of the proposed raising of the minimum age of criminal capacity as provided for in the Child Justice Bill, accessed November 18, 2019, <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/2003/appendices/030310minimumage.htm>.

¹³² Amy Rothschild, “Is America Holding Out on Protecting Children's Rights?,” The Atlantic, Atlantic Media Company, May 2, 2017, <https://www.theatlantic.com/education/archive/2017/05/holding-out-on-childrens-rights/524652/>.

¹³³ See, e.g., *Roper*, 543 U.S. at 576.

¹³⁴ “Minimum Age of Criminal Responsibility,” Children’s Rights International Network. Accessed November 18, 2019. <https://home.crin.org/issues/deprivation-of-liberty/minimum-age-of-criminal-responsibility>.

¹³⁵ “Minimum Age of Criminal Responsibility,” Children’s Rights International Network.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.* A number of countries fell into legal gray areas, such as setting a minimum age of criminal responsibility, but allowing for quasi-criminal responses for children under that age.

¹³⁹ “Responsibility for Crimes: Age 12 and Up.” Éducaloi, March 27, 2019, <https://educaloi.qc.ca/en/capsules/responsibility-for-crimes-age-12-and-up/>.

¹⁴⁰ Department of Justice, “The Youth Criminal Justice Act Summary and Background,” Government of Canada, Department of Justice, Electronic Communications, August 8, 2017, <https://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/back-hist.html>.

¹⁴¹ Department of Justice, “The Youth Criminal Justice Act Summary and Background.”

¹⁴² In considering how best to provide services to children outside of the juvenile justice system, it may be worthwhile to undertake a reexamination of Article III of the Juvenile Court Act and if it would be an appropriate vehicle for responding to children in conflict with the law. Article III of the Juvenile Court Act, which governs minors requiring authoritative intervention, currently applies to three groups of children in need of supervision: children can be classified under Article III as minors requiring authoritative intervention, as truant minors in need of supervision, or as children involved in electronic dissemination of indecent visual depictions in need of supervision. Article III allows for children to be taken into limited custody in lieu of arrest. This option allows law enforcement to remove a child from an unsafe situation without arresting the child or creating a record. 705 ILCS 405/3-1 *et. seq.*

¹⁴³ Substance Abuse and Mental Health Services Administration, “SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach,” HHS Publication No. (SMA) 14-4884, 2014. SAMHSA’s principles of trauma-informed care are safety; trustworthiness and transparency; peer support; collaboration and mutuality; empowerment, voice, and choice; and accounting for cultural, historical, and gender issues. See also Illinois SR 99 (101st General Assembly), <http://www.ilga.gov/legislation/101/SR/PDF/10100SR0099lv.pdf>.

¹⁴⁴ “Promoting Restorative Justice for Children,” United Nations Office of the Special Representative of the Secretary-General on Violence against Children (2013), vi-vii, https://sustainabledevelopment.un.org/content/documents/2599Promoting_restorative_justice.pdf.

¹⁴⁵ *Ibid* at 1-2.

¹⁴⁶ CCBYS is a statewide crisis response system that is required to provide supports for “crisis youth,” such as children who have run away or been locked out, and has discretionary ability to support “non-crisis youth,” such as those at risk of delinquency. “Comprehensive Community-Based Youth Services,” Illinois Department of Human Services, <https://www.dhs.state.il.us/page.aspx?item=31868>.