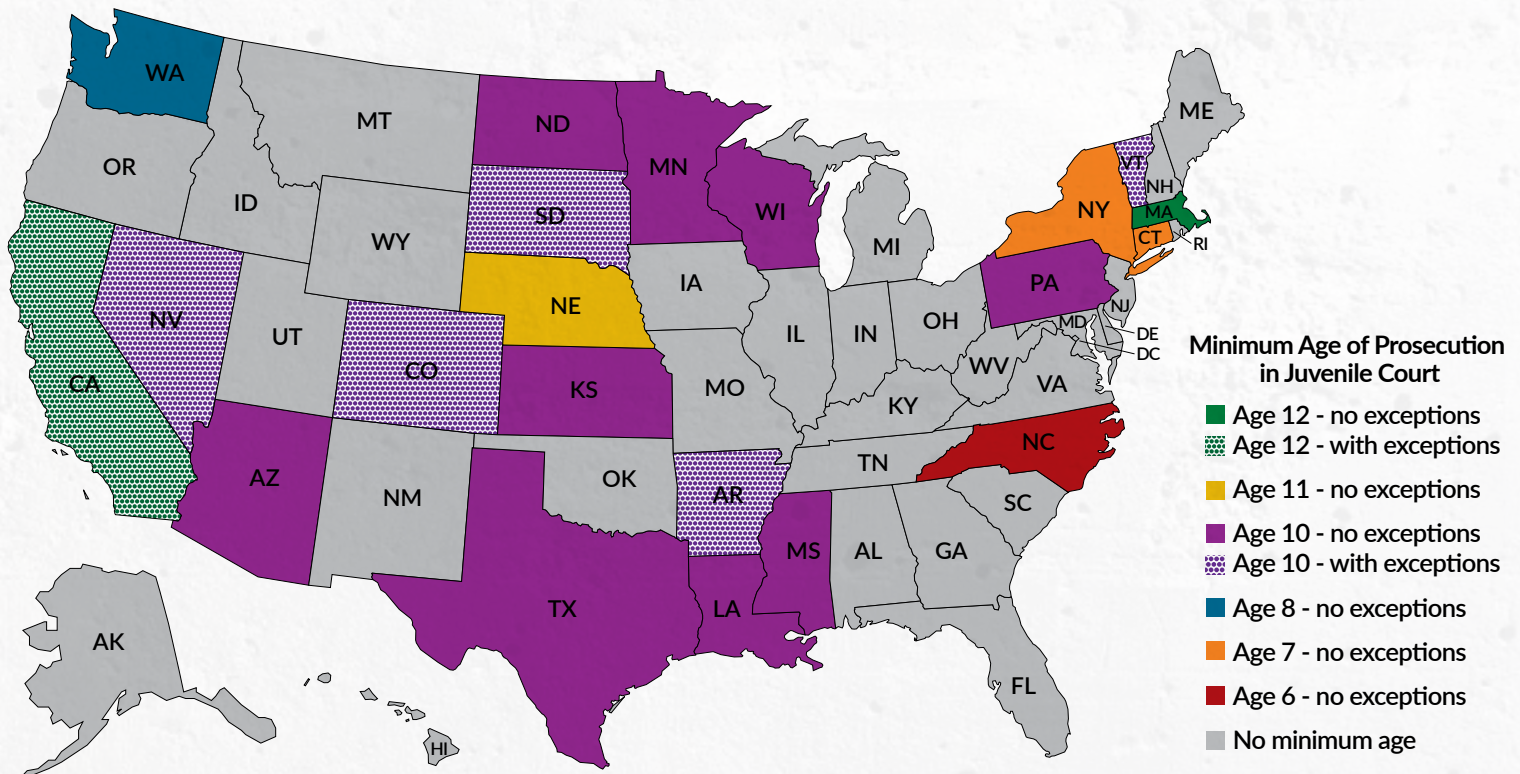


# The Criminalization of Childhood

## In 29 states, it is legal to prosecute a 5-year-old in juvenile court

Most states do not set a minimum age of prosecution in juvenile court. And although common sense knowledge of child development<sup>1</sup> and international standards<sup>2</sup> compel removal of younger children from the juvenile legal system, states have yet to heed the call.

Because younger children are inherently more vulnerable,<sup>3</sup> they should not be subject to the potential harms of juvenile court and the life-long consequences that stem from such involvement. States should strengthen community supports outside the justice system and set the minimum age of prosecution at 14 years old.



Most states have failed to set a minimum age of juvenile court jurisdiction or have set the minimum age far too low.

- Only 2 states have a minimum age of prosecution set at 12 years old: California and Massachusetts<sup>4</sup>
- 1 state has a minimum age of 11 years old: Nebraska<sup>5</sup>
- 14 states have a minimum age of 10: Arizona, Arkansas, Colorado, Kansas, Louisiana, Minnesota, Mississippi, Nevada, North Dakota, Pennsylvania, South Dakota, Texas, Vermont, and Wisconsin<sup>6</sup>
- 1 state has a minimum age of 8: Washington<sup>7</sup>
- 2 states have a minimum age of 7: Connecticut and New York<sup>8</sup>
- 1 state has a minimum age of 6: North Carolina<sup>9</sup>

In the past several years, some states have raised their minimum age of juvenile court jurisdiction and prosecuted fewer children under 14. In 2005, delinquency courts handled over 313,000 cases where the respondent was under 14 years old.<sup>10</sup> In 2017, that number fell to just over 138,000 cases.<sup>11</sup>

Furthermore, by removing children under 14 years old from juvenile court jurisdiction, states will save money and more effectively utilize the limited resources allocated for delinquency matters.

- <sup>1</sup> J.D.B. v. North Carolina, 564 U.S. 261, 272 (2011) (noting that there was no special training required to account for a child's age).
- <sup>2</sup> While there is not a specified minimum age of criminal responsibility under the UN Convention on the Rights of the Child (CRC), the UN's Global Study on Children Deprived of Liberty recommends that all UN member states set a minimum age of criminal responsibility no lower than age 14. GEN. ASSEMBLY, UNITED NATIONS, GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY 10 (2019), <https://undocs.org/en/A/74/136>. Additionally, the UN Committee on the Rights of the Child (which is responsible for monitoring compliance with the CRC) encourages countries to consider minimum ages as high as 16, based on collective international standards. CONVENTION ON THE RIGHTS OF THE CHILD, UNITED NATIONS, GENERAL COMMENT NO. 10: CHILDREN'S RIGHTS IN JUVENILE JUSTICE 10 (2007), <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>. Among countries that set the minimum age of criminal responsibility at 14 or higher are Argentina, China, Congo, Germany, Italy, Poland, Spain, Somalia, Sweden, Russia, and Ukraine, to name a few. CHILD RIGHTS INT'L NETWORK, *The Minimum Age of Criminal Responsibility*, <https://home.crin.org/issues/deprivation-of-liberty/minimum-age-of-criminal-responsibility> (last visited Sept. 3, 2019).
- <sup>3</sup> Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333 (2003) (noting the vulnerability of youth in legal contexts as study demonstrates that youth 15 and younger are more likely than older adolescents and adults to lack competence-related capacities, and that developmental immaturity may impact youth's legal decision-making in other contexts such as confessing to the police or the decision to take a plea agreement). See also Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28 (2009) (indicating the vulnerability of youth through research on mechanisms underlying developmental immaturity in adolescents, with results demonstrating that age is related to future orientation with younger youth less likely to plan ahead and think about the future consequences of their actions).
- <sup>4</sup> CAL. WELF. & INST. CODE § 602 (West 2019); MASS. GEN. LAWS ANN. ch. 119, § 52 (West 2018).
- <sup>5</sup> NEB. REV. STAT. ANN. § 43-247(1) (West 2016).
- <sup>6</sup> ARIZ. REV. STAT. ANN. § 8-307(A) (West 1997); ARK. CODE ANN. § 9-27-303(15) (West 2019); COLO. REV. STAT. ANN. § 19-2-104(1)(a) (West 2018); KAN. STAT. ANN. § 38-2302(n) (West 2016); LA. CHILD. CODE ANN. § art. 804(3) (West 2011); *In re S.A.C.*, 529 N.W.2d 517 (Minn. Ct. App. 1995) (applying MINN. STAT. ANN. § 260C.007(6)(12) (West 2019)); MINN. STAT. ANN. § 611.14 (West 2012); MISS. CODE ANN. § 43-21-105(i) (West 2019); NEV. REV. STAT. ANN. § 194.010 (West 2015); N.D. CENT. CODE ANN. § 12.1-04-01 (West 2019); 42 PA. STAT. AND CONS. STAT. ANN. § 6302 (West 2018); S.D. CODIFIED LAWS § 26-8C-2 (West 2019); TEX. FAM. CODE ANN. § 51.02(2)(A) (West 2015); VT. Stat. Ann. tit. 33, § 5102(2)(c) (West 2019); WIS. STAT. ANN. § 938.12(1) (West 2019).
- <sup>7</sup> WASH. REV. CODE ANN. § 9A.04.050 (West 2011).
- <sup>8</sup> CONN. GEN. STAT. ANN. § 46b-120(1)(A)(i) (West 2019); N.Y. FAM. CT. ACT § 301.2(1) (McKinney 2016).
- <sup>9</sup> N.C. GEN. STAT. ANN. § 7B-1501 (West 2017).
- <sup>10</sup> MELISSA SICKMUND ET AL., *Easy Access to Juvenile Court Statistics: 1985-2017*, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, <https://www.ojjdp.gov/ojstatbb/ezajcs/asp/selection.asp>.
- <sup>11</sup> *Id.*

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