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# RAISE THE AGE: ENSURING ALL KIDS HAVE ACCESS TO THE JUVENILE JUSTICE SYSTEM

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## Legislative Fact Sheet

Ensuring all children under eighteen years of age have access to the juvenile justice system is one of the most widespread protections legislatures provide for children. As of early 2024, only three states excluded seventeen-year-olds from their juvenile justice systems, which is a clear violation of international human rights law. Unfortunately, that number has risen to four this year with Louisiana enacting SB 3 into law.<sup>1</sup> The state of Tennessee attempted a similar move to lower the age of adult criminal court jurisdiction in an emergency session last year.<sup>2</sup> With increasing rhetoric reminiscent of the ‘Super Predator Era’ of the 1990’s, it is crucial that policymakers around the country recognize that continuous efforts to treat children as adults will not result in better public safety or better outcomes for youth offenders.<sup>3</sup> This is because children’s brains are not fully developed and many of them are acting out as a result of trauma they’ve experienced in early childhood.<sup>4</sup> It is imperative that legislation seeking to lower the age of criminal court jurisdiction be rejected wherever they are introduced. Louisiana, along with

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<sup>1</sup> Loren, Samantha. *Gov. Landry Signs Bill to Charge 17-Year-Olds as Adults*. KATC 3, 13 Mar. 2024. <https://www.katc.com/st-martin-parish/gov-landry-signs-bill-to-charge-17-year-olds-as-adults>.

<sup>2</sup> Stockard, Sam. *Special Session Bills Expected to Revive in 2024*. Tennessee Lookout, 13 Sep. 2023.

<sup>3</sup> Ryan, Liz, Office of Juvenile Justice and Delinquency Prevention. *Treat Children as Children*. US Department of Justice, 2022. <https://ojjdp.ojp.gov/blog/treating-children-children>.

<sup>4</sup> US Department of Justice, Office of Juvenile Justice and Delinquency Prevention. *Report of the Attorney General’s National Task Force on Children Exposed to Violence*. US Department of Justice, 2012. Pg. 171-191

Texas, Georgia, and Wisconsin, should uphold their responsibility to protect children's human rights by raising the age to allow cases involving seventeen year olds to be kept in juvenile court. By lowering the barrier of entry into the adult justice system, state policymakers will cause drastic increases in the number of children who are incarcerated in correctional facilities that also house adults. This will result in severe harm to hundreds of children every year, including setbacks in education and rehabilitation, victimization at the hands of adult inmates and staff, and neglect of the very programs designed to help them that reside in the juvenile justice system. This fact sheet is intended to inform the public and policymakers on the human rights violation of excluding 17-year-olds from juvenile courts, which compromises public safety and efforts to successfully rehabilitate children.

### **History and The International Standard**

Illinois established the first Juvenile Court system in 1899, which rapidly cascaded into juvenile justice systems across the country.<sup>5</sup> Juvenile courts were focused on society's collective responsibility to protect children by giving judges the discretion on how best to handle each case, with a specific focus on rehabilitation. This practice's value has since been enshrined in the United Nations Convention on the Rights of the Child (CRC), codifying the separate juvenile justice system as a fundamental human right for children in conflict with the law.

Articles 37, 39, and 40 of the CRC recognize that "childhood is entitled to special care and assistance."<sup>6</sup> Article 40 underscores that a child's age must be considered in legal proceedings, with the understanding that every child accused of a crime should "be treated in a manner consistent with the promotion of the child's sense of dignity and worth" that will take "into account the child's age and the desirability of promoting the child's reintegration and the

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<sup>5</sup> Center on Juvenile and Criminal Justice. *Juvenile Justice History*. Accessed 3 May 2024. Available at <https://www.cjcj.org/history-education/juvenile-justice-history>.

<sup>6</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

child's assuming a constructive role in society."<sup>7</sup> UN General Comments 10 and 24 further uphold the difference between children and adults, establishing that "such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach."<sup>8</sup> Thus, separate child-centered systems were established as the best practice, designed with the rehabilitation of the child in mind and prioritizing their best interests.

### **Historical Perspective: Eighteen as The Benchmark**

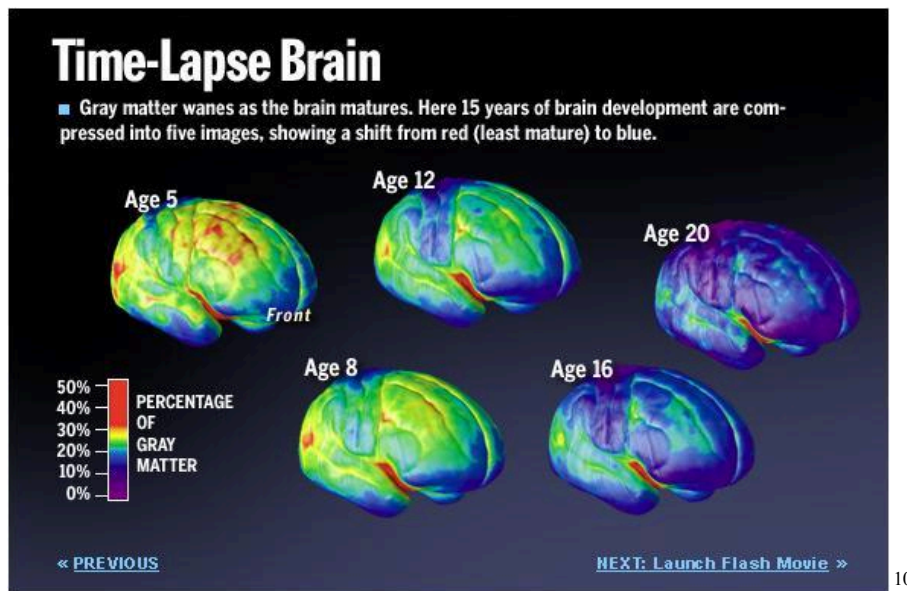
The rights and responsibilities associated with adulthood are almost universally set at eighteen years-of-age in American society. This recognition is backed by laws that restrict the ability of children under seventeen to be drafted into the military, work in certain industries, to vote or serve on juries, or to enter into contracts, among others. This benchmark can be traced back to the development of the education system, which has made attending high school a nearly universal experience among American youth. Completion of high school has created a major milestone of independence and adulthood at eighteen. This milestone is also a recognition of the standard we set for children and is scientifically supported by the fact that a 17-year old's brain is less developed than a fully grown adult's brain. This results in children having limited long-term thinking and impulse control capabilities compared to adults.<sup>9</sup>

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<sup>7</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

<sup>8</sup> UN Committee on the Rights of a Child, *General Comment No. 24 (2019) on Children's Rights in the Child Justice System*, 18 September 2019, United Nations

<sup>9</sup> Gardner, Margo, and Laurence Steinberg. "Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study." *Developmental Psychology*, vol. 41, no. 4, 2005, pp. 625-635.



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Recognition of the profound differences between children and adults in our justice system is not without legal precedent: the Supreme Court’s decision in *Miller v. Alabama* acknowledged the “rashness, proclivity for risk, and inability to assess consequences” as key factors as to why sentencing a child under 18 years-of-age to life imprisonment without parole is cruel and unusual punishment.<sup>11</sup> The Court also recognized a child’s capacity for change, which is reflected in the fact that children often “age out” of offending, and have far lower recidivism rates than adults.<sup>12</sup> The Court’s more recent jurisprudence in this area stretches back to *Roper v. Simmons*, which struck down the death penalty for 16 and 17 year-olds and was rooted, in part, in the international consensus that executing children for crimes committed while under 18 was a violation of human rights<sup>13</sup>. We have decided as a nation that children can and should be held to a different standard in the justice system. Blurring this line by moving kids into adult prisons isn’t just a violation of the norms we carry for adulthood; it is an active decision to hold children to a

<sup>10</sup> <http://img.timeinc.net/time/covers/1101040510/neurons/images/graphic3.jpg> (May 10, 2003).

<sup>11</sup> *Miller v. Alabama*, 567 U.S. 460 (2012).

<sup>12</sup> Daftary-Kapur, Tarika, and Tina M. Zottoli, “Resentencing of Juvenile Lifers: The Philadelphia Experience.” *Department of Justice Studies Faculty Scholarship and Creative Works*, vol. 84, pp. 1-16.

<sup>13</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

higher standard despite them not having access to the rights and privileges that such a standard should entail.

### **The Realities Children Face in the Adult System**

A separate juvenile system does not excuse children for their crimes because of their age; instead, it recognizes how the developmental stage of adolescence, as well as trauma or neglect, are significant factors that account for childhood offenses and provide appropriate services in recognition of this. The adult justice system, conversely, fails to appropriately acknowledge the relevance of childhood in the context of the legal process. While the U.S. Supreme Court has developed clear guidelines for ensuring an adult is fit to stand trial, no such guidance exists in determining the fitness of children to be tried as adults, despite their developmental gap.<sup>14</sup> When children come before the justice system in greater numbers and for increasingly less serious offenses (like theft or shoplifting), the specific factors of youth (decreased maturity, decision-making, and consequence comprehension) are irrelevant in states that exclude certain classes of youth, such as all seventeen-year-olds, from juvenile court.

The “best interests of the child” standard plays a significant role in the juvenile justice and child welfare systems, with a specific objective of rehabilitation. The adult system is notably different; not only are the interests of the offender rarely taken into account, if they are at all, but the stated retributive goals are not designed to protect the safety or human rights of prisoners.<sup>15</sup>

Children are not safe when they are incarcerated alongside adults. A child is five times more likely to be assaulted in adult correctional facilities, and 36 times more likely to die of suicide than those in juvenile facilities.<sup>16</sup> Because of this, federal law requires that adult prisons separate children from adults. These restrictions are known as “sight and sound separation”

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<sup>14</sup> *All Children Are Children: Challenging Abusive Punishment of Juveniles*. Equal Justice Initiative, 2017.

<sup>15</sup> Hopwood, Shon. “How Atrocious Prisons Conditions Make Us All Less Safe.” The Brennan Center for Justice. 9 August 2021.

<sup>16</sup> “Children in Adult Prison.” Equal Justice Initiative. 25 July 2023.

under the Prison Rape Elimination Act. However, because most adult prisons do not have dedicated spaces for children, many children incarcerated in these facilities are placed in indefinite solitary confinement. Prolonged solitary confinement can be psychologically destructive for a child, causing “panic attacks, illusions and hallucinations, obsessional thoughts, random violence and self-harm, and overt paranoia”.<sup>17</sup> Solitary confinement is so potentially devastating that it is sanctioned as a form of torture by the United Nations Covenant against Torture.<sup>18</sup> There is a clear line of understanding that if the risk to a child in an adult jail or prison is so great that their only form of protection can be defined as torture, then placing a child in that environment is a grave human rights violation. When we exclude 17-year-olds from juvenile court, we turn a blind eye to the torturous conditions that await them in adult jails or prisons.

### **Impact on a Child’s Future**

When they exist, educational programs in adult jails or prisons are primarily geared toward prisoners obtaining their General Education Development (GED) or professional training. These programs do little to allow a child to pursue the high school diploma they likely didn’t receive before their incarceration, an issue that is even more serious for children with disabilities, since adult facilities rarely have the capacity for specialized education.<sup>19</sup> When children lose out on quality education due to incarceration, their chances of continuing their education after release decrease and their likelihood of recidivism increases.<sup>20</sup>

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<sup>17</sup>Lee, Jessica. “Lonely Too Long: Redefining and Reforming Juvenile Solitary.” *Fordham Law Review*, vol. 85, no. 2, 2016, pp. 845-876.

<sup>18</sup>UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, Treaty Series, vol. 1465, p. 85, 10 December 1984, <https://www.refworld.org/legal/agreements/unga/1984/en/1394>.

<sup>19</sup>*Destined To Fail: How Florida Jails Deprive Children of Schooling*. Southern Poverty Law Center, 2018.

<sup>20</sup>“Justice and Education Departments Announce New Research Showing Prison Education Reduces Recidivism, Saves Money, Improves Employment.” *Office of Public Affairs*, 22 August 2013. <https://www.justice.gov/opa/pr/justice-and-education-departments-announce-new-research-showing-prison-education-reduces>. Press release.

The adult justice system has lifelong repercussions on a child. Youth moved into the adult justice system could forever lose certain constitutional rights, such as the right to vote, before ever being able to exercise them in the first place. Children are also permanently marked with a mistake from their childhood and suffer economically as a result, with their annual earnings for their entire lives reduced by an average of 52 percent.<sup>21</sup> If our best interest is the rehabilitation and future reintegration of the child, then we must put them in a better position to succeed.

### **Effects of Trauma**

Adverse childhood experiences, or ACEs, are negative childhood events, which include exposure to abuse, neglect, and having an incarcerated household member. Children who come into contact with the justice system have far higher rates of ACEs than the general population and should be provided with trauma-informed care to properly address their needs.<sup>22</sup> Moving children to adult criminal court ignores their rehabilitative needs, while exposing them to an unsympathetic system that offers little programming to address the behavioral issues that brought them into the system .

The adult system overlooks the unique characteristics of youth exposed to trauma, most of whom are victims themselves, which leads to a cruel punitive environment for them. This is especially true for girls, nearly all of whom have experienced some form of physical or sexual abuse before their incarceration.<sup>23</sup> Recent research conducted by Human Rights for Kids (HRFK) has found that women who were incarcerated as children have experienced vastly higher rates of ACEs as children compared to the general population. They experience emotional abuse and

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<sup>21</sup> Craigie, Terry Ann. "Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality." *Brennan Center for Justice*, 2020.

<sup>22</sup> Baglivio, Michael T., et al. "The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders." *OJJDP Journal of Juvenile Justice*, vol. 3, no. 2, 2014, pp. 1-24.

<sup>23</sup> Saada Saar, Malika, et al. "The Sexual Abuse To Prison Pipeline: The Girls' Story." *Human Rights Project for Girls/The Center on Poverty and Inequality/Ms. Foundation for Women*, 2015.

neglect at rates of 92.11% and 94.74% respectively, and experience physical and sexual abuse at rates of 84%.

Prevalence of ACEs in Women Incarcerated as Children

Number of Aces Experienced	Count of Responses	Percentage
0	0	0.00%
1	1	1.32%
2-3	6	7.89%
Over 4	69	90.79%

Prevalence of ACEs in the General Population<sup>24</sup>

Number of Aces Experienced	Percentage
0	36%
1	22.1%
2-3	22.7%
Over 4	19.2%

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<sup>24</sup> Swedo EA, Aslam MV, Dahlberg LL, et al. Prevalence of Adverse Childhood Experiences Among U.S. Adults — Behavioral Risk Factor Surveillance System, 2011–2020. *MMWR Morb Mortal Wkly Rep* 2023;72:707–715. DOI: <http://dx.doi.org/10.15585/mmwr.mm7226a2>. It is also worth noting that the CDC has no currently or formerly incarcerated category in their ACEs data.



Boys who are system-involved also experience high rates of trauma. The biggest difference between boys and girls appears to be the prevalence of sexual abuse, which is lower for boys than girls. At every level, the outcomes for system-involved youth are worse when they are moved into the adult system.<sup>25</sup> Allowing every child to access the system that was designed for them not only increases public safety, but also ensures that children's rights are protected to a greater degree.

### **Impact of Lowering the Age of Prosecution in Adult Court**

States that are considering lowering the age of prosecution in adult court can learn from the mistakes of the four states that exclude seventeen-year-olds from juvenile court. Last year, for example, 295 seventeen year olds were adjudicated delinquent in Louisiana.<sup>26</sup> All of those children would now be charged and tried in the adult system, no matter the severity of the offense. They would all be held in adult jails pretrial pending the outcome of their case. This will cause severe harm to kids who make mistakes as juniors and seniors in high school.<sup>27</sup> The effects of this change will be felt quickly; states that have lowered the maximum age have drastically more children incarcerated as adults as compared to their neighbors.

The three other states that require 17 year olds to be charged as adults (Georgia, Texas, and Wisconsin) have significantly higher populations of people who have been incarcerated since childhood than neighboring states, even when controlling for the size of those states. Georgia's population of people in adult correctional facilities for offenses committed as children

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<sup>25</sup> Lahey, Jessica. "The Steep Costs of Keeping Juveniles in Adult Prisons." *The Atlantic*, 8 January 2016.

<sup>26</sup> Louisiana, Office of Juvenile Justice. *Act 499 Data Repository*, 2023.

<https://ojj.la.gov/page/act-499-data-repository>. Accessed 2023.

<sup>27</sup> National Prison Rape Elimination Commission, "[National Prison Rape Elimination Commission Report](#)" (2009).

is nearly four times the size of neighboring Alabama,<sup>28</sup> at a rate of 12 people per 100,000 in the state compared to Alabama's 7 per 100,000. Texas' population of incarcerated children is nearly 36 times that of neighboring Oklahoma,<sup>29</sup> at a rate of 18 per 100,000 compared to Oklahoma's 4 per 100,000. Wisconsin currently holds 9.49 times the population of people incarcerated as children than Minnesota,<sup>30</sup> at a rate of 29 per 100,000 compared to Minnesota's 3 per 100,000. It is also worth noting that collectively Georgia, Louisiana, Texas, and Wisconsin are currently incarcerating over 10,500 people for crimes they committed as children, which is approximately one-third of the total number of people who have been incarcerated since childhood in the United States.

These stark differences indicate systems that are drastically more inclined towards incarcerating children alongside adults, which is reflected in removing 17-year-olds from the juvenile justice system, with no exceptions. This scale is especially important when considering who this affects most; Human Rights for Kids' research on the mass incarceration of children as adults shows that people of color (specifically Black children) are almost universally incarcerated as adults at far higher rates than their representation in the general population.<sup>31</sup> Increasing the scale of a system that disproportionately harms children of color will only exacerbate these issues.

Every state already has established mechanisms that allow juvenile court judges to use their discretion when it is necessary for waiving or transferring children to adult court. This discretion is most often used when children commit serious or violent crimes. By lowering the barrier to entry, the children that will be swept into the adult system aren't those who have

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<sup>28</sup> Human Rights for Kids. (2023, May) *Crimes Against Humanity: The Mass Incarceration of Children in the United States*. <https://humanrightsforkids.org/a-crime-against-humanity/>

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

committed serious offenses – those children are almost always already eligible to be transferred to adult court. Instead, it will be the children alleged to have committed lower-level offenses, such as shoplifting, theft, drug offenses, or fighting with other youth. These are the children that would benefit the most from diversion and community-based rehabilitation programs, and are the most likely to stop offending if those services are delivered correctly.<sup>32</sup> Yet, by following the model adopted by Texas, Louisiana, Georgia, and Wisconsin states would risk drastically increasing recidivism rates among youth who were low-risk to begin with, dealing a significant blow to public safety and the future prospects for these children.

### **Louisiana is Not a Model for Protecting Children’s Human Rights**

Louisiana’s record for improving public safety or respecting the rights of children is not an impressive one.<sup>33</sup> Louisiana is among the worst states, if not the worst, in the country when it comes to the treatment of children in the criminal justice system. Last year, HRFK found that 7.2% of Louisiana’s prison population had been incarcerated since they were children, higher than any other state.<sup>34</sup> Additional research on this population indicated that Louisiana incarcerates children as adults at a rate of 49 people per 100,000 in the state, far higher than any other state. Louisiana also has 391 people with life sentences that they were given as children, which is the fourth highest in the nation. Some of those children were also convicted under Louisiana’s racist non-unanimous jury rule which was struck down in 2020 by the U.S. Supreme Court. Justice Kavanaugh highlighted the impact of this policy on the state’s Black citizenry:

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<sup>32</sup> Wilson, David B. Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-Analysis. Office of Justice Programs’ National Criminal Justice Reference Service, May 2017.

<https://www.ojp.gov/pdffiles1/ojdp/grants/250872.pdf>

<sup>33</sup> Muller, Wesley. *Data Doesn’t Warrant Louisiana Criminal Justice Overhaul, Groups Say*. Louisiana Illuminator, 19 Feb. 2024.

<https://lailluminator.com/2024/02/19/data-doesnt-warrant-louisiana-criminal-justice-overhaul-groups-say/>

<sup>34</sup> Human Rights for Kids. (2023, May) *Crimes Against Humanity: The Mass Incarceration of Children in the United States*. <https://humanrightsforkids.org/a-crime-against-humanity/>

“In light of the racist origins of the non-unanimous jury, it is no surprise that non-unanimous juries can make a difference in practice, especially in cases involving black defendants, victims, or jurors. After all, that was the whole point of adopting the non-unanimous jury requirement in the first place. And the math has not changed.”<sup>35</sup>

HRFK also identified more than 100 Black children who had been targeted and convicted under this racist, Jim Crow-Era relic. Between its *Roper*, *Graham*, *Miller*, and *Ramos* violations, perhaps no state in the country has violated the Constitutional and human rights of children to the same degree as Louisiana. For this reason alone, Louisiana should not be a model; the fact that the state is willing to increase the scale of this clearly flawed system even further should alone be cause for concern. Unfortunately, Louisiana has done an about-face from the progress it made just a few years ago, when the State Legislature passed Raise the Age legislation in 2016.<sup>36</sup> The legislation came on the heels of a state legislature commissioned study on the impact of Raise the Age, which concluded that doing so would be in the best interests of Louisiana, both in terms of public safety and fiscal impact.<sup>37</sup> Unfortunately, the state never gave the new policies the proper time to succeed, as jurisdiction over 17 year olds was only restored to juvenile courts in 2020.<sup>38</sup> Sadly, the time Louisiana had to implement Raise the Age was marred by serious infrastructure and capacity issues within the state’s juvenile justice system. This included moving children into the defunct Death Row of Angola, the response to which included condemnation from the United Nations Human Rights Council and the U.S. Department of Justice.<sup>39</sup>

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<sup>35</sup> *Ramos v. Louisiana*, 140 S.Ct. 1390, (2020) (Kavanaugh, J., concurring in part).

<sup>36</sup> Louisiana Senate. SB324, Juvenile Jurisdiction Planning and Implementation Act. legis.la.gov, 2016. Louisiana State Legislature, <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1012088>.

<sup>37</sup> Louisiana State Senate. *A Legislated Study of Raising the Age of Juvenile Jurisdiction in Louisiana*. 1 February, 2016. [https://sph.lsuhscc.edu/wp-content/uploads/2016/07/RAISE\\_THE\\_AGE\\_DRAFT\\_20160128Final.pdf](https://sph.lsuhscc.edu/wp-content/uploads/2016/07/RAISE_THE_AGE_DRAFT_20160128Final.pdf)

<sup>38</sup> Rosenfeld, Richard, Bobby Boxerman and Ernesto Lopez. *Pandemic, Social Unrest, and Crime in U.S. Cities: Year-End 2022 Update*. Washington, D.C.: Council on Criminal Justice, January 2023.

<sup>39</sup> United Nations Office of the High Commissioner on Human Rights. *International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement - Visit to the United States of America*. A/HRC/54/CRP.7. 2023.

Louisiana's decision to bar seventeen year olds from the juvenile justice system should not be a trendsetter among other states looking to make positive changes to their juvenile justice systems or improve public safety. Moving more children into the adult justice system harms public safety and produces worse outcomes for child offenders. Juvenile justice systems were implemented in a widespread way because they are better at rehabilitating youth than the adult criminal justice system. States should choose to give children the chance to be rehabilitated, heal, and find a better path in the juvenile justice system, rather than subjecting them to an adult system that only further harms and traumatizes them.