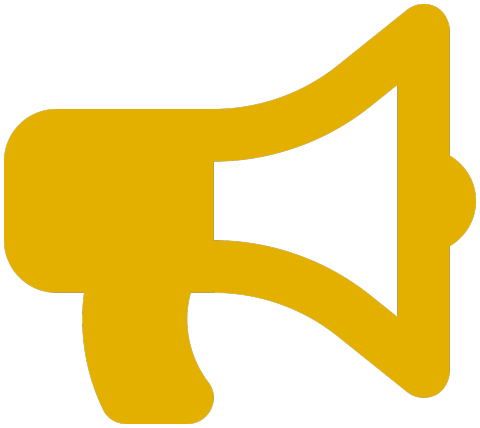

Sample Racial Justice Legislation and Policy

RACIAL JUSTICE TOOLKIT: POLICY ADVOCACY RESOURCE

Sample Racial Justice Legislation & Policy

The samples contained within this document are meant to inspire juvenile defenders to engage in creative policy advocacy that will reduce racial disparities in the juvenile legal system.

As with other documents in Racial Justice for Youth: A Toolkit for Defenders, this list of sample legislation and policy is not exhaustive. We have chosen an example or two under each category that highlights what has been achieved by other advocates. Additionally, this is not an exhaustive list of the types of legislation that can reduce racial disparities.

We encourage you to email inquiries@defendracialjustice.org to share additional examples of existing legislation, new categories of policies that should be added to the document, and your ideas for new areas of racial justice policy advocacy.

Table of Contents

I. Anti-Racial Profiling

Anti-Racial Profiling in Delinquency and Criminal Contexts:

Prohibiting the use of racial profiling in all law enforcement activities is an important step toward reducing the overrepresentation of youth of color in the juvenile legal system. While many states have laws that prohibit racial profiling to some extent, the law can be improved even in these states. The NAACP and the Southern Poverty Law Center have provided guidance for advocates seeking to develop policies that prohibit racial profiling.

The Southern Poverty Law Center released "10 Best Practices for Writing Policies Against Racial Profiling" in 2018: https://www.splcenter.org/20181023/10-best-practices-writing-policies-against-racial-profiling

The NAACP's "Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America," released in 2014, is a policy toolkit that includes both model legislation and a 50-state survey of racial profiling laws. These can be found in Appendix I and IV here: https://www.naacp.org/wp-content/uploads/2018/07/Born_Suspect_Report_final_web.pdf

The NAACP's model legislation defines racial profiling as "any law enforcement action against an individual by a law enforcement officer that relies, to any degree, on actual or perceived race, color, ethnicity, […] in initiating law enforcement action against an individual, rather than any law enforcement action that relies upon a specific suspect description-based notification, an individual's behavior, or other trustworthy information or circumstances, relevant to the locality and timeframe, that links a person or persons to suspected unlawful activity."

California's anti-racial profiling law offers an effective definition of racial profiling. The law states that "racial or identity profiling is a practice that presents a great danger to the fundamental principles of our Constitution and a democratic society." Section 135194 (d)(2) of California Penal Code. The full text of the law is available here: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=13519.4.

The New York City Police Department's Policy Prohibiting Racial Profiling and Bias-Based Policing, enacted in June of 2016, is another useful example. This policy states that "race, color, ethnicity, or national origin may not be used as a motivating factor for initiating a police enforcement action." The policy states that race may only be considered in "stop and frisk" situations "when the stop is based on a specific and reliable suspect description that includes not just race, age, and gender, but other identifying characteristics or information." If the stop is not based on a specific suspect description, race may not be a motivation or justification for the stop. New York City Police Department Patrol Guide, Section: General Regulations, Procedure No. 203-25 can be accessed here: https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg203-25-dept-policy-prohibiting-racial-profiling.pdf

Efforts to pass federal legislation prohibiting racial profiling began in 2001, and the End Racial Profiling Act is still pending. Access to the full text of the pending legislation is available here: https://www.congress.gov/bill/115th-congress/house-bill/1498/text

Anti-Racial Profiling in Civil Contexts:

Several jurisdictions have recently enacted policies to protect people of color against discrimination based on natural hairstyles. Although these policies are focused on anti-discrimination in civil contexts, they are especially relevant to attorneys defending youth accused of school-based offenses.

California's CROWN Act (which stands for Creating a Respectful and Open Workplace), made law in July of 2019, marks California as the first state to ban discrimination against black students and employees over their natural hair texture and protective hairstyles. California already had laws prohibiting racial discrimination in employment, education, and housing. The C.R.O.W.N. Act provides that the definition of race in these existing laws includes "traits historically associated with race, including but not limited to, hair texture and protective hairstyles." The law states that "'protective hairstyles' includes, but is not limited to, such hairstyles as braids, locks, and twists."

Importantly, Section 1 of the law contains text that could be cited to provide insight on hair-based racial profiling in schools or other contexts. Section 1 (f) states: "In a society in which hair has historically been one of many determining factors of a person's race, and whether they were a second-class citizen, hair today remains a proxy for race. Therefore, hair discrimination targeting hairstyles associated with race is racial discrimination." The text of the California law (SB188) can be found here: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB188

New York became the second state to pass such a measure in July 2019, using the same language as the California bill to expand its definition of race in its existing laws prohibiting racial discrimination in employment and education. New York's law (SB6209) can be found here: https://legiscan.com/NY/bill/S06209/2019

New Jersey has a similar law pending. Information on New Jersey's pending legislation (S3945 and A5564), as well as its text, can be found here: https://legiscan.com/NJ/bill/S3945/2018

New York City was a leader in this area. Its Commission on Human Rights released its Legal Enforcement Guidance on Race Discrimination on the Basis of Hair in February of 2019. It clarifies that New York City Human Rights Law prohibits discriminatory harassment and bias-based profiling by law enforcement, as well as discrimination by most employers, housing providers, and providers of public accommodations. Additionally, the Guidance provides specific focus on discriminatory practices in school. The full text of the Guidance can be found here: https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf

II. Competence and Developmental Immaturity

Youth of color may not be given the same consideration in evaluating competence as white youth because they are often perceived as older and more culpable than their similar aged white peers.[1] Laws that explicitly require developmental immaturity based on chronological age to be considered when making a competence determination can help reduce this potential for disparate treatment.

Attorneys should know their existing state laws well and carefully consider potential client impact as they advocate for changes to the law. According to the commentary on National Juvenile Defense Standard 1.7 Role of Counsel Regarding Competence of Youth to Stand Trial, "juvenile defenders should approach competency issues with deliberation and caution. Whatever the finding, the decision can have short- and long-term implications on client autonomy, placement, and services."

Oklahoma passed legislation in 2015 codifying "developmental immaturity" based on "chronological age" as one of several grounds for incompetence. The law defined developmental immaturity: as "a condition based on a juvenile's chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or intellectual disability." The court can order the child to receive services to attain competence for a period of either six or twelve months; however, the court could make a finding that such services are not justified. The full text of the legislation can be found here: http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20ENR/SB/SB457%20ENR.PDF

III. Decriminalization of Marijuana for Youth

While many states are moving toward the decriminalization of marijuana for adults, there is less momentum around keeping youth accused of marijuana possession out of juvenile court.[2] Although prosecutors in some jurisdictions are making efforts to keep youth accused of marijuana offenses out of juvenile courts, youth of color are still more likely than white youth to be prosecuted even though white youth use drugs at the same rate as youth of color. Prosecutors in some jurisdictions are making efforts to keep youth accused of marijuana offenses out of juvenile courts. While decriminalization of marijuana is an important development, remaining laws that criminalize the public consumption or distribution of marijuana are still disproportionately policed and prosecuted against people of color. A black person in D.C., where private consumption has been

[1] Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psychol. 526 (2014).

[2] No states have decriminalized recreational marijuana use for youth. The District of Columbia, Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont and Washington have decriminalized private, recreational marijuana use for adults 21 years of age and older; https://disa.com/map-of-marijuana-legality-by-state

decriminalized for adults, is 11 times more likely to be arrested for public consumption.[3] In addition to advocating for the elimination of prosecuting youth for marijuana possession, juvenile defenders should be prepared to argue against disparate enforcement.

Delaware proposed legislation in March 2019 that would prohibit the filing of delinquency charges for marijuana possession. Instead, youth who are accused of marijuana possession for personal use would be issued a civil citation with the maximum penalty being a fine, which would not expose them to the risk of juvenile detention. The full text of Delaware's proposed law can be found here:
http://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=47243&legislationTypeId=1&docTypeId=2&legislationName=SB45

IV. Eliminating Felony Murder Charge

Felony Murder statutes exist in an overwhelming majority of states.[4] They allow prosecutors to charge individuals with murder without ever having to prove that the accused person acted to support the murder or had the requisite mental state. Prosecutors must simply prove that the individual was present at the time of the murder and had the intent to commit any felony. Prosecutors have immense discretion in making charging decisions. Youth of color are more likely to be charged with felony murder as opposed to a lesser offense.

California recently enacted legislation that eliminates its felony murder charge, and instead requires that prosecutors prove that the accused person had the requisite mental state to be guilty of murder or acted to support the murder. This reduction in prosecutorial discretion can limit the impact of implicit racial bias in charging decisions. The full text of the law can be found here:
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1437

V. Ending Detention of Youth for Truancy and Status Offenses

Youth of color are disproportionately impacted by laws that criminalize truancy. Many states have laws that bring children into the juvenile legal system after they have missed what the law deems an excessive number of days of school. Once system-involved, these children are then at risk for being removed from their homes. Exposure to court involvement and detention increase the risk that youth will become more deeply involved in the juvenile legal system.

[3] Drug Policy Alliance, *From Prohibition to Progress: A Status Report on Marijuana Legalization*, Jan. 2018.
[4] As of 2017, 43 states had a felony murder rule. Robinson, Paul H. and Williams, Tyler Scot, "MAPPING AMERICAN CRIMINAL LAW Variations Across the 50 States: Ch. 5 Felony-Murder Rule" (2017). Faculty Scholarship. 1719. Available at https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2721&context=faculty_scholarship

The Juvenile Justice and Delinquency Prevention Act[5] prohibits the confinement of youth for status offenses, including truancy. However, youth accused of truancy and other status offenses are still at risk of being detained in many states if they are found to be in violation of a valid court order (VCO). This exception allows states that receive OJJDP funding to detain status offenders if they have violated a directed order of a court, such as "attend school regularly."[6]

Reform efforts that reduce the likelihood that youth of color will be brought to court for truancy or other status offenses are needed in many states. Additionally, states that have enacted the "violation of a valid court order" (VCO) exception should enact legislation that prohibits the detention of youth based on truancy and other non-criminal offenses.

Connecticut changed its law to no longer include youth with excessive absences in its definition of unruly or status offenders ("family with service needs"). Connecticut also now prohibits children from being placed in detention for Violation of Valid Court Order. Instead the court may order the child to participate in non-residential or community-based residential services. The full text of the Connecticut law, showing modifications, can be found here:
https://www.cga.ct.gov/2016/ACT/pa/2016PA-00147-R00HB-05642-PA.htm

Utah no longer allows the issuance of a court citation for habitually truant youth. The full text of the Utah law can be found here:
https://www.cga.ct.gov/2016/ACT/pa/2016PA-00147-R00HB-05642-PA.htm

VI. Ending Juvenile Life Without Parole

Legislation passed in Oregon in May 2019 eliminated the availability of a life without parole sentence for youth by amending the sentencing provision of its aggravated murder statute to state that "a person who was under 18 years of age at the time the offense was committed is not subject to a sentence of death or life imprisonment without the possibility of release or parole."[7] The full text of the legislation SB1008 is available here:
https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB1008/Enrolled

Information from the ACLU regarding this reform is available here: https://aclu-or.org/en/press-releases/youth-justice-reform-bill-headed-governors-desk-sb-1008

[5] JJDPA is Federal legislation that was passed in 1974 and reauthorized most recently in 2018. It sets out requirements for states receiving funding from OJJDP. The full text can be accessed here: https://www.congress.gov/bill/115th-congress/house-bill/6964/text

[6] OJJDP published a Literature Review in 2015 covering the confinement of status offenders, which is available here: https://www.ojjdp.gov/mpg/litreviews/Status_Offenders.pdf

[7] ORS 137.707 [(2)(2)]. Amended in Sec. 5 of SB1008

VII. Ending the Shackling of Youth

As of September 2018, 32 states have prohibited indiscriminate shackling of youth in juvenile court. While many states have eliminated the presumptive shackling of all youth, no state has enacted an outright prohibition on shackling in juvenile court. Judges retain discretion (with varying guidance from the law) to shackle certain youth. While elimination of automatic shackling of all youth is a step in the right direction, defenders should be vigilant to ensure that children of color are not shackled due to implicit racial bias (or other factors) leading to false presumptions of their dangerousness.

Shackling can be prohibited through statutes, court rules, court opinions, or policies. An example of each is provided below. While defenders are encouraged to advocate for statewide restrictions on shackling, they should also consider seeking a local court rule to more immediately end shackling in their jurisdiction.

Delaware Code Ann. Tit. 10, § 1007B states that youth may not be restrained in juvenile court proceedings unless it is necessary because the child is "presently uncontrollable and constitutes a serious and evident danger to himself or herself or others," there are safety risks for youth or staff in the courtroom, or if the child has a history of noncompliance. Importantly, the statute requires that the judge find there are "no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including, but not limited to, the presence of court personnel, law-enforcement officers, or bailiffs." The statute also requires that the Court make written findings of fact in support of its order and provide the child or child's attorney an opportunity to be heard as part of any hearing to determine whether the use of restraints is necessary. The full text of the Delaware statute is available here: https://delcode.delaware.gov/title10/c009/sc03/

Massachusetts's policy[8] states that "restraints may not be used on juveniles during court proceedings and must be removed prior to the appearance of juveniles before the court at any stage of any proceeding, unless the justice presiding in the courtroom issues an order and makes specific findings on the record that restraints are necessary because there is a reason to believe that a juvenile may try to escape, or that a juvenile may pose a threat to his or her own safety, or to the safety of other people in the courtroom, or restraints are reasonably necessary to maintain order in the courtroom." The policy goes on to state factors that the justice "shall consider" before ordering restraint of a child in the courtroom.

The commentary to the policy emphasizes that "shacking of juveniles in courtroom proceedings is antithetical to the Juvenile Court goals of rehabilitation and treatment." It cites the Florida Supreme Court's approval of its anti-shackling rule, finding that indiscriminate shackling of

[8] Trial Ct. of the Commonwealth, CT. OFFICER POL'Y AND PROCEDURES MANUAL, Ch. 4, § VI (2010)

youth is "repugnant, degrading, humiliating, and contrary to the primary purpose of the juvenile justice system." The full text of the Massachusetts policy is available here: http://www.njjn.org/uploads/digital-library/resource_1525.pdf

Alaska Delinq. Ct. R. 21.5 (2015) prohibits shackles "unless they are necessary because the juvenile is otherwise uncontrollable or constitutes a serious and evident danger to self or others, there is reason to believe that the juvenile will try to escape, or there is no less restrictive alternative available to maintain order and safety in the courtroom given available security resources." The full text of the Alaska court rule is available here: https://public.courts.alaska.gov/web/rules/docs/del.pdf

For more information on the Campaign Against Indiscriminate Juvenile Shackling see: https://njdc.info/campaign-against-indiscriminate-juvenile-shackling/

VIII. Ending Solitary Confinement of Youth

People of color are subjected to solitary confinement at higher rates than white people. Solitary confinement is widespread, and there is a disproportionate impact on youth of color, gender non-conforming youth, LGBTQ youth, and youth with disabilities.[9] Men of color are overrepresented in solitary confinement in prisons.[10] While there is no data available on racial disparities in the solitary confinement of youth, it is reasonable to expect that youth of color are subjected to the same unequal treatment as adults.

President Obama ended solitary confinement of youth in federal prisons in 2016. The full text of the "Presidential Memorandum—Limiting the Use of Restrictive Housing by the Federal Government" can be accessed here: https://obamawhitehouse.archives.gov/the-press-office/2016/03/01/presidential-memorandum-limiting-use-restrictive-housing-federal. This became enshrined in federal law as part of the First Step Act passed by Congress in December 2018. Importantly, federal law now only allows for solitary confinement to be used when a child risks immediate harm to themselves or others. Additionally, the child must be released as soon as he no longer poses a risk, and can be kept in solitary no longer than 3 hours if he poses a risk to others and 30 minutes if he is a risk only to himself. The full text of the law can be accessed here:

[9] While there is not comprehensive data available on solitary confinement of youth, The Juvenile Law Center's 2017 report titled "Unlocking Youth: Legal Strategies to End Solitary Confinement in Juvenile Facilities" relied upon surveys of public defenders and state protection and advocacy agencies, conversations with youth, families, and advocates, research on implicit racial bias, and the pervasiveness of disparate impact on children of color at every stage of the juvenile legal system, in reaching its conclusion about the disparate impact of isolation on youth of color.

[10] Yale University and the Association of State Correctional Administrators released a national report on solitary confinement in adult prisons in November 2016 titled "Aiming to Reduce Time in Cell." It can be accessed here: https://www.themarshallproject.org/documents/3234404-Aiming-to-Reduce-Time-In-Cell-Correctional

https://www.congress.gov/bill/115th-congress/senate-bill/3747/text#toc-iddf565a43-5d49-48a4-9f05-011eb4e57668

While many states prohibit solitary confinement as discipline, almost all explicitly allow isolation for other purposes, such as safety protection or administrative necessity. The best policies will eliminate solitary confinement altogether, or put a limit on the amount of time a child can be held.

In its 2017 report titled "Unlocking Youth: Legal Strategies to End Solitary Confinement in Juvenile Facilities," the Juvenile Law Center recommends advocating for policy changes that completely prohibit solitary confinement or limit its use to under three hours for any purpose or circumstance. Pages 18 to 20 of this report contain examples of effective policy language, including: 1. defining solitary confinement, 2. prohibiting it for disciplinary purposes and any reason not necessary to prevent immediate harm, 3. limiting its use to no more than three hours, 4. requiring staff to use the least restrictive alternative to avoid solitary confinement, 5. requiring facilities to offer individualized services that address persistent behavior concerns to avoid the use of solitary confinement, and 6. requiring comprehensive data collection. The full text of the report can be accessed here: https://jlc.org/sites/default/files/publication_pdfs/JLC_Solitary_Report-FINAL.pdf

IX. Ending Transfer / Waiver to Adult Criminal Court

Youth of color are at greater risk of being prosecuted as adults.[11] In states with automatic transfer laws, prosecutors can be impacted by implicit racial bias when deciding how to use their discretion in charging youth of color. In states with discretionary waiver, the implicit racial bias of both prosecutors and judges can determine which youth have rehabilitative potential and which are treated as adults. The United States should end the prosecution of children in adult court. Defenders of racial justice should advocate for any law that diminishes the likelihood that youth will be prosecuted in adult court.

Three recently passed bills provide relevant examples:

1. California law now prohibits trying children under the age of sixteen as adults. This was enacted in SB 1391, amending Section 707 of the Welfare and Institutions Code relating to youth. The full text of the law can be found here: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1391

[11]The most recent data available from the Office of Juvenile Justice and Delinquency Prevention shows that in 2017 68.7% of all youth transferred to adult court were youth of color and 54.2% of all youth transferred were black. Available at https://www.ojjdp.gov/ojstatbb/ezajcs. For more information on racial disparity in juvenile transfer see "The Color of Juvenile Transfer: Policy & Practice Recommendations," released by see National Association of Social Workers in collaboration with the Campaign for Youth Justice, in 2017. Available here: https://www.socialworkers.org/LinkClick.aspx?fileticket=30n7g-nwam8%3D&portalid=0

2. Oregon ended automatic waiver to adult criminal court for any youth in a May 2019 amendment to ORS 137.705. Prior to this amendment, prosecutors had the discretion to direct file youth aged 15 and up for an array of enumerated offenses, including compelling prostitution and second-degree robbery. The law now dictates that all children's cases begin in juvenile court and that they can only be tried as adults if the juvenile court enters an "order of waiver." Youth under 15 may not be waived to adult court in Oregon. The full text is available here:
https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB1008/Enrolled

   Information from the ACLU regarding this reform is available here:
https://aclu-or.org/en/press-releases/youth-justice-reform-bill-headed-governors-desk-sb-1008

   "The Color of Juvenile Transfer: Policy & Practice Recommendations," released by the National Association of Social Workers in collaboration with the Campaign for Youth Justice in 2018, highlights the racial disparity in the application of Oregon's automatic transfer law prior to its reform. Data cited in this report indicates that although black youth made up 2.3% of Oregon's youth population in 2017, they accounted for 15.8% of youth tried as adults, which has been a consistent trend of over-representation since the automatic transfer law was enacted in 1995. Black youth were 13 times more likely than their white peers to face adult court and were more likely to be charged with second-degree robbery, a lower-level direct-file offense. Hispanic and Native American youth were also disproportionately affected. The full text of this important report featuring data from many states is available here:
https://www.socialworkers.org/LinkClick.aspx?fileticket=30n7g-nwam8%3D&portalid=0

3. Reform passed in Oregon in May 2019 established a process for all children who are convicted in adult court to have access to a "second look" hearing halfway through their sentence. The young person must prove by clear and convincing evidence that they have been rehabilitated, is not a threat to the safety of the victim or community, and will comply with the conditions of release. Upon such a finding, the court can allow the young person to serve the remainder of their sentence on community-based supervision. ORS 420A.203. The full text is available here:
https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB1008/Enrolled

   Information from the ACLU regarding this reform is available here:
https://aclu-or.org/en/press-releases/youth-justice-reform-bill-headed-governors-desk-sb-1008

X. Fines and Fees

Youth of color are pushed deeper into the justice system for the same type of behavior as their white peers and are thus exposed to more frequent and higher court fines and fees. Not only does the financial burden of juvenile court involvement serve no rehabilitative purpose, it can increase the risk of recidivism as their inability to pay leads to more fees, extended probation, civil liens, license forfeiture, and even incarceration. The vast majority of youth and families involved in the juvenile legal system are low-income, and court fines and fees exacerbate economic disparities, causing families to choose between paying outstanding fees or purchasing basic necessities.

In 2017, California changed its law to eliminate all fees associated with appointing counsel to youth and other fees previously assessed in juvenile court. Youth under 21 are no longer assessed fees for drug testing or home detention. Parents are no longer charged administrative fees for their child's detention, probation supervision, electronic monitoring, and drug testing. Parents must be given notice that they "shall not be liable for the cost of counsel or legal assistance furnished by the court for purposes of representing the minor." The full text of the California law can be found here: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB190

The Juvenile Law Center published a report in 2018 on the fees associated with appointment of counsel, titled "The Price of Justice: The High Cost of 'Free' Counsel for Youth in the Juvenile System." The report highlights the positive impact that the 2017 change to California law, described above, had on families of color. Jeffrey Selbin, a clinical professor of law and director of Berkeley Law School's Policy Advocacy Clinic, is quoted as stating that "together with other administrative charges, we also found that public defender fees undermined youth rehabilitation and public safety, and fell most heavily on families of color." The report can be accessed here: https://debtorsprison.jlc.org/documents/JLC-Debtors-Paying-for-Justice.pdf

The National Juvenile Defender Center issued a Bench Card with important information on the impact of court fines and fees, which can be accessed here:
https://njdc.info/wp-content/uploads/2018/04/Bail-Fines-and-Fees-Bench-Card_Final.pdf

Juvenile defenders should become familiar with the laws and policies governing juvenile court fines and fees in their jurisdictions. In jurisdictions where there is no state law requiring assessment of fines and fees, defenders may be able to advocate that the local court policy eliminate the financial burden of juvenile court and advocate for state laws that prohibit the imposition of court costs.

XI. Minimum Age for Juvenile Court Jurisdiction

Legislative reforms that set or raise the minimum age of jurisdiction in juvenile court can help reduce the impact on youth of color by working against the "net-widening" effects of the juvenile legal system. Black youth are more likely to be perceived as older than their actual age and are seen

as more culpable than white youth.[12] This implicit racial bias results in prosecutors and police criminalizing the typical adolescent and pre-adolescent behavior of youth of color. Although Black youth consist of approximately 14% of the total child population of the United States, Black youth make up approximately 37% of youth 12 and under charged with delinquency offenses.[13] Setting a minimum age for prosecution in juvenile court can help counter-act the impact of implicit racial bias on charging decisions for younger youth of color.

Approximately two-thirds of states have no minimum age of jurisdiction for juvenile court jurisdiction.[14] California and Massachusetts have the highest minimum age, restricting prosecution to children 12 and older.

California recently enacted legislation that ends the prosecution of children under 12, except for murder and forcible rape. While this is an important step toward keeping children of color out of the juvenile legal system, more reform is still needed. The exceptions that remain in the law create a risk that youth of color will be disproportionately over-charged because implicit racial bias impacts prosecutors in their charging discretion. The full text of the California legislation can be found here: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB439

Massachusetts law defines a "delinquent child" as being between 12 and 18 years of age. The full text of the Mass. Gen. Laws Ann. Ch. 119, § 52 can be found here: https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section52

XII. Money Bail

The use of money bail contributes to youth of color being detained at higher rates than white youth. Judges' implicit racial bias impacts their determinations about whether youth of color are dangerous or a risk of flight, and the amount of bail that should be imposed. This results in youth of color being subject to higher bail amounts than white youth, which leads to youth of color being detained more frequently. Ending the use of money bail in juvenile court is an important step in addressing this disparity.

[12] Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psychol. 526 (2014)
[13] Data regarding general youth population by race can be accessed here: https://datacenter.kidscount.org/data/tables/103-child-population-by-race#detailed/1/any/false/37,871,870,573,869,36,868,867,133,38/68,69,67,12,70,66,71,72/423,424
Data regarding delinquency referrals by race and age can be accessed here: https://www.ojjdp.gov/ojstatbb/ezajcs/asp/demo.asp
[14] https://njdc.info/practice-policy-resources/state-profiles/multi-jurisdiction-data/minimum-age-for-delinquency-adjudication-multi-jurisdiction-survey/

Six states and three United States territories prohibit the use of money bail for children accused of delinquency offenses in juvenile court. Hawaii and Kentucky provide helpful examples:

> Haw. Rev. Stat. Ann. §571-32(h) "Provisions regarding bail shall not be applicable to children detained in accordance with this chapter."

> Ky. Rev. Stat. Ann. §610.190(1) "The law relating to bail shall not be applicable to children."

Read the National Juvenile Defender Center's report on reforming juvenile money bail for more information on the impact of money bail on youth of color:
https://njdc.info/wp-content/uploads/2019/NJDC_Right_to_Liberty.pdf

XIII. Police Transparency

Transparency regarding police officers' use of force and misconduct can give advocates and impacted communities essential information regarding individual and systemic racism in the juvenile and criminal legal systems.

California recently enacted legislation that gives the public access to records related to police shootings, use of deadly force instances, sexual assault allegations that were sustained after investigation by an overseeing agency, as well as cases where officers have been found to be dishonest in their professional capacity. The full text of the law can be found here:
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421

XIV. Protecting the Rights of Transgender and Gender Nonconforming Youth

The National Center for Lesbian Rights (NCLR) and the Center for Children's Law and Policy (CCLP), with support from the National PREA Resource Center, released *Model Policy: Transgender, Gender Nonconforming, and Intersex Youth in Youth Confinement Facilities*, to address the crisis affecting transgender, gender nonconforming, and intersex (TGNCI) youth in youth justice facilities. The model policy addresses operational practices to promote the safety, dignity, and well-being of TGNCI youth in confinement facilities. The model policy is designed for broad application in a wide range of confinement facilities (e.g., detention facilities, residential treatment centers, shelter homes).

"According to recent national data 12% of youth in juvenile facilities identify as transgender or gender nonconforming, and 85% of LGBTQ and GNC youth are of color. These youth experience higher levels of sexual abuse and other mistreatment in confinement settings, particularly when facilities lack clear, enforceable guidance on how to protect their safety and promote their well-

being."[15] The policy can be accessed here: https://www.prearesourcecenter.org/sites/default/files/library/TGNCI%20Model%20Policy.pdf

XV. Racial Impact Statements

Racial Impact Statements aim to identify the disparate racial consequences of laws when they are proposed. In 2008, Iowa was the first state to enact a law requiring legislators to submit racial impact statements for proposed legislation related to sentencing, probation, or parole. Connecticut and Wisconsin now have similar provisions related to their criminal legal system. There is now a growing movement to require racial impact statements for every piece of proposed legislation, not just those related to the criminal legal system. This expansion of Racial Impact Statement laws is essential to advance racial justice for youth. While racial impact statements for laws related to the adult criminal legal system are a vital tool for reducing racial disparities for adults accused and convicted of crimes, requiring racial impact statements for all proposed legislation will ensure that racial equity for youth in the juvenile legal system, as well as all people of color who are affected by a state's laws.

IL House Bill 2101, proposed in February 2019: "Provides that every bill which has or could have a disparate impact on racial and ethnic minorities, upon the request of any member, shall have prepared for it, before second reading in the house of introduction, a brief explanatory statement or note that shall include a reliable estimate of the anticipated impact on those racial and ethnic minorities likely to be impacted by the bill." The full text can be found here: http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=108&GA=101&DocTypeId=HB&DocNum=2101&GAID=15&LegID=117733&SpecSess=&Session=

Other states that require Racial Impact Statements are Oregon, Colorado, Minnesota, Connecticut, and New Jersey. The National Conference of State Legislatures created this helpful map in January of 2018: http://www.ncsl.org/research/civil-and-criminal-justice/racial-and-ethnic-disparities-in-the-juvenile-justice-system.aspx#1

The Sentencing Project has long been a proponent of Racial Impact Statement laws. Their initial report was released in 2009 and can be accessed here: https://www.sentencingproject.org/publications/racial-impact-statements-changing-policies-to-address-disparities/?eType=EmailBlastContent&eId=f59f7be8-0d90-45ed-bbdc-2bf01dbe8902

In 2014, they issued an update: https://www.sentencingproject.org/publications/racial-impact-statements/

[15] Wilber, S.& Szanyi, J. (2019) Model Policy: Transgender, Gender Nonconforming and Intersex Youth in Confinement Facilities, page 4, National Center for Lesbian Rights and Center for Children's Law and Policy.

In 2019, they reported on proposed racial impact statements in 7 states: https://www.sentencingproject.org/news/7002/

The Praxis Project has developed a tool for developing equity impact statements: https://www.racialequitytools.org/resourcefiles/praxisproject1.pdf

XVI. Restrictions on Police and Teacher Use of Force

Holding police officers and teachers accountable for their use of force can be a step towards reducing the brutalization of children of color by the police and other authority figures.

California recently enacted legislation that restricts educators from using physical and mechanical restraints or seclusion "only to control behavior that poses a clear and present danger of serious physical harm to the pupil or others that cannot be immediately prevented by a response that is less restrictive." The full text of the law can be found here: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2657

Proposed California legislation would alter the state's criminal procedure code to require police officers to "attempt to control an incident by using time, distance, communications, and available resources in an effort to deescalate a situation wherever safe, feasible, and reasonable to do so." Additionally, the law would prohibit officers from using deadly force except when necessary to "defend against a threat of imminent and serious bodily injury or death to the officer or to another person," prohibiting the use of deadly force when a person "poses a risk only to himself or herself." In situations where a person is fleeing from police, it would only be lawful for officers to use deadly force when the officer "has probable cause to believe that the person has committed, or intends to commit, a felony involving serious bodily injury or death, and there is a threat of imminent death or serious bodily injury to the officer or to another person if the subject is not immediately apprehended." The full text of proposed legislation California AB-931 can be found here: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB931

XVII. School Resource Officers & the School to Prison Pipeline

There is a variety of legislation that can reduce the impact of the school to prison pipeline. Ending zero tolerance policies, prohibiting out of school suspension for minor offenses, limiting School Resource Officer's ability to refer students to court for typical adolescent behavior, and collecting data on racial disparities in the use of school discipline are all examples of policies for which defenders may consider advocating as they work to end the school to prison pipeline.

Policies that require School Resource Officers to receive comprehensive training on adolescent brain development, de-escalation techniques, and the proper implementation of

Individualized Education Plans and Behavior Support Plans, are essential to reducing the negative impact of School Resource Officers on youth of color.

Delaware law passed in 2018 now requires School Resource Officers to be trained in de-escalation, disability awareness, and supporting students with Individualized Education Plans or Behavior Support Plans. The full text of the law can be accessed here: https://delcode.delaware.gov/sessionlaws/ga149/chp189.shtml

Massachusetts law requires school district superintendents and local police chiefs to draft a memorandum of understanding regarding School Resource Officers that "shall state that SROs shall not serve as school disciplinarians, as enforcers of school regulations or in place of licensed school psychologists, psychiatrists or counselors and that SROs shall not use police powers to address traditional school discipline issues, including non-violent disruptive behavior." Mass. Gen. Laws Ann. Part I, Tit. XXII, Ch. 71, Sec. 37P. The full text of the law can be accessed here: https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section37P

The Dignity in Schools campaign has created a Toolkit on Organizing to Combat the School-to-Prison Pipeline, available here: https://dignityinschools.org/toolkits/stpp/

Additionally, Dignity in Schools has released a Model Code on Education and Dignity, and updated resources in 2018 titled Model Code to Fight Criminalization, available here: https://dignityinschools.org/take-action/model-school-code/

The ACLU of Pennsylvania provides many excellent resources on its website https://www.endzerotolerance.org/ .

Howard University's Walter Center released a report in 2016 that reviews legislation from the preceding 8 years that contributes to Black male youth being pushed out of school and into the juvenile and criminal legal systems. The full text of the report, titled "The School-to-Prison Pipeline: A Legislative Database Summary," can be found here: https://walterscenter.howard.edu/sites/walterscenter.howard.edu/files/Legislative_Summary_FINAL%20REPORT.pdf

The Education Commission of the States tracks all education-related legislation across the country on their website: https://www.ecs.org/state-education-policy-tracking/

XVIII. Stop and Frisk Data Collection

California enacted the Racial and Identity Profiling Act of 2015, which required the state's Attorney General to establish the Racial and Identity Profiling Advisory Board (RIPA) to eliminate racial and identity profiling and improve diversity and racial and identity sensitivity in law enforcement. RIPA investigates and analyzes state and local law enforcement agencies' racial and

identity profiling policies and practice and makes these findings publicly available. The full text of the law, AB-953, can be found here: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB953#

More information, including the most recent RIPA report, can be found here: https://oag.ca.gov/ab953

XIX. Victim Compensation

People who are accused of criminal behavior are also often the victims of the criminal acts of others. Many states have laws providing for compensation for victims of certain types of crimes. These laws can unfairly deny their benefits to people of color by placing restrictions on receiving compensation.

California AB 1639, which amended Section 13962 of the Government Code, removes allegations of gang affiliation or immigration status restrictions on receiving otherwise legislatively mandated victim compensation. The full text of the law can be found here: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1639

XX. New Areas for Racial Justice Policy Advocacy

This final section of this document includes a list of ideas for new areas of racial justice policy advocacy. We encourage you to send us additional ideas to inspire your colleagues as they creatively advocate for youth of color.

While policy advocacy for racial justice is often explicitly about race (such as laws prohibiting racial-profiling or requiring race-related data collection), any legislation that limits the power of the state to draw youth deeper into the system can reduce the disparate treatment of youth of color. Think creatively and broadly about the types of policies that will increase justice and equity for youth of color.

Ideas for New Legislation & Policy:

1. Cultural Competency in Placement
   Statutory requirement for decision-makers to place youth in settings that are culturally competent and that will meet the unique needs of youth of color as they develop their racial, ethnic, and cultural identity.

2. Codify the Reasonable Child Standard & Reasonable Black Child

States should enact laws that require courts to adopt a "reasonable Black child" standard when evaluating whether a youth's Fourth Amendment rights were violated in analyzing seizure, stop, and the consent-to-search doctrine.[16]

3. Jury Instructions:
   Much like Massachusetts has juvenile specific jury instruction (https://njdc.info/wp-content/uploads/2018/10/Massachusetts-Juvenile-Specific-Jury-Instructions.pdf), states could create jury instructions related to the "reasonable Black child" standard, including specific jury instructions regarding Black youth and flight, consent to search, and analysis of custody and seizure.

4. Police Standards on Interacting with Youth of Color
   Legislation or policy that requires law enforcement to follow standards on interacting with youth that are informed by both adolescent brain development and cultural competence. Strategies for Youth has released a report on states' efforts toward training officers to interact with youth, which can be accessed here: file:///Users/ro295/Downloads/SFY_StandardsReport_031217.pdf

16 For more information, see Kris Henning, "The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment," 67 Am. U.L. Rev. 1513 (2018). Available at: http://www.aulawreview.org/the-reasonable-black-child-race-adolescence-and-the-fourth-amendment/