

Keeping Young Children on Track to Success

An Act to promote the appropriate treatment of young children (S.48)

Lead Sponsor – Senator Linda Forry



SD1800 would raise the age of juvenile jurisdiction from age 7 to 12. In 2014, 327 children age 12 and under were arrested. Of those who were arraigned, most were arraigned on assault (fights) or destruction of property charges. These elementary school aged young children, aged 7 to 11, are, unsurprisingly given their age, highly impulsive and highly vulnerable.

Introducing a child at such a young age to the juvenile justice system will cause more harm and derail a young child’s path for successful development. Non-juvenile justice, community-based interventions are far more effective and timely in holding a young child accountable for their actions.

Trying very young children is also constitutionally problematic, as they are very unlikely to be competent to stand trial. Young children have limited capacity to stand trial (they have a poor understanding of the process, what’s at stake, risk assessment, etc.) and have limited capacity to exercise their legal rights in a meaningful way. A 2003 study¹ found that children ages 11 to 13 “demonstrated significantly poorer understanding of trial matters, as well as poorer reasoning and recognition of the relevance of information for a legal defense, than did 14- and 15-year-olds.”²

What are kids capable of understanding at each age?

Typical Development of Children 7-11

Age **Grade** **Most popular book in Massachusetts¹**

7	1st-2nd	
8	2nd-3rd	
9	3rd-4th	
10	4th-5th	
11	5th-6th	

Young children can be held accountable in more appropriate and effective systems. Though most very young children are arrested and arraigned for very low level offenses, there will be a small cohort whose justice involvement indicates a more serious intervention. In those cases a child's behavior indicates an underlying child welfare or Child Requiring Assistance concern. By avoiding court processing and associated costs – including a delay in accessing appropriate services during the court process – these human services systems are better equipped to address these children's needs in a more timely manner.

Several states have set or are considering a policy of excluding very young children from delinquency proceedings:

- **California:** There is a presumption that a child under age 14 lacks understanding of wrongfulness and the state “needs clear proof” to rebut the presumption
- **Ohio:** Rules of evidence presume incompetence of a child under age 10. Case law suggests that courts rarely find competence for a child under age 14.
- **Florida:** Despite having no lower age of jurisdiction, age 12 is “universally accepted” as the lower age, and in the past 30 years, no child under age 12 has been processed in juvenile court
- **New Jersey:** There is a rebuttable presumption of incapacity for criminal intent for children between age 7 and 14.
- **New York:** The Governor's Commission on Youth, Public Safety and Justice recommends raising the lower age of juvenile jurisdiction to age 12, except for homicide offenses, which should be raised to 10.

¹ 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): 333–63.

² Final Report of the Governor's Commission on Youth, Public Safety and Justice: Recommendations for Juvenile Justice Reform in New York State. See page 37. Available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice_0.pdf