Is Lowering the Age at Which Juveniles Can Be Transferred to Adult Criminal Court the Answer to Juvenile Crime? A State-by-State Assessment*

The age at which a child should be held responsible for his or her actions has been debated for centuries.¹

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I. INTRODUCTION

No one will ever forget the terrible tragedy that April morning in 1999 when two students gunned down twelve classmates and a teacher at Columbine High School in Littleton, Colorado. Nor will we forget the day in 1998 in Jonesboro, Arkansas, when two boys (eleven and thirteen years old) shot and killed four classmates and a teacher. Since the mid-1990s, these school shootings have been widely publicized by the media. In response to the coverage, public fears, and criminologists’ predictions of increasing future violence, lawmakers in many states have lowered the age at which juveniles are transferred to adult criminal courts. Some public officials are calling for tougher sentencing of violent youths, citing the failure of rehabilitation to ameliorate violent teen behavior, including programs offered in juvenile prisons.

2. See Patrick O’Driscoll, The Day Innocence Died: It Began With a Chilling Prophecy, USA TODAY, Apr. 22, 1999, at 4A (stating both killers were 17 years old).
3. See Peggy Harris, ‘A Lot of Killing To Do’: Arkansas Boy Warned of Shooting: Friends, CHI. SUN-TIMES, Mar. 25, 1998, § Final Markets, at 1 (stating that the killer warned friends “he had a lot of killing to do” after a girl rejected him).
5. In a 1992 case in North Dakota, the court stated, “It is difficult to embrace a rehabilitative stance toward juveniles who have committed particularly heinous or serious violent crimes which provoke strong emotions and fear for safety of the public.” Witkowski v. M.D.N., 493 N.W.2d 680, 683 (N.D. 1992). Similar sentiments were expressed by the main sponsor of the Violent Crime Control and Law Enforcement Act of 1994. This statute permits children thirteen years and older who commit a violent crime with a firearm on federal property to be prosecuted as adults. See 18 U.S.C. § 5032 (1994). Congressman Bill McCollum (R-Fla), the bill’s main sponsor, stated that serious juvenile offenders “should be thrown in jail, the key should be thrown away and there should be very little or no effort to rehabilitate them.” Richard E. Redding, Juvenile Offenders in Criminal Court and Adult Prison, CORRECTIONS TODAY, Apr. 1999, at 92.
6. For the interesting and well-written perspective of a high school journalist, see Ruth DeGolla, Youthful Offenders Could Face Adult Punishment, PLAIN DEALER (Cleveland), Apr. 21, 1999, at 1G. John Zachariah, juvenile court administrator for Cuyahoga County in Ohio, expressed concern about the increased use of waivers to the adult court system. “In the adult court system, there is more of an emphasis on punishment than on rehabilitation. When a kid is bound over to the adult system, we are basically saying that a kid has crossed over and can’t be rehabilitated.” Id. In support of
The trend toward "get tough" policies concerning juveniles has swept through just about every state in the nation, affecting younger and younger minors. In Texas in 1997, not long after a tougher law was passed, a fourteen-year-old girl accused of murder became the youngest juvenile ever to stand trial as an adult in Tarrant County. Texas lowered the age from fifteen to fourteen in a 1995 revision of the state's juvenile justice code. In Michigan, an eleven-year-old boy, Nathaniel Abraham, became one of the youngest persons in the United States to be tried for murder as an adult; he allegedly shot his victim while perched in a tree. Michigan changed the law in 1996, giving prosecutors the authority to charge any child under fourteen as an adult for certain serious crimes.

Proponents of these measures often refer to rising juvenile crime rates. Juvenile involvement in crime increased from between 9 and 10% in the 1980s to 14% of all crime committed in 1994. From 1987 to 1994, the juvenile population increased only 7%, but juvenile arrests for delinquency increased 79%. According to the Federal Bureau of increasing the use of waivers, California Governor Gray Davis strongly supports prevention and rehabilitation but also supports an increased use of automatic and concurrent transfers because it is "necessary to protect society from those individuals for whom prevention and intervention fail." Pete Wilson, California Needs Juvenile Justice Reform, SAN DIEGO UNION-TRIB., Feb. 23, 2000, at B9.

7. See Should 14-Year-Olds Be Tried as Adults?, DALLAS MORNING NEWS, Sept. 18, 1997, at 11A.
9. See Sharon Cohen, 11-Year-Old to Be Tried as Adult, ASSOCIATED PRESS, Sept. 18, 1999, available in 1999 WL 22045660. Abraham was already a suspect in nearly two dozen crimes, including burglary, larceny, home invasion, arson, threatening classmates, beating two teenagers with metal pipes, and snatching a woman's purse at gunpoint. See id. Even after all these warning signs of serious trouble ahead, Abraham slipped through the cracks of juvenile justice and did not get the help he needed. See 20/20: He's Only a Child: Should an 11-Year-Old Be Tried as an Adult? (ABC television broadcast, Feb. 13, 1998) available in 1998 WL 5433498 [hereinafter 20/20: He's Only a Child].
12. A delinquent child is "[a]n infant of not more than specified age who has violated criminal laws or engages in disobedient, indecent or immoral conduct, and is in need of treatment, rehabilitation, or supervision." BLACK'S LAW DICTIONARY 428 (6th ed. 1990).
13. See Snyder, supra note 11, at 4. In 1987 there were about 1,180,000 delinquency cases; by 1995 there were nearly 1,550,000 delinquency cases. See Jeffrey A. Butts, The National Juvenile Court Data Archive: Collecting Data Since 1927, OFF. OF JUV. JUST. & DELINQ. PREVENTION [hereinafter OJJDP] FACT SHEET (U.S. Dep't of Just., Wash. D.C.), Aug. 1997, at 1.
Investigation, between 1983 and 1987 arrests of those under age eighteen increased 22.2% for murder, 18.6% for aggravated assault, and 14.6% for rape. These increases among a relatively small number of juveniles have steered attention away from promising remedies, such as privatized community-based programs, but instead have stimulated the transfer of juveniles to the adult court system where recidivism is at extraordinarily high levels.

However, since 1994, the overall juvenile crime rate has steadily decreased. Nevertheless, the debate over the age juveniles should be transferred to the adult system has been triggered by well-publicized crimes of a few juveniles. The onslaught of media attention focusing on a few rare but gruesome crimes drives the public to demand that severe remedies be applied to the overall population.

Scholar Thomas J. Bernard refers to the juvenile justice system as being in a continuous cyclical pattern, where it is seen as either too lenient or too harsh. He contends that this same cycle has been repeated three times in the last two hundred years. It swings toward harshness when justice officials and the public are convinced that juvenile crime is exceptionally high at that moment in time. The cycle begins by attributing high crime rates to the lenient treatment of juveniles. It continues when legislators decide it is time to toughen up by increasing the penalties until there are only a few lenient options available.

In analyzing the cyclical pattern of juvenile justice, two common views of juvenile delinquents emerge. Some view juvenile

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14. See Anastasia Toufexis, Our Violent Kids: A Rise in Brutal Crimes by the Young Shakes the Soul of Society, TIME, June 12, 1989, at 52 (citing statistics compiled by the FBI).
15. See SUSAN GUARINO-GHEZZI & EDWARD J. LOUGHRAN, BALANCING JUVENILE JUSTICE 1-2 (1996) (describing community-based programs as a variety of highly specialized programs available to fit a range of supervision and treatment needs of minors, classifying offenders into appropriate placements for treatment).
16. See id.
20. See id.
21. See id.
22. See id. at 4.
23. See id.
24. See id. at 5.

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delinquency as no different than general adult criminal behavior being committed by people who only care about themselves. This group generally favors policies that punish juveniles in proportion to the offense committed. In contrast, others view juvenile delinquency as a cry for help from juveniles in neglected or abusive environments. This group generally favors policies that respond to the juvenile’s delinquent behavior by aiding them directly or by addressing the negligent or abusive environment.

Bernard attributes the cyclical nature of the juvenile justice system in part to the perception that at the present time the juvenile crime rate is at an all-time peak and that these problems did not exist in the past. Accordingly, the problem rests with the current handling of juvenile offenders. However, the juvenile crime rate has steadily decreased in the last five years. For example, between 1985 and 1991, the annual homicide rate among males aged fifteen to nineteen increased 154% (from 13 to 33 per 100,000), but this rate began to decrease in 1994, dropping 34% between 1993 and 1997 (from 34.0 to 22.6 per 100,000). In 1997, the rate dropped 12.4%. In 1998, there were only 2100 homicides committed by juveniles out of a total 2,603,300 juvenile arrests, whereas, in 1995, there were 2800 criminal homicides committed by juveniles out of a total of 1,714,300 delinquency cases. In 1998, the juvenile violent crime rate dropped to the 1989 level of about 400 arrests per 100,000 juveniles aged ten to seventeen.

This Comment sets forth a state-by-state look at the age at which and the offenses for which juveniles are transferred, either statutorily or judicially, to the adult criminal court system. Next, this Comment examines whether state laws are moving toward harsher treatment in lieu of the traditional rehabilitation of juveniles. Finally, this Comment

25. See id.
26. See id.
27. See id.
28. See id. at 22.
29. See id.
30. See National Center for Injury, Prevention and Control, supra note 17.
31. See id.
33. See OFF. OF JUV. JUST. & DELINQ. PREVENTION, U.S. DEP’T OF JUST., JUVENILE COURT STATISTICS 1995, at 5 (1998). The number of juvenile arrests is greater than that of juvenile delinquency cases; however, this demonstrates that the number of homicides is decreasing.
34. See Snyder, supra note 11, at 5.
reviews tools useful for rehabilitation, apart from sending juveniles to
the adult criminal justice system. Part I focuses on the history of the
juvenile court system, its purpose, and the changes in treatment of
juvenile offenders that have occurred over the years. Part II examines
differing state laws and the three methods by which juveniles are
transferred into the adult criminal court system; this section also
analyzes recent cases decided since the enactment of new laws reducing
the age at which juveniles are transferred to the adult court system. Part
III reviews the consequences of sending younger juveniles to the
criminal courts as opposed to affording them rehabilitation-oriented
options. Finally, Part IV sets out some of the available options that are
grounded toward rehabilitation rather than simply punishing juvenile
offenders.

II. HISTORY OF THE JUVENILE COURT SYSTEM

Before 1822, juveniles who committed offenses were tried in the same
court and received the same punishment as adults.35 There was no
separate court system exclusively for minors.36 The first group in the
United States to care specifically about the welfare of neglected and
delinquent children was the “Society for the Prevention of Pauperism.”37
Founded in 1817, the Society investigated the treatment of poor and
delinquent children.38 A report prepared for the Society in 1819 stated
that there were no separate facilities for juveniles in penitentiaries and
that these harsh prison conditions did not aid in the rehabilitation of
juveniles.39 Another report, written by then New York mayor and
presiding municipal judge Cadwallader Colden, argued that the
association of adult criminals with juveniles sent to adult penitentiaries
harmed those juveniles.40 In an 1822 report, the Society recommended
establishing a separate penitentiary for juveniles and a new institution
focusing on reform, specifically education, industry, and moral training
instead of punishment.41

The first institution geared toward juveniles was the New York House
of Refuge, which opened in 1825.42 Its main focus was on juveniles who

35. See BERNARD, supra note 19, at 42.
36. See id.
37. See id. at 60; BARRY KRISBERG, THE JUVENILE COURT: RECLAIMING THE
VISION 1, 2 (1988).
38. See KRISBERG, supra note 37, at 2.
39. See id.; BERNARD, supra note 19, at 61 (citing reports written to the Society
about problems concerning juveniles).
40. See BERNARD, supra note 19, at 61.
41. See id.; KRISBERG, supra note 37, at 2.
42. See KRISBERG, supra note 37, at 2; BERNARD, supra note 19, at 62.
had not yet committed a crime, attempting, in essence, to stop the
delinquency before it began. The original functions of the House of
Refuge and other early juvenile institutions were to get poor, wayward,
and delinquent youths off the streets, to separate them from adult
criminals, and to provide them with a regimented life-style, education,
and training. Methods used by the House of Refuge to accomplish this
were to send youths to work on farms in the West or to be indentured
servants until their twenty-first birthday. However, no prior
investigation into the suitability of the homes or subsequent evaluation
of the treatment of the children was conducted; most of the children
were never heard from again. Eventually, many Western states
outlawed this practice.

As these institutions evolved into the juvenile court system of today,
they adopted an approach derived from the English common law, where
the king was viewed as the father of his country (parens patriae) who
assumed responsibility for protecting all orphans and dependent
children. The juvenile court’s role became known as the parens patriae
or the ultimate parent of the child. The first juvenile court was
established in Cook County, Illinois in 1899; this was largely due to the
work of women’s groups, such as the Chicago Women’s Club and Hull
House, who went before the city council and state legislature arguing for
major policy changes in the handling of juvenile offenders. The Cook
County court’s original goals were not to adjudicate guilt or fix blame,
but to investigate, diagnose, and prescribe treatment. After the court
was established, the age of majority—when juveniles would be held
criminally responsible—was set at sixteen. Eight years later the age of
majority was raised to seventeen for boys and eighteen for girls. Juveniles
under eighteen could not be charged with a crime because it

43. See BERNARD, supra note 19, at 62.
44. See SIMONSEN, supra note 1, at 309.
45. See BERNARD, supra note 19, at 65-66; KRISBERG, supra note 37, at 3.
46. See BERNARD, supra note 19, at 66.
47. See id.
48. See SIMONSEN, supra note 1, at 14.
49. See id.; BERNARD, supra note 19, at 95. Parens patriae literally means “parent
of the country,” BLACK’S LAW DICTIONARY 1114 (6th ed. 1990). It refers traditionally
to the role of the state as sovereign and guardian of persons under legal disability, such
as juveniles. See id.
50. See BERNARD, supra note 19, at 86; see also SIMONSEN, supra note 1, at 228.
51. See SIMONSEN, supra note 1, at 228.
52. See BERNARD, supra note 19, at 89.
53. See id.
was thought that "legally they did not have sufficient reasoning ability to form criminal intent." Since they could not form the mens rea, they could not legally commit a crime. By 1925, all but two states had created a juvenile court system.

There were no significant changes to the juvenile court system until the 1960s, when decisions by the United States Supreme Court created procedural and due process changes. By the late 1970s and mid-1980s, the desire to shift the focus of the juvenile court's role to one emphasizing deterrence and punishment began. Conservatives alleged that the juvenile courts were too lenient with dangerous minors and, therefore, called for vigorous prosecution of serious and violent juvenile offenders. As a consequence of such criticisms, more than half the states made it easier to transfer juveniles to adult courts beginning in 1976. "In 1994, 12% of cases waived [into the adult criminal court system] involved a juvenile offender under age 16, double the percentage from 1985." In 1985, the total number of juvenile cases transferred was 7200. In 1994, that number increased to 12,300, an increase of 42%.

Recent changes in state laws dealing with juvenile offenders have come either on the heels of infrequent but terrible crimes or after recent sociology studies. Criminologists have predicted that a wave of violent

54. Id.
55. See id.
57. See In re Gault, 387 U.S. 1, 55-57 (1967) (specifying a detailed list of rights that must be accorded to juveniles, such as protection against self-incrimination, right to written transcript, notification of charges, and right to confront witnesses); Kent v. United States, 383 U.S. 541, 553 (1966) (warning juvenile courts against arbitrariness in detention procedures); see also KRISBERG, supra note 37, at 6.
58. See KRISBERG & AUSTIN, supra note 56, at 50.
59. See id.
60. See id.
62. See id.
63. See id. Over the last twenty-five years, the juvenile population has not changed dramatically. See Snyder, supra note 11, at 4. In 1985 and 1992, the juvenile population was about 27 million. See id.
64. See Dilulio, supra note 4. See also Martha Neil, Rehabilitation Takes Back Seat to Quick Fix, Experts Say, CHI. DAILY L. BULL., Apr. 24, 1999, at 5 ("Although there's a media-driven view on the part of the public that juvenile offenders have gotten increasing[ly] violent and prolific in recent years, that just isn't true . . . ").
crime by ruthless teens called “superpredators” would double between 1992 and 2010. In 1998, two-thirds of Americans polled believed juveniles under age thirteen who commit murder should be tried as adults; in 1999, a quarter of registered voters polled thought juveniles aged twelve or younger who commit violent crimes should be tried as adults.

Despite all the recent media attention on a few horrific crimes by teenagers, the sociologists’ predictions have not proven to be true. The juvenile crime arrest rate declined 30% from 1994 to 1998, from approximately 525 per 100,000 to 370 per 100,000 for juveniles ages ten to seventeen. Specifically, the juvenile arrest rate for murder declined by 52% between 1993 and 1998, from approximately 14 per 100,000 juvenile arrests for ages ten to seventeen to 7 per 100,000, and the rate for aggravated assault decreased 20% between 1994 and 1998, from approximately 300 per 100,000 juvenile arrests for ages ten to seventeen to 240 per 100,000. Although the rates for forcible rape remained relatively stable from the 1980s to 1998, in 1998 the rate was lower (17 per 100,000 juveniles aged ten to seventeen) than in any year since 1983 and 23% below the peak year of 1991 (23 per 100,000). Between 1988 and 1994, the robbery arrest rate increased 70% (from approximately 120 per 100,000 to 200 per 100,000), but, between 1994 and 1998, the robbery arrest rate fell substantially—45% (from 200 per 100,000 to approximately 110 per 100,000). In 1998, the rate was lower than at any point in the 1990s and even past the lowest point in the 1980s (in

65. Dilulio, supra note 4, at 23.
66. See Megan Twohey, The Wrong Answer to Littleton: A Few Teen Criminals Belong in Prison, But Most Do Not, WASH. MONTHLY, June 1999, at 16, 17 (citing a 1994 study conducted by the National Center for Juvenile Justice in Pittsburgh). See also Torsten Ove, No Simple Solution for Solving Violent Crimes: CMU Expert Expects 1 Percent Increase a Year, PITTSBURGH POST-GAZETTE, Sept. 12, 1999, at C-1 (stating that James Alan Fox, Dean of the College of Criminal Justice at Northeastern University, warned in 1995 of a coming “blood bath” of youth violence at the turn of the century). Princeton University Professor Dilulio coined the term “super-predator,” which he says is the result of “[m]oral poverty [which] is the poverty of being without loving, capable, responsible adults who teach you right from wrong.” Dilulio, supra note 4, at 25. “[K]ids of whatever race, creed, or color are most likely to become criminally depraved when they are morally deprived.” Id.
67. See Twohey, supra note 66, at 17.
68. See OJJDP Statistical Briefing Book, supra note 32.
69. See id.
70. See id.
71. See id.
One hundred years after the birth of the juvenile court system, federal and state statutory trends are increasingly returning to the practice of treating children as adults. Three main criticisms of the juvenile court system are associated with this return. First, the punishments given to juveniles in the juvenile court system are less certain and severe, which creates a leniency gap in punishment and retribution. Second, since there was a high rate of violent crime from the 1980s through the mid-1990s, this led to the belief that future violence was not going to be stopped by the rehabilitative philosophy of the juvenile court. Third, the shorter sentences adjudicated in the juvenile court system pose a greater risk to the community. Lawmakers have begun to strip away discretion from juvenile court judges, the people who work day to day with troubled youths, and place in the hands of prosecutors the decision as to how juveniles should be treated. In addition, lawmakers have begun to make laws that automatically send juveniles straight to the adult court system. For instance, in New York juveniles under age sixteen are automatically waived into the criminal court system for any crime committed. Once there, a superior court judge has the discretion to transfer the minor back to juvenile court. Also, in Wisconsin, juveniles ten to fourteen years old are automatically transferred to the adult criminal court system for various degrees of murder or attempted murder. The original movement to treat juveniles differently stems in part from the belief that if children are placed in prisons, with hardened adult criminals, they will have little chance of becoming law-abiding citizens when released. Clearly, the focus has shifted away from rehabilitation.

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72. See id.
73. For instance, in Arizona a juvenile court judge has the discretion to waive a juvenile of any age for any felony to the adult criminal court system. See ARIZ. REV. STAT. ANN. § 8-327 (West 1999). In Nebraska a prosecutor has the discretion of filing an information for any felony committed by a minor below age sixteen in the adult criminal court system. See NEB. REV. STAT. §§ 43-276, 43-247 (1993).
75. See id.
76. See id.
77. See id.
III. STATE LAWS: TRANSFERRING JUVENILES

From the inception of the juvenile court system, there have been provisions allowing juvenile court judges to waive jurisdiction to the adult criminal court, thus subjecting the child to prosecution as an adult. Typically this was seen as a last-ditch option reserved for mostly older or hardened juveniles. Presently, there are three avenues by which a juvenile can be transferred to the adult criminal court system. The original and most common method is by judicial waiver, where under the judge’s discretion, using certain factors, he or she determines whether the juvenile should be tried as an adult. The second method is legislative, which is an automatic waiver mandated by statute for certain crimes committed by juveniles over a certain age. The third, and most controversial, method is the prosecution’s waiver, which gives the prosecutor power and discretion to file a juvenile case directly in the adult criminal court system. Some states use only one type of waiver, whereas other states use two or all three waiver methods depending on the alleged crime committed and the age of the minor. Part A discusses the original way a juvenile could find herself in the adult criminal court system. Part B discusses the legislature’s involvement in this area with the use of automatic waivers. Part C discusses prosecutorial transfer, the more controversial waiver method.

A. Judicial Waiver

A judicial waiver entitles a juvenile court judge to use his or her discretionary authority to waive jurisdiction over a specific juvenile and the case and send him to the adult court system for adjudication. To

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81. See Francis Barry McCarthy, The Serious Offender and Juvenile Court Reform: The Case for Prosecutorial Waiver of Juvenile Court Jurisdiction, 38 St. Louis U. L.J. 629, 642-43 (1994) (discussing judicial waiver). The judicial waiver was viewed as “[t]he safety valve of transferring some cases out of the court . . . but it was certainly not a central feature of the court’s operation or philosophy.” Id. at 647.
82. See id. at 642-43.
84. See Appendices A-C, infra pp. 829-49.
85. Judicial waiver is also known as bind-over or transfer.
86. See Fritsch & Hemmens, supra note 83, at 18.
enact the judicial waiver, the juvenile court may decide on its own motion, the prosecutor can move for transfer, or the juvenile can make a motion to transfer. Most states have always permitted waiver using this method, although it was rarely used until the late 1960s. The early waiver statutes gave complete authority and discretion to the juvenile court judge, and the burden of proof to persuade the judge to transfer the juvenile was on the official attempting to have the juvenile transferred.

Between 1971 and 1981, juvenile transfers to the adult court system increased nationally from “less than 1% to slightly more than 5% of juvenile arrests, an increase of 400%.” In 1985, the number of judicially waived cases nationwide was 7200 or 1.4% of the 505,400 total cases. By 1994, the number of cases transferred increased to 12,300 out of 855,200; this represented an increase of about 60%, although the percentage of cases transferred out of the total number of petitioned cases has remained around 1.4%.

The original force behind transfer was to prosecute as adults those juveniles who committed violent crime, but the majority of cases waived have been for less serious property and drug offenses. Of the cases transferred to the adult court system, one 1990 study found that the majority of these cases were for property offenses (46%), while 14% of transfers were for drug offenses and 35% were for serious and violent offenses or involved other offenses against persons. A 1991 Florida study, conducted by researchers Donna M. Bishop and Charles Frazier, found that, although the waiver provisions were designed to ensure that violent juvenile offenders were detained, more than half (55%) of the juveniles transferred were charged with property offenses, 5% were transferred for misdemeanors, and 25% were first-time, low-level offenders. Another study by the National Center for Juvenile Justice found that in 1992 only 34% of cases waived by juvenile court judges involved offenses against a person, while 45% of transfers were for

87. See id.
88. See id. at 23.
89. Even though the judge has discretion, some statutes require that there be substantial evidence at the hearing that “the minor is not a fit and proper subject for treatment as a juvenile.” Jimmy H. v. Superior Court, 478 P.2d 32, 35-36 (Cal. 1970).
90. See Fritsch & Hemmens, supra note 83, at 23.
91. Id.
92. See DeFrances & Strom, supra note 61, at 4.
93. See id. The juvenile population in 1985 was about 27 million. See Snyder, supra note 11, at 4. The population increased to 29 million by 1994. See id.

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property offenses, and 12% were for drug offenses.\(^\text{96}\)

1. Hearing Requirement

In the forty states that utilize judicial waiver, statutes require that the juvenile be given a hearing to determine if the minor should be transferred or if he or she is amenable to rehabilitation.\(^\text{97}\) Some hearings are bifurcated. For instance in Arizona, Michigan, and Mississippi, at the first hearing, the judge determines whether there is probable cause to believe the juvenile committed the offense; at the second hearing, the court determines whether there is a reasonable prospect of rehabilitation.\(^\text{98}\)

An example of factors the judge should use in deciding whether to transfer the case to the adult court system came from the U.S. Supreme Court.\(^\text{96}\) See Guarino-Ghezzi & Loughran, supra note 15, at 19.


Court case, Kent v. United States.\textsuperscript{99} Common factors that the judge will\textsuperscript{100} consider are: (1) the seriousness of the offense; (2) the age of the offender; (3) the juvenile’s previous record and history with the court; (4) whether the offense was against a person or property; (5) the juvenile’s mental and physical maturity; (6) if the act was done in an aggressive, violent, premeditated, or willful manner; (7) prospects of adequate protection for the public and the likelihood of rehabilitation in the facilities available to the juvenile court; and (8) whether the minor used a firearm or deadly weapon.\textsuperscript{101} A few states utilize some unique factors; for instance, in Arizona, Colorado, and Pennsylvania the juvenile court judge is instructed to consider the views of the victim.\textsuperscript{102} A unique provision in Idaho requires the juvenile court judge to consider the likelihood that the minor will develop competency and life skills while in a juvenile facility in order to become a contributing member of society.\textsuperscript{103} In an Illinois case, In re L.J.,\textsuperscript{104} the minor was fourteen-and-a-half years old when he allegedly committed murder. The court took into consideration that the boy had “come in contact with the police for criminality on numerous occasions, and he is admittedly a member of what appears to be a notorious street gang.”\textsuperscript{105} The court found that his age did not tilt the scales in his favor because of these factors.\textsuperscript{106} In a Nevada case, In re Seven Minors,\textsuperscript{107} the Nevada Supreme Court, in weighing treatment and rehabilitative aspects, stated:

\begin{quote}
[T]he less serious and repetitive the criminal acts and the younger and more immature the child, the more can \textit{pares patriae} be invoked for the care, rehabilitation and advancement of the best interest of the child. . . . [T]he older and more mature the child and the more serious and repetitive the offenses, the more emphasis must be placed on public protection.\textsuperscript{108}
\end{quote}

In some states, juvenile court judges have the discretion to weigh the factors as they see fit,\textsuperscript{109} while in other states judges must give more

\textsuperscript{100} In some states the judge must consider all the factors when deciding whether to transfer the juvenile to the adult court system. See, e.g., Md. Code Ann., Cts. & Jud. Proc. § 3-817(e) (Supp. 1999).
\textsuperscript{101} See Kent, 383 U.S. at 566-67. These factors are found in almost every state statute.
\textsuperscript{104} 654 N.E.2d 671 (Ill. 1995).
\textsuperscript{105} \textit{Id.} at 673.
\textsuperscript{106} See \textit{id.}
\textsuperscript{107} 664 P.2d 947 (Nev. 1983).
\textsuperscript{108} \textit{Id.} at 951.
\textsuperscript{109} In California, for example, the juvenile court judge can make a “determination that the minor is not a fit and proper subject to be dealt with under the juvenile court
weight to predetermined factors. In examining a few cases that discuss the factors juvenile court judges must consider, it becomes clear that the decisions vary. In People v. Superior Court (Jones), after the juvenile court found two minors to be fit for treatment under the juvenile court laws, the California Supreme Court affirmed the reversal by the Second District Court of Appeal, concluding that the degree of criminal sophistication and the circumstances and gravity of the offense supported a finding that the minors were not amenable to treatment as juveniles. The juveniles were both fifteen years old when they shot and killed a store owner during a robbery gone very wrong. Both juveniles earned acceptable grades in high school and participated in school and church activities, and neither had engaged in previous criminal activity or gang affiliation. After becoming intoxicated and smoking marijuana, the two minors decided to rob a store for money to go to their prom. Upon entering the store, one of the juveniles took out a gun and immediately fired into the face of the store owner. The juvenile court explained "criminal sophistication" to be when a minor "through the commission of offenses over a period of time has developed a character of being highly complicated, mature in criminal activity and knowledgeable in those ways of plotting, planning and carrying out intricate criminal acts." The juvenile court found that this crime was not carried out in a...
The juvenile court also concluded that these minors could be rehabilitated prior to the expiration of the juvenile court's jurisdiction. The California Supreme Court held that the minors were not amenable because, although they had never been in trouble with the law before, did not intend to hurt anyone, and possibly had drug problems, they planned and carried out the scheme to rob someone. In his dissent, Justice Werdegar took the view that even minors who commit serious offenses can still be rehabilitated:

Were the perpetrators adults, society would rightly demand they be severely punished, possibly incarcerated for life. Because, however, they are juveniles, 15 years of age, society tempers its justifiable demand for punishment with a recognition that youthful characters are not always fully formed and that young people might make choices that are ill-considered, dangerous and sometimes even fatal. Our Legislature has created a statutory scheme that permits some, but not all, minors to be tried and punished as adults. In so doing, the Legislature has recognized that other of these young offenders—including even those who commit murder—can possibly be rehabilitated and eventually become law-abiding members of the community.

Justice Werdegar agreed with the juvenile court in finding the minors did not display criminal sophistication in the carrying out of the crime. Justice Werdegar and the U.S. Supreme Court are in agreement on the level of juvenile culpability. The U.S. Supreme Court in Thompson v. Oklahoma stated:

This Court has already endorsed the proposition that less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult, since inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult.

In criticizing the majority's decision in People v. Superior Court (Jones), Justice Werdegar stated in his dissent:

The juvenile court personally heard the witnesses testify, personally observed

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118. See id.
119. See id. In this case, the juvenile court's jurisdiction would expire when the juvenile turns twenty-five years old. See CAL. WELF. & INST. CODE § 607(b) (West 1999). In People v. Superior Court (Jones), the minors could have been under the juvenile court's jurisdiction for ten years.
120. See 958 P.2d at 404-05.
121. Id. at 405-06 (Werdegar, J., dissenting). Justice Werdegar was the sole dissenter.
122. See id. at 409 (stating that it was of critical importance that the court found the minors did not intend to kill the victim).
124. Id. at 816. Although the factual basis of this case is different (the Court is discussing whether a juvenile younger than sixteen should be sentenced to death), the issue of a juvenile's level of culpability compared to that of an adult is on point.
the minors and was able personally to evaluate their demeanor, all factfinding advantages not shared by myself or my colleagues in the majority. To the extent the majority chooses to disregard or disbelieve this evidence, they simply are substituting their own credibility determination for that of the juvenile court. To do so, of course, is improper. 125

The Jones case demonstrates how important the hearing factors can be in determining whether the juvenile is tried as an adult. This case also shows how important it is to allow the juvenile court to study each minor and the circumstances involved in making its decision, and not transfer a case simply because it involved a serious offense such as murder. Since the juvenile court has the opportunity to study each individual juvenile in person, the judge's discretion as to whether a particular minor should be transferred should not be constantly second-guessed by looking at the minor only as he is depicted in the record. Although in this case the Court of Appeal and the majority of the California Supreme Court disagreed with the juvenile court's reasoning, several factors were taken into consideration in whether to transfer these minors, such as amenability, criminal sophistication, and gravity of the offense. The courts were able to examine other factors contributing to the offense besides just the age of the minor and the crime alleged.

A common factor that judges consider is whether the juvenile will be rehabilitated by the time the court loses its jurisdiction over the minor, which is usually at age twenty or twenty-one. 126 In D.E.P. v. State, 127 the minor, aged sixteen at the time of the offense, was arrested for first degree burglary and first degree sexual assault. 128 At the waiver hearing, all but one of the expert witnesses agreed that the minor's "best chance for successful rehabilitation would be through treatment in the juvenile system." 129 The Alaska Supreme Court held that "even if a child's best chance for rehabilitation would be in a juvenile institution, waiver must be ordered when the evidence shows a likelihood that the child cannot be rehabilitated before reaching twenty years of age." 130 The juvenile was

125. 958 P.2d at 411 (Werdegar, J., dissenting).
126. See D.E.P. v. State, 727 P.2d 800, 802-03 (Alaska Ct. App. 1986); see also Kevin Mayhood, Teen Headed for Adult Court on Gun Charge: Judge Cites Community Safety in Her Decision, COLUMBUS DISPATCH, June 9, 1999, at 2B (stating that because of the minor's past delinquency and rehabilitation efforts, he would need to be held beyond the age of twenty-one).
127. 727 P.2d at 800.
128. See id. at 801.
129. Id.
130. Id. at 802-03 (citing State v. J.D.S., 723 P.2d 1278 (Alaska 1986)).
waived into the criminal court system because he was sixteen and probably could not be rehabilitated in four years. In contrast, in a case where the juvenile was only thirteen, an Oklahoma court held that he was amenable to treatment or rehabilitation efforts to cease any further criminal activity. This court criticized the state’s desire to transfer every juvenile who commits an offense, stating, “if we were to follow the State’s argument, every juvenile accused of committing an offense which would be a criminal offense if committed by an adult, would be certified to stand trial as an adult simply because of the shortcomings of Oklahoma’s juvenile system.”

2. The Age at Which Minors Can Be Transferred

In the past few years, several states have lowered the age at which juveniles can be transferred into the adult court system using any of the three transfer methods. Of those methods, judicial waiver statutes generally provide the lowest age at which a juvenile court judge can transfer a minor to adult court. For instance, in several states there is no age limit for transfer by judicial waiver. Three states, Indiana, Texas, 

131. See id. The court relied on State v. J.D.S. and § 47.10.060 of the Alaska Code (now repealed) which stated that the alleged offense, the minor’s history of delinquency, the probable cause of the minor’s delinquent behavior, and the facilities available for treating the minor should be considered in determining whether the minor is amendable. See State v. J.D.S., 723 P.2d 1278, 1279 (Alaska 1986). For the current state law, see ALASKA STAT. § 47.12.100(b) (Michie 1998).
132. See T.C. v. State, 740 P.2d 739 (Okla. Crim. App. 1987) (holding that, even though the juvenile beat a man who later died of his injuries, an automatic presumption that the juvenile should be tried as an adult is not created). Some states, discussed below, do create this presumption. See infra note 149.
133. T.C., 740 P.2d at 743.
134. For specific changes, see infra notes 135-41 and accompanying text.
135. Alaska does not state any age limit for an unclassified felony against a person. See ALASKA STAT. § 47.12.100 (Michie 1998). In Arizona, juveniles can be transferred at any age to adult court for any felony. See ARIZ. REV. STAT. ANN. § 8-327(A) (West 1999). In Delaware, any child who allegedly commits first or second degree murder, first or second degree rape, first degree kidnapping, or any attempt of these crimes may be sent to the adult court system. See DEL. CODE ANN. tit. 10, § 1010(a) (1999). In Hawaii, any juvenile who commits murder can be transferred. See HAW. REV. STAT. § 571-22(d)(1) (Supp. 1998). In Idaho, any juvenile who commits murder, robbery, rape, forcible sexual penetration with foreign object, infamous violent crimes against nature, or mayhem, to name a few, may be tried as an adult. See IDAHO CODE §§ 20-509, 20-508 (1997 & Supp. 1999). In Maine, any juvenile can be transferred for murder or a Class A, B, or C crime. See ME. REV. STAT. ANN. tit. 15, § 3101(4)(A) (West 1980 & Supp. 1999). In Missouri, any minor who commits murder, first degree assault, forcible rape, first degree robbery, distribution of drugs, or any felony if she has two prior juvenile adjudications may be transferred. See MO. ANN. STAT. § 211.071(1) (West 1996). In New Hampshire, if a minor commits any offense which would be a felony if committed by an adult then he could be transferred. See N.H. REV. STAT. ANN. § 169-B:24 (Supp. 1999). In Oklahoma, any child who is charged with delinquency as a result
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and Vermont, permit judicial waiver of a minor who is ten years old or older. Three states, Colorado, Missouri, and Montana, allow judicial transfer for a minor aged twelve or older. Three other states, Illinois, Mississippi, and North Carolina, have judicial transfer for juveniles aged thirteen and older. The vast majority of states with judicial waiver set fourteen as the age to be eligible for transfer. A few states permit of an offense which would be a felony if committed by an adult may be transferred to the adult criminal court system. See OKLA. STAT. ANN. tit. 10, § 7303-4.3(B) (West 1998). In Rhode Island, any minor who is charged with an offense which would be a felony if committed by an adult can be waived into the adult criminal court system. See R.I. GEN. LAWS § 14-1-7(c) (1994 & Supp. 1999). In South Carolina, any child who commits murder or criminal sexual conduct can be transferred to the adult criminal court system. See S.C. CODE ANN. § 20-7-7605(6) (Law. Co-op. Supp. 1999).

136. In Indiana, the statute applies only to minors ten or older who commit murder. See IND. CODE ANN. § 31-30-3-4 (Michie 1997). In Texas, the court may waive a juvenile over ten years of age who is alleged to have committed a capital felony or murder. See TEX. FAM. CODE ANN. § 54.02(j) (West Supp. 2000). In Vermont, if a juvenile ten years or older commits one of the enumerated offenses, she can be transferred to adult court. See VT. STAT. ANN. tit. 33, § 5506(a) (1991 & Supp. 1999). The enumerated offenses include arson, assault and robbery with a dangerous weapon, assault and robbery causing bodily injury, aggravated assault, murder, manslaughter, kidnapping, unlawful restraint, sexual assault, aggravated sexual assault, and burglary of an occupied dwelling. See id.

137. In Colorado, a minor aged twelve or older can be transferred for committing a class 1 or 2 felony or a crime of violence. See COLO. REV. STAT. ANN. § 19-2-518(1)(a)(I)(A) (West 1999). In Missouri, a juvenile aged twelve or older who commits any felony, except a few enumerated felonies, can be waived into the adult court system. See MO. ANN. STAT. § 211.071(1) (West 1996). In Montana, the state could use extended jurisdiction juvenile prosecution if a twelve-year-old youth commits a felony with a firearm (except felonies with punishment of death or life imprisonment) which entails giving the minor a blended sentence with the possibility of adult punishment. See MONT. CODE ANN. §§ 41-5-1602, 41-5-1604 (1999).

138. In Illinois, a thirteen-year-old juvenile who commits any crime under the laws of the state can be transferred to the adult criminal system. See 705 ILL. COMP. STAT. ANN. 405/5-805(3) (West 1999). In Mississippi, a thirteen year old who commits any offense can be waived into adult court. See MISS. CODE ANN. § 43-21-157(1) (Supp. 1999). In North Carolina, a youth aged thirteen year can be transferred for any felony and any related misdemeanors. See N.C. GEN. STAT. §§ 7B-1601(d), 7B-2200 (1999).

judicial waiver of a minor who is aged fifteen or sixteen and has committed certain enumerated offenses. In Washington, a seventeen-year-old youth can be transferred for a variety of offenses.

Four states and the District of Columbia have statutes which specify an upper age limit for transferring instead of a lower age limit. For example, in Maryland, any child under the age of fifteen who commits an offense which is punishable by death or life imprisonment can be tried as an adult. In the District of Columbia, a child under the age of eighteen can be transferred to the adult court for illegal possession or control of a firearm within 1000 feet of any type of school or recreational place. If a child under the age of sixteen commits first or

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140. In the District of Columbia, if a fifteen-year-old juvenile is alleged to have committed any offense which would be a felony if committed by an adult, then he may be transferred. See D.C. CODE ANN. § 16-2307 (1997). In Texas, if a fifteen-year-old juvenile is alleged to have committed a second or third degree felony, or state jail felony, then she may be transferred. See TEx. FAM. CODE ANN. § 54.02(a) & (j) (West Supp. 2000). For other states that transfer fifteen-year-olds using judicial waiver, see 705 ILL. COMP. STAT. ANN. 405/5-805 (West 1999); IOWA CODE ANN. § 232.45(7) (West Supp. 1999); MD. CODE ANN., CTs. & Jun. PROC. § 3-817(a) (Supp. 1999); N.H. REV. STAT. ANN. § 169-B:24 (Supp. 1999); OR. REV. STAT. § 419C.349 (Supp. 1998). In Delaware, if a sixteen-year-old juvenile has been previously adjudicated as delinquent and is alleged to have committed first degree conspiracy, second degree rape, first degree assault, or first degree burglary, among other enumerated offenses, then he may be transferred to the adult criminal court system. See DEL. CODE ANN. tit. 10, § 1010 (1999). In Indiana, if a sixteen-year-old youth commits a class A or B felony, involuntary manslaughter, or reckless homicide, then a judge might find it in the best interests of the minor, and the safety and welfare of the community would be best served, if the minor was transferred. See IND. CODE ANN. §§ 31-30-3-3, 31-30-3-5 (Michie 1997). In South Carolina, a sixteen-year-old youth who commits a misdemeanor, class E or F felony, or a felony which provides for a maximum imprisonment term of ten years can be transferred. See S.C. CODE ANN. § 20-7-7605(4) (Law. Co-op. Supp. 1999). For other states that transfer sixteen-year-old juveniles using judicial waiver, see 2000 Cal. Legis. Serv. Prop. 21 (West) (will be codified as CAL. WELF. & INST. CODE § 707 (West Supp. 2000)); HAW. REV. STAT. § 571-22 (Supp. 1998); KY. REV. STAT. ANN. § 635.020(3) (Banks-Baldwin 1999); S.D. CODIFIED LAWS § 26-11-3.1 (Michie 1999); TENN. CODE ANN. § 37-1-134 (Supp. 1999); UTAH CODE ANN. § 78-3a-602 (1996).


143. See MD. CODE ANN., CTs. & JUD. PROC. § 3-804(e) (1998) and § 3-817 (Supp. 1999).

second degree murder, rape, aggravated rape, aggravated robbery, kidnapping, aggravated kidnapping, or any attempt of these crimes in Tennessee, the child can be transferred to adult court. In Oregon, a minor under fifteen can be waived into the adult court system for committing murder or aggravated murder, first degree rape, sodomy, or unlawful sexual penetration. In West Virginia, a minor younger than fourteen can be transferred for committing the offenses of treason, murder, robbery with the use of a deadly weapon, kidnapping, first degree arson, or first degree sexual assault. Judicial waiver is typically used to transfer younger minors who have committed more serious crimes, such as murder, or to transfer an older minor who has committed a less serious offense, such as misdemeanor or simple assault. A juvenile court judge is given considerable discretion in dealing with offenders of such a young age, who in the past were not even considered able to form mens rea.

3. Burden of Proof Regarding Whether to Transfer

Another issue to examine with respect to judicial waivers is which party bears the burden of proving whether the minor should or should not be transferred. The state always has the burden of showing probable cause that the minor committed the alleged offense. In some states, once the prosecution demonstrates probable cause, then there is a rebuttable presumption that the minor should be transferred; thus the minor must show the court why he or she should not be sent to the adult court.

4. Recent State Law Changes

As noted earlier, several states have lowered the age at which a

148. See supra notes 54-55 and accompanying text.
149. In the District of Columbia, a fifteen- to eighteen-year-old minor who allegedly commits any of the enumerated offenses listed or any offense if he or she has three or more prior delinquency adjudications shall have a rebuttable presumption of transfer to overcome. See D.C. Code Ann. § 16-2307(e-2) (1997). In Minnesota, if there is probable cause to believe that a child aged sixteen or seventeen either committed an offense that has the presumptive commitment to prison or committed a felony while brandishing, displaying, threatening with, or employing a firearm, the burden is on the child to rebut the transfer presumption. See Minn. Stat. Ann. § 260B.125(3) (West Supp. 2000). See also 705 Ill. Comp. Stat. Ann. 405/5-805(2) (West 1999).
juvenille can be transferred to adult court at the discretion of a juvenile court judge. For instance, in 1995 California changed its laws to lower the age—from sixteen to fourteen—at which a minor can be found by the court to be unfit under the juvenile laws. In Ohio, a 1995 bill lowered the age from fifteen to fourteen.

In 1994, Oregon changed its law to allow for waiver by judicial or automatic transfer. Prior to the change, in 1993, the Oregon Supreme Court did not transfer a thirteen-year-old youth charged with first degree sodomy because at that time a child under the age of fifteen could not be remanded to the adult court under any circumstances. In its opinion, the court prided itself on how the juvenile courts in Oregon have “emphasized the rehabilitation of allegedly delinquent children” for eighty-six years. The court also noted that, unlike many states that recently shifted from rehabilitation to accountability and punishment, Oregon has “remained faithful to its original emphasis on the rehabilitation of delinquent youth.” At the time of that opinion, no minor under the age of fifteen could be transferred to the criminal court system. Shortly thereafter, the law was changed in 1994 with the passing of Measure 11, which introduced both judicial and legislative waiver to Oregon courts. Now the juvenile court can waive any minor under age fifteen for murder, first degree rape, first degree sodomy, and first degree unlawful sexual penetration.

150. See People v. Superior Court (Jones), 958 P.2d 393, 399 (Cal. 1998); CAL. WELF. & INST. CODE § 707(d)(1) (West Supp. 2000). California decided to lower the age to fourteen and create a rebuttable presumption in favor of transfer for certain offenses rather than use legislative waiver as other states have done. See Hicks v. Superior Court, 43 Cal. Rptr. 2d 269, 275 (Ct. App. 1995).

151. See Ohio Plans Stiffer Sentencing for Violent Youths, WEST'S LEGAL NEWS, Jan. 5, 1996, at 41, available in 1996 WL 257794. The bill’s sponsor, Ohio State Representative E.J. Thomas, used the case of a fourteen-year-old girl who shot and killed a cashier during a robbery, to promote this bill. See Susan R. Bell, Comment, Ohio Gets Tough on Juvenile Crime: An Analysis of Ohio's 1996 Amendments Concerning the Bindover of Violent Juvenile Offenders to the Adult System and Other Related Legislation, 66 U. Cin. L. REV. 207, 219-22 (1997). The girl was charged with aggravated robbery and felonious assault and sentenced to the Ohio Department of Youth Services, where she will not be held beyond her twenty-first birthday. See id.


154. Id. at 845.

155. Id. at 846.

156. See id. at 845 n.5.


5. Pros and Cons of Judicial Waiver

One of the benefits of using the judicial waiver system is that the juvenile court judge, someone who deals with children's issues and knows the best punishment and treatment for troubled minors, can examine every case to decide what is best for that particular juvenile and for society. A good example of the type of cases that call for a juvenile court’s discretion is when teenagers kill their newborns. Homicide cases are associated with the youngest age that a juvenile can be waived into the adult court system. In one case, a seventeen-year-old girl put her newborn in a garbage can, claiming she believed the baby was dead. Luckily, neighbors rescued the baby. As a result of her actions, this minor could spend up to fifty years in prison for attempted murder.

There is also a downside to the use of judicial waiver. Some criticize judicial waiver because of the detrimental effect it can have on juveniles. For instance, judicial waiver is inconsistently applied; most youths who are waived have been charged with property offenses, not with violent crimes, even though the whole emphasis on waiving was to transfer violent teenagers who were a danger to society and were not amenable to rehabilitation.

159. See supra notes 135-40, and infra notes 191-96 and accompanying text.


161. See id.

162. See infra note 18, at 12.

Another problem is that the state can use the potential for transfer and the ability to appeal transfer decisions as a bargaining chip. A minor could be tempted to plead guilty to a lesser offense rather than risk being transferred to the adult court or wait in juvenile court through an appeal if he could not afford bail. Also, the judicial waiver process is highly discretionary, so there is potential for abuse and discrimination.

B. Legislative Waiver

While judicial waiver focuses on the offender, determining whether the minor is amenable to treatment or a threat to public safety, legislative or "automatic" waiver focuses on the offense. The legislative waiver automatically transfers some minors, depending on their age, who are charged with committing certain offenses; the juvenile court does not have jurisdiction over them. Legislative waivers are becoming more and more common. Using this method of transfer is the legislature's way of telling juveniles that if they commit certain crimes they will be tried as adults without any consideration of mitigating factors. The minor does not get the opportunity to persuade the juvenile court that she is amenable to treatment. Generally, the most serious offenses, such as murder, rape, or kidnapping, are automatically waived. Also, repeat offenders are often automatically waived.

1. Reasons in Favor of Legislative Waiver

The prevalence of automatic waiver provisions appears to be evidence of a shift in philosophy regarding juveniles—from rehabilitation to retribution and punishment. Some commentators find the reason behind the switch to automatic transfer to be "the time-consuming and

166. Legislative waiver is also known as statutory exclusion.
167. See Feld, supra note 163, at 66.
168. See id. Generally, a minor who in the past had been transferred to the adult criminal court and was convicted or pleaded guilty will automatically be transferred if she commits a second offense. See, e.g., TEX. FAM. CODE ANN. § 54.02(m) (West Supp. 2000). The author will not list all the states that have this provision since most of the fifty states follow this practice.
169. See Zierdt, supra note 80, at 415-16.
170. See id.
171. See Fritsch & Hemmens, supra note 83, at 29. See also supra notes 5-6 and accompanying text.
burdensome nature of the transfer hearing process” which can take from several months to a year to complete. Also, the shift to automatic transfer can be hastened by well-publicized cases of violence by minors. Other reasons include the strong public sentiment that juveniles should be held responsible for their actions, a perception that certain juveniles deserve a greater punishment than that given in juvenile court, and a belief that juvenile court cannot or will not transfer these cases. Legislative waiver rests on the ideas that “the ‘right’ of a juvenile to be in juvenile court is entirely a statutory right” and that the legislature can take the right away.

2. Recent State Law Changes

Several states have recently changed their laws to reflect the trend toward automatic waiver. Arizona made changes in its laws to allow for legislative waiver. The voters passed Proposition 102 which amended the Arizona Constitution to provide that a minor aged fifteen or older who commits any of the enumerated offenses, such as murder, forcible sexual assault, armed robbery, or any violent felony, will be waived. Before the passing of this proposition, the juvenile court had exclusive original jurisdiction over any minor charged with any criminal offense so the only means to transfer a juvenile was through judicial waiver. In 1994 Oregon voters passed Measure 11, which sends juveniles aged fifteen older to the adult court system for certain offenses, such as first or second degree assault. The Alaska legislature changed its law in 1994 to provide for automatic waiver of minors aged sixteen and older.

173. See id. at 139-40.
174. See McCarthy, supra note 81, at 654.
175. Id.
178. See id.
who commit serious felonies. Prior to this change, the juvenile court had exclusive original jurisdiction over anyone under eighteen. In 1995, Georgia also stiffened its laws requiring automatic transfer of minors aged thirteen or older who commit one of the “seven deadly sins” (murder, voluntary manslaughter, rape, armed robbery, aggravated sexual battery, aggravated sodomy, and aggravated child molestation). These are just a few of the changes states have made to “toughen up” on juvenile crime.

One of the most recent changes occurred in March, 2000, when California voters passed Proposition 21. With this law California will now utilize prosecutorial and legislative waiver. As one reporter stated, “[w]ith one punch of the ballot, California voters have just approved the nation’s toughest crackdown on juvenile crime.”

181. See ALASKA STAT. § 47.12.030 (Michie 1998). The present purpose of Alaska statutes regarding juveniles is to prevent repeated criminal behavior, restore the community and victim, protect the public, hold each juvenile offender directly accountable, and provide swift and consistent consequences. See ALASKA STAT. § 47.12.010(a) (Michie 1998). This purpose seems to be geared more for retribution than rehabilitation. See id.


183. See James Pilcher, When Should Kids Be Tried as Adults?, DESERET NEWS (Salt Lake City), June 13, 1999, at A2; see also GA. CODE ANN. § 15-11-5 (Harrison Supp. 1999).


186. See id.

187. Rene Sanchez & William Booth, California Toughens Juvenile Crime Laws,

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any minor fourteen years or older will automatically be waived to the adult criminal court for committing crimes such as murder, certain sex offenses, and rape.\textsuperscript{188} Those in favor of the stricter laws say "the old rules of juvenile justice [were] antiquated, created in a bygone era when crimes such as truancy and theft . . . were leading worries."\textsuperscript{189} However, opponents say "it remains foolish to give up on troublemakers, even violent ones, at such a young age. Throwing them in jail for years . . . only improves the odds they will come out hardened criminals."\textsuperscript{190}

3. The Age at Which Minors Will Be Transferred

Four states, Florida, Nevada, New York, and Pennsylvania, automatically transfer any minor who commits certain enumerated offenses.\textsuperscript{191} In Wisconsin, a child ten years or older will automatically be transferred for committing first or second degree homicide or first degree reckless homicide.\textsuperscript{192} Also, in Indiana, if there is probable cause that a ten-year-old child committed murder, he or she will be transferred to the adult criminal court system.\textsuperscript{193} In four states, a minor thirteen or older will be transferred if he or she commits one of a list of offenses.\textsuperscript{194}

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\textsuperscript{188} See 2000 Cal. Legis. Serv. Prop. 21 (West). These changes will be codified in CAL. WELF. & INST. CODE § 602.
\textsuperscript{189} Sanchez & Booth, supra note 187.
\textsuperscript{190} Id.
\textsuperscript{191} In Florida, regardless of the child’s age, if a child who has had three or more delinquency adjudications with residential commitments perpetrates any felony, he will be tried as an adult. See Fla. Stat. Ann. § 985.227(2)(b) (West Supp. 2000). In Nevada, if any minor commits murder, attempted murder, or any offense if the minor has been previously convicted of a criminal offense, or a felony on school property which results in death or substantial bodily injury, he or she will be tried as an adult. See Nev. Rev. Stat. Ann. § 62.040(2) (Michie Supp. 1999). In New York, if there is reasonable cause to believe a juvenile under age sixteen committed a crime, she is automatically sent to the superior court; the superior court can hold a hearing to transfer the minor to juvenile court. See N.Y. Crim. Proc. Law § 180.75(3)(a) (McKinney 1993). In Pennsylvania, if any minor commits murder, he will be transferred. See 42 Pa. Cons. Stat. Ann. § 6355 (West Supp. 1999). See also 42 Pa. Cons. Stat. Ann. § 6302 (West Supp. 1999).
\textsuperscript{193} See Ind. Code Ann. § 31-30-3-4 (Michie 1997).
\textsuperscript{194} In Georgia, a thirteen-year-old child will be transferred for committing murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery with a firearm. See Ga. Code Ann. § 15-
A few states transfer a minor fourteen years or older. The majority of states automatically transfer only if the juvenile is at least fifteen or sixteen.

11-5(b)(2)(A) & (C) (Harrison 1998). However, after indictment and investigation, the district attorney may transfer the case to the juvenile court for extraordinary cause. See id. In Mississippi, a thirteen-year-old child will be transferred if he or she commits or attempts a crime which is punishable by life imprisonment or death, or commits or attempts a crime with the use of a deadly weapon or carries a concealed weapon. See Miss. Code Ann. § 43-21-151 (Supp. 1999). In North Carolina, if a thirteen-year-old child commits a class A felony and there is probable cause, then the case is automatically transferred. See N.C. Gen. Stat. § 7B-2200 (1999). In Oklahoma, a minor of thirteen years or older will be transferred for committing murder in the first degree. See Okla. Stat. Ann. tit. 10, § 7306-1.1(B) (West 1998).

In California, a minor fourteen or older who commits murder, certain sex offenses, rape, spousal rape, or forcible sex offenses, will be transferred. See 2000 Cal. Legis. Serv. Prop. 21 (West). The changes will be codified in CAL. WELF. & INST. CODE § 602(b) (West 2000). In Connecticut, a minor fourteen years or older who commits a capital felony, or a class A or B felony, will be transferred. See Conn. Gen. Stat. Ann. § 46b-127(a) (West Supp. 1999). In Kentucky, a minor fourteen years or older will be transferred if there is probable cause to believe he committed a felony with the use of a firearm. See Ky. Rev. Stat. Ann. § 635.020(4) (Banks-Baldwin 1999). In Maryland, a minor fourteen years old or older will be transferred for committing a crime, which is punishable by death or life in prison. See Md. Code Ann., Cts. & Jud. Proc. § 3-804(e) (1998). In Massachusetts, a juvenile between fourteen and sixteen years old who commits murder in the first or second degree will automatically be transferred. See Mass. Gen. Laws Ann. ch. 119, § 74 (West Supp. 2000). In North Dakota, a fourteen-year-old youth who commits certain serious crimes, such as murder, kidnapping, and gross sexual imposition, will be tried as an adult. See N.D. Cent. Code § 27-20-34(1)(b) (Supp. 1999). In Ohio, a fourteen-year-old youth who has been previously transferred and convicted of or pleaded guilty to a felony will automatically be transferred for any second act that would be an offense if committed by an adult. See Ohio Rev. Code Ann. § 2151.26(B)(1) (West Supp. 1999). In South Carolina, if a minor has two prior delinquency adjudications or convictions, then she will be transferred for committing another offense if it provides a prison term of ten or more years. See S.C. Code Ann. § 20-7-7605(10) (Law. Co-op. Supp. 1999). In Vermont, a minor will be transferred for committing arson which causes death, assault and robbery with a dangerous weapon, assault and robbery which causes bodily injury, aggravated assault, murder, manslaughter, kidnapping, unlawful restraint, maiming, (aggravated) sexual assault, or burglary of an unoccupied dwelling. See Vt. Stat. Ann. tit. 33, § 5505 (1991 & Supp. 1999). The criminal court may transfer the case to juvenile court if the minor is amenable to treatment or the public safety is secured. See id. In West Virginia a minor will be transferred under the following circumstances: if there is probable cause to believe the minor committed first degree arson, treason, murder, kidnapping, first degree sexual assault, or robbery with the use of a deadly weapon; if the minor committed any act of violence to a person and has been previously adjudged delinquent for a violent act on a person; or if the minor committed any felony and has two prior felony adjudications in juvenile court for offenses which would be felonies if committed by an adult. See W. Va. Code § 49-5-10(d) (1999).

4. Criticisms of Legislative Waiver

Legislative waiver has also been criticized for being overly broad and too strict on certain juveniles.197 For instance, Oregon's Measure 11 was criticized for including second degree robbery and second degree assault.198 One scholar posits that two high school students who bully and threaten other students for money could be convicted of second degree robbery. Similarly, two fifteen-year-old youths charged with stealing property, such as taking a skateboard from another student, will be transferred.199 A student who gets in a serious schoolyard fight that results in an injury, such as a black eye, could be convicted of second degree assault.200 Though the school principal would probably recommend school suspension, Measure 11 has a mandatory sentence of five years and ten months.201 The Measure 11 penalty for second degree robbery is about six years in prison.202 These types of schoolyard pranks and adolescent fighting are typical adolescent behaviors. The law should not automatically punish first-time offenders who could still be amenable to treatment.203 Measure 11 does not focus on the offender or the circumstances; it only looks at the offense committed.204

197. See McCarthy, supra note 81, at 655-56. Ron Huff, director of Ohio State University's Criminal Justice Research Center, criticized automatic waivers, stating, "No two cases are ever alike. The legislature wants to send the message that they're getting tough on crime, but there are exceptions which require judicial discretion." DeGolia, supra note 6.


199. See id.

200. See id. at 1237.

201. See id.

202. See id. at 1236.

203. See id.

204. See id. at 1237-38 (criticizing the measure because first-time offenders are treated no differently than repeat offenders.) In this system "non-dangerous juveniles
A possible problem with automatic transfers occurs when the state amends the charges against the minor to crimes that are not within the purview of automatic transfer. In most cases, the juvenile is waived back to the juvenile court if the lesser offense is not within the enumerated offenses for automatic waiver. For example, in *State v. Mora*, the state amended its charge to include offenses that were within the original jurisdiction of the juvenile court. The Washington Supreme Court held that the minor was entitled to go back to juvenile court for a transfer hearing. The problem occurs when statutes stipulate that if the minor is found guilty of a different offense (one that would not initiate the automatic transfer), then he cannot be transferred back to the juvenile court. For example, in Alaska the superior court retains jurisdiction over a minor if the judge or jury finds the child guilty of an offense not included in the automatic waiver statute. The juvenile has the burden of proving by a preponderance of the evidence that she is amenable to treatment as a minor. The potential problem with this approach is that the prosecutor could charge an offense which is automatically transferred simply to get the juvenile in the adult criminal court system; if the juvenile had just been charged with the lesser offense, then she might have been adjudicated in the juvenile court system.

Some states get around such criticism with the use of “transfer back.” In “transfer back” cases the burden is usually on the juvenile to request and prove that the case should be sent back to juvenile court. A hearing similar to the one for judicial waiver is conducted, and the superior court uses its discretion to decide whether transfer should occur. This begs the question: why not just leave the discretion with

who are likely candidates for successful rehabilitation will not be given the opportunity to improve." *Id.* at 1239.

205. 977 P.2d 564 (Wash. 1999).

206. *See id.* In *State v. Larios*, the Idaho Supreme Court also held that the minor was entitled to a hearing in juvenile court when he pleaded guilty to a crime that was not enumerated as an automatic waiver offense. *See State v. Larios*, 874 P.2d 538, 541-42 (Idaho 1994).

207. *See ALASKA STAT. § 47.12.030(a) (Michie 1998).*

208. *See id.* This is different from the “transfer back” hearings because here the minor has been convicted of a different offense, whereas the “transfer back” hearings occur before the minor is tried as an adult.

209. *See id.*

210. *See McCarthy, supra note 81, at 656.*

211. *See id.*

212. In New York, the Court of Appeals will consider whether there are mitigating factors to determine if removal of the case to family court would be in the best interest of justice. N.Y. CRIM. PROC. LAW § 210.43 (McKinney 1993). Other states to utilize transfer back are: Georgia, GA. CODE ANN. §§ 15-11-5(B) & (D), 15-11-39.1(d) (Harrison 1998); Maryland, MD. CODE ANN. art. 27, § 594A (Supp. 1999); Oklahoma,
the juvenile court judge? Generally, juvenile court judges have more experience with juveniles than superior court judges. In the adult court system, superior court judges are sentencing juveniles and hardened, life-long adult criminals together. The judge will tend to be more lenient with the juvenile because of problems such as overcrowded prisons and the view that the juvenile is a first-time offender. If the very purpose behind automatic waiver is to subject juveniles to a system less lenient than the juvenile court system, then waiving younger minors to the adult court fails to accomplish this. If juveniles are receiving stiffer penalties in the juvenile court system, perhaps it is better to just leave them there.

C. Prosecutorial Waiver

Prosecutorial waiver occurs when the state has concurrent jurisdiction statutes. The prosecutor has the discretion to file a charge against a minor in either the criminal court or juvenile court. The prosecutor's decision is generally not subject to judicial review and is not generally required to be based on detailed criteria. State appellate courts have ruled that "prosecutorial discretion is equivalent to routine charging decisions made in criminal cases," meaning that prosecutors decide not only what crimes to charge, but also whether the minor should be tried as an adult based on the crime charged. One


213. Although some younger minors will not be placed into adult prison facilities right away, once they reach a certain age, sixteen for example, they are sent to the prisons. See infra note 278 and accompanying text.


215. Prosecutorial waiver is also known as direct filing and concurrent jurisdiction.

216. See DeFrances & Strom, supra note 61, at 4.

217. The use of this system shows the shift to a tougher stance on juvenile crime and the increasing trend away from parens patriae and toward punishment. See Shepherd, supra note 94, at 41.

218. See DeFrances & Strom, supra note 61, at 4; Shepherd, supra note 94, at 41. Some commentators recommend against concurrent jurisdiction because of the high likelihood of inappropriate decisions that are not reviewable with a hearing process. See Guarino-Ghezzi & Loughran, supra note 15, at 20. The prosecutor's decision is subject only to appellate court review, but such decisions are given high deference so reversal is highly unlikely. See Stacey Sabo, Note, Rights of Passage: An Analysis of Waiver of Juvenile Court Jurisdiction, 64 FORDHAM L. REV. 2425, 2426 (1996).

commentator stated:

Only those most knowledgeable about the juvenile justice system fully appreciate the breadth of discretion prosecutors exercise every day in deciding how juvenile delinquency cases should be handled. . . . [P]rosecutors decide not only whether a case is legally sufficient but also make the “social” decision about whether legally adequate cases should be transferred to the adult court, diverted, or formally petitioned. Add to this discretion the authority to make plea agreements about charges or dispositional recommendations . . . .

1. States Which Utilize Prosecutorial Waiver

An increasing number of states utilize prosecutorial waiver. In some states there is concurrent jurisdiction over any offense that a minor for a certain age commits, while in other states the concurrent jurisdiction applies only for certain offenses. For instance, in Arizona the prosecutor “may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is at least fourteen years of age” and accused of an enumerated offense. In Arkansas, the circuit court and juvenile court have concurrent jurisdiction over any minor sixteen years or older who commits any felony, and any minor fourteen years or older who commits murder, kidnapping, aggravated sodomy, rape, battery, and any felony committed while armed with a firearm, to name a few. In California, a prosecutor has the discretion over sixteen-year-olds who commit certain serious offenses, such as murder, arson or robbery, and over fourteen-year-olds who commit offenses, such as those committed for the benefit of a criminal street gang. In Colorado, after the district attorney files charges in the juvenile court, but before the

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222. ARIZ. REV. STAT. ANN. § 13-501(B) (West Supp. 1999). The enumerated offenses include: class 1 felony, class 2 felony, class 3, 4, or 5 felony involving the intentional or knowing infliction of serious physical injury, or the discharge, use, or threatening exhibition of a deadly weapon or dangerous instrument, and any felony offense committed by a chronic felony offender. See id.
224. See 2000 Cal. Legis. Serv. Prop. 21 (West) (statute will be codified as CAL. WELF. & INST. CODE § 707(d)(1) & (2)).
Juveniles in Adult Criminal Court  

When this occurs, the juvenile court no longer has jurisdiction over the case. In Connecticut, a fourteen-year-old who commits a class C or D felony or an unclassified felony may have his case filed in juvenile or adult criminal court, depending on the prosecutor. In Florida, the prosecutor can file directly in criminal court when the offense involves a fourteen- or fifteen-year-old minor. In Georgia, the courts have concurrent jurisdiction over any child who is alleged to have committed a crime that would be punishable by death, life in prison without the possibility of parole, or confinement for life in a penal institution, with the exception of a few crimes for which the superior court has exclusive jurisdiction. Also, in Louisiana, the prosecutor has the discretion of filing in the juvenile or superior court when a minor fifteen years or older commits a crime such as attempted murder, manslaughter, armed robbery, second degree kidnapping, aggravated burglary, or rape. In Montana, the prosecutor has discretion over where to file cases concerning a number of crimes committed by a child twelve years or older. In Nebraska, courts have concurrent jurisdiction over any minor who commits any felony. In Wyoming, courts have concurrent jurisdiction over any minor thirteen years or older.

226. See § 19-2-518(2).
228. See FLA. STAT. ANN. § 985.227 (West Supp. 2000). Offenses for prosecutorial transfer include: arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated assault, aggravated stalking, murder, manslaughter, use of bomb, aggravated battery, lewd act with a child, use of weapon during a felony, armed burglary, possession of a weapon in violation of a statute, home invasion robbery, carjacking, and grand theft auto. See id.
229. See GA. CODE ANN. § 15-11-5(b) (Harrison 1998). The crimes for which the superior court has exclusive jurisdiction are murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, and armed robbery committed with a firearm. See id.
231. See MONT. CODE ANN. § 41-5-206 (1999) (providing the district court with discretion in whether to transfer a case back to juvenile court after a hearing).
233. See WYO. STAT. ANN. § 14-6-203 (Michie 1999).
2. Benefits of Prosecutorial Waiver

Proponents of prosecutorial waiver argue that it makes the system more efficient and convenient. These proponents claim that this system gets around the cumbersome process involved in judicial waivers, which must include certain procedural requirements, such as a hearing and appellate review.

3. Criticisms of Prosecutorial Waiver

Prosecutorial waiver is very controversial because it vests enormous discretion in someone whose "primary duty is to secure convictions and who is traditionally more concerned with retribution than with rehabilitation." Some commentators criticize this method because it "denies the juvenile any opportunity to receive rehabilitative services," assuming most of the prosecutors decide to file in criminal court. Another opportunity for abuse is the ability of prosecutors to wait until the juvenile is older to bring formal charges; this would be especially useful if the juvenile was near a birthday that would change which jurisdiction she fell under. In State v. Annala, the Wisconsin Supreme Court held that jurisdiction of the juvenile court is determined by the individual's age at the time charged, not the individual's age at the time of the alleged offense. Another potential problem is that the

235. See id. Alabama Attorney General Jefferson Sessions, while testifying before Congress in favor of direct file for U.S. Attorneys, emphasized two of the greatest difficulties in trying a juvenile as an adult: the transfer hearing, with all its red tape, and the appeals of the waiver decision, which delay the entire case. See id.
236. Fritsch & Hemmens, supra note 83, at 18.
237. Cintron, supra note 164, at 1271. Some child advocates argue that lawmakers and prosecutors are "sacrificing the future of many savable children in an effort to appear tough on crime." Pilcher, supra note 183. Helen Leiner, chair of the juvenile justice committee of the National Association of Criminal Defense Lawyers, stated, "[w]hen you have given the prosecutors absolute discretion, you've skewed the system. High-profile cases result in high-profile responses." Id.
238. In Ohio, if a person commits an offense, which would be a felony if committed by an adult, while under the age of eighteen, but is apprehended or taken into custody after turning twenty-one, the juvenile court does not have jurisdiction to hear or determine any portion of the case. See OHIO REV. CODE ANN. § 2151.26(G) (West Supp. 1999). The case will be brought in the adult criminal court system. See id. Statute of limitations is a means to protect minors from prosecutors who wait to file. The statute of limitations could protect some juveniles, but if one's birthday is less than a year away then it might not.
239. 484 N.W.2d 138 (Wis. 1992).
240. See id. at 142. In this case, the defendant was not charged with the offense of sexual molestation for five years (he was age fifteen when it occurred) and after he had received years of counseling. See id. at 140.
interests of individual juveniles may not be taken into consideration when the prosecutor has a case involving multiple offenders, including adults and minors, for a series of related crimes. Minors may be prosecuted as adults "solely because the prosecution wishes to try the case only one time and not to expose the government’s witnesses to multiple cases in different courts." An additional issue is that the prosecutor’s decision to try a juvenile as an adult is not appealable and not reviewed, except through the political process if it is highly publicized. Because the decisions of the prosecutors are reviewed through the political process, there is also potential of abuse due to political pressure. One study, performed by Professors Donna Bishop and Charles Frazier, reviewed prosecutorial transfers in Florida from 1978 to 1987. The study found that prosecutors “felt pressure to prosecute more children as adults because they felt they had been given a mandate by the legislature.” Florida is the leader in prosecutorial waiver; in 1995, the Urban Institute in Washington, D.C., reported that “Florida prosecutors sent 7,000 cases to adult court, nearly matching the number of cases judges sent to the criminal justice system nationwide that year.”

IV. CONSEQUENCES OF TRANSFERRING

The legislature and voters have demonstrated their desire to “toughen up” on juvenile violence by passing new laws making it easier to send younger minors to the adult court system. The question remains: are the stricter laws working? The answer appears to be no. The effectiveness of transfers has been given mainly negative assessments by the most recent scholarly studies. One 1991 study of adult and juvenile court sanctions found that for sixteen- and seventeen-year-old youths convicted of burglary or robbery the juvenile court dispositions were no

241. See Burnett, supra note 18, at 12-13.
242. Id. at 13.
243. See Klein, supra note 234, at 395.
244. See id. at 397.
246. Klein, supra note 234, at 397.
247. Schiraldi & Ziedenberg, supra note 95, at 47.
less severe than adult court dispositions of juveniles.\textsuperscript{249} The study also found that over time juveniles "adjudicated in the juvenile court were rearrested less often, at a lower rate, and after more time had elapsed."\textsuperscript{249}

One common misconception is that juveniles will be given a stiffer penalty if they are sentenced in adult court.\textsuperscript{251} One study examining the period from 1980 to 1988 found on average that 55\% of all juvenile waivers to the adult criminal court resulted in probation, that in 26\% of the cases the charges were dismissed or the offender was acquitted, and that only 11\% of the cases resulted in incarceration.\textsuperscript{252} One explanation for the more lenient sentencing in criminal court is that the minor's age becomes a mitigating factor.\textsuperscript{253} As a result, the statutes which lower the age to transfer juveniles are in many cases not effective in getting tougher on sentencing. Additionally, transfer denies juveniles the benefit of any rehabilitation treatments offered in juvenile facilities.

Furthermore, juveniles who stand trial in juvenile court actually may face longer confinement than offenders who are tried for the identical conduct in adult court.\textsuperscript{254} For example, a thirteen-year-old juvenile found guilty of burglary in juvenile court could be in custody for up to eight years, while a juvenile tried for the same offense in criminal court might receive only two or three years in prison.\textsuperscript{255} When the minor gets to criminal court, he or she becomes part of a "large adult aggregate that is often extended probation as a means of alleviating jail overcrowding and allocating scarce prison space for more dangerous offenders."\textsuperscript{256} Offenses considered serious by juvenile courts are often considered less serious by criminal court judges.\textsuperscript{257} If the object of increasing transfers is to get tougher on delinquent minors, then staying in the juvenile court...

\textsuperscript{249} See id. (citing a study conducted at Columbia University about New Jersey and New York juvenile arrests).

\textsuperscript{250} Id.

\textsuperscript{251} Some evidence suggests transfer of juveniles results in more lenient dispositions. See Champion, supra note 214, at 579.

\textsuperscript{252} See id. at 583.

\textsuperscript{253} See id. at 584; see also Beth Wilbourn, Note, Waiver of Juvenile Court Jurisdiction: National Trends and the Inadequacy of the Texas Response, 23 AM. J. CRT. L. 633, 648 (1996). The evidence shows that it is easier to convict a juvenile in juvenile court than before a jury in an adult criminal proceeding. See Elsea, supra note 74, at 140; see also Should 14-Year-Olds Be Tried as Adults, supra note 7 (stating that many adult jurors give a less severe sentence because of the age of the minor and more adversarial nature of criminal court proceedings).

\textsuperscript{254} See Stephen J. Schulhofer, Youth Crime and What Not To Do About It, 31 VAL. U. L. REV. 435, 437 (1997). The minor can be held in juvenile facilities until he or she reaches age eighteen or twenty-one. See id.; see also Zierdt, supra note 80, at 413-14.

\textsuperscript{255} See Schulhofer, supra note 254, at 437.

\textsuperscript{256} Champion, supra note 214, at 584.

\textsuperscript{257} See id.
system appears to better further that goal.

Even sending minors to adult jail or prison with longer sentences does not appear to further the goal of decreasing crime committed by minors because of the increase in recidivism. Scholars have found that “[m]ore and longer incarceration does not appear to be working. As the incarceration rate has gone up, so has the percentage of juveniles rearrested for crimes after their release.”\(^{258}\) In a study reporting the effects of transfers to the adult court system, researchers found that youths who were transferred were three times more likely to reoffend and reoffended sooner than those kept in the juvenile court system.\(^{259}\) In Florida, a state that mainly uses prosecutorial waivers, the state has had the second highest overall violent crime rate of any state in the country throughout the 1990s, whereas the national crime rate has gone down.\(^{260}\)

Another study conducted in Utah from 1989 to 1993 found that of fifty-three juveniles transferred to adult court, forty-nine cases went forward, and that forty of the forty-nine were plea bargained; only nine cases went to trial.\(^{261}\) Out of the forty-nine juveniles, only twenty-eight received prison sentences of about two years.\(^{262}\) The goals behind increasing transfers to adult court were to provide stiffer sentencing and to lower the recidivism rate, but two different results are occurring—and these are not the ones legislatures and voters anticipated or wanted. The problem with sending juveniles to prison is that they “come out of the institutions in worse condition than when they entered because they are coming out embittered and hardened.”\(^{263}\) Society must remember that most of the minors sent to criminal court will be released eventually, so it is imperative that we consider how we want these juvenile offenders to

\(^{258}\) Elsea, supra note 74, at 141; see also Shepherd, supra note 94, at 42.

\(^{259}\) See Schiraldi & Ziedenberg, supra note 95, at 48.

\(^{260}\) See id.

\(^{261}\) See Shepherd, supra note 94, at 42.

\(^{262}\) See id.

\(^{263}\) Elsea, supra note 74, at 141. Punishment or imprisonment in correctional institutions generally makes matters worse because the minor is subjected to “psychologically traumatic and embittering experiences, while providing little or no psychological, educational, or vocational help; and, at the same time, they serve as ‘finishing schools’ for future criminal behavior.” Paul Henry Mussen et al., Child Development and Personality 637 (4th ed. 1974). The notion that juveniles who go to prison to do hard time will learn from their mistakes was advocated by Michigan Governor John Engler in 1998 when he stated, “These are young, dangerous punks who have been committing very serious crimes . . . . They’re not going to be back in society until they’re older, and hopefully they will be somewhat wiser.” 20/20: He’s Only a Child, supra note 9.
turn out when released.\textsuperscript{264} Is it better to send minors into rehabilitation facilities designed to "treat" them for three years or to send them into a system designed to "punish" them for ten to fifteen years?\textsuperscript{265} Moreover, many minors commit only one serious crime and then cease being criminally active, so changing the focus from rehabilitation to retribution backfires on minors stigmatized by transfer to criminal court.\textsuperscript{266} Besides, most adolescents are very naive in realizing that their actions have real consequences.\textsuperscript{267} Over eighty percent of American adolescents admit to committing one or more delinquent acts; relatively few are responsible for major delinquent behavior.\textsuperscript{268} Studies indicate that the longer a juvenile remains incarcerated, the more likely he or she will recidivate.\textsuperscript{269}

Another problem that accompanies sending increasing numbers of juveniles to the adult criminal court system is that proceedings there are longer and slower because most courts do not transfer additional resources along with the increase in caseload.\textsuperscript{270} If a juvenile cannot afford bail, he must remain in jail awaiting trial for a longer period of time than if left in the juvenile court system. This is especially harsh in cases in which the minor is innocent of the charged offense.

\textsuperscript{264} See Should 14-Year-Olds Be Tried as Adults, supra note 7 ("If we want to get tough on juvenile offenders, locking them up until they are simply bigger, angrier kids—never becoming mature, responsible adults—is not the solution."); see also Del Carlo, supra note 198, at 1245 (pointing out that when these juveniles are released, the social skills they will have learned during their adult forming years will be based on the social cues received from adult criminals).


\textsuperscript{266} See Fritsch & Hemmens, supra note 83, at 32; see also BERNARD, supra note 19, at 35-36 (stating most juveniles stop committing crimes because their behavior was just part of growing up). Giving such harsh punishment for first-time offenders might increase the likelihood that they will commit crimes again rather than simply growing out of it. See id. Data on child development from 1972 indicates that commission of serious crimes is most prevalent at age fifteen and begins to decline after hitting that peak. See Martin Gold & Richard J. Petronio, Delinquent Behavior in Adolescence, in HANDBOOK OF ADOLESCENT PSYCHOLOGY 495, 505 (Joseph Adelson ed., 1980). Some theorists believe part of delinquency is caused by the onset of puberty and the social reactions to it. See id.

\textsuperscript{267} See BERNARD, supra note 19, at 168.

\textsuperscript{268} See Gold & Petronio, supra note 266, at 523.

\textsuperscript{269} See Forst & Blomquist, supra note 265, at 362-63. See also Ogden v. J.K.M., 557 N.W.2d 229, 232 (N.D. 1996). In Ogden, the juvenile psychologist feared that if the minor "went to jail, it would only increase the likelihood that she [would] have violent or antisocial behavior in the future." Id.

\textsuperscript{270} See Zierdt, supra note 80, at 423; see also Forst & Blomquist, supra note 265, at 351-52 (stating that on average it takes 2.5 times longer for a minor to be waived, convicted, and sentenced in an adult criminal court than to be considered for transfer, retained, adjudicated, and disposed in juvenile court).
Another consequence of transferring increasingly younger juveniles to adult criminal court is that if the minor is found guilty of the offense, she loses many rights normally afforded to minors in juvenile court. For example, some states have eliminated or reduced protection for anonymity and confidentiality for juveniles. When a minor is adjudicated in a juvenile court, most often the proceedings remain confidential for the rest of the juvenile’s life. Federal law now permits fingerprinting and photographing of juveniles who commit “adult felonies.” In California, a new law permits disclosure of the name of a juvenile over the age of fourteen who commits certain offenses. In Witkowski v. M.D.N., the North Dakota Supreme Court stated, “Trying a juvenile as an adult is a severe sanction with harsh consequences. The status of ‘juvenile’ carries a shield from publicity, protection against extended pre-trial detention and post-conviction incarceration with adults, and guarantees that confinement will not extend beyond the age of twenty.” Also, just as with adults who are convicted of a felony, juveniles convicted as adults lose certain civil rights, such as disqualification from public employment and restrictions placed on other legitimate opportunities.

A serious consequence of sending younger juveniles to adult institutions is the threat of physical and emotional harm by older inmates. Juveniles in adult institutions are five times more likely to be

271. See Zierdt, supra note 80, at 420-21.
272. See id. (stating that confidentiality of juvenile proceedings was one of the reasons behind the perception of lenient treatment in juvenile court). Unfortunately, some states are disposing of the confidentiality in juvenile proceedings. For instance, in Arizona, all proceedings and matters involving juveniles accused of unlawful conduct are open to the public. See Ariz. Const. art. 4, pt. 2, § 22 (1996).
273. Zierdt, supra note 80, at 421 (citing 18 U.S.C. § 5038(d) (1994)).
274. See id. (citing Cal. Welf. & Inst. Code § 204.5 (West 1998)).
276. Id. at 683.
277. See id.; see also Zierdt, supra note 80, at 420-21. For example, a convicted felon loses the right to vote.
278. See Shepherd, supra note 94, at 42. In some states, a juvenile will be held in a juvenile institution until age sixteen and then sent to an adult prison. See, e.g., N.Y. CRIM. PROCD. LAW § 510.15 (McKinney 1995); Mich. Comp. Laws Ann. § 750.139 (West Supp. 1999). See also Ariz. Const. art. 22 § 16 (1984) (stating that no minor under age eighteen shall be in the same section of any jail or prison as adults); N.J. Stat. Ann. § 2A:4A-37 (West Supp. 1999). However, in some states, if the minor is sentenced as an adult, he or she will be incarcerated with the adult population. See, e.g., Oklahoma, Okla. Stat. Ann. tit. 10, §§ 7306-2.4(E), 7306-2.6(F) (West Supp. 2000); Okla. Stat. Ann. tit. 10, § 7303-4.3(C) (West 1998).
sexually assaulted, twice as likely to be beaten by staff, and fifty percent more likely to be attacked with a weapon than minors in juvenile facilities.\textsuperscript{279} Several different groups, including child advocates, law enforcement officials, and criminologists, have "urged Congress to consider the destructive effects of placing youth in adult jails and prisons. . . . [A] substantial body of research shows that placing youth in adult institutions accentuates criminal behavior after release."\textsuperscript{280} The benefits of juvenile facilities, no matter how small, outweigh the violence and destruction that occur in adult prisons.\textsuperscript{281} Juvenile treatment facilities are more likely to provide life and problem-solving skills to the troubled juveniles.\textsuperscript{282}

Finally, the ever-increasing use of waivers underscores inherent contradictions in the laws concerning minors. For instance, minors are not treated as adults in the areas of driving, contracting, voting, drinking alcohol, serving in the military, and consenting to sex, but they are treated as adults for certain offenses. The rationalization behind these limitations is that minors do not have the maturity, independence of thought, self-control, and ethical sensibilities to make such decisions.\textsuperscript{283}

V. DIFFERENT APPROACHES

Instead of rushing to judgment and transferring juveniles who commit certain offenses, there are other positive methods to use when coping with troubled minors. The best way to stop juvenile crime from rising is to prevent it from starting in the first place. Many people have lost faith in prevention programs because of the perceived rise in juvenile crime, but some legislators still believe it makes more sense to invest in programs to reach juveniles before they commit crime than to spend more money building new prisons.\textsuperscript{284} For a prevention program to be


\textsuperscript{280} Ziedenberg & Schiraldi, supra note 279.

\textsuperscript{281} See Forst & Blomquist, supra note 265, at 361.

\textsuperscript{282} See id.; see also DeGolia, supra note 6 (stating that "[a]lthough adult prisons are not required to rehabilitate juvenile inmates, they are required to educate youths until the age of 16"; however, the quality of education is different due to the smaller number of staff serving juveniles in adult prisons).

\textsuperscript{283} See Eric Zom, Even Young Thugs Are Still Children, CHI. TRIB., Sept. 22, 1994, at 1A (stating that the threat of losing adult liberties they never had in the first place is not an effective deterrent).

\textsuperscript{284} See Keimig Elsea, supra note 74, at 140.

While there are undoubtably juveniles who are mature enough to be sentenced

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effective, it must identify those juveniles who are "at-risk."\(^{285}\) The predictors include: (1) early, troublesome, dishonest, aggressive, or antisocial behavior; (2) poor parental guidance and stability; (3) criminal parents and siblings; (4) broken homes and early separations; (5) social deprivation stemming from a low economic level; and (6) school failure resulting from low intelligence or achievement, and absenteeism.\(^{286}\) The most effective prevention programs involve the whole family and the community.\(^{287}\)

One successful prevention program is Head Start, a federally funded program which provides a wide range of services to help low income families and prepares pre-schoolers for admission to school.\(^{288}\) Although this program is expensive, about $4500 per student per year, it appears to be working. Head Start is cheaper in the long run than paying for a juvenile in confinement, which costs about $25,000 to $50,000 per

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\(^{285}\) See Elsea, supra note 74, at 141. Dr. Tolan also stated, "You can spot signs of at-risk behavior as young as 3 years old to 5 years old." 20/20: Before It's Too Late, supra note 284.

\(^{286}\) See Elsea, supra note 74, at 141. The single most predicative indicator of adolescent delinquency is the juvenile's relationship with his or her parents. See MUSSEN ET AL., supra note 263, at 636.

\(^{287}\) See Arnold Gesell ET AL., YOUTH: THE YEARS FROM TEN TO SIXTEEN 471 (1956). Ninetenths of these children struggled adjusting to life before age eleven; more than one-third of the group showed "noticeable signs of becoming delinquent at the age of eight or younger." Id. The difference between non-delinquents and delinquents in social behavior and personality characteristics is likely to be manifested early in their development. See MUSSEN ET AL., supra note 263, at 634.
minor per year. This program is successful because it targets very young children.

The problem with waiving all juveniles who commit certain offenses to the adult court system is that this can be overinclusive, transferring minors whose crimes of violence and weapons offenses are really no more than fighting, petty robbery, or bringing a weapon to school for self-protection. To combat this problem, youths in Arizona and Indiana caught carrying a gun, if they are not serious delinquents, can avoid prosecution by agreeing to take a "firearms-prevention course." In Boston, students found with a gun must receive academic, psychological, and social counseling.

Another way to rehabilitate juvenile delinquents is through community-based programs. For instance, a program in which the juvenile must repay the victim (if possible) and the community while receiving job training, employment opportunities, educational opportunities, and counseling would promote both rehabilitation and retribution. In order to have a successful program, certain factors have been found to be essential: (1) continuous case management or increased supervision; (2) reintegration (closely involving the community); (3) focus on close involvement and achievements made by the juvenile; (4) control and security; (5) education, training, and social skill development; (6) counseling; and (7) restitution or reimbursement to the victim. Reinforcing accomplishment is also very important because most of these juveniles are starving for some attention, recognition, and achievement.

Another new alternative some states utilize are "teen courts" or "youth courts" where the minor is judged by his or her own peers for more

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290. See id. at 445. It is beneficial to target younger children because by the end of third grade some future delinquents are already viewed by teachers as "more poorly adapted than their classmates," "less considerate and fair in dealing with others, less friendly, less responsible, more impulsive, and more antagonistic," and "less liked and accepted by their peers." Mussen et al., supra note 263, at 634.
291. See Schulhofer, supra note 254, at 444.
292. Id. at 445.
293. See id.
295. A successful program is a program which teaches minors to be socially conscious and stops recidivism.
297. See id.; see also Cheri Panzer, Comment, Reducing Juvenile Recidivism Through Pre-Trial Diversion Programs: A Community's Involvement, 18 J. Juv. L. 186, 201-05 (1997).
298. See Altschuler, supra note 296, at 234.
minor offenses, such as theft, misdemeanor assault, disorderly conduct, or possession of alcohol.299 No formal adjudication is entered, but the minor must do what the jury sentences, which includes such punishments as community service and victim apology letters.300

Another alternative program is ARCH (Action to Rehabilitate Community Housing).301 This program provides vocational training and education to forty District of Columbia youths, ranging in age from sixteen to twenty-four years old, who are under the control of the superior court.302 The goal is to place each youth with an employer following a nine- to fourteen-month term in the program.303

In some states, the state youth correctional agencies are successful. For instance in Massachusetts, the Department of Youth Services, which emphasizes rehabilitation, is nationally acclaimed for its low recidivism rate.304 The success is attributed to small, intensively staffed, secure facilities and a system of community-based programs.305 Another successful juvenile correctional program is in Austin, Texas, at Giddings State School.306 This institution houses about 400 serious young criminal offenders, such as rapists, murderers, and armed robbers.307 The difference between this institution and the hundreds of others around the nation is its attitude toward its inmates.308 The people who run this school hold the conviction that they can “turn bad kids around with a kinder, gentler approach” instead of the usual “lock them up and throw away the key mentality.”309 The approach includes using group therapy to allow inmates to share feelings, talk about what happened, and discuss why they committed their crimes.310 The goal is for the juvenile to

299. See Burnett, supra note 18, at 9. The minor must admit the charges against him or her in order to qualify for use of teen court. See id.
300. See id.
301. See id. at 11.
302. See id.
303. See id.
304. See Harshbargar & Keshian, supra note 172, at 137.
305. See id. “Research suggests that recidivism among the most violent delinquents can be reduced up to 70% in small, secure, treatment-oriented juvenile facilities.” BERNARD, supra note 19, at 163.
307. See id.
308. See id.
309. Id.
310. See id.
eventually own up and take responsibility for what he has done. Sometimes juveniles may be released before reaching twenty-one if the psychologists are comfortable with their recovery. Only twelve percent of the juveniles who complete this program commit another crime within one year.

Delaware is another state that has continued to focus on rehabilitation. In cases where the juvenile has committed a serious offense, such as murder, rape, or kidnapping, or is over sixteen with one prior adjudication for delinquency, the statute provides that the nature of the hearing and all other proceedings shall be in the interest of rather than against the child.

There is a compromise between sending the juvenile to adult criminal court and leaving her in juvenile court; some states are using a concept called "split sentencing." Under the law, the juvenile receives a juvenile sentence and an adult sentence. The adult sentence is stayed while the minor completes the juvenile sentence; at the end of the juvenile sentence, if the judge believes the minor is rehabilitated, the adult sentence will be vacated. This is an ideal solution for cases in which a younger juvenile commits a serious crime and the court is not

311. See id.
312. See id.
313. See id. Twenty-one is the age when the institution must release the juveniles since it is a juvenile corrections institution. See id. Florida Prosecutor Harry Lee Coe has no patience for this type of program, stating, "Once they're convicted, and we hope they are, they're going to the Florida State Prison. That's the program we have for people like that in Florida, not therapy." Id. Prosecutor Coe's judgments regarding juvenile offenders is in contrast with Florida statutes' emphasis on rehabilitation. One Florida statute calls for the creation of a serious or habitual juvenile offender program of nine to twelve months, which would include diagnostic evaluation services, appropriate treatment, vocational services, job training, case management services, educational services, self-sufficiency planning, independent living skills, parenting skills, community involvement, graduated reentry into the community, and consistent and clear consequences for misconduct. See Fla. Stat. Ann. § 985.31 (West Supp. 2000). The problem with the retributinal thinking, like Prosecutor Coe's, is that Florida uses prosecutorial waiver of minors over the age of fourteen who commit serious offenses. See Fla. Stat. Ann. § 985.227 (West Supp. 2000). With prosecutors like Harry Coe, not many juveniles will get the benefit of statutes that emphasize rehabilitation.
314. See 48 Hours: Class of 2000, supra note 306. The success of this program is obvious when this figure is compared to the national average of fifty percent.
316. See title 10, § 1010.
317. Title 10, § 1002.
318. Harshbarger & Keshian, supra note 172, at 142. This is also known as blended or double sentencing.
319. See Anthony Burke Boylan, Boy May Face Area's 1st Double Sentence, Chl. Trib., May 5, 1999, § McHenry County, at 1; DeGolia, supra note 6; Twohey, supra note 66, at 19.
sure that the juvenile can be rehabilitated. Rather than automatically holding the minor as an adult, the court can determine if the minor can be rehabilitated first, without losing jurisdiction at age twenty or twenty-one; if the court does not feel the community will be safe, the adult sentence will be enacted.\footnote{See 'Blended Sentences' for Youths, L.A. TIMES, July 1, 1996, at B4; Twohey, supra note 66, at 19.} The purpose behind blended sentencing is to alleviate some of the reliance on automatic and discretionary transfers; it also gives the minor a chance to utilize the rehabilitation programs available in the juvenile court system.\footnote{See Burnett, supra note 18, at 7. This also gives the minor a good incentive to work the programs while protecting society if he or she does not improve. See id.} States utilizing this sentencing structure include Alaska, Arkansas, Florida, Illinois, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Mexico, and Oklahoma.\footnote{See ALASKA STAT. § 47.12.160 (Michie 1998); ARK. CODE ANN. § 9-27-507 (Michie Supp. 1999); FLA. STAT. ANN. § 985.233(4) (West 1999); 705 ILL. COMP. STAT. ANN. 405/5-810 (West 1999); KAN. STAT. ANN. § 38-16,126 (Supp. 1999); MASS. GEN. LAWS ANN. ch. 119, § 58(b) (West Supp. 2000); MICH. COMP. LAWS. ANN. § 712A.18i (West Supp. 1999); MINN. STAT. ANN. § 260B.130 (West Supp. 2000); MO. ANN. STAT. § 211.073 (West Supp. 2000); MONT. CODE ANN. § 41-5-1602 (1997); N.M. STAT. ANN. § 32A-2-20 (Michie Supp. 1998); and OKLA. STAT. ANN. tit. 10, § 7306-2.9 (West 1998), OKLA. STAT. ANN. tit. 10, § 7306-2.10 (West Supp. 2000).}  

VI. CONCLUSION

The answer to juvenile crime is not as simple as getting tougher and stricter. The best results in the long run will be through community involvement and treatment to learn why younger children are committing such crimes. One recommendation toward the goal of obtaining the best results for each juvenile delinquency case is:

All judges and other judicial officers serving in a juvenile division or juvenile court should be required to have intensive and ongoing training, not only in the statutory and case law governing delinquency, status offense, and dependency matters, but also in child development, cultural factors, resources for families, the court’s relationship with and duties toward social welfare agencies, and research findings regarding rehabilitative interventions.\footnote{Center for the Future of Children, The David and Lucile Packard Foundation, Executive Summary: The Juvenile Court, 6 FUTURE OF CHILDREN (1996) (visited Jan. 25, 2000) <http://www.futureofchildren.org/juv/exsum15.html>.}

In dealing with juvenile offenders, the judge should consider the long-term effect of the type of punishment or treatment on the juvenile, as
well as on society. Juvenile courts should be given more support. As one commentator stated: "[G]iven the importance of reaching troubled youth in the most formative time in their lives, juvenile courts should be placed at the head of the line for sufficient financial funding and proper staffing with committed judges, social workers, psychologists, psychiatrists, and other personnel necessary to meet the demand."  

Also, the judges and personnel who work in juvenile courts must "appreciate the stages of child development, the educational needs of children at various stages in their development, and child behavioral issues," to really find the best solution for the minor, whether it be to stay in the juvenile court system or be transferred. There are plenty of other solutions available to fight juvenile crime and recidivism instead of sending younger and younger offenders straight to adult criminal courts where they will only get lost or forgotten in an already overburdened system. Ideally, the discretion to transfer juveniles should be returned to the juvenile court judges where each juvenile can be evaluated on a case-by-case basis. This will ensure that more treatment programs will once again be used to help juveniles. "[D]elinquency is not a disease, but a symptom of more fundamental problems—social, psychological, economic, educational, vocational, physical, even philosophical."

Lisa S. Beresford

324. Burnett, supra note 18, at 7.
325. Id. at 8.
326. Although there are some problems with the juvenile court system, such as abuse of discretion by judges and violence in juvenile facilities, the benefits, which include rehabilitation treatments, confidentiality and examining a juvenile on a case-by-case basis, far outweigh the problems and any benefits of simply waiving minors to the adult court system.
327. Mussen et al., supra note 263, at 637.
## APPENDIX A: JUDICIAL WAIVER

<table>
<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Age</th>
<th>Type of Offense</th>
<th>Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>12-15-34</td>
<td>14+</td>
<td>Act That Would Constitute Crime If Committed by an Adult</td>
<td>Yes *</td>
</tr>
<tr>
<td>Alaska</td>
<td>47.12.100</td>
<td>Any</td>
<td>Unclassified Felony, Crime Against Person</td>
<td>Yes *</td>
</tr>
<tr>
<td>Arizona</td>
<td>8-327</td>
<td>Any</td>
<td>Any Felony</td>
<td>Views Victim, Degree of Juvenile Participation *</td>
</tr>
<tr>
<td>California</td>
<td>707, 707.01</td>
<td>16+</td>
<td>Offense Varies for Different Ages **</td>
<td>Yes *</td>
</tr>
<tr>
<td></td>
<td></td>
<td>14+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Colorado</td>
<td>19-2-518</td>
<td>12+</td>
<td>Class 1 or 2 Felony, Crime of Violence</td>
<td>Impact on Victim *</td>
</tr>
<tr>
<td>Colorado</td>
<td>19-2-518</td>
<td>14+</td>
<td>Any Felony</td>
<td>Impact on Victim *</td>
</tr>
<tr>
<td>Delaware</td>
<td>1010</td>
<td>Any</td>
<td>Murder, Rape, Kidnapping</td>
<td>Judge Will Determine If the Minor Is Amendable</td>
</tr>
</tbody>
</table>

* Typical factors include prior history of the juvenile, previous treatment attempts, mental or emotional condition of juvenile, likelihood of rehabilitation, seriousness of offense, whether the act was committed in aggressive violent or premeditated manner, whether the offense was against a person or property, what kind of rehabilitation facilities are available in the juvenile court system, interests of community, and age and maturity of juvenile.

** Typical offenses for waiver include murder, sexual battery, armed robbery, aggravated battery, aggravated assault, kidnapping, battery, sodomy, discharge of gun, and burglary with a gun.
**APPENDIX A: JUDICIAL WAIVER (CONTINUED)**

<table>
<thead>
<tr>
<th>STATE</th>
<th>STATUTE</th>
<th>AGE</th>
<th>TYPE OF OFFENSE</th>
<th>FACTORS</th>
</tr>
</thead>
<tbody>
<tr>
<td>DELAWARE</td>
<td>1010</td>
<td>16+</td>
<td>Prior Adjudication Plus 1st Degree Conspiracy, 3rd Degree Rape, 1st Degree Assault, 1st Degree Arson, 1st Degree Burglary, 1st Degree Robbery, Trafficking in Drugs</td>
<td>Judge Will Determine If the Minor Is Amenable</td>
</tr>
<tr>
<td>DISTRICT OF COLUMBIA</td>
<td>16-2307</td>
<td>15+</td>
<td>Any Felony</td>
<td>Yes *</td>
</tr>
<tr>
<td>DISTRICT OF COLUMBIA</td>
<td>16-2307</td>
<td>Any</td>
<td>Illegal Possession Gun 1,000 Ft. of School</td>
<td>Yes *</td>
</tr>
<tr>
<td>FLORIDA</td>
<td>985-226</td>
<td>14+</td>
<td>Delinquent Act Plus Prior Delinquent Adjudication</td>
<td>Yes *</td>
</tr>
<tr>
<td>HAWAII</td>
<td>571-22</td>
<td>16+</td>
<td>Any Felony</td>
<td>Yes *</td>
</tr>
<tr>
<td>HAWAII</td>
<td>571-22</td>
<td>14+</td>
<td>Act Results in Serious Injury, 'Class A Felony,' or 1 Prior &amp; Felony</td>
<td>Yes *</td>
</tr>
<tr>
<td>HAWAII</td>
<td>571-22</td>
<td>Any</td>
<td>Murder or Attempted Murder</td>
<td>Yes *</td>
</tr>
<tr>
<td>IDAHO</td>
<td>20-508, 20-509</td>
<td>Any</td>
<td>Murder, Robbery, Rape (Excluding Statutory), Forcible Sexual Penetration with Foreign Object</td>
<td>Yes *</td>
</tr>
<tr>
<td>IDAHO</td>
<td>20-508</td>
<td>14+</td>
<td>Typical Offenses **</td>
<td>Yes *</td>
</tr>
<tr>
<td>ILLINOIS</td>
<td>5-805(3)</td>
<td>13+</td>
<td>Any Crime Under State Law</td>
<td>Yes *</td>
</tr>
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### APPENDIX A: JUDICIAL WAIVER (CONTINUED)

<table>
<thead>
<tr>
<th>STATE</th>
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<tbody>
<tr>
<td>ILLINOIS</td>
<td>5-805(2)(A) &amp; B</td>
<td>15+</td>
<td>Class X Felony, Aggravated Discharge of Firearm, Armed Violence with Class 1 or 2 Felony in Furtherance of Gang Activity, Armed Violence Under Illinois Controlled Substance Act or Cannabis Control Act, Armed Violence When Weapon Is Machine Gun or Other Dangerous Weapon</td>
<td>Yes *</td>
</tr>
<tr>
<td>INDIANA</td>
<td>31-30-3-2</td>
<td>14+</td>
<td>Heinous/Aggravated Act or Part Repetitive Pattern</td>
<td>Probable Cause, Best Interests Child, Safety &amp; Welfare Community, Child Beyond Rehabilitation</td>
</tr>
<tr>
<td>INDIANA</td>
<td>31-30-3-3</td>
<td>16+</td>
<td>Felony Class A &amp; B, Involuntary Manslaughter, Reckless Homicide</td>
<td>Probable Cause, Best Interests Child, Safety &amp; Welfare Community</td>
</tr>
<tr>
<td>IOWA</td>
<td>232.45</td>
<td>14+ 15+</td>
<td>Typical Offenses **</td>
<td>Yes *</td>
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<tr>
<td>State</td>
<td>Statute</td>
<td>Age</td>
<td>Type of Offense</td>
<td>Factors</td>
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</tr>
<tr>
<td>Kansas</td>
<td>38-1636</td>
<td>14+</td>
<td>Felony Against Person with Use of Firearm, Non-drug Severity Level 1-6 Felony, Any Drug Severity 1 or 2 Felony, Any Felony &amp; Prior</td>
<td>Yes *</td>
</tr>
<tr>
<td>Kentucky</td>
<td>635.020</td>
<td>14+</td>
<td>Class A &amp; B Felony, Capital Offense (Also Class C &amp; D Included with A &amp; B Felony)</td>
<td>Yes *</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Art. 862, 857</td>
<td>14+</td>
<td>Typical Offenses**</td>
<td>Yes *</td>
</tr>
<tr>
<td>Maine</td>
<td>3101</td>
<td>Any</td>
<td>Murder, Class A, B, C</td>
<td>Yes *</td>
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<tr>
<td>Maryland</td>
<td>3-817</td>
<td>15+</td>
<td>Act Punishable by Death or Life in Prison</td>
<td>Yes *</td>
</tr>
<tr>
<td>Maryland</td>
<td>3-817</td>
<td>15+</td>
<td>Any</td>
<td>Consider Victim’s Impact Stmt *</td>
</tr>
<tr>
<td>Michigan</td>
<td>712A.4</td>
<td>14+</td>
<td>Offense That Would Be a Felony if Committed by an Adult</td>
<td>Yes *</td>
</tr>
<tr>
<td>Minnesota</td>
<td>260B.125</td>
<td>14+</td>
<td>Any Offense That Would Be a Felony if Committed by an Adult</td>
<td>Yes *</td>
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<tr>
<td>Mississippi</td>
<td>42-21-137</td>
<td>13+</td>
<td>Any</td>
<td>Yes *</td>
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<tr>
<td>Missouri</td>
<td>211.071</td>
<td>Any</td>
<td>1st &amp; 2nd Degree Murder, 1st Degree Assault, Forcible Rapes, Forcible Sodomy, 1st Degree Robbery, Distribution Drugs, or Committed 2+ Prior Unrelated Offenses (Felonies If Committed by Adult)</td>
<td>Yes, * Hearing Mandatory</td>
</tr>
</tbody>
</table>
### APPENDIX A: Judicial Waiver (continued)

<table>
<thead>
<tr>
<th>STATE</th>
<th>STATUTE</th>
<th>AGE</th>
<th>TYPE OF OFFENSE</th>
<th>FACTORS</th>
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<tbody>
<tr>
<td>MISSOURI</td>
<td>211.071</td>
<td>12+</td>
<td>Any Offense Considered a Felony If Committed by an Adult</td>
<td>Yes, * Hearing Discretionary</td>
</tr>
<tr>
<td>MONTANA</td>
<td>41-5-1602</td>
<td>14+</td>
<td>Sexual Intercourse without Consent, Deliberate Homicide, Negligent Homicide, Arson, Aggravated or Felony Assault, Robbery, Burglary, Aggravated Kidnapping, Possession Explosives, Criminal Sale Dangerous Drugs, Criminal Production, Manufacture Dangerous Drugs, Use of Threat to Coerce Criminal Street Gang Membership (Offenses Do Not Include Those with Punishment of Death, Life Imprisonment, or Sentence of 100 Years)</td>
<td>Hearing To Determine If Case Will Be Designated Extended Jurisdiction Juvenile Prosecution— If It Is Then the Minor Will Get a Blended Sentence</td>
</tr>
<tr>
<td>STATE</td>
<td>STATUTE</td>
<td>AGE</td>
<td>TYPE OF OFFENSE</td>
<td>FACTORS</td>
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</tr>
<tr>
<td>MONTANA</td>
<td>41-5-1602</td>
<td>12+</td>
<td>Any Offense That Would Be a Felony If Committed by an Adult (Except Offenses with Punishment of Death, Life Imprisonment, or Sentence of 100 Years)</td>
<td>Hearing to Determine If Case Will Be Designated Extended Jurisdiction Juvenile Prosecution— If It Is Then the Minor Will Get a Blended Sentence</td>
</tr>
<tr>
<td>NEVADA</td>
<td>62.080</td>
<td>14+</td>
<td>Offense That Would Be a Felony If Committed by an Adult, Sexual Assault Involving Use/Threatened Use Force/Violence Against Victim, Offense/Attempted Offense with Use of Firearm</td>
<td>Minor Will Not Be Transferred If Actions Were Result of Substance Abuse, Emotional, or Behavioral Problems Which Can Be Treated</td>
</tr>
<tr>
<td>NEW HAMPSHIRE</td>
<td>169-B:24</td>
<td>Any</td>
<td>Offense That Is Felony If Committed by an Adult</td>
<td>Yes *</td>
</tr>
<tr>
<td>NEW HAMPSHIRE</td>
<td>169-B:24</td>
<td>15+</td>
<td>Typical Offenses **</td>
<td>Yes, * Presumption of Transfer</td>
</tr>
</tbody>
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### APPENDIX A: JUDICIAL WAIVER (CONTINUED)

<table>
<thead>
<tr>
<th>STATE</th>
<th>STATUTE</th>
<th>AGE</th>
<th>TYPE OF OFFENSE</th>
<th>FACTORS</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Jersey</td>
<td>2A:4A-26</td>
<td>14+</td>
<td>Criminal Homicide, Robbery, (Aggravated) Sexual Assault, Aggravated Assault, 2nd Degree Kidnapping, 1st Degree Arson, Offense Against a Person in Aggressive, Violent, Willful Manner, Unlawful Possession of Firearm, Theft Automobile, Crime That Is Part of Continuing Criminal Activity in Concert with 2+ people, Class A Felony, or Any Felony Plus 4 Delinquent Adjudications</td>
<td>Judge Uses Discretion Whether to Invoke Adult or Juvenile Sentence</td>
</tr>
<tr>
<td>New Mexico</td>
<td>32A-2-3, 32A-2-20</td>
<td>14+</td>
<td>2nd Degree Murder, Assault with Intent to Commit Violent Felony, Kidnapping, Aggravated Battery, Shooting at Dwelling/Occupied Building or from/at Vehicle, Dangerous Use Explosives, Criminal Sexual Penetration, Robbery Aggravated Burglary, Aggravated Arson, Abuse Child That Results in Serious Bodily Injury or Death to Child, Felony Offense Plus 3 Prior Felonies Within One Year, 1st Degree Murder</td>
<td></td>
</tr>
<tr>
<td>STATE</td>
<td>STATUTE</td>
<td>AGE</td>
<td>TYPE OF OFFENSE</td>
<td>FACTORS</td>
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</tr>
<tr>
<td>NORTH CAROLINA</td>
<td>7B-2200, 7B-2203, 7B-1601</td>
<td>13-16</td>
<td>Any Offense Considered a Felony If Committed by an Adult</td>
<td>Yes *</td>
</tr>
<tr>
<td>NORTH DAKOTA</td>
<td>27-20-34</td>
<td>14+</td>
<td>Manslaughter, Aggravated Assault, Robbery, Arson Involving Inhabited Structure, Escape Involving Use of Dangerous Weapon, or Offense That Would Be Felony If Committed by an Adult Plus 2+ Previous Delinquent Adjudications</td>
<td>Yes *</td>
</tr>
<tr>
<td>OHIO</td>
<td>2151.26</td>
<td>14+</td>
<td>Any Act That Would Be a Felony If Committed by an Adult</td>
<td>Minor Not Amenable to Care, Community Safety, Victim 5 or Younger, Victim 65 or Older, Victim Physically Harmed, Minor Had Firearm, History Failure Rehabilitate</td>
</tr>
<tr>
<td>OKLAHOMA</td>
<td>7303-4.3</td>
<td>Any</td>
<td>Any Offense Considered a Felony If Committed by an Adult</td>
<td>Yes *</td>
</tr>
<tr>
<td>OREGON</td>
<td>419C.352</td>
<td>15†</td>
<td>Murder, Rape, Sodomy, Unlawful Sexual Penetration</td>
<td>Yes *</td>
</tr>
</tbody>
</table>
### APPENDIX A: JUDICIAL WAIVER (CONTINUED)

<table>
<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Age</th>
<th>Type of Offense</th>
<th>Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>OREGON</td>
<td>419C.349</td>
<td>15+</td>
<td>Class A or B Felony or Any Following Class C Felonies: Escape 2nd Degree, Assault 3rd Degree, Coercion, Arson 2nd Degree, Robbery 3rd Degree &amp; Use</td>
<td>Yes *</td>
</tr>
<tr>
<td>PENNSYLVANIA</td>
<td>6355</td>
<td>14+</td>
<td>Any Felony (Except a Few Serious Offenses Which Are Automatically Transferred)</td>
<td>Impact of Offense on Victim, Threat to Safety *</td>
</tr>
<tr>
<td>RHODE ISLAND</td>
<td>14-1-7</td>
<td>Any</td>
<td>Offense Punishable by Life Imprisonment, Any Offense Considered a Felony If Committed by an Adult</td>
<td>Yes *</td>
</tr>
<tr>
<td>SOUTH CAROLINA</td>
<td>20-7-7605</td>
<td>16+</td>
<td>Misdemeanor, Class E or F If Committed by an Adult</td>
<td>Contrary Best Interest Public &amp; Juvenile</td>
</tr>
<tr>
<td>SOUTH CAROLINA</td>
<td>20-7-7605</td>
<td>14+</td>
<td>Assault and Battery of a Highly Aggravated Nature</td>
<td>Contrary Best Interest Public &amp; Juvenile</td>
</tr>
<tr>
<td>SOUTH CAROLINA</td>
<td>20-7-7605</td>
<td>14</td>
<td>Class A, B, C, D, Felony or Felony with a Max Term of 15 Years or More Imprisonment</td>
<td>Contrary Best Interest Public &amp; Juvenile</td>
</tr>
<tr>
<td>SOUTH CAROLINA</td>
<td>20-7-7605(6)</td>
<td>Any</td>
<td>Murder or Criminal Sexual Conduct</td>
<td>Contrary Best Interest Public &amp; Juvenile</td>
</tr>
</tbody>
</table>
## APPENDIX A: JUDICIAL WAIVER (CONTINUED)

<table>
<thead>
<tr>
<th>STATE</th>
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<th>FACTORS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOUTH DAKOTA</td>
<td>26-11-3.1</td>
<td>16+</td>
<td>Class A, B, 1, 2</td>
<td>Rebuttable Presumption That Minor Should Be Tried as an Adult, Minor Has Burden at Hearing</td>
</tr>
<tr>
<td>SOUTH DAKOTA</td>
<td>26-11-4</td>
<td>Any</td>
<td>Criminal Felony Charge</td>
<td>Yes *</td>
</tr>
<tr>
<td>TENNESSEE</td>
<td>37-1-134</td>
<td>16+</td>
<td>Murder, Rape, Aggravated Robbery, or Aggravated Kidnapping</td>
<td>Member Gang *</td>
</tr>
<tr>
<td>TENNESSEE</td>
<td>37-1-134</td>
<td>16+</td>
<td>Any Felony</td>
<td>Member Gang</td>
</tr>
<tr>
<td>TEXAS</td>
<td>54.02</td>
<td>14+</td>
<td>Capital Felony, Felony 1st Degree, Aggravated Control Substance</td>
<td>Yes *</td>
</tr>
<tr>
<td>TEXAS</td>
<td>54.02</td>
<td>15+</td>
<td>2nd or 3rd Degree Felony</td>
<td>Yes *</td>
</tr>
<tr>
<td>TEXAS</td>
<td>54.02</td>
<td>10+</td>
<td>Capital Felony or Murder</td>
<td>Yes *</td>
</tr>
<tr>
<td>UTAH</td>
<td>78-3a-502(3), 78-3a-603</td>
<td>14+</td>
<td>Commission of Act That Would Constitute a Felony If Committed by an Adult</td>
<td>Yes *</td>
</tr>
<tr>
<td>VERMONT</td>
<td>5502, 5506</td>
<td>10+</td>
<td>Typical Offenses **</td>
<td>Yes *</td>
</tr>
</tbody>
</table>
## APPENDIX A: JUDICIAL WAIVER (CONTINUED)

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<tr>
<th>STATE</th>
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</thead>
<tbody>
<tr>
<td>VIRGINIA</td>
<td>16.1 - 269.1</td>
<td>14+</td>
<td>Any Felony (Except Murder, Robbery, Abduction, Rape, Carjacking, Sodomy, Rape, Which Automatically Transfer)</td>
<td>Yes *</td>
</tr>
<tr>
<td>WASHINGTON</td>
<td>13.40.110</td>
<td>17+</td>
<td>2nd Degree Assault, 1st Degree Extortion, Indecent Liberties, 2nd Degree Child Molestation, 2nd Degree Kidnapping, 2nd Degree Robbery</td>
<td>???</td>
</tr>
<tr>
<td>WASHINGTON</td>
<td>13.40.110</td>
<td>15+</td>
<td>Class A Felony, or Attempt/Sollicit/Conspire Class A Felony</td>
<td>???</td>
</tr>
<tr>
<td>WEST VIRGINIA</td>
<td>49-5-10</td>
<td>14+</td>
<td>Treason, Murder, Robbery w/Gun, Kidnapping, 1st Degree Arson, 1st Degree Sexual Assault, Offense Violence on a Person Plus Prior Adjudication or Any Felony Plus 2 Prior Adjudications of Offenses That Would Be Felonies If Committed By an Adult</td>
<td>Mental and Physical Condition of Minor, Maturity, Attitude, Home/Family Environment, School Experience, and Similar Personal Factors</td>
</tr>
<tr>
<td>WISCONSIN</td>
<td>938.18</td>
<td>14+</td>
<td>Typical Offenses **</td>
<td>Yes *</td>
</tr>
<tr>
<td>WISCONSIN</td>
<td>938.18</td>
<td>15+</td>
<td>Any Criminal Offense</td>
<td>Yes *</td>
</tr>
<tr>
<td>STATE</td>
<td>STATUTE</td>
<td>AGE</td>
<td>TYPE OF OFFENSE</td>
<td>FACTORS</td>
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<tr>
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<td>---------</td>
</tr>
<tr>
<td>WYOMING</td>
<td>14-6-203</td>
<td>12†</td>
<td>Felony or a Misdemeanor Punishable by More Than 6 Months</td>
<td>Yes *</td>
</tr>
</tbody>
</table>
### APPENDIX B: LEGISLATIVE WAIVER

<table>
<thead>
<tr>
<th>STATE</th>
<th>STATUTE</th>
<th>AGE</th>
<th>TYPE OF OFFENSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALABAMA</td>
<td>12-15-34.1</td>
<td>16+</td>
<td>Capital Offense, Class A Felony, Felony That Has Element Use of Dangerous Weapon, Cause Death or Serious Physical Injury, or Use of Dangerous Instrument Against a Person of Authority, Trafficking Drugs</td>
</tr>
<tr>
<td>ALASKA</td>
<td>47.12.030</td>
<td>16+</td>
<td>Unclassified Felony, Felony Against Person, 1st Degree Arson, Class B Felony—Crime Against a Person with Use Deadly Weapon Plus Prior Adjudication Conviction Crime of Violence Against a Person</td>
</tr>
<tr>
<td>ARIZONA</td>
<td>13-501, Ariz. Const. Art. 4 Pt. 2 §22 (1)</td>
<td>15+</td>
<td>Murder, Forcible Sexual Assault, Armed Robbery, Violent Felony, Chronic Felony Offenders</td>
</tr>
<tr>
<td>CALIFORNIA</td>
<td>602</td>
<td>14+</td>
<td>Murder, Rape, Spousal Rape, Forcible Sex Offenses, Forcible Lewd &amp; Lascivious Acts on Child Under 14, Forcible Penetration by Foreign Object, Sodomy, Oral Copulation,</td>
</tr>
<tr>
<td>CONNECTICUT</td>
<td>46b-127</td>
<td>14+</td>
<td>Capital Felony, Class A or B Felony</td>
</tr>
<tr>
<td>DELAWARE</td>
<td>630a</td>
<td>16+</td>
<td>1st Degree Vehicular Homicide, Driving Under the Influence</td>
</tr>
<tr>
<td>FLORIDA</td>
<td>985.227(2)</td>
<td>16+</td>
<td>Any Violent Offense Against a Person Plus Previous Adjudication for Delinquent Act Classified a Felony (Murder, Sexual Battery, Armed Robbery, Carjacking, Home Invasion, Robbery, Aggravated Battery, Aggravated Assault)</td>
</tr>
<tr>
<td>FLORIDA</td>
<td>985.227(2)</td>
<td>Any</td>
<td>Any Offense Which Would be a Felony If Committed by an Adult Plus 3 Prior Adjudications, Stealing Motor Vehicle and While in the Possession of the Stolen Vehicle Causing Serious Bodily Injury or Death to an Innocent Person</td>
</tr>
<tr>
<td>GEORGIA</td>
<td>15-11-39.1</td>
<td>15+</td>
<td>Burglary Plus 3 Prior Adjudications for Burglary</td>
</tr>
<tr>
<td>State</td>
<td>Statute</td>
<td>Age</td>
<td>Type of Offense</td>
</tr>
<tr>
<td>-----------</td>
<td>------------------</td>
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<td>---------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Georgia</td>
<td>15-11-5(B)(2)(A)</td>
<td>13+</td>
<td>Murder, Voluntary Manslaughter, Rape, Aggravated Sodomy, Aggravated Child Molestation, Aggravated Sexual Battery, Armed Robbery if Committed with a Firearm</td>
</tr>
<tr>
<td>Illinois</td>
<td>5-805, 5-130</td>
<td>15+</td>
<td>Forcible Felony Plus Previous Adjudication for a Felony, 1st Degree Murder, Aggravated Criminal Sexual Assault, Armed Robbery with Firearm, Aggravated Carjacking with Firearm, Aggravated Discharge Gun within 1000 Ft School, Class X Felony with Prior Delinquent Adjudication, Act Committed in Furtherance of Criminal Activity of Organized Gang, Felony Plus Previous Adjudication for Forcible Felony</td>
</tr>
<tr>
<td>Indiana</td>
<td>31-30-3-4</td>
<td>10+</td>
<td>Murder</td>
</tr>
<tr>
<td>Indiana</td>
<td>31-30-1-4</td>
<td>16+</td>
<td>Murder, Kidnapping, Rape, Criminal Deviate Conduct, Robbery with Deadly Weapon or If It Results in Bodily Injury, Carjacking, Use Weapon, Criminal Gang Activity, Carrying Handgun without a License, Use Firearms, Dealing Drugs</td>
</tr>
<tr>
<td>Kentucky</td>
<td>635.020(4)</td>
<td>14+</td>
<td>Felony Committed with the Use of a Firearm</td>
</tr>
<tr>
<td>Louisiana</td>
<td>305</td>
<td>15+</td>
<td>Murder, Aggravated Rape, Aggravated Kidnapping</td>
</tr>
<tr>
<td>Maryland</td>
<td>3-804</td>
<td>14+</td>
<td>Crime Punishable by Death or Life in Prison</td>
</tr>
</tbody>
</table>
# APPENDIX B: LEGISLATIVE WAIVER (CONTINUED)

<table>
<thead>
<tr>
<th>STATE</th>
<th>STATUTE</th>
<th>AGE</th>
<th>TYPE OF OFFENSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>MARYLAND</td>
<td>3-804</td>
<td>16+</td>
<td>Abduction, Kidnapping, 2nd Degree Murder (or Attempted), Voluntary Manslaughter, 2nd Degree Rape (or Attempted), Robbery w/Deadly Weapon, 2nd or 3rd Sexual Offense, Use of a Weapon to Traffic Drugs, Carjacking, 1st Degree Assault, Use/Threaten to Use Firearm Plus Prior Adjudication Felony</td>
</tr>
<tr>
<td>MASSACHUSETTS</td>
<td>74</td>
<td>14-16</td>
<td>1st or 2nd Degree Murder</td>
</tr>
<tr>
<td>MINNESOTA</td>
<td>260b.103</td>
<td>16+</td>
<td>Murder</td>
</tr>
<tr>
<td>MISSISSIPPI</td>
<td>43-21-151</td>
<td>13+</td>
<td>Crime Punishable by Death or Life in Prison, Act Committed with Deadly Weapon, Carrying Concealed Weapon (Includes Attempting to Do above Crimes)</td>
</tr>
<tr>
<td>NEVADA</td>
<td>62.040</td>
<td>16+</td>
<td>Sexual Assault (or Attempted) Involving Use/Threatened Use Force/Violence Plus Prior Felony Juvenile Adjudication Plus Use/Threaten with Gun, Offense (Attempted) Involving Use/Threatened Use Firearm Plus Prior Felony Juvenile Adjudication, Offense Felony Which Results in Death or Serious Bodily Injury Plus Prior Felony Adjudication Committed on School Property with Intent to Create Risk Death or Serious Bodily Injury with Dangerous Weapon</td>
</tr>
<tr>
<td>NEVADA</td>
<td>62.040</td>
<td>Any</td>
<td>Murder, Attempted Murder, Any Felony Plus Prior Delinquent Felony</td>
</tr>
<tr>
<td>NEW YORK</td>
<td>180.75</td>
<td>16+</td>
<td>Any Crime Plus Reasonable Cause Criminally Responsibility</td>
</tr>
<tr>
<td>NORTH CAROLINA</td>
<td>7b-2200</td>
<td>13+</td>
<td>Class A Felony</td>
</tr>
</tbody>
</table>
## APPENDIX B: LEGISLATIVE WAIVER (CONTINUED)

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<tbody>
<tr>
<td>NORTH DAKOTA</td>
<td>27-20-34</td>
<td>14+</td>
<td>Attempted Murder, Murder, Gross Sexual Imposition (Attempted), Kidnapping, Manufacture/Deliver Possession with Intent Manufacture/Deliver Controlled Substance</td>
</tr>
<tr>
<td>OHIO</td>
<td>2151.26(B)</td>
<td>14+</td>
<td>Act That Would Be Offense If Committed by Adult and Previous Conviction or Guilty Plea in Adult Court of Act That Would Be an Offense If Committed by Adult</td>
</tr>
<tr>
<td>OHIO</td>
<td>2151.26(B)</td>
<td>16+</td>
<td>Category One Offense or Category Two Offense Plus Previous Delinquency Adjudication for Category One or Two Offense or Act Committed with Gun</td>
</tr>
<tr>
<td>OKLAHOMA</td>
<td>7306-1.1(A)</td>
<td>16+</td>
<td>Murder, Kidnapping, Robbery with Dangerous Weapon, 1st Degree Robbery with Personal Injury Resulting, 1st Degree Rape, Rape with Instrumentation, Felony Plus Use Firearm or Other Offensive Weapon, 1st Degree Arson, Burglary With Explosives, 1st or 2nd Degree Burglary after 3+ Prior Adjudications for Burglary, Shooting with Intent to Kill, Discharging Weapon from Vehicle, Intimidating a Witness, 1st Degree Manslaughter, Sodomy, Trafficking Illegal Drugs, Manufacture/Distribute/Dispense Controlled Dangerous Substance, Assault and Battery with Dangerous Weapon</td>
</tr>
</tbody>
</table>
## APPENDIX B: LEGISLATIVE WAIVER (CONTINUED)

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<tbody>
<tr>
<td>OKLAHOMA</td>
<td>7306-2.6</td>
<td>16+</td>
<td>1st Degree Burglary, Aggravated Assault and Battery on Police Officer, Intimidating Witness, Trafficking/Manufacturing Illegal Drugs, Maiming, Residential Burglary Plus Priors—Minor Will Be Held Accountable as Youthful Offender</td>
</tr>
<tr>
<td>OKLAHOMA</td>
<td>7306-2.6</td>
<td>15+</td>
<td>2nd Degree Murder, Kidnapping with Purpose Extortion, 1st Degree Manslaughter, (Attempted) Robbery with Dangerous Weapon, 1st Degree or Attempted Rape, (Attempted) Rape with Instrumentality, Forcible Sodomy, Lewd Molestation, (Attempted) 1st Degree Arson, Shooting With Intent To Kill, Discharge of a Dangerous Weapon from Vehicle—Minor Will Be Held Accountable as Youthful Offender</td>
</tr>
<tr>
<td>OKLAHOMA</td>
<td>7306-1.1(B)</td>
<td>13+</td>
<td>1st Degree Murder</td>
</tr>
<tr>
<td>OREGON</td>
<td>137.707</td>
<td>15+</td>
<td>Robbery 1st &amp; 2nd Degree, 1st &amp; 2nd Degree Manslaughter, Assault 1st &amp; 2nd Degree, Kidnapping 1st &amp; 2nd Degree, Rape 1st &amp; 2nd Degree, Sodomy 1st &amp; 2nd Degree, Unlawful Sexual Penetration, Sexual Abuse, Murder under §163.095, 1st Degree Arson, Compelling Prostitution</td>
</tr>
<tr>
<td>PENNSYLVANIA</td>
<td>6355, 6302</td>
<td>Any</td>
<td>Murder</td>
</tr>
<tr>
<td>STATE</td>
<td>STATUTE</td>
<td>AGE</td>
<td>TYPE OF OFFENSE</td>
</tr>
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</tr>
<tr>
<td>RHODE ISLAND</td>
<td>14-1-7.2</td>
<td>16+</td>
<td>Two Past Delinquent Adjudications Plus Any Offense</td>
</tr>
<tr>
<td>SOUTH CAROLINA</td>
<td>20-7-7605(10)</td>
<td>14+</td>
<td>Offense Which Gets 10 Yrs Prison Plus 2+ Priors Offenses of Juvenile Adjudications Which Would Be Felonies If Committed by an Adult or 2 Convictions</td>
</tr>
<tr>
<td>UTAH</td>
<td>78-3a-601</td>
<td>16+</td>
<td>Murder, or Any Felony Plus Prior</td>
</tr>
<tr>
<td>UTAH</td>
<td>78-3a-602</td>
<td>16+</td>
<td>Aggravated Arson, Aggravated Assault w/Intent Cause Serious Bodily Injury, Aggravated Kidnapping, Aggravated Burglary, Aggravated Robbery, Aggravated Sexual Assault, Discharge Firearm from Vehicle, Attempted Aggravated Murder, Attempted Murder, Other Offenses If Involves Use of a Dangerous Weapon and Minor Has Prior Adjudication/ Conviction of Offense with Use of a Dangerous Weapon</td>
</tr>
<tr>
<td>VERMONT</td>
<td>5505</td>
<td>14+</td>
<td>Arson Causing Death, Robbery w/Dangerous Weapon, Manslaughter, Kidnapping, Unlawful Restraint, Maiming, Sexual Assault, Aggravated Sexual Assault, Burglary of Home</td>
</tr>
</tbody>
</table>
### APPENDIX B: LEGISLATIVE WAIVER (CONTINUED)

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<tr>
<th>STATE</th>
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<tbody>
<tr>
<td>WASHINGTON</td>
<td>13.40.030</td>
<td>16+</td>
<td>Serious Violent Offense, 1st Degree Robbery, 1st Degree Rape Child, Drive-By Shooting, 1st Degree Burglary, Plus Prior, Violent Offense Plus Prior Class A Felony or B Felony, Vehicular Assault, 2nd Degree Manslaughter, Any Violent Offense If Armed with Firearm</td>
</tr>
<tr>
<td>WEST VIRGINIA</td>
<td>49-5-10</td>
<td>14+</td>
<td>Treason, Murder, Robbery with Use Deadly Weapon, Kidnapping, Arson, 1st Degree Sexual Assault, Offense Violence Against Person Plus One Prior, Any Felony Plus 2 Prior Adjudications That Would Be Felonies If Committed by an Adult</td>
</tr>
<tr>
<td>WISCONSIN</td>
<td>938.183</td>
<td>10-15</td>
<td>Homicide</td>
</tr>
</tbody>
</table>
## APPENDIX C: PROSECUTORIAL WAIVER

<table>
<thead>
<tr>
<th>STATE</th>
<th>STATUTE</th>
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</tr>
</thead>
<tbody>
<tr>
<td>ARIZONA</td>
<td>13-501</td>
<td>14+</td>
<td>Class 1 or 2 Felony, Class 3-5 Felony with Intent or Knowledge That It Will Inflict Serious Bodily Injury or Use/Threaten Use Deadly Weapon, Any Felony Offense Committed by Chronic Felony Offender</td>
</tr>
<tr>
<td>ARKANSAS</td>
<td>9-27-318</td>
<td>14 or 15</td>
<td>Capital Murder, 1st or 2nd Degree Murder, Kidnapping, Aggravated Robbery, Rape, Battery, Possession of a Handgun on School Property, Aggravated Assault, Terrorist Act, Unlawful Discharge of Firearm from a Vehicle, Any Felony Armed with a Firearm, Solicitation of a Minor to Join Street Gang, Criminal Use of a Prohibited Weapon, Escape, Felony Attempt/Solicit/Conspire Commit Any of These Offenses: Murder, Kidnapping, Aggravated Robbery, Rape, 1st Degree Battery, 1st or 2nd Degree Escape</td>
</tr>
<tr>
<td>ARKANSAS</td>
<td>9-27-318</td>
<td>16+</td>
<td>Any Act That Would Be a Felony If Committed by an Adult</td>
</tr>
</tbody>
</table>
### APPENDIX C: PROSECUTORIAL WAIVER (CONTINUED)

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<tr>
<th>STATE</th>
<th>STATUTE</th>
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<th>TYPE OF OFFENSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>CALIFORNIA</td>
<td>707</td>
<td>14+</td>
<td>Any Offense Which Is Punishable by Death/Imprisonment Life; Use Firearm in Commission of Felony; Offense Listed in 16+ Category If: Committed for Benefit/at Direction of or in Association with Any Street Criminal Gang, for Purpose of Intimidating or Interfering with Any Other Person's Free Exercise or Enjoyment of Any Right Secured to Him/Her by Law, Victim Was 65 Years or Older, or Disabled</td>
</tr>
<tr>
<td>COLORADO</td>
<td>19-2-517</td>
<td>14+</td>
<td>Class 1 or 2 Felony, Crime of Violence Felony, Use Deadly Weapon Plus Felony, Vehicular Homicide, Habitual Offender</td>
</tr>
<tr>
<td>COLORADO</td>
<td>19-2-517</td>
<td>16+</td>
<td>Class 3 Felony Plus Prior Adjudication</td>
</tr>
<tr>
<td>CONNECTICUT</td>
<td>46b-127</td>
<td>14+</td>
<td>Class C or D Felony, Unclassified Felony</td>
</tr>
<tr>
<td>FLORIDA</td>
<td>985.227</td>
<td>16+</td>
<td>Any Felony Act, Misdemeanor Plus 2 Prior Adjudications That Would Be Felonies If Committed by an Adult</td>
</tr>
<tr>
<td>FLORIDA</td>
<td>985.227</td>
<td>14 or 15</td>
<td>Arson, Sexual Battery, Robbery, Kidnapping, Aggravated Child Abuse, Aggravated Assault, Aggravated Stalking, Murder, Manslaughter, Unlawful Throwing/Placing/Discharging Destructive Bomb, Armed Burglary, Aggravated Battery, Lewd/Lascivious Offense with Person under 16, Carrying/Displaying/Using/Threatening or Attempt Use Weapon or Firearm, Grand Theft, Possession Weapon on School Property, Home Invasion Robbery, Carjacking, Use Weapon Plus Felony, or Any After 4th Subsequent Adjudication</td>
</tr>
</tbody>
</table>
## APPENDIX C: PROSECUTORIAL WAIVER (CONTINUED)

<table>
<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Age</th>
<th>Type of Offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia</td>
<td>15-11-5(C)</td>
<td>Any</td>
<td>Delinquent Act That If Tried in Superior Court Would Be Punishable by Death or Life in Prison without Possibility of Parole</td>
</tr>
<tr>
<td>Louisiana</td>
<td>305</td>
<td>15+</td>
<td>Attempted 1st or 2nd Degree Murder, Manslaughter, Armed Robbery, Aggravated Burglary, Aggravated Battery, Aggravated Battery with Firearm, Forcible Rape, Simple Rape, Aggravated Oral Sexual Battery, Attempted Murder, 2nd Degree Kidnapping, 2nd Offense of Selling, Manufacturing or Possessing Drugs, 2nd or Subsequent Aggravated Battery, Aggravated Burglary, or Burglary of Inhabited Dwelling</td>
</tr>
<tr>
<td>Michigan</td>
<td>712a.2</td>
<td>14+</td>
<td>Violation of Any One of Several Penal Codes Listed</td>
</tr>
<tr>
<td>Montana</td>
<td>41-5-206</td>
<td>12+</td>
<td>Sex without Consent, Deliberate Homicide, Mitigated Deliberate Homicide;</td>
</tr>
<tr>
<td>Montana</td>
<td>41-5-206</td>
<td>16+</td>
<td>Negligent Homicide, Arson, Aggravated or Felony Assault, Robbery, (Aggravated) Burglary, Aggravated Kidnapping, Possession Explosives, Criminal Sale Dangerous Drugs, Criminal Production or Manufacture of Dangerous Drugs, Use Threat or Coerce Street Gang Membership</td>
</tr>
<tr>
<td>Nebraska</td>
<td>43-276, 43-247</td>
<td>16+</td>
<td>Any Crime</td>
</tr>
<tr>
<td>Vermont</td>
<td>5505(C)</td>
<td>16+</td>
<td>Any Offense Except: Arson, Robbery with Deadly Weapon, Manslaughter, Kidnapping, Aggravated Sexual Assault, Burglary Home</td>
</tr>
</tbody>
</table>
### APPENDIX C: PROSECUTORIAL WAIVER (CONTINUED)

<table>
<thead>
<tr>
<th>STATE</th>
<th>STATUTE</th>
<th>AGE</th>
<th>TYPE OF OFFENSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>VIRGINIA</td>
<td>16.1-269.1(B) &amp;</td>
<td>14+</td>
<td>Murder, Aggravated Wounding, Felonious Injury by Mob, Abduction, Malicious Wounding</td>
</tr>
<tr>
<td></td>
<td>(C)</td>
<td></td>
<td>of Law Enforcement Officer, Adulteration of Products, Robbery, Rape, Carjacking,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Forcible Sodomy, Object Sexual Penetration</td>
</tr>
<tr>
<td>WYOMING</td>
<td>14-6-203</td>
<td>13+</td>
<td>Any Felony</td>
</tr>
</tbody>
</table>