

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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1. CLIFFORD E. SIMONSEN, JUVENILE JUSTICE IN AMERICA 13 (3d ed. 1991).

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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.² 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.³ 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,⁴ lawmakers in many states have lowered the age at which juveniles are transferred to adult criminal courts.⁵ 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.⁶

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).

4. See John J. Dilulio, Jr., *The Coming of the Super-Predators*, WKLY. STANDARD, Nov. 27, 1995, at 23.

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 DeGolia, *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.⁷ Texas lowered the age from fifteen to fourteen in a 1995 revision of the state’s juvenile justice code.⁸ 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.⁹ Michigan changed the law in 1996, giving prosecutors the authority to charge any child under fourteen as an adult for certain serious crimes.¹⁰

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 1994.¹¹ From 1987 to 1994, the juvenile population increased only 7%, but juvenile arrests for delinquency¹² increased 79%.¹³ 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.

8. See TEX. FAM. CODE ANN. § 54.02 (West Supp. 2000).

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*].

10. See Cohen, *supra* note 9. See also MICH. COMP. LAWS ANN. § 712A.2d (West Supp. 1999).

11. See Howard N. Snyder, *Juvenile Arrests 1997*, JUV. JUST. BULL. (U.S. Dep’t of Just., Wash. D.C.), Dec. 1998, at 4.

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.¹⁴ These increases among a relatively small number of juveniles have steered attention away from promising remedies, such as privatized community-based programs,¹⁵ but instead have stimulated the transfer of juveniles to the adult court system where recidivism is at extraordinarily high levels.¹⁶

However, since 1994, the overall juvenile crime rate has steadily decreased.¹⁷ 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.¹⁸ 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.¹⁹ He contends that this same cycle has been repeated three times in the last two hundred years.²⁰ It swings toward harshness when justice officials and the public are convinced that juvenile crime is exceptionally high at that moment in time.²¹ The cycle begins by attributing high crime rates to the lenient treatment of juveniles.²² It continues when legislators decide it is time to toughen up by increasing the penalties until there are only a few lenient options available.²³

In analyzing the cyclical pattern of juvenile justice, two common views of juvenile delinquents emerge.²⁴ Some view juvenile

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.*

17. See National Center for Injury, Prevention and Control, *Youth Violence in the United States* (visited Jan. 30, 2000) <<http://www.cdc.gov/ncipc/dvp/yvfacts.htm>>.

18. See Ira M. Schwartz, *Juvenile Crime-Fighting Policies: What the Public Really Wants*, in JUVENILE JUSTICE AND PUBLIC POLICY: TOWARD A NATIONAL AGENDA 214, 221 (Ira M. Schwartz ed., 1992). The Honorable Arthur L. Burnett, Sr. states, "What legislators and executive officials should do is provide the juvenile courts with greater resources to deal effectively with children . . ." Arthur L. Burnett, Sr., *What of the Future? Envisioning an Effective Juvenile Court*, 2000 A.B.A. SEC. CRIM. JUST. 7, 7.

19. See THOMAS J. BERNARD, THE CYCLE OF JUVENILE JUSTICE 3 (1992).

20. See *id.*

21. See *id.*

22. See *id.* at 4.

23. See *id.*

24. See *id.* at 5.

delinquency as no different than general adult criminal behavior being committed by people who only care about themselves.²⁵ This group generally favors policies that punish juveniles in proportion to the offense committed.²⁶ 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.²⁷

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.²⁸ Accordingly, the problem rests with the current handling of juvenile offenders.²⁹ 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).³⁰ In 1997, the rate dropped 12.4%.³¹ In 1998, there were only 2100 homicides committed by juveniles out of a total 2,603,300 juvenile arrests,³² whereas, in 1995, there were 2800 criminal homicides committed by juveniles out of a total of 1,714,300 delinquency cases.³³ In 1998, the juvenile violent crime rate dropped to the 1989 level of about 400 arrests per 100,000 juveniles aged ten to seventeen.³⁴

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.*

32. *See* OJJDP Statistical Briefing Book (visited Apr. 29, 2000) <<http://ojjdp.ncjrs.org/ojstatbb/qa255.html>>.

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 geared 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.⁴³ 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.⁴⁴ 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.⁴⁵ 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.⁴⁶ Eventually, many Western states outlawed this practice.⁴⁷

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.⁴⁸ The juvenile court's role became known as the *parens patriae* or the ultimate parent of the child.⁴⁹ 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.⁵⁰ The Cook County court's original goals were not to adjudicate guilt or fix blame, but to investigate, diagnose, and prescribe treatment.⁵¹ After the court was established, the age of majority—when juveniles would be held criminally responsible—was set at sixteen.⁵² Eight years later the age of majority was raised to seventeen for boys and eighteen for girls.⁵³ 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.”⁵⁴ Since they could not form the mens rea, they could not legally commit a crime.⁵⁵ By 1925, all but two states had created a juvenile court system.⁵⁶

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.⁵⁷ 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.⁵⁸ Conservatives alleged that the juvenile courts were too lenient with dangerous minors and, therefore, called for vigorous prosecution of serious and violent juvenile offenders.⁵⁹ As a consequence of such criticisms, more than half the states made it easier to transfer juveniles to adult courts beginning in 1976.⁶⁰ “In 1994, 12% of cases waived [into the adult criminal court system] involved a juvenile offender under age 16, double the percentage from 1985.”⁶¹ In 1985, the total number of juvenile cases transferred was 7200.⁶² In 1994, that number increased to 12,300, an increase of 42%.⁶³

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.⁶⁴ Criminologists have predicted that a wave of violent

54. *Id.*

55. *See id.*

56. *See* BARRY KRISBERG & JAMES F. AUSTIN, *REINVENTING JUVENILE JUSTICE* 30 (1993). The two states that did not have a juvenile court system by 1925 were Maine and Wyoming. *See* Charles W. Thomas & Shay Bilchik, *Prosecuting Juveniles in Criminal Courts: A Legal and Empirical Analysis*, 76 J. CRIM. L. & CRIMINOLOGY 439, 451 (1985).

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.*

61. Carol J. DeFrances & Kevin J. Strom, *National Survey of Prosecutors, 1994: Juveniles Prosecuted in State Criminal Courts*, BUREAU JUST. STAT. SELECTED FINDINGS (U.S. Dep’t Just., Wash., D.C.), Mar. 1997, at 1, 5.

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”⁶⁵ would double between 1992 and 2010.⁶⁶ 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.⁶⁷

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.⁶⁸ 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 100,000.⁶⁹ 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).⁷⁰ 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).⁷¹ 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.*

1988 at 120 per 100,000).⁷²

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.⁷³ Three main criticisms of the juvenile court system are associated with this return.⁷⁴ 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.⁷⁵ 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.⁷⁶ Third, the shorter sentences adjudicated in the juvenile court system pose a greater risk to the community.⁷⁷ 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.⁷⁸ 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.⁷⁹ 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.⁸⁰ Clearly, the focus has shifted away from rehabilitation.

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).

74. *See* Kelly Keimig Elsea, *The Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention*, 5 KAN. J.L. & PUB. POL'Y 135, 139 (1995).

75. *See id.*

76. *See id.*

77. *See id.*

78. *See* N.Y. CRIM. PROC. LAW §§ 180.75, 210.43 (McKinney 1993 & Supp. 1999-2000).

79. *See* WIS. STAT. ANN. § 938.183 (West Supp. 1999).

80. *See* Candace Zierdt, *The Little Engine that Arrived at the Wrong Station: How to Get Juvenile Justice Back on the Right Track*, 33 U.S.F. L. REV. 401, 404 (citing WILEY B. SANDERS, *JUVENILE OFFENDERS: FOR A THOUSAND YEARS* 127-28 (1970)).

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.⁸¹ Typically this was seen as a last-ditch option reserved for mostly older or hardened juveniles.⁸² 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.⁸³ 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.⁸⁴ 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 waiver⁸⁵ 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.⁸⁶ To

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.

83. See Eric Fritsch & Craig Hemmens, *Juvenile Waiver in the United States 1979-1995: A Comparison and Analysis of State Waiver Statutes*, 46 JUV. & FAM. CT. J. 17, 18 (1995); James Shine & Dwight Price, *Prosecutors and Juvenile Justice: New Roles and Perspectives*, in JUVENILE JUSTICE AND PUBLIC POLICY: TOWARD A NATIONAL AGENDA 101, 112 (Ira M. Schwartz ed., 1992).

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.⁸⁷ Most states have always permitted waiver using this method, although it was rarely used until the late 1960s.⁸⁸ The early waiver statutes gave complete authority and discretion to the juvenile court judge,⁸⁹ and the burden of proof to persuade the judge to transfer the juvenile was on the official attempting to have the juvenile transferred.⁹⁰

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%.”⁹¹ In 1985, the number of judicially waived cases nationwide was 7200 or 1.4% of the 505,400 total cases.⁹² 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%.⁹³

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.⁹⁴ 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.⁹⁵ 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.*

94. *See Robert E. Shepherd Jr., Juvenile Justice: The Rush to Waive Children to Adult Court*, 10 CRIM. JUST. 39, 40 (1995).

95. Vincent Schiraldi & Jason Ziedenberg, *The Florida Experiment: Transferring Power from Judges to Prosecutors*, 2000 A.B.A. SEC. CRIM. JUST. 47, 47.

property offenses, and 12% were for drug offenses.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.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.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

96. See GUARINO-GHEZZI & LOUGHRAN, *supra* note 15, at 19.

97. Forty states and the District of Columbia require a hearing: Alabama, ALA. CODE § 12-15-34 (Supp. 1998); Alaska, ALASKA STAT. § 47.12.100 (Michie 1998); Arizona, ARIZ. REV. STAT. ANN. § 8-327 (West 1999); California, CAL. WELF. & INST. CODE § 707 (West Supp. 2000); Colorado, COLO. REV. STAT. ANN. § 19-2-518 (West 1999); Delaware, DEL. CODE ANN. tit. 10, § 1010(b) (1999); District of Columbia, D.C. CODE ANN. § 16-2307 (1997); Florida, FLA. STAT. ANN. § 985.226 (West Supp. 2000); Hawaii, HAW. REV. STAT. § 571-22 (Supp. 1998); Idaho, IDAHO CODE § 20-508 (1997 & Supp. 1999); Illinois, 705 ILL. COMP. STAT. ANN. 405/5-805 (2) & (3) (West 1999); Indiana, IND. CODE ANN. §§ 31-30-3-2, 31-30-3-3, 31-30-3-5 (Michie 1997); Iowa, IOWA CODE ANN. § 232.45 (West Supp. 1999); Kansas, KAN. STAT. ANN. § 38-1636 (Supp. 1998); Kentucky, KY. REV. STAT. ANN. § 640.010 (Banks-Baldwin 1999); Louisiana, LA. CHILDREN'S CODE ANN. art. 862 (West 1995); Maine, ME. REV. STAT. ANN. tit. 15, § 3101 (West 1980 & Supp. 1999); Maryland, MD. CODE ANN., CTS. & JUD. PROC. § 3-817 (Supp. 1999); Michigan, MICH. COMP. LAWS ANN. § 712A.4 (West Supp. 1999); Minnesota, MINN. STAT. ANN. § 260B.125 (West Supp. 2000); Mississippi, MISS. CODE ANN. § 43-21-157 (Supp. 1999); Missouri, MO. ANN. STAT. § 211.071 (West 1996); Montana, MONT. CODE ANN. §§ 41-5-1603, 41-5-1606 (1999); New Hampshire, N.H. REV. STAT. ANN. § 169-B:24 (Supp. 1999); New Mexico, N.M. STAT. ANN. § 32A-2-20 (Michie Supp. 1999); North Carolina, N.C. GEN. STAT. § 7B-2203 (1999); North Dakota, N.D. CENT. CODE § 27-20-34 (Supp. 1999); Oklahoma, OKLA. STAT. ANN. tit. 10, § 7303-4.3 (West 1998); Oregon, OR. REV. STAT. §§ 419C.349, 419C.352 (Supp. 1998); Pennsylvania, 42 PA. CONS. STAT. ANN. § 6355 (West 1982 & Supp. 1999); Rhode Island, R.I. GEN. LAWS § 14-1-7.1 (1994 & Supp. 1999); South Carolina, S.C. CODE ANN. § 20-7-7605 (Law. Co-op. Supp. 1999); South Dakota, S.D. CODIFIED LAWS § 26-11-4 (Michie 1999); Tennessee, TENN. CODE ANN. § 37-1-134 (Supp. 1999); Texas, TEX. FAM. CODE ANN. § 54.02 (West Supp. 2000); Utah, UTAH CODE ANN. § 78-3a-603 (1996 & Supp. 1999); VERMONT, VT. STAT. ANN. tit. 33, § 5506 (1991 & Supp. 1999); Virginia, VA. CODE ANN. § 16.1-269.1 (Michie 1999); Washington, WASH. REV. CODE ANN. § 13.40.110 (West Supp. 2000); Wisconsin, WIS. STAT. ANN. § 938.18 (West Supp. 1999); and Wyoming, WYO. STAT. ANN. § 14-6-237 (Michie 1999).

98. See ARIZ. REV. STAT. ANN. R. 14; MICH. CT. M.C.R. 5.950; MISS. CODE ANN. § 43-21-157 (Supp. 1999).

Court case, *Kent v. United States*.⁹⁹ Common factors that the judge will¹⁰⁰ 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.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.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.¹⁰³ In an Illinois case, *In re L.J.*,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."¹⁰⁵ The court found that his age did not tilt the scales in his favor because of these factors.¹⁰⁶ In a Nevada case, *In re Seven Minors*,¹⁰⁷ the Nevada Supreme Court, in weighing treatment and rehabilitative aspects, stated:

[T]he less serious and repetitive the criminal acts and the younger and more immature the child, the more can *parens 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.¹⁰⁸

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

99. 383 U.S. 541, 566-67 (1966).

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).

101. See *Kent*, 383 U.S. at 566-67. These factors are found in almost every state statute.

102. See ARIZ. REV. STAT. ANN. § 8-327(D)(7) (West 1999); COLO. REV. STAT. ANN. § 19-2-518(4)(b)(VIII) (West 1999); 42 PA. CONS. STAT. ANN. § 6355(a)(4)(iii)(A) (West Supp. 1999).

103. See IDAHO CODE § 20-508(8)(f) (1997 & Supp. 1999).

104. 654 N.E.2d 671 (Ill. 1995).

105. *Id.* at 673.

106. See *id.*

107. 664 P.2d 947 (Nev. 1983).

108. *Id.* at 951.

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.¹¹⁰

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)*,¹¹¹ 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.¹¹² The juveniles were both fifteen years old when they shot and killed a store owner during a robbery gone very wrong.¹¹³ 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.¹¹⁴ After becoming intoxicated and smoking marijuana, the two minors decided to rob a store for money to go to their prom.¹¹⁵ Upon entering the store, one of the juveniles took out a gun and immediately fired into the face of the store owner.¹¹⁶ 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."¹¹⁷ The juvenile court found that this crime was not carried out in a

law . . . based on any one or a combination of the factors." CAL. WELF. & INST. CODE § 707(a) (West Supp. 2000). The factors are the degree of sophistication exhibited, whether the minor can be rehabilitated prior to expiration of the juvenile court's jurisdiction, success of previous attempts by the juvenile court to rehabilitate the minor, previous delinquent history, and the circumstances and gravity of the offense. *See id.* In Idaho, the amount of weight given to each factor is at the discretion of the court. *See* IDAHO CODE § 20-508(8)(g) (1997 & Supp. 1999).

110. In Illinois, the juvenile court judge must give greater weight to the seriousness of the alleged offense and the minor's prior delinquency record. *See* 705 ILL. COMP. STAT. ANN. 405/5-805(2)(b) (West 1999). In Michigan, the juvenile court must give greater weight to the seriousness of the alleged offense and the minor's prior delinquency. *See* MICH. COMP. LAWS ANN. § 712A.4(4) (West Supp. 1999). The judge must also give more weight to these same factors in Minnesota. *See* MINN. STAT. ANN. § 260B.125(4) (West Supp. 2000).

111. 958 P.2d 393 (Cal. 1998).

112. *See id.* at 395.

113. *See id.* at 395-96.

114. *See id.* at 395.

115. *See id.* at 395-96.

116. *See id.* at 396, 404 (finding that the gun was loaded and cocked and that before they went to the store, the minors tried unsuccessfully to uncock the gun).

117. *Id.* at 397 (quoting the juvenile court).

criminally sophisticated manner.¹¹⁸ The juvenile court also concluded that these minors could be rehabilitated prior to the expiration of the juvenile court's jurisdiction.¹¹⁹ 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.¹²⁰ In his dissent, Justice Werdegarg 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.¹²¹

Justice Werdegarg agreed with the juvenile court in finding the minors did not display criminal sophistication in the carrying out of the crime.¹²²

Justice Werdegarg and the U.S. Supreme Court are in agreement on the level of juvenile culpability. The U.S. Supreme Court in *Thompson v. Oklahoma*¹²³ 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.¹²⁴

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

The juvenile court personally heard the witnesses testify, personally observed

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 (Werdegarg, J., dissenting). Justice Werdegarg 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).

123. 487 U.S. 815 (1988).

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 (Werdegard, 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.¹³¹ 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.¹³² This court criticized the state's desire to transfer every juvenile who commits an offense, stating, "[i]f 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."¹³³

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.¹³⁴ 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.¹³⁵ 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

and Vermont, permit judicial waiver of a minor who is ten years old or older.¹³⁶ Three states, Colorado, Missouri, and Montana, allow judicial transfer for a minor aged twelve or older.¹³⁷ Three other states, Illinois, Mississippi, and North Carolina, have judicial transfer for juveniles aged thirteen and older.¹³⁸ The vast majority of states with judicial waiver set fourteen as the age to be eligible for transfer.¹³⁹ 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 transferred 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).

139. There are twenty-four states that set fourteen as the age for transfer by judicial waiver: *See* Alabama, ALA. CODE § 12-15-34(a) (Supp. 1998); Colorado, COLO. REV. STAT. ANN. § 19-2-518(1)(a)(I)(B) (West 1999); Florida, FLA. STAT. ANN. § 985.226(2) (West Supp. 2000); Hawaii, HAW. REV. STAT. § 571-22(b)(1) (Supp. 1998); Idaho, IDAHO CODE § 20-508(1)(b) (Supp. 1999); Indiana, IND. CODE ANN. § 31-30-3-2 (Michie 1997); Iowa, IOWA CODE ANN. § 232.45(6) (West Supp. 1999); Kansas, KAN. STAT. ANN. § 38-1636(a)(2) (Supp. 1998); Kentucky, KY. REV. STAT. ANN. § 635.020(2) (Banks-Baldwin 1999); Louisiana, LA. CHILDREN'S CODE ANN. art. 857 (West Supp. 2000); Michigan, MICH. COMP. LAWS ANN. § 712A.4 (West Supp. 1999); Minnesota, MINN. STAT. ANN. § 260B.125 (West Supp. 2000); Montana, MONT. CODE ANN. § 41-5-1602 (1999); Nevada, NEV. REV. STAT. ANN. § 62.080 (Michie Supp. 1999); New

judicial waiver of a minor who is aged fifteen or sixteen and has committed certain enumerated offenses.¹⁴⁰ In Washington, a seventeen-year-old youth can be transferred for a variety of offenses.¹⁴¹

Four states and the District of Columbia have statutes which specify an upper age limit for transferring instead of a lower age limit.¹⁴² 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.¹⁴³ 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.¹⁴⁴ If a child under the age of sixteen commits first or

Jersey, N.J. STAT. ANN. § 2A:4A-26 (West Supp. 2000); New Mexico, N.M. STAT. ANN. § 32A-2-3 (Michie Supp. 1999); North Dakota, N.D. CENT. CODE § 27-20-34(1)(b)&(c) (Supp. 1999); Ohio, OHIO REV. CODE ANN. § 2151.26(B) (West Supp. 1999); Pennsylvania, 42 PA. CONS. STAT. ANN. § 6355(a)(1) (West 1982 & Supp. 1999); South Carolina, S.C. CODE ANN. § 20-7-7605(5) & (9) (Law. Co-op. Supp. 1999); Texas, TEX. FAM. CODE ANN. § 54.02(a) & (j) (West Supp. 2000); Utah, UTAH CODE ANN. §§ 78-3a-502(3), 78-3a-603 (1996 & Supp. 1999); Virginia, VA. CODE ANN. § 16.1-269.1(A) (Michie 1999); and Wisconsin, WIS. STAT. ANN. § 938.18 (West Supp. 1999).

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. & JUD. 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, third 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 is 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).

141. See WASH. REV. CODE ANN. § 13.40.110 (West Supp. 2000).

142. See District of Columbia, D.C. CODE ANN. § 16-2307(4) (1997); Maryland, MD. CODE ANN., CTS. & JUD. PROC. § 3-804(e) (1998) and § 3-817 (Supp. 1999); Oregon, OR. REV. STAT. § 419C.352 (Supp. 1998); Tennessee, TENN. CODE ANN. § 37-1-134(a)(1) (Supp. 1999); and West Virginia, W. VA. CODE § 49-5-10 (1999).

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

144. See D.C. CODE ANN. § 16-2307(4) (1997).

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.¹⁴⁵ 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.¹⁴⁶ 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.¹⁴⁷ 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.¹⁴⁸

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.¹⁴⁹

4. *Recent State Law Changes*

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

145. See TENN. CODE ANN. § 37-1-134(a)(1) (Supp. 1999).

146. See OR. REV. STAT. § 419C.352 (Supp. 1998).

147. See W. VA. CODE § 49-5-10(e) (1999).

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).

juvenile 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.¹⁵⁰ In Ohio, a 1995 bill lowered the age from fifteen to fourteen.¹⁵¹

In 1994, Oregon changed its law to allow for waiver by judicial or automatic transfer.¹⁵² 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.¹⁵³ 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.¹⁵⁴ 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.”¹⁵⁵ At the time of that opinion, no minor under the age of fifteen could be transferred to the criminal court system.¹⁵⁶ Shortly thereafter, the law was changed in 1994 with the passing of Measure 11, which introduced both judicial and legislative waiver to Oregon courts.¹⁵⁷ 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.¹⁵⁸

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.*

152. See OR. REV. STAT. § 137.707(1) (Supp. 1998).

153. See *State ex rel. Juvenile Dep't v. Reynolds*, 857 P.2d 842, 843, 845 n.5 (Or. 1993).

154. *Id.* at 845.

155. *Id.* at 846.

156. See *id.* at 845 n.5.

157. See *State v. Lawler*, 927 P.2d 99, 101-02 (Or. Ct. App. 1996). See also OR. REV. STAT. § 137.707(1) (Supp. 1998).

158. See OR. REV. STAT. §§ 419C.349, 419C.352 (Supp. 1998).

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.¹⁵⁹ In one case, a seventeen-year-old girl put her newborn in a garbage can, claiming she believed the baby was dead.¹⁶⁰ Luckily, neighbors rescued the baby. As a result of her actions, this minor could spend up to fifty years in prison for attempted murder.¹⁶¹ If a juvenile court had the case, it could determine why the minor did this, taking into consideration the minor's age and level of her maturity. By considering these factors, the judge can determine whether the minor would be amenable to rehabilitation, thereby sparing her from an adult conviction. As one commentator stated, a "juvenile should be dealt with through individualized justice considerations based on his or her own conduct and particular needs, rather than a process solely dictated by the offense."¹⁶²

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,¹⁶³ 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.

160. See William J. Booher, *Teen Mom to Be Tried as Adult: 17-Year-Old from Nigeria is Accused of Leaving Her Newborn Baby in a Northeastside Trash Bin*, INDIANAPOLIS NEWS, July 10, 1999, at B1.

161. See *id.*

162. Burnett, *supra* note 18, at 12.

163. See Eric L. Jensen, *The Waiver of Juveniles to Criminal Court: Policy Goals, Empirical Realities, and Suggestions for Change*, 31 IDAHO L. REV. 173, 202 (1994). Most of the juveniles transferred appear in criminal court as first-time offenders and typically receive community dispositions rather than incarceration, so they are actually treated more leniently. See Barry C. Feld, *Criminalizing the Juvenile Court: A Research Agenda for the 1990s*, in JUVENILE JUSTICE AND PUBLIC POLICY: TOWARD A NATIONAL AGENDA 59, 68 (Ira M. Schwartz ed., 1992). See also *supra* notes 94-96 and accompanying text.

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.¹⁶⁴ Also, the judicial waiver process is highly discretionary, so there is potential for abuse and discrimination.¹⁶⁵

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” waiver¹⁶⁶ focuses on the offense.¹⁶⁷ 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.¹⁶⁸ 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.¹⁶⁹ The minor does not get the opportunity to persuade the juvenile court that she is amenable to treatment.¹⁷⁰ 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.¹⁷¹ Some commentators find the reason behind the switch to automatic transfer to be “the time-consuming and

164. See Lisa A. Cintron, Comment, *Rehabilitating the Juvenile Court System: Limiting Juvenile Transfers to Adult Criminal Court*, 90 NW. U. L. REV. 1254, 1267 (1995-1996) (discussing the potential use of waiver as a bargaining chip).

165. See Barry C. Feld, *The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes*, 78 J. CRIM. L. & CRIMINOLOGY 471, 503-04 (1987). A minor’s race as well as geographic locale can influence transfer decisions. See Feld, *supra* note 163, at 68.

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.¹⁷² Also, the shift to automatic transfer can be hastened by well-publicized cases of violence by minors.¹⁷³ 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.¹⁷⁴ 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.¹⁷⁵

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.¹⁷⁶ 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.¹⁷⁷ Before the passing of this proposition, the juvenile court had exclusive original jurisdiction over any minor charged with any criminal offense¹⁷⁸ so the only means to transfer a juvenile was through judicial waiver.¹⁷⁹ In 1994 Oregon voters passed Measure 11, which sends juveniles aged fifteen or older to the adult court system for certain offenses, such as first or second degree assault.¹⁸⁰ The Alaska legislature changed its law in 1994 to provide for automatic waiver of minors aged sixteen and older

172. Scott Harshbarger & Carolyn Keshian, *The Attorney General of Massachusetts' Bill Relative to the Trial and Sentencing of Serious Juvenile Offenders*, 5 B.U. PUB. INT. L.J. 135, 139 (1995).

173. See *id.* at 139-40.

174. See McCarthy, *supra* note 81, at 654.

175. *Id.*

176. See generally Brenda Gordon, Note, *A Criminal's Justice or a Child's Injustice? Trends in the Waiver of Juvenile Court Jurisdiction and the Flaws in the Arizona Response*, 41 ARIZ. L. REV. 193 (1999). See also ARIZ. REV. STAT. ANN. § 13-501 (West Supp. 1999).

177. See ARIZ. CONST. art. 4, pt. 2, § 22 (1996); ARIZ. REV. STAT. ANN. § 13-501 (West Supp. 1999); Saucedo v. Superior Court, 946 P.2d 908, 909 (Ariz. Ct. App. 1997).

178. See Saucedo, 946 P.2d at 909.

179. See *id.*

180. See State v. Lawler, 927 P.2d 99, 101-02 (Or. Ct. App. 1996); see also OR. REV. STAT. § 137.707 (Supp. 1998).

who commit serious felonies.¹⁸¹ Prior to this change, the juvenile court had exclusive original jurisdiction over anyone under eighteen.¹⁸² 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).¹⁸³ These are just a few of the changes states have made to “toughen up” on juvenile crime.¹⁸⁴

One of the most recent changes occurred in March, 2000, when California voters passed Proposition 21.¹⁸⁵ With this law California will now utilize prosecutorial and legislative waiver.¹⁸⁶ As one reporter stated, “[w]ith one punch of the ballot, California voters have just approved the nation’s toughest crackdown on juvenile crime.”¹⁸⁷ Now

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.*

182. See *State v. Ladd*, 951 P.2d 1220, 1220 (Alaska Ct. App. 1998); see also ALASKA STAT. § 47.12.030 (Michie 1998).

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).

184. Twenty-nine states utilize automatic waiver: Alabama, ALA. CODE § 12-15-34.1 (Supp. 1998); Alaska, ALASKA STAT. § 47.12.030 (Michie 1998); Arizona, ARIZ. REV. STAT. ANN. § 13-501 (West 1999); ARIZ. CONST. art. 4, § 22(1) (1996); California, 2000 Cal. Legis. Serv. Prop. 21 (West) (will be codified as CAL. WELF. & INST. CODE § 602(b) (West Supp. 2000)); Connecticut, CONN. GEN. STAT. ANN. § 46b-127 (West Supp. 1999); Delaware, DEL. CODE ANN. tit. 11, § 630A (1999); Florida, FLA. STAT. ANN. § 985.227(2) (West Supp. 2000); Georgia, GA. CODE ANN. §§ 15-11-5, 15-11-39.1 (Harrison Supp. 1999); Illinois, 705 ILL. COMP. STAT. ANN. 405/5-805 (West 1999); Indiana, IND. CODE ANN. § 31-30-1-4 (Michie 1997); Kentucky, KY. REV. STAT. ANN. § 640.020(4) (Banks-Baldwin 1999); Louisiana, LA. CHILDREN’S CODE ANN. art. 305 (West Supp. 2000); Maryland, MD. CODE ANN., CTS. & JUD. PROC. § 3-804(e) (1998); Minnesota, MINN. STAT. ANN. § 260B.103(1) (West Supp. 2000); Mississippi, MISS. CODE ANN. § 43-21-151 (Supp. 1999); Nevada, NEV. REV. STAT. ANN. § 62.040(2) (Michie Supp. 1999); New York, N.Y. CRIM. PROC. LAW § 180.75 (McKinney Supp. 1999-2000); North Carolina, N.C. GEN. STAT. § 7B-2200 (1999); Ohio, OHIO REV. CODE ANN. § 2151.26(B) (West Supp. 1999); Oklahoma, OKLA. STAT. ANN. tit. 10, § 7306-1.1 (West 1998); Oregon, OR. REV. STAT. § 137.707 (Supp. 1998); Pennsylvania, 42 PA. CONS. STAT. ANN. §§ 6355, 6302 (West 1982 & Supp. 1999); Rhode Island, R.I. GEN. LAWS § 14-1-7.2 (1994); South Carolina, S.C. CODE ANN. § 20-7-7605 (Law. Co-op. Supp. 1999); Utah, UTAH CODE ANN. §§ 78-3a-602 (1996), 78-3a-601 (Supp. 1999); Vermont, VT. STAT. ANN. tit. 33, § 5502 (1991 & Supp. 1999); Washington, REV. CODE ANN. § 13.40.030 (West Supp. 2000); West Virginia, W. VA. CODE § 49-5-10 (1999); and Wisconsin, WIS. STAT. ANN. § 938.183 (West Supp. 1999).

185. 2000 Cal. Legis. Serv. Prop. 21 (West). This act will be known as the Gang Violence and Juvenile Crime Prevention Act of 1998. See *id.*

186. See *id.*

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

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.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."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."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.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.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.¹⁹³ In four states, a minor thirteen or older will be transferred if he or she commits one of a list of offenses.¹⁹⁴

WASH. POST, Mar. 13, 2000, at A3.

188. See 2000 Cal. Legis. Serv. Prop. 21 (West). These changes will be codified in CAL. WELF. & INST. CODE § 602.

189. Sanchez & Booth, *supra* note 187.

190. *Id.*

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).

192. See WIS. STAT. ANN. § 938.183(1)(am) (West Supp. 1999). These homicides include the death of someone from drugs manufactured, distributed, or delivered by the minor. See WIS. STAT. ANN. § 940.02 (West 1996). See also WIS. STAT. ANN. §§ 940.01, 940.05 (West 1996).

193. See IND. CODE ANN. § 31-30-3-4 (Michie 1997).

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.¹⁹⁵ The majority of states automatically transfer only if the juvenile is at least fifteen or sixteen.¹⁹⁶

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).

195. In California, a minor fourteen years 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).

196. Seven states automatically transfer minors who are at least fifteen years old: Arizona, ARIZ. REV. STAT. ANN. §§ 13-501(A) (West Supp. 1999); ARIZ. CONST. art. 4, § 22 (1996); Georgia, GA. CODE ANN. §§ 15-11-39.1 (Harrison Supp. 1999); Illinois, 705 ILL. COMP. STAT. ANN. 405/5-805 & 405/5-130 (West 1999); Louisiana, LA. CHILDREN'S CODE ANN. art. 305 (West Supp. 2000); Oklahoma, OKLA. STAT. ANN. tit. 10, § 7306-2.6(A) (West Supp. 2000); Oregon, OR. REV. STAT. § 137.707 (Supp. 1998);

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

and Pennsylvania, 42 PA. CONS. STAT. ANN. § 6302 (West Supp. 1999).

Thirteen states automatically transfer minors sixteen years or older: Alabama, ALA. CODE § 12-15-34.1 (Supp. 1998); Alaska, ALASKA STAT. § 47.12.030 (Michie 1998); Delaware, DEL. CODE ANN. tit. 11, § 630A (1995); Florida, FLA. STAT. ANN. § 985.227(2) (West Supp. 2000); Indiana, IND. CODE ANN. § 31-30-1-4 (Michie 1997); Maryland, MD. CODE ANN., CTS. & JUD. PROC. § 3-804(e) (1998); Minnesota, MINN. STAT. ANN. § 260B.103(1) (West Supp. 2000); Nevada, NEV. REV. STAT. ANN. § 62.040(2) (Michie Supp. 1999); Oklahoma, OKLA. STAT. ANN. tit. 10, § 7306-1.1 (West 1998), OKLA. STAT. ANN. tit. 10, § 7306-2.6 (West Supp. 2000); Ohio, OHIO REV. CODE ANN. § 2151.26(B)(3) (West Supp. 1999); Rhode Island, R.I. GEN. LAWS § 14-1-7.2(c) (1994); Utah, UTAH CODE ANN. §§ 78-3a-601 (Supp. 1999), 78-3a-602 (1996); and Washington, WASH. REV. CODE ANN. § 13.40.030 (West Supp. 2000).

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.

198. See Shari Del Carlo, Comment, *Oregon Voters Get Tough on Juvenile Crime: One Strike and You Are Out!*, 75 OR. L. REV. 1223, 1236 (1996).

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*,²⁰⁵ 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.²⁰⁶ 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.²⁰⁷ 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.²⁰⁸ The juvenile has the burden of proving by a preponderance of the evidence that she is amenable to treatment as a minor.²⁰⁹ 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."²¹⁰ 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.²¹¹ A hearing similar to the one for judicial waiver is conducted, and the superior court uses its discretion to decide whether transfer should occur.²¹² 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 prisons²¹³ and the view that the juvenile is a first-time offender.²¹⁴ 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 waiver²¹⁵ occurs when the state has concurrent jurisdiction statutes.²¹⁶ The prosecutor has the discretion to file a charge against a minor in either the criminal court or juvenile court.²¹⁷ The prosecutor's decision is generally not subject to judicial review and is not generally required to be based on detailed criteria.²¹⁸ 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.²¹⁹ One

OKLA. STAT. ANN. tit. 10, § 7306-1.1(E) (West 1998) and OKLA. STAT. tit. 10, § 7306-2.6(E) (West Supp. 2000); and Vermont, VT. STAT. ANN. tit. 33, § 5505(c) (1991 & Supp. 1999).

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.

214. See Dean J. Champion, *Teenage Felons and Waiver Hearings: Some Recent Trends, 1980-1988*, 35 CRIM. & DELINQ. 577, 579 (1989).

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).

219. DeFrances & Strom, *supra* note 61.

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 recommendations²²⁰

1. States Which Utilize Prosecutorial Waiver

An increasing number of states utilize prosecutorial waiver.²²¹ 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.²²² 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.²²³ In California, a prosecutor has the discretion over sixteen-year-old youths 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.²²⁴ In Colorado, after the district attorney files charges in the juvenile court, but before the

220. Shine & Price, *supra* note 83, at 101.

221. Thirteen states utilize prosecutorial waiver: Arizona, ARIZ. REV. STAT. ANN. § 13-501(B) (West Supp. 1999); ARIZ. CONST. art. 4, pt. 2, § 22 (1996); Arkansas, ARK. CODE ANN. § 9-27-318(b) (Michie Supp. 1999); California, 2000 Cal. Legis. Serv. Prop. 21 (West) (statute will be codified as CAL. WELF. & INST. CODE § 707(d)); Colorado, COLO. REV. STAT. ANN. § 19-2-517 (West Supp. 1999); Connecticut, CONN. GEN. STAT. ANN. § 46b-127 (West Supp. 1999); Florida, FLA. STAT. ANN. § 985.227(1) (West Supp. 2000); Georgia, GA. CODE ANN. § 15-11-5(b)(1) (Harrison 1998); Louisiana, LA. CHILDREN'S CODE ANN. art. 305(B)(3) (West Supp. 2000); Michigan, MICH. COMP. LAWS ANN. § 712A.2 (West Supp. 1999); Montana, MONT. CODE ANN. § 41-5-206 (1997); Nebraska, NEB. REV. STAT. § 43-276 (1993); Vermont, VT. STAT. ANN. tit. 33, § 5505 (1991 & Supp. 1999); and Virginia, VA. CODE ANN. § 16.1-269.1 (Michie 1999).

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.*

223. *See* ARK. CODE ANN. § 9-27-318(b) (Michie Supp. 1999).

224. *See* 2000 Cal. Legis. Serv. Prop. 21 (West) (statute will be codified as CAL. WELF. & INST. CODE § 707(d)(1) & (2)).

transfer hearing, she can "file the same or different charges against the juvenile by direct filing of an information in the district court."²²⁵ When this occurs, the juvenile court no longer has jurisdiction over the case.²²⁶ 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.²²⁷ In Florida, the prosecutor can file directly in criminal court when the offense involves a fourteen- or fifteen-year-old minor.²²⁸ 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.²²⁹ 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.²³⁰ In Montana, the prosecutor has discretion over where to file cases concerning a number of crimes committed by a child twelve years or older.²³¹ In Nebraska, courts have concurrent jurisdiction over any minor who commits any felony.²³² In Wyoming, courts have concurrent jurisdiction over any minor thirteen years or older.²³³

225. COLO. REV. STAT. ANN. § 19-2-518(2) (West Supp. 1999); *see also* COLO. REV. STAT. ANN. § 19-2-517 (West Supp. 1999).

226. *See* § 19-2-518(2).

227. *See* CONN. GEN. STAT. ANN. § 46b-127 (West Supp. 1999).

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.*

230. *See* LA. CHILDREN'S CODE ANN. art. 305(B)(3) (West 1995 & Supp. 2000).

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).

232. *See* NEB. REV. STAT. §§ 43-276, 43-247 (1993).

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.²³⁴ 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.²³⁵

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."²³⁶ 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.²³⁷ 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.²³⁸ In *State v. Annala*,²³⁹ 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.²⁴⁰ Another potential problem is that the

234. See Eric K. Klein, Note, *Dennis the Menace or Billy the Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice*, 35 AM. CRIM. L. REV. 371, 395 (1998).

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.²⁴¹ 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.”²⁴² 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.²⁴³ Because the decisions of the prosecutors are reviewed through the political process, there is also potential of abuse due to political pressure.²⁴⁴ One study, performed by Professors Donna Bishop and Charles Frazier, reviewed prosecutorial transfers in Florida from 1978 to 1987.²⁴⁵ 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.”²⁴⁶ 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.”²⁴⁷

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.²⁴⁸ 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.

245. See Donna M. Bishop & Charles E. Frazier, *Transfer of Juveniles to Criminal Court: A Case Study and Analysis of Prosecutorial Waiver*, 5 NOTRE DAME J.L. ETHICS & PUB. POL’Y 281 (1991).

246. Klein, *supra* note 234, at 397.

247. Schiraldi & Ziedenberg, *supra* note 95, at 47.

248. See, e.g., GUARINO-GHEZZI & LOUGHRAN, *supra* note 15, at 18.

less severe than adult court dispositions of juveniles.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.”²⁵⁰

One common misconception is that juveniles will be given a stiffer penalty if they are sentenced in adult court.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.²⁵² One explanation for the more lenient sentencing in criminal court is that the minor’s age becomes a mitigating factor.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.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.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.”²⁵⁶ Offenses considered serious by juvenile courts are often considered less serious by criminal court judges.²⁵⁷ If the object of increasing transfers is to get tougher on delinquent minors, then staying in the juvenile court

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

250. *Id.*

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

252. *See id.* at 583.

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. CRIM. 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).

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.

255. *See* Schulhofer, *supra* note 254, at 437.

256. Champion, *supra* note 214, at 584.

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.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?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.²⁶⁶ Besides, most adolescents are very naïve in realizing that their actions have real consequences.²⁶⁷ Over eighty percent of American adolescents admit to committing one or more delinquent acts; relatively few are responsible for major delinquent behavior.²⁶⁸ Studies indicate that the longer a juvenile remains incarcerated, the more likely he or she will recidivate.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.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.

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).

265. See Martin L. Forst & Martha-Elin Blomquist, *Cracking Down on Juveniles: The Changing Ideology of Youth Corrections*, 5 NOTRE DAME J.L. ETHICS & PUB. POL’Y 323, 361-62 (1991) (citing Martin Forst et al., *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, 40 JUV. & FAM. CT. J. 1 (1989)).

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.*

267. See BERNARD, *supra* note 19, at 168.

268. See Gold & Petronio, *supra* note 266, at 523.

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.*

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.²⁷¹ When a minor is adjudicated in a juvenile court, most often the proceedings remain confidential for the rest of the juvenile's life.²⁷² Federal law now permits fingerprinting and photographing of juveniles who commit "adult felonies."²⁷³ In California, a new law permits disclosure of the name of a juvenile over the age of fourteen who commits certain offenses.²⁷⁴ In *Witkowski v. M.D.N.*,²⁷⁵ 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."²⁷⁶ 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.²⁷⁷

A serious consequence of sending younger juveniles to adult institutions is the threat of physical and emotional harm by older inmates.²⁷⁸ 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)).

275. 493 N.W.2d 680 (N.D. 1992).

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. PROC. 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.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.”²⁸⁰ The benefits of juvenile facilities, no matter how small, outweigh the violence and destruction that occur in adult prisons.²⁸¹ Juvenile treatment facilities are more likely to provide life and problem-solving skills to the troubled juveniles.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.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.²⁸⁴ For a prevention program to be

279. See Martin Forst et al., *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, 40 JUV. & FAM. CT. J. 1, 9 (1989). These statistics are from a 1989 study conducted by researchers Jeffrey Fagan, Martin Forst, and T. Scott Vivona. See Jason Ziedenberg & Vincent Schiraldi, *The Risks Juveniles Face When They Are Incarcerated with Adults*, Justice Policy Institute, July 1997 (visited Apr. 28, 2000) <<http://www.cjcj.org/jpi/risks.html>>.

280. Ziedenberg & Schiraldi, *supra* note 279.

281. See Forst & Blomquist, *supra* note 265, at 361.

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).

283. See Eric Zorn, *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).

284. See Keimig Elsea, *supra* note 74, at 140.

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

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

as adults, there are others who are only confused and who are not the habitual criminals that the system was set up to weed out and punish. For these individuals, the solution is prevention programs that will focus on their specific needs and problems and will 'straighten them out' before a crime is committed

Id. at 141. Dr. Patrick Tolan from the Institute of Juvenile Research, while discussing one troubled twelve-year-old boy with anger problems, stated:

He's going to need long treatment . . . a lot of treatment . . . a lot of follow-up. But I think the real crime here is that it sounds like he won't get it because of their [county] system just will not pay for it. They just see it as not a thing that's worth paying for.

20/20: *Before It's Too Late, Children Who Suffer From Severe Anger Problems* (ABC television broadcast, Oct. 7, 1998) available in 1998 WL 5433734 [hereinafter 20/20: *Before It's Too Late*].

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 Elsea, *supra* note 74, at 141.

288. See *We Can Do Better: We've Made Great Progress in Improving Children's Lives*, says Marian Wright Edelman; *But Much More Remains to Be Done*, TRIAL, Aug. 1998, at 20. See Schulhofer, *supra* note 254, at 445-46. The largest number of troubled minors are first apprehended by police between the ages of thirteen and fifteen. See ARNOLD GESELL ET AL., *YOUTH: THE YEARS FROM TEN TO SIXTEEN* 471 (1956). Nine-tenths 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.²⁸⁹ This program is successful because it targets very young children.²⁹⁰

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.²⁹¹ 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."²⁹² In Boston, students found with a gun must receive academic, psychological, and social counseling.²⁹³

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.²⁹⁴ In order to have a successful program,²⁹⁵ certain factors have been found to be essential:²⁹⁶ (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.²⁹⁷ Reinforcing accomplishment is also very important because most of these juveniles are starving for some attention, recognition, and achievement.²⁹⁸

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

289. See Schulhofer, *supra* note 254, at 445-46.

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.*

294. See Schwartz, *supra* note 18, at 223-24.

295. A successful program is a program which teaches minors to be socially conscious and stops recidivism.

296. See David M. Altschuler, *Tough and Smart Juvenile Incarceration: Reintegrating Punishment, Deterrence and Rehabilitation*, 14 ST. LOUIS U. PUB. L. REV. 217, 230-31 (1994).

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 Harshbarger & 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.

306. See *48 Hours: Class of 2000: The Tragedy of School Shootings* (CBS television broadcast, June 10, 1999), available in 1999 WL 16194039 [hereinafter *48 Hours: Class of 2000*].

307. See *id.*

308. See *id.*

309. *Id.*

310. See *id.*

eventually own up and take responsibility for what he has done.³¹¹ Ultimately, the juveniles are required to act out their crime to understand why they did it.³¹² Sometimes juveniles may be released before reaching twenty-one if the psychologists are comfortable with their recovery.³¹³ Only twelve percent of the juveniles who complete this program commit another crime within one year.³¹⁴

Delaware is another state that has continued to focus on rehabilitation.³¹⁵ Except 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,³¹⁶ the statute provides that “the nature of the hearing and all other proceedings shall be in the interest of rather than against the child.”³¹⁷

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.”³¹⁸ 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.³¹⁹ 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 retributational 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.

315. *See* DEL. CODE ANN. tit. 10, §§ 1002, 1010 (1999).

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*, CHI. 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.³²⁰ 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.³²¹ States utilizing this sentencing structure include Alaska, Arkansas, Florida, Illinois, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Mexico, and Oklahoma.³²²

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.³²³

In dealing with juvenile offenders, the judge should consider the long-term effect of the type of punishment or treatment on the juvenile, as

320. See *'Blended Sentences' for Youths*, L.A. TIMES, July 1, 1996, at B4; Twohey, *supra* note 66, at 19.

321. 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.*

322. 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).

323. 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>>.

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.”³²⁴ 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.³²⁵ 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.³²⁶ 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.”³²⁷

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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

STATE	STATUTE	AGE	TYPE OF OFFENSE	FACTORS
ALABAMA	12-15-34	14+	Act That Would Constitute Crime If Committed by an Adult	Yes *
ALASKA	47.12.100	Any	Unclassified Felony, Crime Against Person	Yes *
ARIZONA	8-327	Any	Any Felony	Views Victim, Degree of Juvenile Participation *
CALIFORNIA	707, 707.01	16+ 14+	Offense Varies for Different Ages **	Yes *
COLORADO	19-2-518	12+	Class 1 or 2 Felony, Crime of Violence	Impact on Victim *
COLORADO	19-2-518	14+	Any Felony	Impact on Victim *
DELAWARE	1010	Any	Murder, Rape, Kidnapping	Judge Will Determine If the Minor Is Amendable

* 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)

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

APPENDIX A: JUDICIAL WAIVER (*CONTINUED*)

STATE	STATUTE	AGE	TYPE OF OFFENSE	FACTORS
ILLINOIS	5-805(2)(A) & B	15+	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	Yes *
INDIANA	31-30-3-2	14+	Heinous/Aggravated Act or Part Repetitive Pattern	Probable Cause, Best Interests Child, Safety & Welfare Community, Child Beyond Rehabilitation
INDIANA	31-30-3-3	16+	Felony Class A & B, Involuntary Manslaughter, Reckless Homicide	Probable Cause, Best Interests Child, Safety & Welfare Community
IOWA	232.45	14+ 15+	Typical Offenses **	Yes *

APPENDIX A: JUDICIAL WAIVER (CONTINUED)

STATE	STATUTE	AGE	TYPE OF OFFENSE	FACTORS
KANSAS	38-1636	14+	Felony Against Person with Use of Firearm, Nondrug Severity Level 1-6 Felony, Any Drug Severity 1 or 2 Felony, Any Felony & Prior	Yes *
KENTUCKY	635.020	14+	Class A & B Felony, Capital Offense (Also Class C & D Included with A & B Felony)	Yes *
LOUISIANA	Art. 862, 857	14+	Typical Offenses**	Yes *
MAINE	3101	Any	Murder, Class A, B, C	Yes *
MARYLAND	3-817	15↓	Act Punishable by Death or Life in Prison	Yes *
MARYLAND	3-817	15+	Any	Consider Victim's Impact Stmt *
MICHIGAN	712A.4	14+	Offense That Would Be a Felony if Committed by an Adult	Yes *
MINNESOTA	260B.125	14+	Any Offense That Would Be a Felony if Committed by an Adult	Yes *
MISSISSIPPI	42-21-157	13+	Any	Yes *
MISSOURI	211.071	Any	1st & 2 nd Degree Murder, 1st Degree Assault, Forcible Rape, Forcible Sodomy, 1st Degree Robbery, Distribution Drugs, or Committed 2+ Prior Unrelated Offenses (Felonies If Committed by Adult)	Yes, * Hearing Mandatory

APPENDIX A: JUDICIAL WAIVER (*CONTINUED*)

STATE	STATUTE	AGE	TYPE OF OFFENSE	FACTORS
MISSOURI	211.071	12+	Any Offense Considered a Felony If Committed by an Adult	Yes, * Hearing Discretionary
MONTANA	41-5-1602	14+	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)	Hearing To Determine If Case Will Be Designated Extended Jurisdiction Juvenile Prosecution— If It Is Then the Minor Will Get a Blended Sentence

APPENDIX A: JUDICIAL WAIVER (CONTINUED)

STATE	STATUTE	AGE	TYPE OF OFFENSE	FACTORS
MONTANA	41-5-1602	12+	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)	Hearing to Determine If Case Will Be Designated Extended Jurisdiction Juvenile Prosecution— If It Is Then the Minor Will Get a Blended Sentence
NEVADA	62.080	14+	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	Minor Will Not Be Transferred If Actions Were Result of Substance Abuse, Emotional, or Behavioral Problems Which Can Be Treated
NEW HAMPSHIRE	169-B:24	Any	Offense That Is Felony If Committed by an Adult	Yes *
NEW HAMPSHIRE	169-B:24	15+	Typical Offenses **	Yes, * Presumption of Transfer

APPENDIX A: JUDICIAL WAIVER (*CONTINUED*)

STATE	STATUTE	AGE	TYPE OF OFFENSE	FACTORS
NEW JERSEY	2A:4A-26	14+	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	
NEW MEXICO	32A-2-3, 32A-2-20	14+	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	Judge Uses Discretion Whether to Invoke Adult or Juvenile Sentence

APPENDIX A: JUDICIAL WAIVER (CONTINUED)

STATE	STATUTE	AGE	TYPE OF OFFENSE	FACTORS
NORTH CAROLINA	7B-2200, 7B-2203, 7B-1601	13-16	Any Offense Considered a Felony If Committed by an Adult	Yes *
NORTH DAKOTA	27-20-34	14+	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	Yes *
OHIO	2151.26	14+	Any Act That Would Be a Felony If Committed by an Adult	Minor Not Amenable to Care, Community Safety, Victim 5 or Younger, Victim 65 or Older, Victim Physically Harmed, Minor Had Firearm, History Failure Rehabilitate
OKLAHOMA	7303-4.3	Any	Any Offense Considered a Felony If Committed by an Adult	Yes *
OREGON	419C.352	15↓	Murder, Rape, Sodomy, Unlawful Sexual Penetration	Yes *

APPENDIX A: JUDICIAL WAIVER (*CONTINUED*)

STATE	STATUTE	AGE	TYPE OF OFFENSE	FACTORS
OREGON	419C.349	15+	Class A or B Felony or Any Following Class C Felonies: Escape 2nd Degree, Assault 3rd Degree, Coercion, Arson 2nd Degree, Robbery 3rd Degree & Use	Yes *
PENNSYLVANIA	6355	14+	Any Felony (Except a Few Serious Offenses Which Are Automatically Transferred)	Impact of Offense on Victim, Threat to Safety *
RHODE ISLAND	14-1-7	Any	Offense Punishable by Life Imprisonment, Any Offense Considered a Felony If Committed by an Adult	Yes *
SOUTH CAROLINA	20-7-7605	16+	Misdemeanor, Class E or F If Committed by an Adult	Contrary Best Interest Public & Juvenile
SOUTH CAROLINA	20-7-7605	14+	Assault and Battery of a Highly Aggravated Nature	Contrary Best Interest Public & Juvenile
SOUTH CAROLINA	20-7-7605	14 or 15	Class A, B, C, D, Felony or Felony with a Max Term of 15 Years or More Imprisonment	Contrary Best Interest Public & Juvenile
SOUTH CAROLINA	20-7-7605(6)	Any	Murder or Criminal Sexual Conduct	Contrary Best Interest Public & Juvenile

APPENDIX A: JUDICIAL WAIVER (CONTINUED)

STATE	STATUTE	AGE	TYPE OF OFFENSE	FACTORS
SOUTH DAKOTA	26-11-3.1	16+	Class A, B, 1, 2	Rebuttable Presumption That Minor Should Be Tried as an Adult, Minor Has Burden at Hearing
SOUTH DAKOTA	26-11-4	Any	Criminal Felony Charge	Yes *
TENNESSEE	37-1-134	16↓	Murder, Rape, Aggravated Robbery, or Aggravated Kidnapping	Member Gang *
TENNESSEE	37-1-134	16+	Any Felony	Member Gang
TEXAS	54.02	14+	Capital Felony, Felony 1st Degree, Aggravated Control Substance	Yes *
TEXAS	54.02	15+	2nd or 3rd Degree Felony	Yes *
TEXAS	54.02	10+	Capital Felony or Murder	Yes *
UTAH	78-3a-502(3), 78-3a-603	14+	Commission of Act That Would Constitute a Felony If Committed by an Adult	Yes *
VERMONT	5502, 5506	10+	Typical Offenses **	Yes *

APPENDIX A: JUDICIAL WAIVER (CONTINUED)

STATE	STATUTE	AGE	TYPE OF OFFENSE	FACTORS
VIRGINIA	16.1 - 269.1	14+	Any Felony (Except Murder, Robbery, Abduction, Rape, Carjacking, Sodomy, Rape, Which Automatically Transfer)	Yes *
WASHINGTON	13.40.110	17+	2nd Degree Assault, 1st Degree Extortion, Indecent Liberties, 2nd Degree Child Molestation, 2nd Degree Kidnapping, 2nd Degree Robbery	???
WASHINGTON	13.40.110	15+	Class A Felony, or Attempt/Solicit/ Conspire Class A Felony	???
WEST VIRGINIA	49-5-10	14↓	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	Mental and Physical Condition of Minor, Maturity, Attitude, Home/ Family Environment, School Experience, and Similar Personal Factors
WISCONSIN	938.18	14+	Typical Offenses **	Yes *
WISCONSIN	938.18	15+	Any Criminal Offense	Yes *

APPENDIX A: JUDICIAL WAIVER (CONTINUED)

STATE	STATUTE	AGE	TYPE OF OFFENSE	FACTORS
WYOMING	14-6-203	12↓	Felony or a Misdemeanor Punishable by More Than 6 Months	Yes *

APPENDIX B: LEGISLATIVE WAIVER

STATE	STATUTE	AGE	TYPE OF OFFENSE
ALABAMA	12-15-34.1	16+	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
ALASKA	47.12.030	16+	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
ARIZONA	13-501, Ariz. Const. Art. 4 Pt. 2 §22 (1)	15+	Murder, Forcible Sexual Assault, Armed Robbery, Violent Felony, Chronic Felony Offenders
CALIFORNIA	602	14+	Murder, Rape, Spousal Rape, Forcible Sex Offenses, Forcible Lewd & Lascivious Acts on Child Under 14, Forcible Penetration by Foreign Object, Sodomy, Oral Copulation,
CONNECTICUT	46b-127	14+	Capital Felony, Class A or B Felony
DELAWARE	630a	16+	1st Degree Vehicular Homicide, Driving Under the Influence
FLORIDA	985.227(2)	16+	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)
FLORIDA	985.227(2)	Any	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
GEORGIA	15-11-39.1	15+	Burglary Plus 3 Prior Adjudications for Burglary

APPENDIX B: LEGISLATIVE WAIVER (CONTINUED)

STATE	STATUTE	AGE	TYPE OF OFFENSE
GEORGIA	15-11-5(B)(2)(A)	13+	Murder, Voluntary Manslaughter, Rape, Aggravated Sodomy, Aggravated Child Molestation, Aggravated Sexual Battery, Armed Robbery if Committed with a Firearm
ILLINOIS	5-805, 5-130	15+	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
INDIANA	31-30-3-4	10+	Murder
INDIANA	31-30-1-4	16+	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
KENTUCKY	635.020(4)	14+	Felony Committed with the Use of a Firearm
LOUISIANA	305	15+	Murder, Aggravated Rape, Aggravated Kidnapping
MARYLAND	3-804	14+	Crime Punishable by Death or Life in Prison

APPENDIX B: LEGISLATIVE WAIVER (CONTINUED)

STATE	STATUTE	AGE	TYPE OF OFFENSE
MARYLAND	3-804	16+	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
MASSACHUSETTS	74	14-16	1st or 2nd Degree Murder
MINNESOTA	260b.103	16+	Murder
MISSISSIPPI	43-21-151	13+	Crime Punishable by Death or Life in Prison, Act Committed with Deadly Weapon, Carrying Concealed Weapon (Includes Attempting to Do above Crimes)
NEVADA	62.040	16+	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
NEVADA	62.040	Any	Murder, Attempted Murder, Any Felony Plus Prior Delinquent Felony
NEW YORK	180.75	16↓	Any Crime Plus Reasonable Cause Criminally Responsibility
NORTH CAROLINA	7b-2200	13+	Class A Felony

APPENDIX B: LEGISLATIVE WAIVER (*CONTINUED*)

STATE	STATUTE	AGE	TYPE OF OFFENSE
NORTH DAKOTA	27-20-34	14+	Attempted Murder, Murder, Gross Sexual Imposition (Attempted), Kidnapping, Manufacture/ Deliver/ Possession with Intent Manufacture/Deliver Controlled Substance
OHIO	2151.26(B) (1)	14+	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
OHIO	2151.26(B) (3)&(4)	16+	Category One Offense or Category Two Offense Plus Previous Delinquency Adjudication for Category One or Two Offense or Act Committed with Gun
OKLAHOMA	7306-1.1(A)	16+	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

APPENDIX B: LEGISLATIVE WAIVER (*CONTINUED*)

STATE	STATUTE	AGE	TYPE OF OFFENSE
OKLAHOMA	7306-2.6	16+	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
OKLAHOMA	7306-2.6	15+	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
OKLAHOMA	7306-1.1(B)	13+	1st Degree Murder
OREGON	137.707	15+	Robbery 1st & 2nd Degree, 1st & 2nd Degree Manslaughter, Assault 1st & 2nd Degree, Kidnapping 1st & 2nd Degree, Rape 1st & 2nd Degree, Sodomy 1st & 2nd Degree, Unlawful Sexual Penetration, Sexual Abuse, Murder under §163.095, 1st Degree Arson, Compelling Prostitution
PENNSYLVANIA	6355, 6302	Any	Murder

APPENDIX B: LEGISLATIVE WAIVER (CONTINUED)

STATE	STATUTE	AGE	TYPE OF OFFENSE
PENNSYLVANIA	6302	15+	Deadly Weapon Used in Commission of: Rape, Involuntary Deviate Sexual Intercourse, Aggravated Assault, Robbery, Robbery of Motor Vehicle, Aggravated Indecent Assault, Kidnapping, Voluntary Manslaughter, Attempt/Conspire/Solicit Murder; Previous Adjudication Delinquency Plus Offense of: Rape, Involuntary Deviate Sexual Intercourse, Robbery, Robbery of Motor Vehicle, Kidnapping, Voluntary Manslaughter, Attempt/Conspire/Solicit Murder
RHODE ISLAND	14-1-7.2	16+	Two Past Delinquent Adjudications Plus Any Offense
SOUTH CAROLINA	20-7-7605(10)	14+	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
UTAH	78-3a-601	16+	Murder, or Any Felony Plus Prior
UTAH	78-3a-602	16+	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
VERMONT	5505	14+	Arson Causing Death, Robbery w/Dangerous Weapon, Manslaughter, Kidnapping, Unlawful Restraint, Maiming, Sexual Assault, Aggravated Sexual Assault, Burglary of Home

APPENDIX B: LEGISLATIVE WAIVER (*CONTINUED*)

STATE	STATUTE	AGE	TYPE OF OFFENSE
WASHINGTON	13.40.030	16+	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
WEST VIRGINIA	49-5-10	14+	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
WISCONSIN	938.183	10-15	Homicide

APPENDIX C: PROSECUTORIAL WAIVER

STATE	STATUTE	AGE	TYPE OF OFFENSE
ARIZONA	13-501	14+	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
ARKANSAS	9-27-318	14 or 15	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
ARKANSAS	9-27-318	16+	Any Act That Would Be a Felony If Committed by an Adult
CALIFORNIA	707	16+	Murder, Arson, Robbery, Rape with Force/Violence/Duress/Menace/Threat of Great Bodily Harm, Lewd/Lascivious Act, Oral Copulation by Force/Violence/Duress/Menace/Threat of Great Bodily Harm, Kidnapping, Attempted Murder, Assault with Firearm/Destructive Device, Assault by Means Force Likely Produce Great Bodily Injury, Discharge Firearm into Occupied Building, Any Felony with Use Weapon, Other Felonies Listed by Penal Code, Any Violent Felony, Manufacture/Compounding/Selling Controlled Substance, Escape, Torture, Aggravated Mayhem, Carjacking, Voluntary Manslaughter

APPENDIX C: PROSECUTORIAL WAIVER (*CONTINUED*)

STATE	STATUTE	AGE	TYPE OF OFFENSE
CALIFORNIA	707	14+	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
COLORADO	19-2-517	14+	Class 1 or 2 Felony, Crime of Violence Felony, Use Deadly Weapon Plus Felony, Vehicular Homicide, Habitual Offender
COLORADO	19-2-517	16+	Class 3 Felony Plus Prior Adjudication
CONNECTICUT	46b-127	14+	Class C or D Felony, Unclassified Felony
FLORIDA	985.227	16+	Any Felony Act, Misdemeanor Plus 2 Prior Adjudications That Would Be Felonies If Committed by an Adult
FLORIDA	985.227	14 or 15	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 4 th Subsequent Adjudication

APPENDIX C: PROSECUTORIAL WAIVER (CONTINUED)

STATE	STATUTE	AGE	TYPE OF OFFENSE
GEORGIA	15-11-5(C)	Any	Delinquent Act That If Tried in Superior Court Would Be Punishable by Death or Life in Prison without Possibility of Parole
LOUISIANA	305	15+	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
MICHIGAN	712a.2	14+	Violation of Any One of Several Penal Codes Listed
MONTANA	41-5-206	12+	Sex without Consent, Deliberate Homicide, Mitigated Deliberate Homicide,
MONTANA	41-5-206	16+	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
NEBRASKA	43-276, 43-247	16↓	Any Crime
VERMONT	5505(C)	16+	Any Offense Except: Arson, Robbery with Deadly Weapon, Manslaughter, Kidnapping, Aggravated Sexual Assault, Burglary Home

APPENDIX C: PROSECUTORIAL WAIVER (*CONTINUED*)

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

