Juvenile Offenders and Victims: 2014 National Report

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Chapter 4

Juvenile justice system structure and process

The first juvenile court in the United States was established in Chicago in 1899, more than 100 years ago. In the long history of law and justice, juvenile justice is a relatively new development. The juvenile justice system has changed drastically since the late 1960s, due to Supreme Court decisions, federal legislation, and changes in state statutes.

Perceptions of a juvenile crime epidemic in the early 1990s, brought about by a number of reasons, including media scrutiny, focused the public's attention on the juvenile justice system's ability to effectively control violent juvenile offenders. As a reaction, states adopted numerous legislative changes in an effort to crack down on juvenile crime. In fact, through the mid-1990s, nearly every state broadened the scope of their transfer laws, exposing more youth to criminal court prosecution. Although the juvenile and criminal justice systems have grown similar in recent years, the juvenile justice system remains unique, guided by its own philosophy—with an emphasis on individualized justice and serving the best interests of the child—and legislation, and implemented by its own set of agencies.

This chapter describes the structure and process of the juvenile justice system, focusing on delinquency and status offense matters. (Chapter 2 discusses the handling of child maltreatment matters.) Parts of this chapter provide an overview of the history of juvenile justice in the United States, lay out the significant Supreme Court decisions that have shaped and affected the juvenile justice system, and describe standardized case processing in the juvenile justice system. Also summarized in this chapter are changes that states have made with regard to the juvenile justice system's jurisdictional authority, sentencing, corrections, programming, confidentiality of records and court hearings, and victim involvement in court hearings. Much of this information was drawn from National Center for Juvenile Justice analyses of juvenile codes in each state. (Note: For ease of discussion, the District of Columbia is often referred to as a state.)

This chapter also includes information on juveniles processed in the federal justice sytem, as well as a discussion on measuring recidivism in the justice system.

The juvenile justice system was founded on the concept of rehabilitation through individualized justice

Early in U.S. history, children who broke the law were treated the same as adult criminals

Throughout the late 18th century, "infants" below the age of reason (traditionally age 7) were presumed to be incapable of criminal intent and were, therefore, exempt from prosecution and punishment. Children as young as 7, though, could stand trial in criminal court for offenses committed, and if found guilty, could be sentenced to prison or even given a death sentence.

The 19th century movement that led to the establishment of the juvenile court in the U.S. had its roots in 16th century European educational reform movements. These earlier reform movements changed the perception of children from one of miniature adults to one of persons with less than fully developed moral and cognitive capacities. As early as 1825, the Society for the Prevention of Juvenile Delinquency established a facility specifically for the housing, education, and rehabilitation of juvenile offenders. Soon, facilities exclusively for juveniles were established in most major cities. By mid-century, these privately operated youth "prisons" were under criticism for various abuses. Many states then took on the responsibility of operating juvenile facilities.

The first juvenile court in the United States was established in Cook County, Illinois, in 1899

Illinois passed the Juvenile Court Act in 1899, which established the nation's first separate juvenile court. The British doctrine of *parens patriae* (the state as parent) was the rationale for the right of the state to intervene in the lives of children in a manner different from the way it dealt with the lives of adults. The doctrine was interpreted to mean that because children were not of full legal capacity, the state had the inherent power and responsibility to provide protection for children whose natural parents were not providing appropriate care or supervision. A key element was the focus on the welfare of the child. Thus, the delinquent child was also seen as in need of the court's benevolent intervention.

Juvenile courts flourished for the first half of the 20th century

By 1910, 32 states had established juvenile courts and/or probation services. By 1925, all but two states had followed suit. Rather than merely punishing delinquents for their crimes, juvenile courts sought to turn delinquents into productive citizens—through rehabilitation and treatment.

The mission to help children in trouble was stated clearly in the laws that established juvenile courts. This mission led to procedural and substantive differences between the juvenile and criminal justice systems.

In the first 50 years of the juvenile court's existence, most juvenile courts had exclusive original jurisdiction over all youth under age 18 who were charged with violating criminal laws. Only if the juvenile court waived its jurisdiction in a case, a child could be transferred to criminal court and tried as an adult. Transfer decisions were made on a case-by-case basis using a "best interests of the child and public" standard and were within the realm of individualized justice.

The focus on offenders and not offense, on rehabilitation and not punishment, had substantial procedural impact

Unlike the criminal justice system, where district attorneys selected cases for trial, the juvenile court controlled its own intake. And unlike criminal prosecutors, juvenile court intake considered extra-legal as well as legal factors in deciding how to handle cases. Juvenile court intake also had discretion to handle cases informally, bypassing judicial action altogether.

In the courtroom, juvenile court hearings were much less formal than criminal court proceedings. In this benevolent court—with the express purpose of protecting children—due process protections afforded to criminal defendants were deemed unnecessary. In the early juvenile courts, and even in some to this day, attorneys for the state and the youth are not considered essential to the operation of the system, especially in less serious cases.

A range of dispositional options was available to a judge wanting to help rehabilitate a child. Regardless of offense, outcomes ranging from warnings to probation supervision to training school confinement could be part of the treatment plan. Dispositions were tailored to the "best interests of the child." Treatment lasted until the child was "cured" or became an adult (age 21), whichever came first.

As public confidence in the treatment model waned, due process protections were introduced

In the 1950s and 1960s, society came to question the ability of the juvenile court to succeed in rehabilitating delinquent youth. The treatment techniques available to juvenile justice professionals often failed to reach the desired levels of effectiveness. Although the goal of rehabilitation through individualized justice—the basic philosophy of the juvenile justice system— was not in question, professionals were concerned about the growing number of juveniles institutionalized indefinitely in the name of treatment.

In a series of decisions beginning in the 1960s, the U.S. Supreme Court changed the juvenile court process. Formal hearings were now required in

The first cases in juvenile court

After years of development and months of compromise, the Illinois legislature passed, on April 14, 1899, a law permitting counties in the state to designate one or more of their circuit court judges to hear all cases involving dependent, neglected, and delinquent children younger than age 16. The legislation stated that these cases were to be heard in a special courtroom that would be designated as "the juvenile courtroom" and referred to as the "Juvenile Court." Thus, the first juvenile court opened in Cook County on July 3,1899, was not a new court, but a division of the circuit court with original jurisdiction over juvenile cases.

The judge assigned to this new division was Richard Tuthill, a Civil War veteran who had been a circuit court judge for more than 10 years. The first case heard by Judge Tuthill in juvenile court was that of Henry Campbell, an 11-year-old who had been arrested for larceny. The hearing was a public event. While some tried to make the juvenile proceeding secret, the politics of the day would not permit it. The local papers carried stories about what had come to be known as "child saving" by some and "child slavery" by others.*

At the hearing, Henry Campbell's parents told Judge Tuthill that their son was a good boy who had been led into trouble by others, an argument consistent with the underlying philosophy of the court—that individuals (especially juveniles) were not solely responsible for the crimes they commit. The parents did not want young Henry sent to an institution, which was one of the few options available to the judge. Although the enacting legislation granted the new juvenile court the right to appoint probation officers to handle juvenile cases, the officers were not to receive publicly funded compensation. Thus, the judge had no probation staff to provide services to Henry. The parents suggested that Henry be sent to live with his grandmother in Rome, New York. After questioning the parents, the judge agreed to send Henry to his grandmother's in the hope that he would "escape the surroundings which have caused the mischief." This first case was handled informally, without a formal adjudication of delinquency on the youth's record.

Judge Tuthill's first formal case is not known for certain, but the case of Thomas Majcheski (handled about two weeks after the Campbell case) might serve as an example. Majcheski, a 14-year-old, was arrested for stealing grain from a freight car in a railroad yard, a common offense at the time. The arresting officer told the judge that the boy's father was dead and his mother (a washerwoman with nine children) could not leave work to come to court. The officer also said that the boy had committed similar offenses previously but had never been arrested. The boy admitted the crime. The judge then asked the nearly 300 people in the courtroom if they had anything to say. No one responded. Still without a probation staff in place, the judge's options were limited: dismiss the matter, order incarceration at the state reformatory, or transfer the case to adult court. The judge decided the best alternative was incarceration in the state reformatory, where the youth would "have the benefit of schooling."

A young man in the audience then stood up and told the judge that the sentence was inappropriate. Newspaper accounts indicate that the objector made the case that the boy was just trying to obtain food for his family. Judge Tuthill then asked if the objector would be willing to take charge of the boy and help him become a better citizen. The young man accepted. On the way out of the courtroom, a reporter asked the young man of his plans for Thomas. The young man said "Clean him up, and get him some clothes and then take him to my mother. She'll know what to do with him."

In disposing of the case in this manner, Judge Tuthill ignored many possible concerns (e.g., the rights and desires of Thomas's mother and the qualifications of the young man—or more directly, the young man's mother). Nevertheless, the judge's actions demonstrated that the new court was not a place of punishment. The judge also made it clear that the community had to assume much of the responsibility if it wished to have a successful juvenile justice system.

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* Beginning in the 1850s, private societies in New York City rounded up street children from the urban ghettos and sent them to farms in the Midwest. Child advocates were concerned that these home-finding agencies did not properly screen or monitor the foster homes, pointing out that the societies were paid by the county to assume responsibility for the children and also by the families who received the children. Applying this concern to the proposed juvenile court, the Illinois legislation stated that juvenile court hearings should be open to the public so the public could monitor the activities of the court to ensure that private organizations would not be able to gain custody of children and then "sell" them for a handsome profit and would not be able to impose their standards of morality or religious beliefs on working-class children.

Source: Authors' adaptation of Tanenhaus' *Juvenile Justice in the Making*.

waiver situations, and delinquents facing possible confinement were given 5th amendment protection against self-incrimination and rights to receive notice of the charges against them, to present witnesses, to question witnesses, and to have an attorney. The burden of proof was raised from "a preponderance of evidence" to a "beyond a reasonable doubt" standard for an adjudication. The Supreme Court, however, still held that there were enough "differences of substance between the criminal and juvenile courts … to hold that a jury is not required in the latter." (See Supreme Court decisions later in this chapter.)

Meanwhile, Congress, in the Juvenile Delinquency Prevention and Control Act of 1968, recommended that children charged with noncriminal (status) offenses be handled outside the court system. A few years later, Congress passed the Juvenile Justice and Delinquency Prevention Act of 1974, which as a condition for state participation in the Formula Grants Program required deinstitutionalization of status offenders and nonoffenders as well as the separation of juvenile delinquents from adult offenders. In the 1980 amendments to the 1974 Act, Congress added a requirement that juveniles be removed from adult jail and lockup facilities, and the 1992 amendment added requirements to reduce disproportionate minority confinement (later contact). Community-based programs, diversion, and deinstitutionalization became the banners of juvenile justice policy in the 1970s.

In the 1980s, the pendulum began to swing toward law and order

During the 1980s, the public perceived that serious juvenile crime was increasing and that the system was too lenient with offenders. Although there was a substantial misperception regarding increases in juvenile crime, many states responded by passing more stringent laws. Some laws removed certain classes of offenders from the juvenile justice system and handled them as adult criminals in criminal court. Others required the juvenile justice system to be more like the criminal justice system and to treat certain classes of juvenile offenders as criminals but in juvenile court.

As a result, offenders charged with certain offenses now are excluded from juvenile court jurisdiction or face mandatory or automatic waiver to criminal court. In several states, concurrent jurisdiction provisions give prosecutors the discretion to file certain juvenile cases directly in criminal court rather than juvenile court. In some states, certain adjudicated juvenile offenders face mandatory sentences.

The 1990s saw unprecedented change as state legislatures cracked down on juvenile crime

Five areas of change emerged as states passed laws designed to combat juvenile crime. These laws generally involved expanded eligibility for criminal court processing and adult correctional sanctioning, and reduced confidentiality protections for a subset of juvenile offenders. Between 1992 and 1997, all but three states changed laws in one or more of the following areas:

- Transfer provisions: Laws made it easier to transfer juvenile offenders from the juvenile justice system to the criminal justice system (45 states).
- Sentencing authority: Laws gave criminal and juvenile courts expanded sentencing options (31 states).
- Confidentiality: Laws modified or removed traditional juvenile court confidentiality provisions by making records and proceedings more open (47 states).

In addition to these areas, there was change relating to:

- Victims' rights: Laws increased the role of victims of juvenile crime in the juvenile justice process (22 states).
- Correctional programming: As a result of new transfer and sentencing laws, adult and juvenile correctional administrators developed new programs.

The 1980s and 1990s saw significant change in terms of treating more juvenile offenders as criminals. Changes since 2000 have been minor by comparison. No major new expansion of the juvenile justice system has occurred. On the other hand, states have shown little tendency to reverse or even reconsider the expanded transfer and sentencing laws already in place. Despite the steady decline in juvenile crime and violence rates since 1994, there has, at the time of this publication, been no discernible pendulum swing back toward the 1970s approach to transfer. However, many of the other juvenile justice mechanisms, such as community-based programs and diversion, are still in use.

Some juvenile codes emphasize prevention and treatment goals, some stress punishment, but most seek a balanced approach

States vary in how they express the purposes of their juvenile courts—not just in the underlying assumptions and philosophies but also in the approaches they take to the task. Some declare their goals and objectives in great detail; others mention only the broadest of aims. Many juvenile court purpose clauses have been amended over the years, reflecting philosophical or rhetorical shifts and changes in emphasis in the states' overall approaches to juvenile delinquency. Others have been

Several core requirements of the Juvenile Justice and Delinquency Prevention Act address custody issues

The Juvenile Justice and Delinquency Prevention Act of 2002 (the Act) establishes four custody-related requirements.

The **"deinstitutionalization of status offenders and nonoffenders"** requirement (1974) specifies that juveniles not charged with acts that would be crimes for adults "shall not be placed in secure detention facilities or secure correctional facilities." This requirement does not apply to juveniles charged with violating a valid court order or possessing a handgun, or those held under interstate compacts.

The **"sight and sound separation"** requirement (1974) specifies that "juveniles alleged to be or found to be delinquent and [status offenders and nonoffenders] shall not be detained or confined in any institution in which they have contact with adult inmates" in custody because they are awaiting trial on criminal charges or have been convicted of a crime. This requires that juvenile and adult inmates cannot see each other and no conversation between them is possible.

The **"jail and lockup removal"** requirement (1980) states that juveniles shall not be detained or confined in adult jails or lockups. There are, however, several exceptions. There is a 6-hour grace period that allows adult jails and lockups to hold delinquents temporarily while awaiting transfer to a juvenile facility or making court appearances. (This exception applies only if the facility can maintain sight and sound separation.) Under certain conditions, jails and lockups in rural areas may hold delinquents awaiting initial court appearance up to 48 hours. Some jurisdictions have obtained approval for separate juvenile detention centers that are collocated with an adult facility; in addition, staff who work with both juveniles and adult inmates must be trained and certified to work with juveniles.

Regulations implementing the Act exempt juveniles held in secure adult facilities if the juvenile is being tried as a criminal for a felony or has been convicted as a criminal felon. Regulations also allow adjudicated delinquents to be transferred to adult institutions once they have reached the state's age of full criminal responsibility, where such transfer is expressly authorized by state law.

In the past, the **"disproportionate minority confinement"** (DMC) requirement (1988) focused on the extent to which minority youth were confined in proportions greater than their representation in the population. The 2002 Act broadened the DMC concept to encompass all stages of the juvenile justice process; thus, DMC has come to mean **disproportionate minority contact**.

States must agree to comply with each requirement to receive Formula Grants funds under the Act's provisions. States must submit plans outlining their strategy for meeting these and other statutory requirements. Noncompliance with core requirements results in the loss of at least 20% of the state's annual Formula Grants Program allocation per requirement.

As of 2012, 56 of 57 eligible states and territories were participating in the Formula Grants Program. Annual state monitoring reports show that the vast majority were in compliance with the requirements, either reporting no violations or meeting *de minimis* or other compliance criteria.

left relatively untouched for decades. Given the changes in juvenile justice in recent decades, it is remarkable how many states still declare their purposes in language first developed by standards-setting agencies in the 1950s and 1960s.

Most common in state purpose clauses are components of Balanced and Restorative Justice (BARJ). BARJ advocates that juvenile courts give balanced attention to three primary interests: public safety, individual accountability to victims and the community, and development of skills to help offenders live law-abiding and productive lives. Some states are quite explicit in their adoption of the BARJ model. Others depart somewhat from the model in the language they use, often relying on more traditional terms (treatment, rehabilitation, care, guidance, assistance, etc.).

Several states have purpose clauses that are modeled on the one in the Standard Juvenile Court Act. The Act was originally issued in 1925 and has been revised numerous times. The 1959 version appears to have been the most influential. According to its opening provision, the purpose of the Standard Act was that "each child coming within the jurisdiction of the court shall receive… the care, guidance, and control that will conduce to his welfare and the best interest of the state, and that when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they should have given him."

Another group of states uses all or most of a more elaborate, multipart purpose clause contained in the Legislative *Guide for Drafting Family and Juvenile Court Acts*, a late 1960s publication. The *Guide's* opening section lists four purposes:

- To provide for the care, protection, and wholesome mental and physical development of children involved with the juvenile court.
- To remove from children committing delinquent acts the consequences of criminal behavior and to substitute therefore a program of supervision, care, and rehabilitation.
- To remove a child from the home only when necessary for his welfare or in the interests of public safety.
- To assure all parties their constitutional and other legal rights.

Purpose clauses in some states can be loosely characterized as "tough" in that they stress community protection, offender accountability, crime reduction through deterrence, or outright punishment. Texas and Wyoming, for instance, having largely adopted the multipurpose language of the Legislative Guide, pointedly insert two extra items—"protection of the public and public safety" and promotion of "the concept of punishment for criminal acts"—at the head of the list.

A few jurisdictions have statutory language that emphasizes promotion of the welfare and best interests of the juvenile as the sole or primary purpose of the juvenile court system. For example, Massachusetts has language stating that accused juveniles should be "treated, not as criminals, but as children in need of aid, encouragement and guidance."

States juvenile code purpose clauses vary in their emphasis

State	BARJ features	Juvenile Court Act language	Legislative Guide language	Accountability/ protection emphasis	Child welfare emphasis
Alabama	■				
Alaska	■				
Arizona					■
Arkansas		■	■		
California	■	■			
Colorado	■				
Connecticut				■	
Delaware		■			
Dist. of Columbia	■				
Florida	■	■			
Georgia		■			
Hawaii				■	
Idaho	■				
Illinois	■	■			
Indiana	■				
Iowa		■			
Kansas	■				
Kentucky					■
Louisiana		■			
Maine		■	■		
Maryland	■				
Massachusetts		■			■
Michigan		■			
Minnesota	■	■			
Mississippi		■			
Missouri		■			
Montana	■		■		
Nebraska	■				
Nevada		■			
New Hampshire			■		
New Jersey	■	■	■		
New Mexico			■		
New York		■			
North Carolina				■	
North Dakota					■
Ohio			■		
Oklahoma	■				
Oregon	■				
Pennsylvania	■				
Rhode Island		■			
South Carolina		■			
South Dakota		■			
Tennessee			■		
Texas			■	■	
Utah				■	
Vermont	■				
Virginia			■		
Washington	■				
West Virginia					■
Wisconsin	■				
Wyoming			■	■	

Source: Authors' adaptation of OJJDP's *Statistical Briefing Book* [online].

U.S. Supreme Court cases have had an impact on the character and procedures of the juvenile justice system

The Supreme Court has made its mark on juvenile justice

Issues arising from juvenile delinquency proceedings rarely come before the U.S. Supreme Court. Beginning in the late 1960s, however, the Court decided a series of landmark cases that dramatically changed the character and procedures of the juvenile justice system.

Kent v. *United States*
383 U.S. 541, 86 S. Ct. 1045 (1966)

In 1961, while on probation from an earlier case, Morris Kent, age 16, was charged with rape and robbery. Kent confessed to the charges as well as to several similar incidents. Assuming that the District of Columbia juvenile court would consider waiving jurisdiction to the adult system, Kent's attorney filed a motion requesting a hearing on the issue of jurisdiction.

The juvenile court judge did not rule on this motion filed by Kent's attorney. Instead, he entered a motion stating that the court was waiving jurisdiction after making a "full investigation." The judge did not describe the investigation or the grounds for the waiver. Kent was subsequently found guilty in criminal court on six counts of housebreaking and robbery and sentenced to 30 to 90 years in prison.

Kent's lawyer sought to have the criminal indictment dismissed, arguing that the waiver had been invalid. He also appealed the waiver and filed a writ of habeas corpus asking the state to justify Kent's detention. Appellate courts rejected both the appeal and the writ, refused to scrutinize the judge's "investigation," and accepted the waiver as valid. In appealing to the U.S. Supreme Court, Kent's attorney argued that the judge had not made a complete investigation and that Kent was denied constitutional rights simply because he was a minor.

The Court ruled the waiver invalid, stating that Kent was entitled to a hearing that measured up to "the essentials of due process and fair treatment," that Kent's counsel should have had access to all records involved in the waiver, and that the judge should have provided a written statement of the reasons for waiver.

Technically, the *Kent* decision applied only to D.C. courts, but its impact was more widespread. The Court raised a potential constitutional challenge to *parens patriae* as the foundation of the juvenile court. In its past decisions, the Court had interpreted the equal protection clause of the Fourteenth Amendment to mean that certain classes of people could receive less due process if a "compensating benefit" came with this lesser protection. In theory, the juvenile court provided less due process but a greater concern for the interests of the juvenile. The Court referred to evidence that this compensating benefit may not exist in reality and that juveniles may receive the "worst of both worlds"—"neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children."

In re Gault
387 U.S. 1, 87 S. Ct. 1428 (1967)

Gerald Gault, age 15, was on probation in Arizona for a minor property offense when, in 1964, he and a friend made a prank telephone call to an adult neighbor, asking her, "Are your cherries ripe today?" and "Do you have big bombers?" Identified by the neighbor, the youth were arrested and detained.

The victim did not appear at the adjudication hearing and the court never resolved the issue of whether Gault made the "obscene" remarks. Gault was committed to a training school for the period of his minority. The maximum sentence for an adult would have been a $50 fine or 2 months in jail.

An attorney obtained for Gault after the trial filed a writ of habeas corpus that was eventually heard by the U.S. Supreme Court. The issue presented in the case was that Gault's constitutional rights (to notice of charges, counsel, questioning of witnesses, protection against self-incrimination, a transcript of the proceedings, and appellate review) were denied.

The Court ruled that in hearings that could result in commitment to an institution, juveniles have the right to notice and counsel, to question witnesses, and to protection against self-incrimination. The Court did not rule on a juvenile's right to appellate review or transcripts but encouraged the states to provide those rights.

The Court based its ruling on the fact that Gault was being punished rather than helped by the juvenile court. The Court explicitly rejected the doctrine of *parens patriae* as the founding principle of juvenile justice, describing the concept as murky and of dubious historical relevance. The Court concluded that the handling of Gault's case violated the due process clause of the Fourteenth Amendment: "Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."

In re Winship
397 U.S. 358, 90 S. Ct. 1068 (1970)

Samuel Winship, age 12, was charged with stealing $112 from a woman's purse in a store. A store employee claimed to have seen Winship running from the scene just before the woman noticed the money was missing; others in the store stated that the employee was not in a position to see the money being taken.

Winship was adjudicated delinquent and committed to a training school. New York juvenile courts operated under the civil court standard of a "preponderance of evidence." The court agreed with Winship's attorney that there was "reasonable doubt" of Winship's guilt but based its ruling on the "preponderance" of evidence.

Upon appeal to the Supreme Court, the central issue in the case was whether "proof beyond a reasonable doubt" should be considered among the "essentials of due process and fair treatment" required during the adjudicatory stage of the juvenile court process. The Court rejected lower court arguments that juvenile courts were not required to operate on the same standards as adult courts because juvenile courts were designed to "save" rather than to "punish" children. The Court ruled that the "reasonable doubt" standard should be required in all delinquency adjudications.

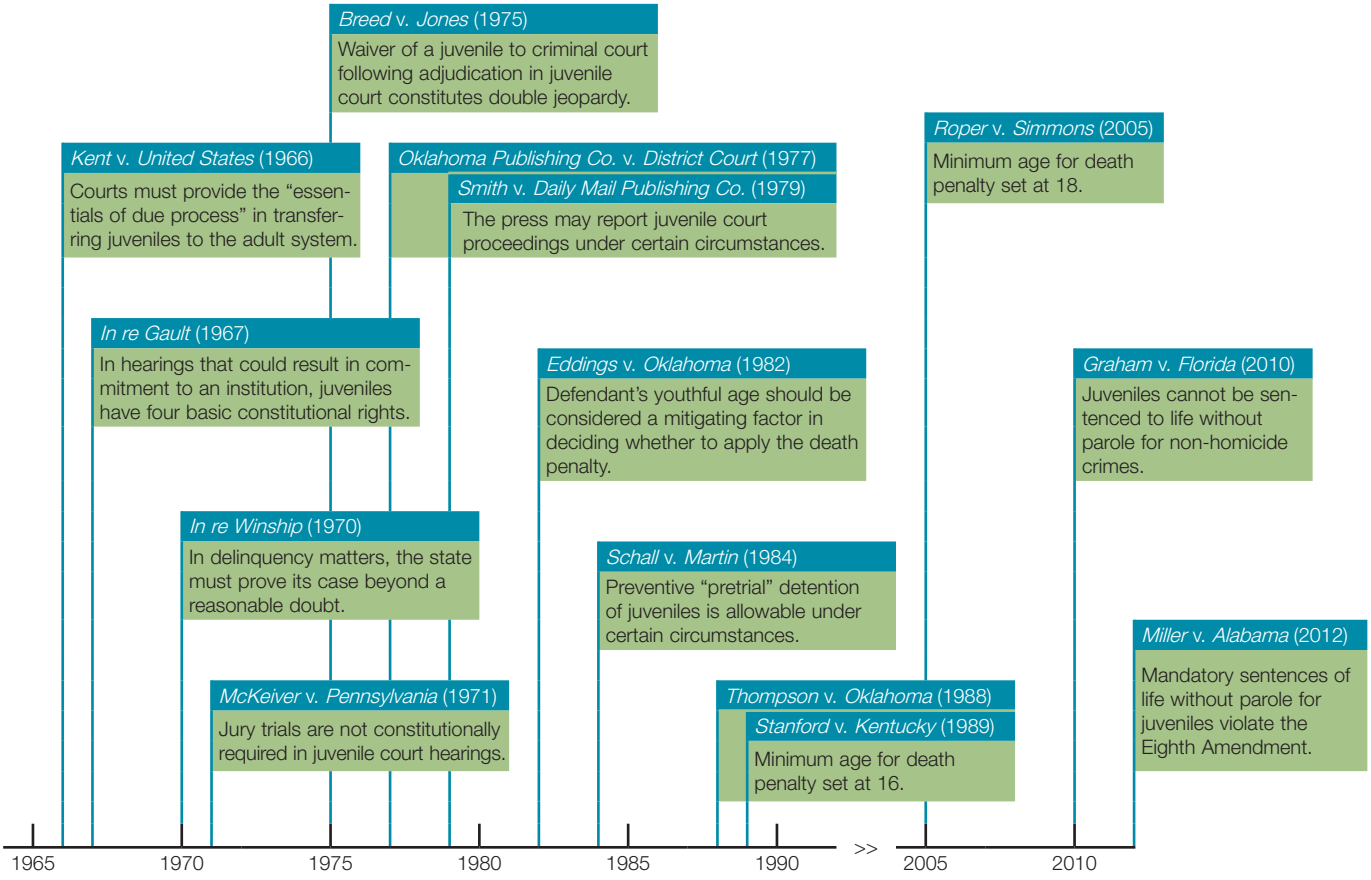
McKeiver v. *Pennsylvania* 403 U.S. 528, 91 S. Ct. 1976 (1971)

Joseph McKeiver, age 16, was charged with robbery, larceny, and receiving stolen goods. He and 20 to 30 other youth allegedly chased 3 youth and took 25 cents from them.

McKeiver met with his attorney for only a few minutes before his adjudicatory hearing. At the hearing, his attorney's request for a jury trial was denied by the court. He was subsequently adjudicated and placed on probation.

The state supreme court cited recent decisions of the U.S. Supreme Court that had attempted to include more due process in juvenile court proceedings without eroding the essential benefits of the juvenile court. The state supreme court affirmed the lower court, arguing that, of all due process rights, trial by jury is most likely to "destroy the traditional character of juvenile proceedings."

A series of U.S. Supreme Court decisions made juvenile courts more like criminal courts but maintained some important differences



The U.S. Supreme Court found that the due process clause of the Fourteenth Amendment did not require jury trials in juvenile court. The impact of the Court's *Gault* and *Winship* decisions was to enhance the accuracy of the juvenile court process in the fact-finding stage. In *McKeiver*, the Court argued that juries are not known to be more accurate than judges in the adjudication stage and could be disruptive to the informal atmosphere of the juvenile court, tending to make it more adversarial.

Breed v. *Jones*
421 U.S. 519, 95 S. Ct. 1779 (1975)

In 1970, Gary Jones, age 17, was charged with armed robbery. Jones appeared in Los Angeles juvenile court and was adjudicated delinquent on the original charge and two other robberies.

At the dispositional hearing, the judge waived jurisdiction over the case to criminal court. Counsel for Jones filed a writ of habeas corpus, arguing that the waiver to criminal court violated the double jeopardy clause of the Fifth Amendment. The court denied this petition, saying that Jones had not been tried twice because juvenile adjudication is not a "trial" and does not place a youth in jeopardy.

Upon appeal, the U.S. Supreme Court ruled that an adjudication in juvenile court, in which a juvenile is found to have violated a criminal statute, is equivalent to a trial in criminal court. Thus, Jones had been placed in double jeopardy. The Court also specified that jeopardy applies at the adjudication hearing when evidence is first presented. Waiver cannot occur after jeopardy attaches.

Oklahoma Publishing Company v. *District Court in and for Oklahoma City*
480 U.S. 308, 97 S. Ct. 1045 (1977)

The Oklahoma Publishing Company case involved a court order prohibiting the press from publishing the name and photograph of a youth involved in a juvenile court proceeding. The material in question was obtained legally from a source outside the court. The U.S. Supreme Court found the court order to be an unconstitutional infringement on freedom of the press.

Smith v. *Daily Mail Publishing Company*
443 U.S. 97, 99 S. Ct. 2667 (1979)

The Daily Mail case held that state law cannot stop the press from publishing a juvenile's name that it obtained independently of the court. Although the decision did not hold that the press should have access to juvenile court files, it held that if information regarding a juvenile case is lawfully obtained by the media, the First Amendment interest in a free press takes precedence over the interests in preserving the anonymity of juvenile defendants.

Schall v. *Martin*
467 U.S. 253, 104 S. Ct. 2403 (1984)

Gregory Martin, age 14, was arrested in 1977 and charged with robbery, assault, and possession of a weapon. He and two other youth allegedly hit a boy on the head with a loaded gun and stole his jacket and sneakers.

Martin was held pending adjudication because the court found there was a "serious risk" that he would commit another crime if released. Martin's attorney filed a habeas corpus action challenging the fundamental fairness of preventive detention. The lower appellate courts reversed the juvenile court's detention order, arguing in part that pretrial detention is essentially punishment because many juveniles detained before trial are released before, or immediately after, adjudication.

The U.S. Supreme Court upheld the constitutionality of the preventive detention statute. The Court stated that preventive detention serves a legitimate state objective in protecting both the juvenile and society from pretrial crime and is not intended to punish the juvenile. The Court found that enough procedures were in place to protect juveniles from wrongful deprivation of liberty. The protections were provided by notice, a statement of the facts and reasons for detention, and a probable cause hearing within a short time. The Court also reasserted the *parens patriae* interests of the state in promoting the welfare of children.

Within the past decade, the U.S. Supreme Court has taken a closer look at juvenile detention as well as the juvenile death penalty and juvenile life without parole.

Roper v. *Simmons*
543 U.S. 551, 125 S. Ct. 1183 (2005)

Christopher Simmons, age 17, committed murder. The facts of the case were not in dispute. Simmons and two other accomplices conspired to burglarize a home and kill the occupant, one Shirley Crook. Simmons was arrested and, after a waiver of his right to an attorney, confessed to the murder of Shirley Crook. Missouri had set 17 as the age barrier between juvenile and adult court jurisdiction, so Simmons was tried as an adult. The state of Missouri sought the death penalty in the case, and the jury recommended the

sentence, which the trial judge imposed.

After *Simmons* had been decided, the Supreme Court ruled in *Atkins* v. *Virginia* that the execution of a mentally retarded person was prohibited by the Eighth and Fourteenth Amendments. Simmons filed a petition with the Missouri Supreme Court, arguing that following the same logic used in *Atkins*, the execution of a juvenile who committed a crime under the age of 18 was prohibited by the Constitution. The Missouri Supreme Court agreed with Simmons and set aside his death penalty sentence.

The U.S. Supreme Court reviewed the case and reversed the imposition of the death penalty on any juvenile under the age of 18 on the grounds that it violated the Eighth Amendment prohibition of cruel and unusual punishment. The Court cited factors such as the "lack of maturity and an underdeveloped sense of responsibility, juvenile's susceptibility to peer pressure, and that the personality traits of juveniles are not as fixed as adults" in their decision. The Court also looked to other nation's practices as well as the evolving standards of decency in society to make their decision.

Graham v. *Florida*
560 U.S. 48, 130 S. Ct. 2011 (2010)

Terrance Graham, age 16, was arrested and charged with the crimes of burglary and robbery in 2003. Graham accepted a plea deal, part of which was a 3-year probationary period and a prison term requiring him to spend 12 months in the county jail. Graham was released from prison 6 months later on June 25, 2004.

Not 6 months later, Graham was arrested for armed robbery. The state of Florida charged him with violations of the terms and conditions of his probation. The trial court held a hearing on these violations in 2005 and 2006 and passed down a sentence of life imprisonment. Florida had abolished their system of parole; Graham could only be released by executive pardon.

Graham filed an appeal claiming that his Eighth Amendment rights against cruel and unusual punishment were being violated by the length of the sentence. The Supreme Court agreed, ruling that the sentencing of a juvenile offender to life without parole for a non-homicidal case was a violation of the cruel and unusual punishment clause of the Eighth Amendment. The Court found that there was no national consensus for life without parole sentences, juvenile offenders had limited culpability, and life sentences were extremely punitive for juvenile non-homicide offenders.

Miller v. *Alabama*
567 U.S. ___, 132 S. Ct. 2455 (2012)

Evan Miller was 14 when he and a friend beat his neighbor with a baseball bat and set fire to his trailer, killing him in the process. Miller was tried as a juvenile at first, but was then transferred to criminal court, pursuant to Alabama law. He was charged by the district attorney with murder in the course of arson, a crime with a mandatory minimum sentence of life without parole. The jury found Miller guilty, and he was summarily sentenced to a life without parole term.

Miller filed an appeal claiming that his sentence was in violation of the Eighth Amendment clause against cruel and unusual punishment. The Supreme Court held that the Eighth Amendment forbid a mandatory sentence of life in prison without parole for juvenile homicide offenders. The Court based their reasoning on prior rulings in *Roper* and *Graham*, which had prohibited capital punishment for children and prohibited life without parole sentences for non-homicide offenses, respectively. Combining the rationales from these precedential cases, the Court ruled that juveniles could not be mandatorily sentenced to serve a life without parole term.

State statutes define who is under the jurisdiction of juvenile court

Statutes set age limits for original jurisdiction of the juvenile court

In most states, the juvenile court has original jurisdiction over all youth charged with a law violation who were younger than age 18 at the time of the offense, arrest, or referral to court. Since 1975, five states have changed their age criteria: Alabama raised its upper age from 15 to 16 in 1976 and to 17 in 1977; Wyoming lowered its upper age from 18 to 17 in 1993; New Hampshire and Wisconsin lowered their upper age from 17 to 16 in 1996; and in 2007, Connecticut passed a law that gradually raised its upper age from 15 to 17 by July 1, 2012.

Oldest age for original juvenile court jurisdiction in delinquency matters, 2010:

Age	State
15	New York, North Carolina
16	Connecticut, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, Wisconsin
17	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming

Many states have higher upper ages of juvenile court jurisdiction in status offense, abuse, neglect, or dependency matters—typically through age 20. In many states, the juvenile court has original jurisdiction over young adults who committed offenses while juveniles.

States often have statutory exceptions to basic age criteria. For example, many states exclude married or otherwise emancipated juveniles from juvenile court jurisdiction. Other exceptions, related to the youth's age, alleged offense, and/or prior court history, place certain youth under the original jurisdiction of the criminal court. In some states, a combination of the youth's age, offense, and prior record places the youth under the original jurisdiction of both the juvenile and criminal courts. In these states, the prosecutor has the authority to decide which court will initially handle the case.

As of the end of the 2010 legislative session, 16 states have statutes that set the lowest age of juvenile court delinquency jurisdiction. Other states rely on case law or common law. Children younger than a certain age are presumed to be incapable of criminal intent and, therefore, are exempt from prosecution and punishment.

Youngest age for original juvenile court jurisdiction in delinquency matters, 2010:

Age	State
6	North Carolina
7	Maryland, Massachusetts, New York
8	Arizona
10	Arkansas, Colorado, Kansas, Louisiana, Minnesota, Mississippi, Pennsylvania, South Dakota, Texas, Vermont, Wisconsin

Juvenile court authority over youth may extend beyond the upper age of original jurisdiction

Through extended jurisdiction mechanisms, legislatures enable the court to provide sanctions and services for a duration of time that is in the best interests of the juvenile and the public, even for older juveniles who have reached the age at which original juvenile court jurisdiction ends. As of the end of the 2011 legislative session, statutes in 33 states extend juvenile court jurisdiction in delinquency cases until the 21st birthday.

Oldest age over which the juvenile court may retain jurisdiction for disposition purposes in delinquency matters, 2011:

Age	State
18	Alaska, Iowa, Kentucky, Nebraska, Oklahoma, Rhode Island, Texas
19	Mississippi
20	Alabama, Arizona*, Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada**, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Washington, West Virginia, Wyoming
21	Florida, Vermont
22	Kansas
24	California, Montana, Oregon, Wisconsin
***	Colorado, Hawaii, New Jersey, Tennessee

Note: Extended jurisdiction may be restricted to certain offenses or juveniles.

*Arizona statute extends jurisdiction through age 20, but a 1979 state supreme court decision held that juvenile court jurisdiction terminates at age 18.

** Until the full term of the disposition order for sex offenders.

*** Until the full term of the disposition order.

In some states, the juvenile court may impose adult correctional sanctions on certain adjudicated delinquents that extend the term of confinement well beyond the upper age of juvenile jurisdiction. Such sentencing options are included in the set of dispositional options known as blended sentencing.

Most young law violators enter the juvenile justice system through law enforcement agencies

Local processing of juvenile offenders varies

From state to state, case processing of juvenile law violators varies. Even within states, case processing may vary from community to community, reflecting local practice and tradition. Any description of juvenile justice processing in the U.S. must, therefore, be general, outlining a common series of decision points.

Law enforcement agencies divert many juvenile offenders out of the juvenile justice system

At arrest, a decision is made either to send the matter further into the justice system or to divert the case out of the system, often into alternative programs. Generally, law enforcement makes this decision after talking to the victim, the juvenile, and the parents and after reviewing the juvenile's prior contacts with the juvenile justice system. In 2010, 23% of all juvenile arrests were handled within the police department and resulted in release of the youth; in 68 of 100 arrests, the cases were referred to juvenile court. The remaining arrests were referred for criminal prosecution or to other agencies.

Most delinquency cases are referred by law enforcement agencies

Law enforcement accounted for 83% of all delinquency cases referred to juvenile court in 2010. The remaining referrals were made by others, such as parents, victims, school personnel, and probation officers.

Intake departments screen cases referred to juvenile court for formal processing

The court intake function is generally the responsibility of the juvenile probation department and/or the prosecutor's office. Intake decides whether to dismiss the case, to handle the matter informally, or to request formal intervention by the juvenile court.

To make this decision, an intake officer or prosecutor first reviews the facts of the case to determine whether there is sufficient evidence to prove the allegation. If not, the case is dismissed. If there is sufficient evidence, intake then determines whether formal intervention is necessary.

Nearly half of all cases referred to juvenile court intake are handled informally. Many informally processed cases are dismissed. In the other informally processed cases, the juvenile voluntarily agrees to specific conditions for a specific time period. These conditions often are outlined in a written agreement, generally called a "consent decree." Conditions may include such things as victim restitution, school attendance, drug counseling, or a curfew.

In most jurisdictions, a juvenile may be offered an informal disposition only if he or she admits to committing the act. The juvenile's compliance with the informal agreement often is monitored by a probation officer. Thus, this process is sometimes labeled "informal probation."

If the juvenile successfully complies with the informal disposition, the case is dismissed. If, however, the juvenile fails to meet the conditions, the case is referred for formal processing and proceeds as it would have if the initial decision had been to refer the case for an adjudicatory hearing.

If the case is to be handled formally in juvenile court, intake files one of two types of petitions: a delinquency petition requesting an adjudicatory hearing or a petition requesting a waiver hearing to transfer the case to criminal court.

A delinquency petition states the allegations and requests that the juvenile court adjudicate (or judge) the youth a delinquent, making the juvenile a ward of the court. This language differs from that used in the criminal court system, where an offender is convicted and sentenced.

In response to the delinquency petition, an adjudicatory hearing is scheduled. At the adjudicatory hearing (trial), witnesses are called and the facts of the case are presented. In nearly all adjudicatory hearings, the determination that the juvenile was responsible for the offense(s) is made by a judge; however, in some states, the juvenile has the right to a jury trial.

During the processing of a case, a juvenile may be held in a secure detention facility

Juvenile courts may hold delinquents in a secure juvenile detention facility if this is determined to be in the best interest of the community and/or the child.

After arrest, law enforcement may bring the youth to the local juvenile detention facility. A juvenile probation officer or detention worker reviews the case to decide whether the youth should be detained pending a hearing before a judge. In all states, a detention hearing must be held within a time period defined by statute, generally within 24 hours. At the detention hearing, a judge reviews the case and determines whether continued detention is warranted. In 2010, juveniles were detained in 21% of delinquency cases processed by juvenile courts.

Detention may extend beyond the adjudicatory and dispositional hearings. If residential placement is ordered but no placement beds are available, detention may continue until a bed becomes available.

The juvenile court may transfer the case to criminal court

A waiver petition is filed when the prosecutor or intake officer believes that a case under jurisdiction of the juvenile court would be handled more appropriately in criminal court. The court decision in these matters follows a review of the facts of the case and a determination that there is probable cause to believe that the juvenile committed the act. With this established, the court then decides whether juvenile court jurisdiction over the matter should be waived and the case transferred to criminal court.

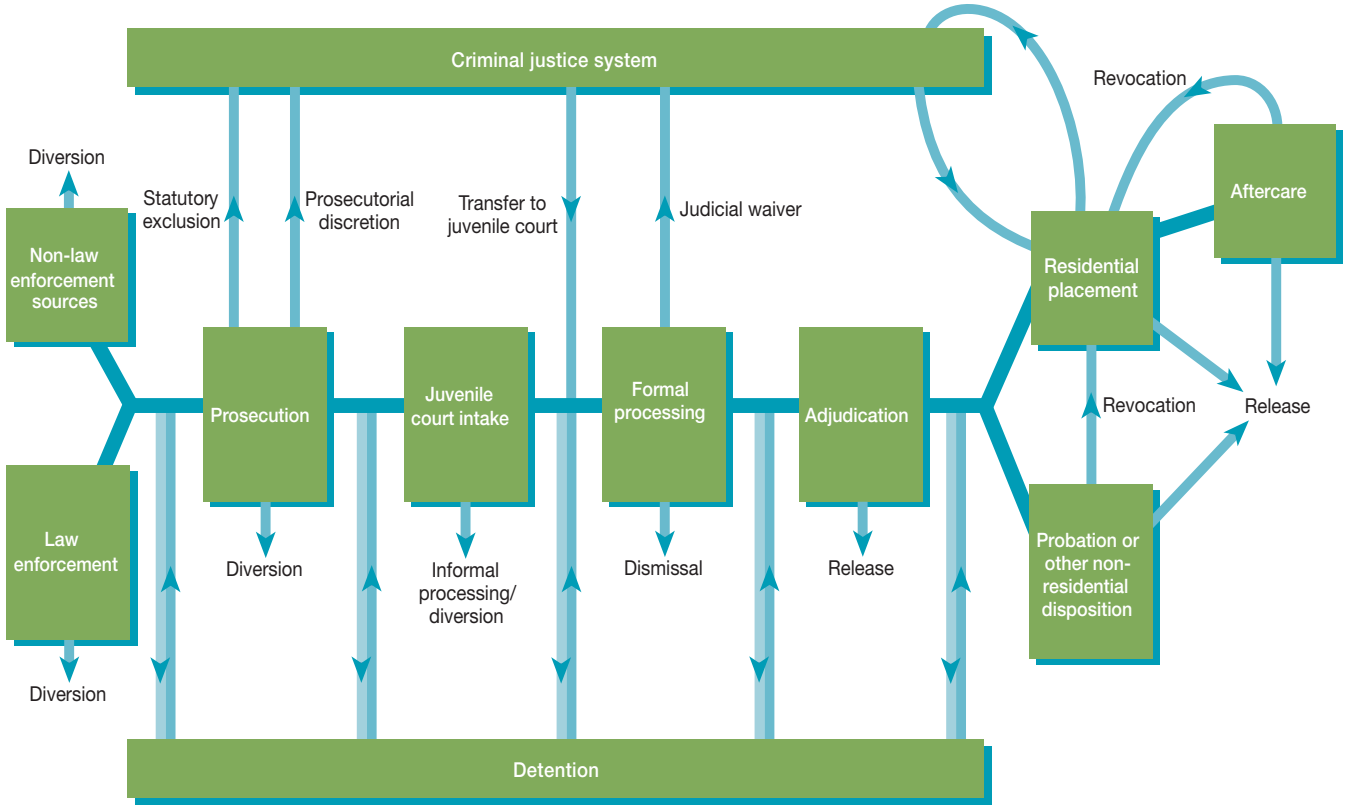
The judge's decision in such cases generally centers on the issue of the juvenile's amenability to treatment in the juvenile justice system. The prosecution may argue that the juvenile has been adjudicated several times previously and that interventions ordered by the juvenile court have not kept the juvenile from committing subsequent criminal acts. The prosecutor may also argue that the crime is so serious that the juvenile court is unlikely to be able to intervene for the time period necessary to rehabilitate the youth.

If the judge decides that the case should be transferred to criminal court, juvenile court jurisdiction is waived and the case is filed in criminal court. In 2010, juvenile courts waived 1% of all formally processed delinquency cases. If the judge does not approve the waiver request, generally an adjudicatory hearing is scheduled in juvenile court.

Prosecutors may file certain cases directly in criminal court

In more than half of the states, legislatures have decided that in certain cases (generally those involving serious offenses), juveniles should be tried as criminal offenders. The law excludes such cases from juvenile court; prosecutors must file them in criminal court. In a smaller number of states, legislatures have given both the juvenile and adult courts original jurisdiction in certain cases. Thus, prosecutors have discretion to file such cases in either criminal or juvenile court.

What are the stages of delinquency case processing in the juvenile justice system?



Note: This chart gives a simplified view of caseflow through the juvenile justice system. Procedures may vary among jurisdictions.

After adjudication, probation staff prepare a disposition plan

Once the juvenile is adjudicated delinquent in juvenile court, probation staff develop a disposition plan. To prepare this plan, probation staff assess the youth, available support systems, and programs. The court may also order psychological evaluations, diagnostic tests, or a period of confinement in a diagnostic facility.

At the disposition hearing, probation staff present dispositional recommendations to the judge. The prosecutor and the youth may also present dispositional recommendations. After considering the recommendations, the judge orders a disposition in the case.

Most youth placed on probation also receive other dispositions

Most juvenile dispositions are multifaceted and involve some sort of supervised probation. A probation order often includes additional requirements such as drug counseling, weekend confinement in the local detention center, or restitution to the community or victim. The term of probation may be for a specified period of time or it may be open-ended. Review hearings are held to monitor the juvenile's progress. After conditions of probation have been successfully met, the judge terminates the case. In 2010, formal probation was the most severe disposition ordered in 61% of the cases in which the youth was adjudicated delinquent.

The judge may order residential placement

In 2010, juvenile courts ordered residential placement in 26% of the cases in which the youth was adjudicated delinquent. Residential commitment may be for a specific or indeterminate time period. The facility may be publicly or privately operated and may have a secure, prison-like environment or a more open (even home-like) setting. In many states, when the judge commits a juvenile to the state department of juvenile corrections, the department determines where the juvenile will be placed and when the juvenile will be released. In other states, the judge controls the type and length of stay; in these situations, review hearings are held to assess the progress of the juvenile.

Juvenile aftercare is similar to adult parole

Upon release from an institution, the juvenile is often ordered to a period of aftercare or parole. During this period, the juvenile is under supervision of the court or the juvenile corrections department. If the juvenile does not follow the conditions of aftercare, he or she may be recommitted to the same facility or may be committed to another facility.

Status offense and delinquency case processing differ

A delinquent offense is an act committed by a juvenile for which an adult could be prosecuted in criminal court. There are, however, behaviors that are law violations only for juveniles and/or young adults because of their status. These "status offenses" may include behaviors such as running away from home, truancy, alcohol possession or use, incorrigibility, and curfew violations.

In many ways, the processing of status offense cases parallels that of delinquency cases. Not all states, however, consider all of these behaviors to be law violations. Many states view such behaviors as indicators that the child is in need of supervision. These states handle status offense matters more like dependency cases than delinquency cases, responding to the behaviors by providing social services.

Although many status offenders enter the juvenile justice system through law enforcement, in many states the initial, official contact is a child welfare agency. About 3 in 5 status offense cases referred to juvenile court come from law enforcement.

The federal Juvenile Justice and Delinquency Prevention Act states that jurisdictions shall not hold status offenders in secure juvenile facilities for detention or placement. This policy has been labeled deinstitutionalization of status offenders. There is an exception to the general policy: a status offender may be confined in a secure juvenile facility if he or she has violated a valid court order, such as a probation order requiring the youth to attend school and observe a curfew.

A juvenile court by any other name is still a juvenile court

Every state has at least one court with juvenile jurisdiction, but in most states it is not actually called "juvenile court." The names of the courts with juvenile jurisdiction vary by state—district, superior, circuit, county, family, or probate court, to name a few. Often, the court of juvenile jurisdiction has a separate division for juvenile matters. Courts with juvenile jurisdiction generally have jurisdiction over delinquency, status offense, and abuse/neglect matters and may also have jurisdiction in other matters such as adoption, termination of parental rights, and emancipation. Whatever their name, courts with juvenile jurisdiction are generically referred to as juvenile courts.

Once a mainstay of juvenile court, confidentiality has given way to substantial openness in many states

The first juvenile court was open to the public, but confidentiality became the norm over time

The legislation that created the first juvenile court in Illinois stated that the hearings should be open to the public. Thus, the public could monitor the activities of the court to ensure that the court handled cases in line with community standards.

In 1920, all but 7 of the 45 states that established separate juvenile courts permitted publication of information about juvenile court proceedings. The Standard Juvenile Court Act, first published in 1925, did not ban the publication of juveniles' names. By 1952, however, many states that adopted the Act had statutes that excluded the general public from juvenile court proceedings. The commentary to the 1959 version of the Act referred to the hearings as "private, not secret." It added that reporters should be permitted to attend hearings with the understanding that they not disclose the identity of the juvenile. The rationale for this confidentiality was "to prevent the humiliation and demoralizing effect of publicity." It was also thought that publicity might propel youth into further delinquent acts to gain more recognition.

As juvenile courts became more formalized and concerns about rising juvenile crime increased, the pendulum began to swing back toward more openness. By 1988, statutes in 15 states permitted the public to attend certain delinquency hearings.

Delinquency hearings are open to the public in 18 states

As of the end of the 2010 legislative session, statutes or court rules in 18 states either permit or require open delinquency hearings to the general public. Such statutes typically state that all hearings must be open to the public, except on special order of the court. The judge has the discretion to close the hearing when it is in the best interests of the child and the public or good cause is shown. In 3 of the 18 states, the state constitution has broad open court provisions.

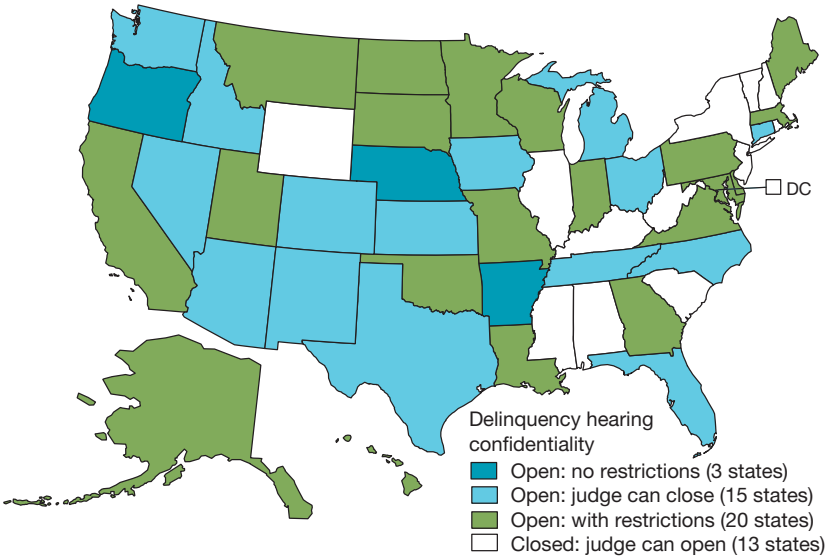
In 20 states, limits are set on access to delinquency hearings

In addition to the states with open delinquency hearings that a judge can close, 20 states have statutes that open delinquency hearings for some types of cases. The openness restrictions typically involve age and/or offense criteria. For example, a statute might allow open hearings if the youth is charged with a felony and was at least 16 years old at the time of the crime. Some statutes also limit open hearings to those involving youth with a particular criminal history. For example, hearings might be open only if the youth met age and offense criteria and had at least one prior felony conviction (criminal court) or felony adjudication (juvenile court).

In 13 states, delinquency hearings are generally closed

As of the 2010 legislative session, 13 states had statutes and/or court rules that generally close delinquency hearings to the general public. A juvenile court judge can open the hearings for compelling reasons, such as if public

Delinquency proceedings are open in some states, closed in others, and in some states, it depends on the type of case



- In 13 states, statutes or court rules generally close delinquency hearings to the public.
- In 20 states, delinquency hearings are open to the public, conditioned on certain age and offense requirements.

Note: Information is as of the end of the 2010 legislative session.

Source: Authors' adaptation of Szymanski's What States Allow for Open Juvenile Delinquency Hearings? *NCJJ Snapshot*.

safety outweighs confidentiality concerns.

Most states specify exceptions to juvenile court record confidentiality

Although legal and social records maintained by law enforcement agencies and juvenile courts have traditionally been confidential, legislatures have made significant changes over the past decade in how the justice system treats information about juvenile offenders. In almost every state, the juvenile code specifies which individuals or agencies are allowed access to such records.

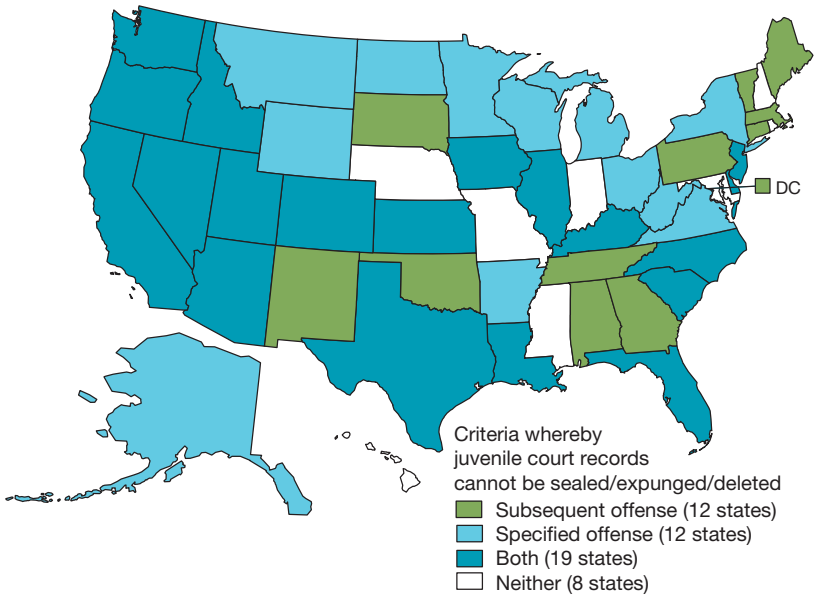
All states allow certain juvenile offenders to be fingerprinted under specific circumstances

All states have a statute or court rule that governs the fingerprinting of alleged or adjudicated juveniles under specified circumstances. As of the end of 2009, 10 states (Hawaii, Indiana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Utah, and Wisconsin) have specific statutory age restrictions concerning the fingerprinting of juveniles. The age restrictions range between 10 and 14 as the lowest age that a juvenile can be fingerprinted. In the other 41 states, there are no age restrictions for fingerprinting by law enforcement individuals.

School notification laws are common

As of the end of the 2008 legislative session, 46 states have school notification laws. Under these laws, schools are notified when students are involved with law enforcement or courts for committing delinquent acts. Some statutes limit notification to youth charged with or convicted of serious or violent crimes.

Some juvenile court records cannot be sealed



- In 31 states, juvenile court records cannot be sealed/expunged/deleted if the court finds that the petitioning juvenile has subsequently been convicted of a felony or misdemeanor, or adjudicated delinquent.
- In 31 states, juvenile records cannot be sealed/expunged/deleted if the adjudication is for a statutorily specified offense. In some states, these are the offenses for which a juvenile can be transferred to criminal court.

Note: Information is as of the 2009 legislative session.

Source: Authors' adaptation of Szymanski's Are There Some Juvenile Court Records That Cannot Be Sealed? *NCJJ Snapshot*.

All states allow certain juveniles to be tried in criminal court or otherwise face adult sanctions

Transferring juveniles to criminal court is not a new phenomenon

Juvenile courts have always had mechanisms for removing the most serious offenders from the juvenile justice system. Traditional transfer laws establish provisions and criteria for trying certain youth of juvenile age in criminal court. Blended sentencing laws are also used to impose a combination of juvenile and adult criminal sanctions on some offenders of juvenile age.

Transfer laws address which court (juvenile or criminal) has jurisdiction over certain cases involving offenders of juvenile age. State transfer provisions are typically limited by age and offense criteria. Transfer mechanisms vary regarding where the responsibility for transfer decisionmaking lies. Transfer provisions fall into the following three general categories.

Judicial waiver: The juvenile court judge has the authority to waive juvenile court jurisdiction and transfer the case to criminal court. States may use terms other than judicial waiver. Some call the process certification, remand, or bind over for criminal prosecution. Others transfer or decline rather than waive jurisdiction.

Prosecutorial discretion: Original jurisdiction for certain cases is shared by both criminal and juvenile courts, and the prosecutor has the discretion to file such cases in either court. Transfer under prosecutorial discretion provisions is also known as prosecutorial waiver, concurrent jurisdiction, or direct file.

Statutory exclusion: State statute excludes certain juvenile offenders from juvenile court jurisdiction. Under statutory exclusion provisions, cases originate in criminal rather than juvenile court. Statutory exclusion is also known as legislative exclusion.

In many states, criminal courts may send transferred cases to juvenile court

Several states have provisions for sending transferred cases from criminal to juvenile court for adjudication under certain circumstances. This procedure, sometimes referred to as "reverse waiver," generally applies to cases initiated in criminal court under statutory exclusion or prosecutorial discretion provisions. Of the 36 states with such provisions at the end of the 2011 legislative session, 21 also have provisions that allow certain transferred juveniles to petition for a "reverse." Reverse decision criteria often parallel a state's discretionary waiver criteria. In some states, transfer cases resulting in conviction in criminal court may be reversed to juvenile court for disposition.

Most states have "once an adult, always an adult" provisions

In 34 states, juveniles who have been tried as adults must be prosecuted in criminal court for any subsequent offenses. Nearly all of these "once an adult, always an adult" provisions require that the youth must have been convicted of the offenses that triggered the initial criminal prosecution.

Blended sentencing laws give courts flexibility in sanctioning

Blended sentencing laws address the correctional system (juvenile or adult) in which certain offenders of juvenile age will be sanctioned. Blended sentencing statutes can be placed into the following two general categories.

Juvenile court blended sentencing: The juvenile court has the authority to impose adult criminal sanctions on certain juvenile offenders. The majority of these blended sentencing laws authorize the juvenile court to combine a juvenile disposition with a criminal sentence that is suspended. If the youth successfully completes the juvenile disposition and does not commit a new offense, the criminal sanction is not imposed. If, however, the youth does not cooperate or fails in the juvenile sanctioning system, the adult criminal sanction is imposed. Juvenile court blended sentencing gives the juvenile court the power to send uncooperative youth to adult prison, giving teeth to the typical array of juvenile court dispositional options.

Criminal court blended sentencing: Statutes allow criminal courts sentencing certain transferred juveniles to impose sanctions otherwise available only to offenders handled in juvenile court. As with juvenile court blended sentencing, the juvenile disposition may be conditional—the suspended criminal sentence is intended to ensure good behavior. Criminal court blended sentencing gives juveniles prosecuted in criminal court one last chance at a juvenile disposition, thus mitigating the effects of transfer laws on an individual basis.

Most states have multiple ways to impose adult sanctions on offenders of juvenile age

State	Judicial waiver			Prosecutorial discretion	Statutory exclusion	Reverse waiver	Once an adult/ always an adult	Blended sentencing	
	Discretionary	Presumptive	Mandatory					Juvenile	Criminal
Number of states	45	15	15	15	29	24	34	14	17
Alabama	■				■		■		
Alaska	■	■			■			■	
Arizona	■			■	■	■	■		
Arkansas	■			■		■		■	■
California	■	■		■	■	■	■		■
Colorado	■	■		■		■		■	■
Connecticut			■			■		■	
Delaware	■		■		■	■	■		
Dist. of Columbia	■	■		■			■		
Florida	■			■	■		■		■
Georgia	■		■	■	■	■			
Hawaii	■						■		
Idaho	■				■		■		■
Illinois	■	■	■		■		■	■	■
Indiana	■		■		■		■		
Iowa	■				■	■	■		■
Kansas	■	■					■	■	
Kentucky	■		■			■			■
Louisiana	■		■	■	■				
Maine	■	■					■		
Maryland	■				■	■	■		
Massachusetts					■			■	■
Michigan	■			■			■	■	■
Minnesota	■	■			■		■	■	
Mississippi	■				■	■	■		
Missouri	■						■		■
Montana				■	■	■		■	
Nebraska				■		■			■
Nevada	■	■			■	■	■		
New Hampshire	■	■					■		
New Jersey	■	■	■						
New Mexico					■			■	■
New York					■	■			
North Carolina	■		■				■		
North Dakota	■	■	■				■		
Ohio	■		■				■	■	
Oklahoma	■			■	■	■	■		■
Oregon	■				■	■	■		
Pennsylvania	■	■			■	■	■		
Rhode Island	■	■	■				■	■	
South Carolina	■		■		■				
South Dakota	■				■	■	■		
Tennessee	■					■	■		
Texas	■						■	■	
Utah	■	■			■		■		
Vermont	■			■	■	■			
Virginia	■		■	■		■	■		■
Washington	■				■		■		
West Virginia	■		■						■
Wisconsin	■				■	■	■		■
Wyoming	■			■		■			

■ In states with a combination of provisions for transferring juveniles to criminal court, the exclusion, mandatory waiver, or prosecutorial discretion provisions generally target the oldest juveniles and/or those charged with the most serious offenses, whereas younger juveniles and/or those charged with relatively less serious offenses may be eligible for discretionary waiver.

Note: Table information is as of the end of the 2011 legislative session.

Source: Authors' adaptation of OJJDP's *Statistical Briefing Book* [online].

In most states, age and offense criteria limit transfer provisions

Judicial waiver remains the most common transfer provision

As of the end of the 2011 legislative session, a total of 45 states have laws designating some category of cases in which waiver of jurisdiction by juvenile court judges transfers certain cases to criminal court. Such action is usually in response to a request by the prosecutor. In several states, however, juveniles or their parents may request judicial waiver. In most states, waiver is limited by age and offense boundaries.

Waiver provisions vary in terms of the degree of decisionmaking flexibility allowed. The decision may be entirely discretionary, there may be a rebuttable presumption in favor of waiver, or it may be a mandatory decision. Mandatory decisions arise when a law or provision requires a judge to waive the child after certain statutory criteria have been met. Most states set a minimum threshold for eligibility, but these are often quite low. In a few states, such as Alaska, Kansas, and Washington, prosecutors may ask the court to waive virtually any juvenile delinquency case. Nationally, the proportion of juvenile cases in which waiver is granted is less than 1% of petitioned delinquency cases.

Some statutes establish waiver criteria other than age and offense

In some states, waiver provisions target youth charged with offenses involving firearms or other weapons. Most state statutes also limit judicial waiver to juveniles who are no longer "amenable to treatment." The specific factors that determine lack of amenability vary, but they typically include the juvenile's offense history and previous dispositional outcomes. Such amenability criteria are generally not included in statutory exclusion or concurrent jurisdiction provisions.

In most states, juvenile court judges may waive jurisdiction over certain cases and transfer them to criminal court

	Judicial waiver offense and minimum age criteria, 2011							
State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alabama	14							
Alaska	NS				NS			
Arizona		NS						
Arkansas		14	14	14	14			14
California	16	14		14	14	14	14	
Colorado		12		12	12			
Connecticut		14	14	14				
Delaware	NS	15		NS	NS	16	16	
Dist. of Columbia	16	15		15	15	15		NS
Florida	14							
Georgia	15		13	14	13	15		
Hawaii		14		NS				
Idaho	14	NS		NS	NS	NS	NS	
Illinois	13	15					15	
Indiana	14	NS		10			16	
Iowa	14							
Kansas	10	14			14		14	
Kentucky		14	14					
Louisiana				14	14			
Maine		NS		NS	NS			
Maryland	15		NS					
Michigan		14						
Minnesota		14						
Mississippi	13							
Missouri		12						
Nevada	14	14			16			
New Hampshire		15		13	13		15	
New Jersey	14	14		14	14	14	14	14
North Carolina		13	13					
North Dakota	16	14		14	14		14	
Ohio		14		14	16	16		
Oklahoma		NS						
Oregon		15		NS	NS	15		
Pennsylvania		14			14	14		
Rhode Island	NS	16	NS	17	17			
South Carolina	16	14		NS	NS		14	14
South Dakota		NS						
Tennessee	16			NS	NS			
Texas		14	14				14	
Utah		14			16	16		16
Vermont				10	10	10		
Virginia		14		14	14			
Washington	NS							
West Virginia		NS		NS	NS	NS	NS	
Wisconsin	15	14		14	14	14	14	
Wyoming	13							

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which a juvenile may be waived from juvenile court to criminal court. The number indicates the youngest possible age at which a juvenile accused of an offense in that category may be waived. "NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2011 legislative session.

Source: Authors' adaptation of OJJDP's *Statistical Briefing Book* [online].

Many statutes instruct juvenile courts to consider other factors when making waiver decisions, such as the availability of dispositional alternatives for treating the juvenile, the time available for sanctions, public safety, and the best interest of the child. The waiver process must also adhere to certain constitutional principles of due process.

Before 1970, transfer in most states was court ordered on a case-by-case basis

Laws allowing juvenile courts to waive jurisdiction over individual youth can be found in some of the earliest juvenile courts and have always been relatively common. Most states had enacted judicial waiver laws by the 1950s, and they had become nearly universal by the 1970s.

For the most part, these laws made transfer decisions individual ones at the discretion of the juvenile court. Laws that made transfer "automatic" for certain categories were rare and tended to apply only to rare offenses such as murder and capital crimes. Before 1970, only 8 states had such laws.

Prosecutorial discretion laws were even rarer. Only 2 states, Florida and Georgia, had prosecutorial discretion laws before 1970.

States adopted new transfer mechanisms in the 1970s and 1980s

During the next 2 decades, automatic transfer and prosecutorial discretion steadily proliferated. In the 1970s, 5 states enacted prosecutorial discretion laws, and 7 more states added some form of automatic transfer.

By the mid-1980s, nearly all states had judicial waiver laws, 20 states had automatic transfer, and 7 states had prosecutorial discretion laws.

The surge in youth violence that peaked in 1994 helped shape current transfer laws

State transfer laws in their current form are largely the product of a period of intense legislative activity that began in the latter half of the 1980s and continued through the end of the 1990s. Prompted in part by public concern and media focus on the rise in violent youth crime that began in 1987 and peaked in 1994, legislatures in nearly every state revised or rewrote their laws to lower thresholds and broaden eligibility for transfer, shift transfer decisionmaking authority from judges to prosecutors, and replace individualized attention with broad automatic and categorical mechanisms.

Between 1986 and the end of the century, the number of states with automatic transfer laws jumped from 20 to 38, and the number with prosecutorial discretion laws rose from 7 to 15. Moreover, many states that had automatic or prosecutor-controlled transfer statutes expanded their coverage drastically. In Pennsylvania, for example, an automatic transfer law had been in place since 1933 but had applied only to murder charges. Amendments that took place in 1996 added a long list of violent offenses to this formerly narrow automatic transfer law.

In recent years, transfer laws have changed little

Transfer law changes since 2000 have been minor by comparison. No major new expansion has occurred. On the other hand, states have been reluctant to reverse or reconsider the expanded transfer laws already in place. Despite the steady decline in juvenile crime and violence rates, there has been no large-scale discernible pendulum swing away from transfer. Individual states have

In states with concurrent jurisdiction, the prosecutor has discretion to file certain cases in either criminal or juvenile court

	Prosecutorial discretion offense and minimum age criteria, 2011							
State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Arizona		14						
Arkansas		16	14	14	14			
California		14	14	14	14	14	14	
Colorado		14		14	14	14		
Dist. of Columbia				16	16	16		
Florida	16	16	NS	14	14	14		14
Georgia			NS					
Louisiana				15	15	15	15	
Michigan		14		14	14	14	14	
Montana				12	12	16	16	16
Nebraska	16	NS						
Oklahoma		16		15	15	15	16	15
Vermont	16							
Virginia				14	14			
Wyoming	13	14		14	14	14		

Notes: An entry in the column below an offense category means that there is at least one offense in that category that is subject to criminal prosecution at the option of the prosecutor. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to criminal prosecution. "NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2011 legislative session.

Source: Authors' adaptation of OJJDP's *Statistical Briefing Book* [online].

changed or modified their laws, but there is no countrywide movement away from expansive transfer laws.

As of the end of the 2011 legislative session, 15 states have prosecutorial discretion provisions, which give both juvenile and criminal courts original jurisdiction in certain cases. Under such provisions, prosecutors have discretion to file eligible cases in either court. Prosecutorial discretion is typically limited by age and offense criteria. Cases involving violent or repeat crimes or weapons offenses usually fall under prosecutorial discretion statutes. These statutes are usually silent regarding standards, protocols, or considerations for decisionmaking, and no national data exists on the number of juvenile cases tried in criminal court under prosecutorial discretion provisions. In Florida, which has a broad prosecutor discretion provision, prosecutors sent more than 2,900 youth to criminal court in fiscal year 2008. In comparison, juvenile court judges nationwide waived 7,700 cases to criminal court in 2008.

State appellate courts have taken the view that prosecutorial discretion is equivalent to the routine charging decisions prosecutors make in criminal cases. Prosecutorial discretion in charging is considered an executive function, which is not subject to judicial review and does not have to meet the due process standards established by the Supreme Court. Some states, however, do have written guidelines for prosecutorial discretion.

In states with statutory exclusion provisions, certain serious offenses are excluded from juvenile court jurisdiction

	Statutory exclusion offense and minimum age criteria, 2011							
State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alabama		16	16				16	
Alaska					16	16		
Arizona		15		15	15			
California				14	14			
Delaware		15						
Florida				16	NS	16	16	
Georgia				13	13			
Idaho				14	14	14	14	
Illinois		15		13	15			15
Indiana		16		16	16		16	16
Iowa		16					16	16
Louisiana				15	15			
Maryland			14	16	16			16
Massachusetts				14				
Minnesota				16				
Mississippi		13	13					
Montana				17	17	17	17	17
Nevada	16*	NS		NS	16			
New Mexico				15				
New York				13	13	14		14
Oklahoma				13				
Oregon				15	15			
Pennsylvania				NS	15			
South Carolina		16						
South Dakota		16						
Utah		16		16				
Vermont				14	14	14		
Washington				16	16	16		
Wisconsin				10	10			

* In Nevada, the exclusion applies to any juvenile with a previous felony adjudication, regardless of the current offense charged, if the current offense involves the use or threatened use of a firearm.

Notes: An entry in the column below an offense category means that there is at least one offense in that category that is excluded from juvenile court jurisdiction. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to exclusion. "NS" means no age restriction is specified for an offense in that category. Table information is as of the end of the 2011 legislative session.

Source: Authors' adaptation of OJJDP's *Statistical Briefing Book* [online].

Statutory exclusion accounts for the largest number of transfers

Legislatures transfer large numbers of young offenders to criminal court by enacting statutes that exclude certain cases from original juvenile court jurisdiction. As of the end of the 2011 legislative session, 29 states have statutory exclusion provisions. State laws typically set age and offense limits for excluded offenses. The offenses most often excluded are murder, capital crimes, and other serious person offenses. (Minor offenses such as wildlife, traffic, and watercraft violations are often excluded from juvenile court jurisdiction in states where they are not covered by concurrent jurisdiction provisions.)

Jurisdictional age laws may transfer as many as 137,000 additional youth to criminal court

Although not typically thought of as transfers, large numbers of youth younger than age 18 are tried in criminal court. States have always been free to define the respective jurisdictions of their juvenile and criminal courts. Nothing compels a state to draw the line between juvenile and adult at age 18. In 13 states, the upper age of juvenile court jurisdiction in 2010 was set at 15 or 16 and youth could be held criminally responsible at the ages of 16

and 17, respectively. The number of youth younger than 18 prosecuted as adults in these states can only be estimated. But it almost certainly dwarfs the number that reaches criminal courts as a result of transfer laws in the nation as a whole.

In 2010, more than 2 million 16- and 17-year-olds were considered criminally responsible adults under the jurisdictional age laws of the states in which they resided. If national petitioned delinquency case rates (the number of delinquency referrals petitioned per 1,000 juveniles) are applied to this population group based on specific age, race, and county size factors, and if it is assumed that this population would have been referred to criminal court at the same rates that 16- and 17-year-olds were referred to juvenile courts in other states, then as many as 137,000 offenders younger than age 18 would have been referred to criminal courts in 2010.

It should be noted, however, that this estimate is based on an assumption that is at least questionable: that juvenile and criminal courts would respond in the same way to similar offending behavior. In fact, it is possible that some conduct that would be considered serious enough to merit referral to and formal processing in juvenile court—such as vandalism, trespassing, minor thefts, and low-level public order offenses—would not receive similar handling in criminal court.

Many states allow transfer of certain very young offenders

In 22 states, no minimum age is specified in at least one judicial waiver, concurrent jurisdiction, or statutory exclusion provision for transferring juveniles to criminal court. For example, Pennsylvania's murder exclusion has no specified minimum age. Other transfer provisions in Pennsylvania have age minimums set at 14 and 15. Among states where statutes specify age limits for all transfer provisions, age 14 is the most common minimum age specified across provisions.

Minimum transfer age specified in statute, 2011:

Age	State
None	Alaska, Arizona, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Maine, Maryland, Nebraska, Nevada, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, West Virginia
10	Kansas, Vermont, Wisconsin
12	Colorado, Missouri, Montana
13	Illinois, Mississippi, New Hampshire, New York, North Carolina, Wyoming
14	Alabama, Arkansas, California, Connecticut, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Jersey, North Dakota, Ohio, Texas, Utah, Virginia
15	New Mexico

Like transfer laws, juvenile court blended sentencing allows imposition of adult sanctions on juveniles

Transfer laws and juvenile court blended sentencing laws have a similar impact

As of the end of the 2011 legislative session, 14 states have blended sentencing laws that enable juvenile courts to impose criminal sanctions on certain juvenile offenders. Although the impact of juvenile blended sentencing laws depends on the specific provisions (which vary from state to state), in general, juvenile court blended sentencing expands the sanctioning powers of the juvenile court such that juvenile offenders may face the same penalties as adult offenders. Thus, like transfer laws, juvenile court blended sentencing provisions define certain juvenile offenders as eligible to be handled in the same manner as adult offenders and expose those juvenile offenders to harsher penalties.

The most common type of juvenile court blended sentencing provision allows juvenile court judges to order both a juvenile disposition and an adult criminal sentence. The adult sentence is suspended on the condition that the juvenile offender successfully completes the terms of the juvenile disposition and refrains from committing any new offenses. The criminal sanction is intended to encourage cooperation and serve as a deterrent to future offending. This type of arrangement is known as inclusive blended sentencing.

Most states with juvenile court blended sentencing have inclusive blends (10 of 14). Generally, statutes require courts to impose a combination of juvenile and adult sanctions in targeted cases. In Massachusetts and Michigan, though, the court is not required to order a combined sanction. The court has the option to order a juvenile disposition, a criminal sentence, or a combined sanction.

Among the four states that do not have inclusive juvenile court blended sentencing, three (Colorado, Rhode Island, and Texas) have some type of contiguous blended sentencing arrangement. Under the contiguous model, juvenile court judges can order a sentence that would extend beyond the state's age of extended jurisdiction. The initial commitment is to a juvenile facility, but later the offender may be transferred to an adult facility. The fourth state without an inclusive juvenile blend, New Mexico, simply gives the juvenile court the option of ordering an adult sentence instead of a juvenile disposition. This is referred to as an exclusive blend.

As with transfer laws, states' juvenile court blended sentencing provisions are limited by age and offense criteria

	Juvenile court blended sentencing offense and minimum age criteria, 2011							
State	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alaska					16			
Arkansas		14		NS	14			14
Colorado		NS			NS			
Connecticut		14			NS			
Illinois		13						
Kansas	10							
Massachusetts		14			14			14
Michigan		NS		NS	NS	NS	NS	
Minnesota		14						
Montana		12		NS	NS	NS	NS	NS
New Mexico		14		14	14	14		
Ohio		10		10				
Rhode Island		NS						
Texas		NS		NS	NS		NS	

Notes: An entry in the column below an offense category means that there is at least one offense in that category for which a juvenile may receive a blended sentence in juvenile court. The number indicates the youngest possible age at which a juvenile committing an offense in that category is subject to blended sentencing. "NS" indicates that, in at least one of the offense restrictions indicated, no minimum age is specified. Table information is as of the end of the 2011 legislative session.

Source: Authors' adaptation of OJJDP's *Statistical Briefing Book* [online].

Criminal court blended sentencing laws act as a fail-safe for juvenile defendants

Under criminal court blended sentencing, juvenile offenders who have been convicted in criminal court can receive juvenile dispositions. Criminal court blended sentencing provisions give juvenile defendants an opportunity to show that they belong in the juvenile court system. These laws act as a "safety valve" or "emergency exit" because they allow the court to review the circumstances of an individual case and make a decision based on the particular youth's amenability and suitability for juvenile or criminal treatment. Youth are given a last chance to receive a juvenile disposition.

Eighteen states allow criminal court blended sentencing. Of these states, 11 have exclusive blended sentencing arrangements where the criminal court has an either/or choice between criminal and juvenile sanctions. The other seven states have an inclusive model, where juvenile offenders convicted in criminal court can receive a combination sentence. The criminal court can also suspend the adult sanction or tie it conditionally to the youth's good behavior.

Criminal court blended sentencing provisions, 2011:

Provision	State
Exclusive	California, Colorado, Illinois, Kentucky, Massachusetts, Nebraska, New Mexico, Oklahoma, Vermont, West Virginia, Wisconsin
Inclusive	Arkansas, Florida, Idaho, Iowa, Michigan, Missouri, Virginia

The scope of criminal court blended sentencing varies from state to state, depending on the individual state statutes. The broadest criminal court blended statutes allow juvenile sanctions in any case where a juvenile was prosecuted in criminal court. Other states exclude juveniles who are convicted of a capital offense from blended sentencing. In still other states, statutes require a hearing to determine whether the disposition for a lesser offense should be a juvenile sanction. The court must base its decision on criteria similar to those used in juvenile court discretionary waiver decisions.

States "fail-safe" mechanisms—reverse waiver and criminal court blended sentencing—vary in scope

Many states that transfer youth to criminal court either automatically or at the discretion of the prosecutor also provide a "fail-safe" mechanism that gives the criminal court a chance to review the case and make an individualized decision as to whether the case should be returned to the juvenile system for trial or sanctioning. The two basic types of fail-safes are reverse waiver and criminal court blended sentencing. With such combinations of provisions, a state can define cases to be handled in criminal court and at the same time ensure that the court can decide whether such handling is appropriate in individual cases. Of the 44 states with mandatory waiver, statutory exclusion, or concurrent jurisdiction provisions, 30 also have reverse waiver and/or criminal court blended sentencing as a fail-safe.

Reverse waiver. In 24 states, provisions allow juveniles whose cases are handled in criminal court to petition to have the case heard in juvenile court.

Criminal court blended sentencing. In 17 states, juveniles convicted in criminal court are allowed the opportunity to be sanctioned in the juvenile system.

Some states have comprehensive fail-safes; others do not.

Comprehensive fail-safes. In 15 states, no juvenile can be subject to criminal court trial and sentencing either automatically or at the prosecutor's discretion without a chance to prove his or her individual suitability for juvenile handling.

Partial fail-safes. In 15 states, fail-safe mechanisms do not cover every transferred case.

No fail-safe. In 14 states, juveniles have no chance to petition for juvenile handling or sanctioning: Alabama, Alaska, District of Columbia, Indiana, Louisiana, Minnesota, New Jersey, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Utah, and Washington.

Need no fail-safe. Seven states need no fail-safe because cases only reach criminal court through judicial waiver: Hawaii, Kansas, Maine, Missouri, New Hampshire, Tennessee, and Texas.

Juvenile indigent defense is primarily a state- or county-based system of public defense

Juvenile criminal defense came about in the 1960s, following two Supreme Court decisions

From the inception of the modern juvenile court in Chicago in 1889, the juvenile court process was non-adversarial. The court stood *in loco parentis* to its juvenile wards, there to provide guidance. The concept of juvenile criminal defense was first instituted by two U.S. Supreme Court cases from the 1960s, In *re. Gault* and *Gideon* v. *Wainwright*. In *re. Gault* extended the due process rights and protections that had always been available to adults to juveniles as well, including the right to an attorney. *Gideon* v. *Wainwright* created a right to government-provided counsel for indigent defendants. These two cases combined to create the right to an attorney for a juvenile indigent criminal defendant.

There are three primary types or methods of providing indigent defense

Indigent defense can take three main forms. The first form is that of a public defender. These are full- or part-time salaried attorneys who provide representation, generally in a central office with paralegal and administrative support. The second form is that of contract counsel. Contract counsel are private attorneys selected by the court to provide representation for an individual case or for a whole year. This contract is often awarded through a bidding process. The third form is that of assigned counsel. Assigned counsel are private attorneys picked to take cases and compensated by the hour or per case. They are generally used when the public defender's office has a conflict of interest or in other situations where public defenders or contract counsel cannot take a case. Additionally, non-profit defender services such as legal aid societies may provide indigent defense services.

Public defender's offices are provided for by states or counties in 49 states and the District of Columbia

As of 2007, 49 states and the District of Columbia have state- or county-based public defender offices that are funded at either the state or county level. Maine is the sole state without a centrally organized public defender office, operating a system of court-appointed attorneys in place of a designated public defender office. Twenty-two states have a state-based system, and 28 have a county-based system.

The Bureau of Justice Statistics' 2007 Census of Public Defender Offices collected data on 427 public defender offices across the country. This program did not report data on contract or assigned counsel. State-based public defender offices had 208,400 juvenile-related cases out of a total caseload of 1,491,420 in 2007 in 21 states (Alaska did not release caseload data, and Missouri and New Mexico only released aggregate data). This includes delinquency, delinquency appeals, and transfer/waiver cases. County-based public defender offices received 375,175 juvenile-related cases out of a total caseload of 4,081,030 in 2007. These data did not include public defender offices providing primarily appellate or juvenile representation.

Both state- and county-based public defender offices offered professional development services and training for attorneys who handled juvenile cases. Professional development includes continuing legal education courses, mentoring of junior attorneys by senior attorneys, and training and refresher courses for attorneys. Twenty state-based public defender offices offered professional development training for attorneys on juvenile delinquency issues. Most (76%) county-based public defender offices offered professional development training opportunities for attorneys on juvenile delinquency issues.

Current juvenile indigent defense reforms are being spearheaded by the National Juvenile Defender Center and the MacArthur Foundation

The MacArthur Foundation launched the Juvenile Indigent Defense Action Network (JIDAN) in 2008, an initiative to improve juvenile indigent defense policy and practice. Coordinated by the National Juvenile Defender Center, JIDAN is active in California, Florida, Illinois, Louisiana, Massachusetts, New Jersey, Pennsylvania, and Washington State, focusing on access to counsel and the creation of resource centers at the state, regional, and local levels. The access to counsel workgroup is focusing on timely access to counsel, with an emphasis on early appointment of counsel, postdisposition representation, and increased training for juvenile public defenders, as well as the development of standards and guidelines. The resource center workgroup is focused on building capacity, providing leadership, and establishing a mentoring structure for juvenile defenders.

States have responded to *Miller* v. *Alabama* by changing mandatory sentencing laws for juveniles

Miller v. *Alabama* eliminated mandatory life without parole sentences for juveniles

The 2012 U.S. Supreme Court decision *Miller* v. *Alabama* struck down mandatory sentences of life without the possibility of parole for juvenile offenders. Previous Supreme Court decisions had struck down statutes that allowed the death penalty for juveniles and statutes that allowed for a life without parole sentence for a nonhomicide offense. At the time of *Miller* v. *Alabama*, 29 jurisdictions had statutes that made life without parole mandatory for a juvenile convicted of murder. As a result of this ruling, various state legislative bodies have enacted statutes to change their life without parole laws.

Several states have already passed laws codifying the judicial ruling of *Miller* v. *Alabama*

Pennsylvania passed Senate Bill 850 in 2012. This bill allows juveniles above the age of 15 to be sentenced to terms of 35 years to life and those under 15 to be sentenced to terms of 25 years to life. The life without parole sentencing option is no longer mandatory, and a court has the discretion, after looking at a list of factors, to not sentence a juvenile to life without parole.

North Carolina passed Senate Bill 635 in 2012. Under this new bill, any person under age 18 who is convicted of first-degree murder is sentenced to life imprisonment with the possibility of parole. The court must also consider mitigating factors or circumstances in determining the sentence. Additionally, the bill lays out procedures for resentencing juveniles who had previously been sentenced to life without parole prison terms.

California passed Senate Bill 9 in 2012 in response to the *Miller* v. *Alabama* ruling. This bill allowed a prisoner who had been sentenced while a juvenile to a term of life without parole to petition for a new sentencing hearing based on certain criteria. The petition would have to include a statement of remorse by the prisoner as well as their efforts to rehabilitate themselves. The court would have to hold a hearing if they found the petition to be true. Prisoners who had killed a public safety official or tortured their victim were not allowed to file a petition.

Montana passed House Bill 137 in 2013. This bill carved out exceptions to the mandatory minimum sentencing scheme and parole eligibility requirements in Montana. Mandatory life sentences and the restrictions on parole do not apply if the offender was under the age of 18 when they committed the offense for which they are being sentenced.

South Dakota passed Senate Bill 39 in 2013. This bill mandated a presentence hearing to allow mitigating and aggravating factors to be heard before a juvenile could be sentenced to a term of life imprisonment, complying with the requirements of *Miller* v. *Alabama* and eliminating mandatory sentences in South Dakota.

Wyoming passed House Bill 23 in 2013. This bill eliminated life sentences without the possibility of parole for crimes committed as a juvenile, and a person sentenced to life imprisonment would have parole eligibility after 25 years of incarceration.

Other states are in the process of modifying laws to conform with the judicial ruling of *Miller* v. *Alabama*

Other states have either passed executive orders or are currently discussing policies or laws to modify existing juvenile life without parole laws. The governor of Iowa commuted the life without parole sentences of 38 inmates to 60-year terms shortly after *Miller* v. *Alabama* was handed down. The Arkansas Supreme Court, permitted by state law to remove provisions that are unconstitutional, changed language in the capital murder statute to exclude juveniles. Other states have laws that are moving through the legislative process but have not yet been enacted or ratified. As of July 1, 2013, Alabama, Connecticut, Delaware, Florida, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Mexico, Texas, Utah, Virginia, and Washington all have bills pending as a result of the decision in *Miller* v. *Alabama*. Arizona, Idaho, Mississippi, Montana, New Hampshire, and New Jersey have not yet passed laws in reaction to the *Miller* v. *Alabama* decision.

Few juveniles enter the federal justice system

There is no separate federal juvenile justice system

Juveniles who are arrested by federal law enforcement agencies may be prosecuted and sentenced in U.S. District Courts and even committed to the Federal Bureau of Prisons. The Federal Juvenile Delinquency Act, Title 18 U.S.C. 5031, lays out the definitions of a juvenile and juvenile delinquency as well as the procedures for the handling of juveniles accused of crimes against the U.S. Although it generally requires that juveniles be turned over to state or local authorities, there are limited exceptions.

Juveniles initially come into federal law enforcement custody in a variety of ways. The federal agencies that arrest the most young people are the Border Patrol, Drug Enforcement Agency, U.S. Marshals Service, and FBI. A report by Adams and Samuels of the Urban Institute, which documents the involvement of juveniles in the federal justice system, states that federal agencies arrested an average of 320 juveniles each year between 1999 and 2008.*

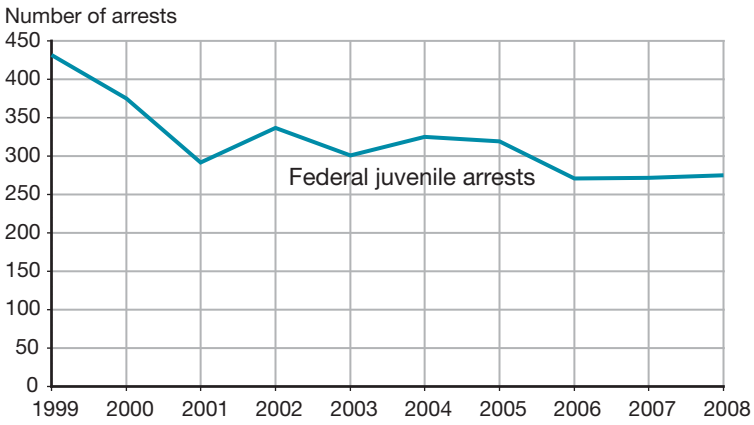
Federal juvenile arrest profile:

Demographic	1999	2008
Total arrests	432	275
Gender	100%	100%
Male	86	91
Female	14	9
Race	100%	100%
White	42	51
Black	12	13
American Indian	43	32
Other/unknown	2	4
Age at offense	100%	100%
Age 15 or younger	25	17
Age 16	27	17
Age 17	46	58
Age 18 or older	3	8

Note: Detail may not total 100% because of rounding.

* Most juvenile arrests involve persons ages 10–17 but include a small number (16 per year on average) of youth ages 18–20 determined to have a juvenile legal status.

From 1999 to 2008, the number of federal arrests involving juveniles fell by more than one-third

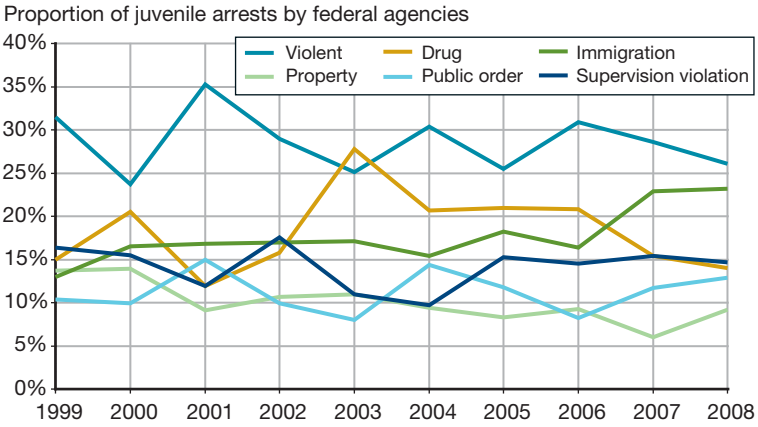


- Federal agencies reported nearly 3,200 arrests of juveniles between 1999 and 2008. The U.S. Marshals Service accounted for 22% of these arrests and the FBI accounted for nearly one-fifth (18%).

Note: Annual arrests involve persons ages 10–17 as well as a small number ages 18–20 who were determined to have a juvenile legal status.

Source: Authors' adaptation of Adams and Samuels' *Tribal Youth in the Federal Justice System: Final Report (Revised)*.

Together, violent crimes and immigration offenses accounted for half of all federal juvenile arrests in 2008



- The proportion of federal arrests for immigration offenses nearly doubled between 1999 and 2008—from 13% in 1999 to 23% in 2008.

Note: Annual arrests involve persons ages 10–17 as well as a small number ages 18–20 who were determined to have a juvenile legal status.

Source: Authors' adaptation of Adams and Samuels' *Tribal Youth in the Federal Justice System: Final Report (Revised)*.

Federal prosecutors may retain certain serious cases involving a "substantial federal interest"

Following a federal arrest of a person under 21, federal law requires an investigation to determine whether the offense was a delinquent offense under state law. If so, and if the state is willing and able to deal with the juvenile, the federal prosecutor may forego prosecution and surrender the juvenile to state authorities. However, a case may instead be "certified" by the Attorney General for federal delinquency prosecution, if one of the following conditions exists: (1) the state does not have or refuses to take jurisdiction over the case; (2) the state does not have adequate programs or services for the needs of the juvenile; or (3) the juvenile is charged with a violent felony, drug trafficking, or firearms offense and the case involves a "substantial federal interest."

A case certified for federal delinquency prosecution is heard in U.S. District Court by a judge sitting in closed session without a jury. Following a finding of delinquency, the court has disposition powers similar to those of state juvenile courts. For instance, it may order the juvenile to pay restitution, serve a period of probation, or undergo "official detention" in a correctional facility. Generally, neither probation nor official detention may extend beyond the juvenile's 21st birthday or the maximum term that could be imposed on an adult convicted of an equivalent offense, whichever is shorter. But for juveniles who are between ages 18 and 21 at the time of sentencing, official detention for certain serious felonies may last up to 5 years.

A juvenile in the federal system may also be "transferred" for criminal prosecution

When proceedings in a federal case involving a juvenile offender are transferred for criminal prosecution, they actually remain in district court but are governed by federal criminal laws rather than state laws or the Juvenile Justice and Delinquency Prevention Act. Federal law authorizes transfer at the written request of a juvenile of at least age 15 who is alleged to have committed an offense after attaining the age of 15 or upon the motion of the Attorney General in a qualifying case where the court finds that "the interest of justice" requires it. Qualifying cases include those in which a juvenile is charged with (1) a violent felony or drug trafficking or importation offense committed after reaching age 15; (2) murder or aggravated assault committed after reaching age 13; or (3) possession of a firearm during the commission of any offense after reaching age 13. However, transfer is mandatory in any case involving a juvenile age 16 or older who was previously found guilty of a violent felony or drug trafficking offense and who is now accused of committing a drug trafficking or importation offense or any felony involving the use, attempted use, threat, or substantial risk of force.

Most federal juvenile arrests result in a guilty plea or a conviction at trial

The U.S. Marshals Service reports data on the disposition of federal arrests and bookings. The Urban Institute report found that about 85% of all juvenile defendants in cases terminated in U.S. District Court were convicted or adjudicated, mostly through use of the guilty plea. The other 15% were not convicted because of case dismissal or a finding of not guilty.

Juveniles may be committed to the Federal Bureau of Prisons as delinquents or adults

From fiscal years 1999 through 2008, a little over 3,500 juveniles were committed to the custody of the Federal Bureau of Prisons (BOP) for offenses committed while under age 18. Of these, 2,193 were committed to BOP custody as delinquents and 1,335 as adults. The majority of these juveniles were male (92%), American Indian (53%), and older than 15 (65%). Most juvenile delinquents were committed to BOP custody by probation confinement conditions, a probation sentence that requires a special condition of confinement or a term of supervised release (54%), whereas most juveniles with adult status were committed to BOP custody by a U.S. District Court (48%).

Profile of juveniles (younger than age 18 at the time of offense) committed to BOP custody:

Demographic	1999	2008
Total	513	156
Gender	100%	100%
Male	93	92
Female	7	8
Race	100%	100%
White	31	33
Black	16	17
American Indian	51	50
Asian	2	0
Ethnicity	100%	100%
Hispanic	17	23
Non-Hispanic	83	77
Age at offense	100%	100%
Younger than 15	19	15
Age 15	18	14
Age 16	22	25
Age 17	38	45
Older than 17	3	1
Committed as	100%	100%
Juvenile delinquent	64	57
Juvenile charged as adult	36	43

Note: Detail may not total 100% because of rounding.

Measures of subsequent reoffending can be indicators of system performance

What is recidivism?

Recidivism is the repetition of criminal behavior. A recidivism rate may reflect any number of possible measures of repeated offending—self-report, arrest, court referral, conviction, correctional commitment, and correctional status changes within a given period of time. Most measures of recidivism underestimate reoffending because they only include offending that comes to the attention of the system. Self-reported reoffending is also likely to be inaccurate (an over- or underestimate).

The most useful recidivism analyses include the widest possible range of system events that correspond with actual reoffending and include sufficient detail to differentiate offenders by offense severity in addition to other characteristics. Recidivism findings should include clearly identified units of count and detail regarding the length of time the subject population was in the community.

Measuring recidivism is complex

The complexities of measuring subsequent offending begin with the many ways that it can be defined. There are a number of decision points, or marker events, that can be used to measure recidivism, including rearrest, re-referral to court, readjudication, or reconfinement. The resulting recidivism rate can vary drastically, depending on the decision point chosen as a marker event. For example, when rearrest is counted as the point of recidivism, the resulting rate is much higher than when reconfinement is the measure. Of the youth who are rearrested, only a portion will be reconfined.

The followup time in a study can have a similar impact on recidivism rates. When subsequent offending is tracked over a short timeframe (i.e., 6 months, 1 year), there is less opportunity to reoffend, and rates are logically lower than when tracked over a longer timeframe (i.e., 2 or 3 years). Additionally, recidivism rates over a long time period may increase as benefits from treatment or other interventions subside.

Data availability can also impact how recidivism is defined. Recidivism studies often require information from multiple sources (e.g., juvenile court, criminal court, probation agencies, corrections agency). For example, an offender may first be confined as a juvenile, and later rearrested and enter the criminal justice system. In this case, it is necessary to have data from the juvenile corrections agency, the criminal court, and law enforcement to be able to measure subsequent offending.

Recidivism as a performance measure

Although there are a number of obstacles to obtaining meaningful recidivism rates, they are still valuable indicators of how a system is functioning. Juvenile justice practitioners can use recidivism rates to develop benchmarks to determine the impacts of programming, policies, or practices. Although using recidivism rates as a point of

Common uses of recidivism data

Recidivism data can serve a number of purposes. Each of these purposes should be considered in advance of data collection and at times in the design of the information system.

Systems diagnosis and monitoring: Recidivism data can enable systems to examine the impact of policy changes, budget reductions, new programs and/or practices, and changes in offender characteristics on system-level performance.

Evaluation against prior performance: This involves tracking outcome data and examining performance in previous outcomes. When purposeful changes are made to a program in order to improve outcomes, sustained trends tell us something about the likely impact of these program modifications.

Comparing different offender groups: Differentiating offenders in terms of demographic, risk, or assessment information can help to pinpoint differential impacts of interventions. Interventions can then be matched to youths likely to benefit from a specific set of methods.

Program evaluation: Studies involving comparison groups make it possible to test the impact or effectiveness of a program. Experiments are most effective for this purpose—they isolate the effects of an intervention from all other factors that may also influence outcomes. There are a variety of quasi-experimental designs available if random assignment is not possible or desirable.

Cost-benefit analysis: To influence public policy, cost-benefit analyses, which examine variations in cost associated with different program or policy options, should be pursued. Policymakers responsible for allocating tax dollars find such analyses particularly persuasive.

Comparing systems: Classifying systems on factors likely to affect outcomes, making comparisons within groups of similar systems, and comparing similar populations of individuals will decrease error. Here again, risk levels and other population attributes should be accounted for in the analysis.

Source: Authors' adaptation of Harris, Lockwood, and Mengers' *A CJCA White Paper: Defining and Measuring Recidivism*.

comparison with other jurisdictions is a risky proposition, the reality is that such comparisons will be made. Any recidivism statistics developed should be well defined so users inclined to make jurisdictional comparisons can at least do so in an informed way. Depending on data availability, useful comparisons might include:

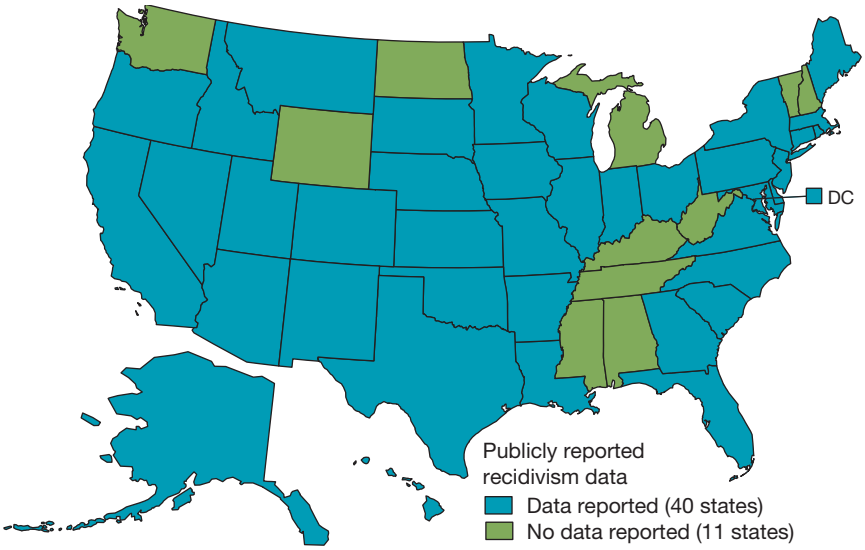
- System penetration groups: probation vs. placement vs. secure confinement.
- Demographics: gender, race/ethnicity, and age groups.
- Risk factor groups: offense seriousness, prior history, gang involvement, risk assessment groups.
- Needs groups: based on assessments of various social characteristics, substance abuse, mental health, etc.

There is no national recidivism rate for juveniles

Each state's juvenile justice system differs in organization, administration, and data capacity. These differences influence how states define, measure, and report recidivism rates. This also makes it challenging to compare recidivism rates across states.

There are general guidelines that increase the ability for recidivism studies to be compared. Studies should take into account multiple system events, such as rearrest, readjudication (reconviction), and reconfinement (reincarceration). Including information on severity of subsequent offenses, time to reoffend, and frequency of reoffending maximizes possibilities for making comparisons. Calculating recidivism rates for more than one timeframe (6 months, 1 year, 2 years, etc.) also increases comparison flexibility.

Most states publicly report recidivism data



- Agencies within the same state may report differing recidivism rates based on the characteristics they use to define the measure. For example, Missouri's correctional agency reports recidivism as recommitment or involvement in the adult system within a specified time period. Missouri's Office of State Courts Administrator reports recidivism as a law violation within 1 year of the initial referral's disposition.
- Other states have declared a state definition of recidivism to standardize measurements. Pennsylvania defines recidivism as, "a subsequent delinquency adjudication or conviction in criminal court for either a misdemeanor or felony offense within 2 years of case closure."

Note: Measures of subsequent offending vary, depending on the purpose for the collection.

Source: Authors' analyses of publicly available state agency reports, and authors' adaptation of the Pew Center for the States' *Juvenile Recidivism Infographic*.

CJCA offers recommendations for correctional agencies to measure recidivism

Clear measure: The Council of Juvenile Correctional Administrators (CJCA) recommendations emphasize the importance of identifying a clear measure of recidivism. This includes defining the population, multiple marker events, followup timeframe, and data sources. The CJCA recommends using readjudication and reconviction as marker events, although using multiple measures of recidivism is encouraged.

Timeframe: The CJCA recommends beginning data collection with the date of disposition. The timeframe for measurement recommended by the CJCA is at least 24 months; however, data must be collected for a longer time period to account for delays between arrest and adjudication. Including multiple timeframes is useful for comparing rates.

Sufficient detail for comparisons: The CJCA recommends collecting all subsequent charges, demographics, and risk levels so that similar groups can be compared.

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