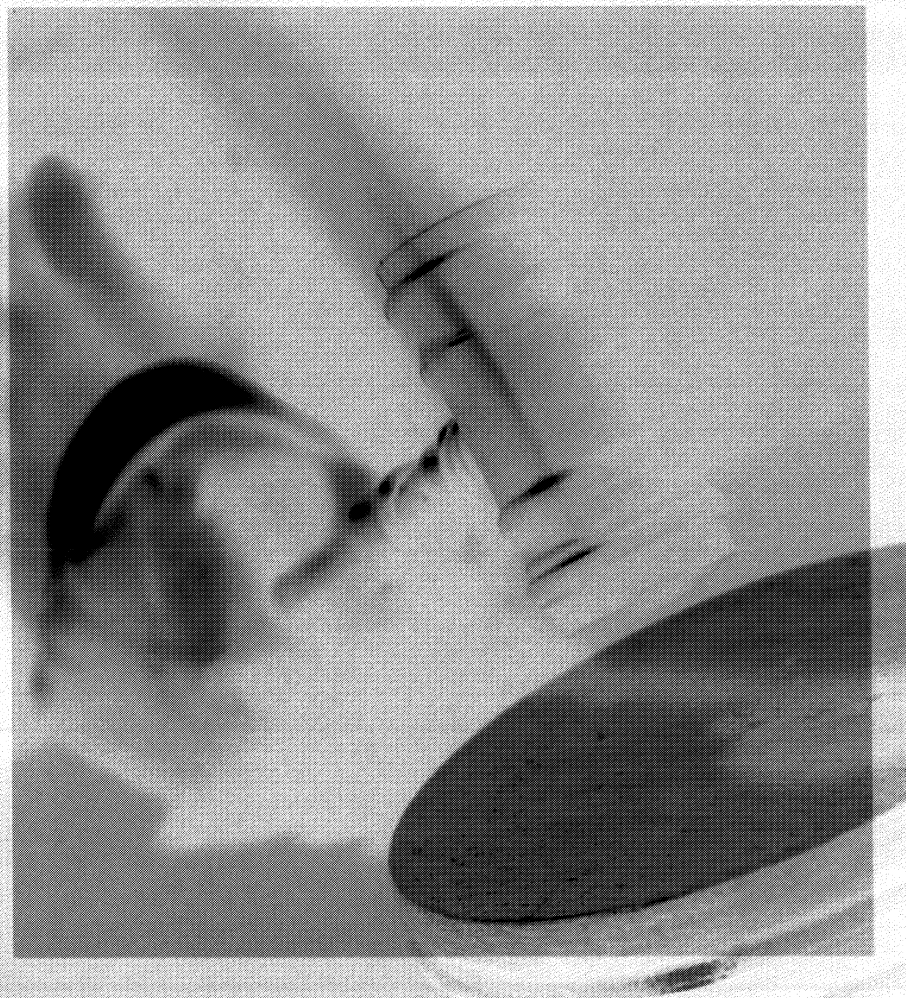




# Trying Juveniles as Adults in Criminal Court:

## *An Analysis of State Transfer Provisions*



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**OJJDP**  
Report



# Office of Juvenile Justice and Delinquency Prevention

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was established by the President and Congress through the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, Public Law 93–415, as amended. Located within the Office of Justice Programs of the U.S. Department of Justice, OJJDP’s goal is to provide national leadership in addressing the issues of juvenile delinquency and improving juvenile justice.

OJJDP sponsors a broad array of research, program, and training initiatives to improve the juvenile justice system as a whole, as well as to benefit individual youth-serving agencies. These initiatives are carried out by seven components within OJJDP, described below.

**Research and Program Development Division** develops knowledge on national trends in juvenile delinquency; supports a program for data collection and information sharing that incorporates elements of statistical and systems development; identifies how delinquency develops and the best methods for its prevention, intervention, and treatment; and analyzes practices and trends in the juvenile justice system.

**Training and Technical Assistance Division** provides juvenile justice training and technical assistance to Federal, State, and local governments; law enforcement, judiciary, and corrections personnel; and private agencies, educational institutions, and community organizations.

**Special Emphasis Division** provides discretionary funds to public and private agencies, organizations, and individuals to replicate tested approaches to delinquency prevention, treatment, and control in such pertinent areas as chronic juvenile offenders, community-based sanctions, and the disproportionate representation of minorities in the juvenile justice system.

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The mission of OJJDP is to provide national leadership, coordination, and resources to prevent juvenile victimization and respond appropriately to juvenile delinquency. This is accomplished through developing and implementing prevention programs and a juvenile justice system that protects the public safety, holds juvenile offenders accountable, and provides treatment and rehabilitative services based on the needs of each individual juvenile.

# Trying Juveniles as Adults in Criminal Court:

**An Analysis of State Transfer Provisions**

**Report**



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Patricia Torbet  
Linda Szymanski  
National Center for Juvenile Justice**

**Shay Bilchik, Administrator**  
Office of Juvenile Justice and Delinquency Prevention

December 1998

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The Office of Juvenile Justice and Delinquency Prevention is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime.



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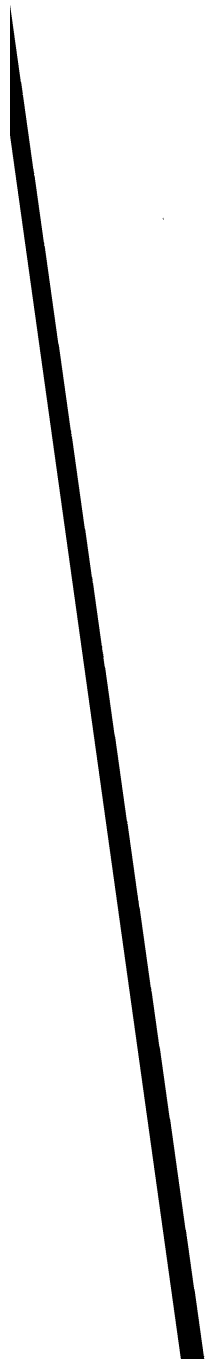
# Foreword

In recent years, the number of juvenile offenders transferred into the adult criminal justice system has increased. From 1992 through 1995, 40 States and the District of Columbia passed laws making it easier for juveniles to be tried as adults. To better understand this growing trend and its potential impact on youth crime, we need to take into account the nature of the offenses triggering such transfers and the various mechanisms used to effect them.

*Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions* delineates the distinctions among discretionary, mandatory, and presumptive waivers. Direct file provisions, which typically authorize the prosecutor to determine the jurisdiction based on age/offense categories, are described, as are statutory exclusions, which remove certain offenses or age/offense categories from the jurisdiction of the juvenile court. Other topics covered include “once an adult/always an adult” provisions, transfer for nonviolent offenses, requirements for additional pretransfer findings, evidentiary standards for waivers and transfers, transfer treatment based on prior record, devices to limit prosecutorial discretion, and minimum age provisions.

As we work to strengthen our response to challenges posed by youth crime, the information provided by this Bulletin should prove helpful in assessing the role that should be played by the transfer of juvenile offenders to adult criminal courts.

**Shay Bilchik**  
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Office of Juvenile Justice and Delinquency Prevention



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# Table of Contents

<b>Foreword</b> .....	iii
<b>Acknowledgments</b> .....	v
<b>List of Tables</b> .....	viii
<b>Introduction</b> .....	1
<b>Transfer Provisions</b> .....	3
Waiver .....	3
Direct File .....	7
Statutory Exclusion .....	8
Reverse Waiver .....	9
Once an Adult/Always an Adult .....	10
<b>Additional Analyses</b> .....	13
Transfer for Nonviolent Offenses .....	13
Additional Pretransfer Findings Required .....	13
Clear and Convincing Evidence Standard .....	13
Special Transfer Treatment Based on Prior Record .....	14
Devices To Limit Prosecutorial Discretion .....	14
Minimum Age Provisions .....	15
<b>Appendix</b> .....	A-1

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# List of Tables

Most States Have a Combination of Transfer Provisions .....	1
Summary of Transfer Provisions, 1997 .....	2
Discretionary Waiver: Minimum Age and Offense Criteria, 1997 .....	5
Mandatory Waiver: Minimum Age and Offense Criteria, 1997 .....	6
Presumptive Waiver: Minimum Age and Offense Criteria, 1997 .....	7
Direct File: Minimum Age and Offense Criteria, 1997 .....	8
Statutory Exclusion: Minimum Age and Offense Criteria, 1997 .....	9
Minimum Age and Offenses for Which a Juvenile Can Be Transferred to Criminal Court in Every State, 1997 .....	14
Lowest Age of Criminal Responsibility/Criminal Court Jurisdiction, 1997 .....	16
Lowest Age for Original Juvenile Court Jurisdiction in Delinquency Matters, 1997 .....	17



# Introduction

All States and the District of Columbia (hereafter included with States in this Report) allow adult criminal prosecution of juveniles under some circumstances. The following discussion of State law in this area—which is based on State statutes as amended through the 1997 legislative sessions—gives an account of the principal transfer mechanisms by which juveniles are placed in the criminal justice system at the State level for serious and violent crimes.

State transfer mechanisms differ from one another primarily in where they locate the responsibility for deciding whether or not a given juvenile should be prosecuted in a court exercising civil (delinquency) or criminal jurisdiction.

- ◆ *Waiver* provisions leave transfer decisionmaking to the State's juvenile courts: juveniles may not be prosecuted as if they were adult criminals pursuant to a waiver provision until a juvenile court judge has ordered it.<sup>1</sup> Waiver provisions differ from one another in the degree of decisionmaking flexibility they allow the courts. Some make the waiver decision entirely *discretionary*. Others set up a *presumption* in favor of waiver. And still others specify circumstances under which waiver is *mandatory*. But under all waiver provisions, a case against a juvenile must at least originate in juvenile court and cannot be channeled elsewhere without a juvenile court judge's formal approval.
- ◆ *Direct File* provisions leave it up to the prosecutor to determine whether to initiate a case against a minor in juvenile court or in criminal (adult) court.
- ◆ *Statutory Exclusion* provisions grant criminal courts original jurisdiction over a whole class of cases involv-

<sup>1</sup> State laws do not change the legal status of a juvenile, who is criminally prosecuted, to an adult. Rather, the transfer mechanisms provide for the prosecution of juveniles as if they were adults, subjecting them to a possible criminal conviction and sentence in a court exercising criminal jurisdiction, in the same manner as an adult offender. However, it is common parlance to refer to a juvenile who is criminally prosecuted as one who is being prosecuted "as an adult" or in "adult court."

ing juveniles. Under statutory exclusion, a State legislature is essentially predetermining the question of criminal prosecution for itself and taking the decision out of both the prosecutor's and the court's hands.

This Report also describes statutory mechanisms by which individual cases may be moved from criminal to juvenile court (see Reverse Waiver); provisions that permanently terminate juvenile court jurisdiction over individual juveniles who have been tried or convicted as adults (see Once an Adult/Always an Adult); standards applied to waiver decisions (see Transfer Criteria); and a number of related subsidiary issues, including the extent to which transfers are allowed or required for offenses that are not violent, probable cause requirements, extraordinary evidentiary burdens, the effect of prior delinquency records in transfer proceedings, limits on prosecutorial discretion, and minimum age provisions.

## Most States Have a Combination of Transfer Provisions

**Direct file only:** Nebraska.

**Exclusion only:** New Mexico and New York.

**Waiver<sup>2</sup> only:** California, Connecticut, Hawaii, Kansas, Kentucky, Maine, Missouri, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Rhode Island, Tennessee, Texas, and West Virginia.

**Direct file and exclusion:** Massachusetts.

**Waiver<sup>2</sup> and direct file:** Arkansas, Colorado, District of Columbia, Michigan, Virginia, and Wyoming.

**Waiver<sup>2</sup> and exclusion:** Alabama, Alaska, Delaware, Idaho, Illinois, Indiana, Iowa, Maryland, Minnesota, Mississippi, Nevada, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Washington, and Wisconsin.

**All three mechanisms:** Arizona, Florida, Georgia, Louisiana, Montana, Oklahoma, and Vermont.

<sup>2</sup> Waiver refers to discretionary, mandatory, and/or presumptive judicial waivers. See appendix for more detail.

## Summary of Transfer Provisions, 1997

State	Judicial Waiver			Direct File	Statutory Exclusion	Reverse Waiver	Once an Adult/ Always an Adult
	Discretionary	Mandatory	Presumptive				
<b>Total States:</b>	<b>46</b>	<b>14</b>	<b>15</b>	<b>15</b>	<b>28</b>	<b>23</b>	<b>31</b>
Alabama	■				■		■
Alaska	■		■		■		
Arizona	■		■*	■	■	■	■
Arkansas	■			■		■	
California	■		■				■
Colorado	■		■	■			
Connecticut		■				■	
Delaware	■	■			■	■	■
Dist. of Columbia	■		■	■			■
Florida	■			■			■
Georgia	■	■		■		■	
Hawaii	■				(r-97)		■
Idaho	■				■		■
Illinois	■	■	■		■		
Indiana	■	■			■		■
Iowa	■				■	■	■
Kansas	■		■		(r-96)		■
Kentucky	■	■				■	
Louisiana	■	■		■	■		
Maine	■						■
Maryland	■				■	■	
Massachusetts	(r-96)			■	■		
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	■			■		■	

Legend: ■ indicates the provision(s) allowed by each State as of the end of the 1997 legislative session; "r" indicates repealed; \* indicates by court rule.

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# Transfer Provisions

## Waiver

### Discretionary Waiver

A total of 46 States give juvenile court judges discretion to waive jurisdiction in individual cases involving minors, so as to allow prosecution in adult criminal courts. Terminology varies from State to State—some call the process a “certification,” “bind-over,” or “remand” for criminal prosecution, for example, or a “transfer” or “decline” rather than a waiver proceeding—but all transfer mechanisms in this category have the effect of authorizing but not requiring juvenile courts to designate appropriate cases for adult prosecution.

Most discretionary waiver statutes specify threshold criteria similar to those outlined in *Kent v. United States* (383 U.S. 541, 566–67 (1966)) that must be met before the court may consider waiver in a given case: generally a minimum age, a specified type or level of offense, a sufficiently serious record of previous delinquency, or some combination of the three. However, 17 States authorize discretionary waiver, at least for certain age groups, for any offense. (This is not to say that offense seriousness is not taken into account in waiver determinations in those States, only that their statutes specify no particular kind or quality of offense as a threshold for waiver consideration.)

Some States specify that the prosecutor must initiate the discretionary waiver process by filing a motion; others allow any party or the court to initiate the process.

In all States where discretionary waiver is authorized, the juvenile court must conduct a hearing at which the parties are entitled to present evidence

bearing on the waiver issue. In addition, laws in seven States require a prehearing investigative report on the accused juvenile’s past record and current circumstances, prepared by a juvenile probation office or some other local agency, to be submitted to the juvenile court for its consideration.

The prosecution bears the burden of proof in a discretionary waiver hearing; however, some States designate special circumstances under which this burden may be shifted to the child (see Presumptive Waiver). Generally, the case for a waiver must be made by “a preponderance of the evidence,” although a few States require a higher showing (see Clear and Convincing Evidence Standard in next chapter). In most discretionary waiver jurisdictions, the law specifies factors a court must weigh, findings it must make, and an overall standard it must apply in making its waiver decision (see Transfer Criteria below).

Once a case has been waived to criminal court, statutes in seven States expressly provide that the criminal court may exercise jurisdiction not only over the offense that triggered the waiver, but also over any lesser included offenses.

### Transfer Criteria

Nearly all of the States that authorize juvenile courts to make discretionary waivers (44 out of 46) specify broad standards to be applied and/or factors to be considered in deciding whether to waive jurisdiction. Overall, standards tend to be in the form of extremely general formulas—“the best interests of the child and the public,” for instance. Lists of factors to be weighed by the courts are always considerably more specific and are usually at least loosely based on the eight factors enumerated in *Kent*.



The most common waiver standards call for courts to exercise their discretion to waive jurisdiction when the interests of the juvenile or the public (six States) or the interests of both (four States) would be served thereby; when the public safety (six States) or the public interest (four States) requires it; or when the juvenile does not appear to be amenable to treatment or rehabilitation within the juvenile system (four States). Most of the remaining standards combine these concepts in some way (the District of Columbia, for example, authorizes waiver if it is “in the interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitation”) or simply allow waiver whenever the court finds “good cause” (Kansas) or whenever the accused is not a “proper subject” for juvenile treatment (Missouri and Virginia). Besides requiring the court to consider “the best interests of the youth and of society” as a number of other States do, Oregon departs from the usual practice by focusing on whether the juvenile has the capacity “to appreciate the nature and quality of [his or her] conduct.”

Most States that specify particular factors to be considered in waiver hearings either simply paraphrase the list from the U.S. Supreme Court’s *Kent* opinion or list some of the *Kent* factors that are considered more important while omitting others. But a few States add factors of their own to the *Kent* list. In the District of Columbia, for example, judges considering waiver are called upon to bear in mind, besides the *Kent* factors, the “potential rehabilitative effect . . . of parenting classes or family counseling” on the juvenile. Arizona adds consideration of the views of the victim and any gang involvement on the juvenile’s part to the usual list of factors. Maine requires the court to ask whether retaining jurisdiction would “diminish the gravity of the offense” in public opinion. In Missouri, courts must take into account any “racial disparity in certification” of juveniles for adult prosecution.

Most State statutes simply recite the factors and leave them to the consideration of juvenile court judges, without attempting to dictate precisely how they should fit into the waiver decision. In Michigan and Minnesota, however, courts are required to give the most weight to two specified factors (offense

seriousness and prior record), whereas in Kentucky the law specifies that, of the seven factors the court must consider, at least two must support any decision in favor of waiver.

### **Mandatory Waiver**

The statutes of 14 States provide for mandatory waiver in cases that meet certain age, offense, or other criteria. In these States, proceedings against the juvenile are initiated in juvenile court. However, the juvenile court has no role other than to confirm that the statutory requirements for mandatory waiver are met. Once it has done so, the juvenile court must send the case to a court of criminal jurisdiction.

Mandatory waiver must be distinguished from statutory exclusion. When an offense has been excluded by law from juvenile court jurisdiction, the case against a minor accused of that offense originates in criminal court. Under ordinary circumstances, the juvenile court has no involvement and is entirely bypassed. By contrast, although the juvenile court’s involvement in a mandatory waiver case may be minimal, it receives the case initially, conducts some sort of preliminary hearing to ensure that the case is one to which the mandatory waiver statute applies, and issues a transfer order and any other necessary orders, relating to appointment of counsel, interim detention, and so on.

The mandatory waiver classification applies to statutory mechanisms that actually tie the juvenile court’s hands—not those that merely seem to. So, for example, the many State laws that recite that the juvenile court “shall” or “must” transfer certain juveniles—if the public interest requires it or unless there are good reasons not to—are classified as discretionary waiver provisions. Generally, in a true mandatory waiver jurisdiction, the juvenile court is called upon only to determine that there is probable cause to believe a juvenile of the requisite age committed an offense falling within the mandatory waiver law. However, even this is not always necessary: in Indiana and South Carolina, which require mandatory waiver in cases involving juveniles with certain prior records, the juvenile court, once it has confirmed the juvenile’s record, may leave the probable cause determination to the

## Discretionary Waiver: Minimum Age and Offense Criteria, 1997

State	Lower Age†	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
						Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alabama		14							
Alaska		NS							
Arizona	8		NS						
Arkansas	10		14/16*	14	14	14			14
California		16			14	14	14	14	
Colorado	10		12/14*		12	12			
Delaware		NS/14*							
District of Columbia		16/18*	15						NS
Florida		14							
Georgia		15		13					
Hawaii			14/16*		NS				
Idaho		14	NS		NS	NS	NS	NS	
Illinois		13							
Indiana		14	16		10/16*			16	
Iowa		14/15*							
Kansas	10	10							
Kentucky			14/16*	14					
Louisiana	10				14	14			
Maine			NS		NS				
Maryland	7	15		NS					
Michigan		14							
Minnesota	10		14						
Mississippi	10	13							
Missouri			12						
Montana*									
Nevada			14						
New Hampshire			15		13	13			
New Jersey		14			14	14	14		14
North Carolina	6		13						
North Dakota		16				14			
Ohio			14						
Oklahoma			NS						
Oregon			15		NS	NS/15*	15		
Pennsylvania	10		14						
Rhode Island			16	NS					
South Carolina		16	14		NS	NS/14*		14	14
South Dakota	10		NS						
Tennessee		16			NS	NS			
Texas	10		14/15*	14				14	
Utah			14						
Vermont	10				10	10	10		
Virginia			14						
Washington		NS							
West Virginia			NS/14*		NS	NS	NS	NS	
Wisconsin	10	15	14		14	14	14	14	
Wyoming		13							

Note: "NS" indicates "none specified."

†"Lower age" refers to the minimum age below which the juvenile court has no jurisdiction for delinquency matters.

\*See appendix for more detail on State provisions.

## Mandatory Waiver: Minimum Age and Offense Criteria, 1997

State	Lower Age†	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
						Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Connecticut			14	14	14				
Delaware			15		NS	NS/16*	16	16	
Georgia					14	14	15		
Illinois			15						
Indiana			NS						
Kentucky			14						
Louisiana					15	15			
North Carolina	6			13					
North Dakota					14	14		14	
Ohio		14			14/16*	16	16		
Rhode Island					17	17			
South Carolina			14						
Virginia					14	14			
West Virginia			14		14	14	14		

Note: "NS" indicates "none specified."

†"Lower age" refers to the minimum age below which the juvenile court has no jurisdiction for delinquency matters.

\*See appendix for more detail on State provisions.

criminal court. In Connecticut, the law stipulates that, where the mandatory waiver provision applies, the juvenile's counsel is not permitted to make any argument or file any motion to oppose transfer; in fact, in those mandatory waiver situations in which a probable cause finding is necessary, the court makes it without notice, a hearing, or any participation on the part of the juvenile or his or her attorney.

Laws in a few States specify types of cases in which courts must at least consider waiver. For instance, Delaware, besides requiring waiver in certain cases, also requires that the courts give consideration to waiver in some others—as when a juvenile of at least 14 is charged with violating a restitution order or when one who is at least 16 is charged with having committed any of various listed crimes. Likewise, a Missouri law mandates that the court at least hold a waiver hearing when a juvenile is charged with any of a number of serious crimes or has already committed two or more previous felonies. However, since these laws do not affirmatively mandate waiver—only that the courts consider waiver—they have been classified as discretionary waiver provisions.

### Presumptive Waiver

In 15 States, statutes (court rule in Arizona) designate a category of cases in which waiver to criminal court is rebuttably presumed to be appropriate. In such cases, the juvenile rather than the State bears the burden of proof in the waiver hearing; if a juvenile meeting age, offense, or other statutory criteria triggering the presumption fails to make an adequate argument against transfer, the juvenile court must send the case to criminal court.

It should be noted that the rebuttable presumption in these cases applies if the juvenile meets statutory criteria qualifying the case for presumptive waiver treatment. It would not ordinarily apply to the question of whether the juvenile meets these criteria. For instance, in Alaska—which like many States generally requires that the prosecutor in a waiver hearing demonstrate probable cause to believe that the juvenile actually committed the crime alleged (see Additional Pretransfer Findings Required)—the prosecutor must show probable cause even when the alleged crime is one that triggers a presumptive waiver. Only when the prosecutor has met this initial burden must the juvenile come forward with evidence of "amenability to treatment" as a juvenile.



## Presumptive Waiver: Minimum Age and Offense Criteria, 1997

State	Lower Age†	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
						Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alaska						NS			
Arizona	8		16						
California			16		14/16*	16	16	16	
Colorado*									
District of Columbia		15			15	15	15		
Illinois			15						
Kansas	10		14			14		14	14
Minnesota	10		16						
Nevada						14			14
New Hampshire			15		15	15		15	
New Jersey					14	14	14	14	
North Dakota			14		14	14			
Pennsylvania	10		14		15	15			
Rhode Island*									
Utah			16		16	16	16		16

Note: "NS" indicates "none specified."

†"Lower age" refers to the minimum age below which the juvenile court has no jurisdiction for delinquency matters.

By court rule.

\*See appendix for more detail on State provisions.

In four States, a child subject to a presumption in favor of waiver not only has the burden of proof at the waiver hearing, but must present "clear and convincing evidence" that a waiver is not justified (see Clear and Convincing Evidence Standard).

Statutory criteria triggering presumptive waiver fall into three broad categories. In some States, it is primarily the current offense that matters; in Alaska, for example, children of any age charged with certain violent felonies are rebuttably presumed to be "unamenable to treatment." (Alaska, however, is the only State that has set up a presumption against children younger than 14.) In others, older juveniles are singled out, even if the offenses of which they are accused would not otherwise trigger a presumption; in New Hampshire, the same crimes that would merely authorize consideration of a waiver in the case of a 13-year-old would presumptively require one if the juvenile involved was 15 at the time of commission. Still other States emphasize the child's prior offense history over other factors; in Colorado, if the juvenile otherwise qualifies for discretionary waiver treatment, a sufficiently serious prior delinquency record triggers the presumption all by itself.

### Direct File

Statutes in 15 States define a category of cases in which the prosecutor may determine whether to proceed initially in juvenile or criminal court. Typically, these direct file provisions give both juvenile and adult criminal courts the power to hear cases involving certain offenses or age/offense categories, leaving it up to the prosecutor to make discretionary decisions about where to file them.

Of course, prosecutors often have considerable discretionary powers in this area even in the absence of formal statutory authority. In their charging decisions, for instance, they may sometimes, in effect, choose the forum in which the case will be heard. What distinguishes direct file authority is that it rests on the juvenile and criminal courts' concurrent jurisdiction over a given type of case.

Again, as is the case with other transfer mechanisms, there is wide variation among the States regarding criteria for direct file treatment, with some emphasizing offense categories, others the age of the juvenile involved, and still others the extent and seriousness of the juvenile's offending history. Generally, the

## Direct File: Minimum Age and Offense Criteria, 1997

State	Lower Age†	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
						Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Arizona	8		14						
Arkansas	10		14/16*	14	14	14			14
Colorado	10		14/16*		14	14	14		14
District of Columbia					16	16	16		
Florida		16*	16	NS	14	14	14		14
Georgia				NS					
Louisiana	10				15	15	15	15	
Massachusetts	7		14			14			14
Michigan			14		14	14	14	14	
Montana					12/16*	12/16*	16	16	16
Nebraska		16	NS						
Oklahoma					15	15/16*	15/16*	16	15
Vermont	10	16							
Virginia					14	14			
Wyoming		17	14						

Note: "NS" indicates "none specified."

†"Lower age" refers to the minimum age below which the juvenile court has no jurisdiction for delinquency matters.

\*See appendix for more detail on State provisions.

minimum level of offense seriousness necessary to trigger direct file appears to be lower than that required for statutory exclusion or mandatory or presumptive waiver. Arkansas authorizes direct file treatment of a large range of offenses (including soliciting a minor to join a street gang), evidently trusting its prosecutors to make appropriate filing and resource allocation decisions. Florida allows even misdemeanors to be prosecuted in criminal court if the child involved is at least 16 and has a sufficiently serious record.

### Statutory Exclusion

Twenty-eight States have statutes that remove certain offenses or age/offense/prior record categories from the juvenile court's jurisdiction. Generally, the laws of such States simply exclude anyone fitting into one of these categories from being defined as a "child" for juvenile court jurisdictional purposes. A juvenile accused of an excluded offense is treated as an adult from the beginning—that is, proceeded against (by information, indictment, or otherwise) in the criminal court that would have had jurisdiction over the same offense if it had been committed by an adult. This way of proceeding is not merely an option available

to the prosecutor, as in those States that leave the determination of how to process certain offenses or age/offense categories to the prosecutor's discretion (see Direct File). Once the prosecutor has made the decision to charge a juvenile with an excluded offense, the case must be filed in criminal court—although many States provide a mechanism under which criminal courts may order excluded cases transferred to juvenile courts (see Reverse Waiver).

Some States exclude only the most serious offenses; in New Mexico, for example, only first-degree murder committed by a child of at least 15 is excluded. Others single out cases involving older juveniles. Mississippi excludes all felonies committed by 17-year-olds. It should be noted that one blanket application of this method—simply lowering the upper age limit of original juvenile court jurisdiction—excludes the largest number of juveniles for adult prosecution. Finally, as is the case with the presumptive and mandatory waiver provisions previously discussed, some States focus not so much on offense or age as on the individual juvenile's offense history. Arizona excludes any felony committed by a juvenile as young as 15, provided the juvenile has two or more previous delinquency adjudications for offenses that would have been felonies if committed by an adult.

## Statutory Exclusion: Minimum Age and Offense Criteria, 1997

State	Lower Age†	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
						Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alabama			16	16				16	
Alaska						16	16		
Arizona	8		15		15	15			
Delaware			15						
Florida		NS				NS/16*			
Georgia					13	13			
Idaho					14	14	14	14	
Illinois			15		13/15*	15		15	15
Indiana			16		16	16		16	16
Iowa			16					16	16
Louisiana	10				15	15			
Maryland	7			14	16	16			16
Massachusetts	7				14				
Minnesota	10				16				
Mississippi	10		13/17*	13					
Montana					17	17	17	17	17
Nevada		NS			NS	16			16
New Mexico					15				
New York	7				13/14*	14	14		
Oklahoma					13				
Oregon					15	15			
Pennsylvania	10				NS/15*	15			
South Carolina			16						
South Dakota	10		16						
Utah			16		16				
Vermont	10				14	14	14		
Washington					16	16	16		
Wisconsin	10				10	NS			

Note: "NS" indicates "none specified."

†"Lower age" refers to the minimum age below which the juvenile court has no jurisdiction for delinquency matters.

\*See appendix for more detail on State provisions.

## Reverse Waiver

The laws of 23 States provide some mechanism whereby a juvenile who is being prosecuted as an adult in criminal court may petition to have the case transferred to juvenile court for adjudication or disposition. By enacting a reverse waiver provision, a State may simultaneously define a broad category of cases that it considers merit criminal court handling and ensure that its courts have an opportunity to consider whether such handling is actually appropriate in individual cases.

A statutory provision is placed in the reverse waiver category if it authorizes the State's adult criminal

courts to transfer a juvenile's case from criminal to juvenile court, however it arrived in the criminal court in the first place—via direct file, exclusion, or in some instances, waiver. The reverse waiver designation applies to provisions that authorize the criminal court to transfer a case for disposition to the juvenile court, but does not apply to "blended sentencing" provisions under which the criminal court retains the case while imposing a combination of dispositions, some of which are ordinarily available only to juvenile courts. Likewise, although many States allow a juvenile who has been waived by a juvenile court to appeal the decision immediately, provisions authorizing an appeals court (as opposed

to a trial-level criminal court) to order a case returned to juvenile court are not counted as reverse waiver provisions. Conversely, provisions that authorize a trial-level criminal court to make the decision either to accept jurisdiction over a case for trial, or to send it to juvenile court for adjudication, are considered reverse waiver provisions, even where (as in Virginia) they are designated “appeal” provisions.

Generally, when the reverse waiver proceeding represents the first time a court has had an opportunity to consider the appropriateness of adult prosecution in a given case—when the alleged offense is one that is excluded from juvenile jurisdiction by statute, for example, or when the prosecutor has exercised “direct file” discretion to proceed initially in criminal court—the court’s decision is governed by the same kinds of broad “best interests” standards and considerations as those taken into account by a juvenile court in deciding whether to waive jurisdiction (see Transfer Criteria). In Nebraska, for example, which gives county attorneys considerable direct file discretion but requires them to consider a number of factors (including “the best interests of the juvenile and the security of the public”), the district or county court must consider the very same factors in deciding whether to retain jurisdiction over such a case in the face of the juvenile’s objections.

However, six States (Connecticut, Kentucky, Mississippi, Nevada, Tennessee, and Virginia) authorize reverse waiver in some cases even when a juvenile court judge has already looked into the issues and determined that waiver to criminal court is appropriate. Under these circumstances, a reverse waiver is usually available only if the juvenile court’s decision was substantially groundless (Mississippi), or if other “exceptional circumstances” can be shown (Nevada). Tennessee and Virginia have particularly anomalous reverse waiver provisions. In Virginia, as noted above, the procedure is cast in terms of an “appeal” to the adult trial court from the juvenile court’s transfer decision, with the issue being whether the juvenile court’s decision was in substantial compliance with the law; however, in substance the decision is the same as in other reverse waiver situations—whether or not to accept jurisdiction and retain the case for an adult criminal trial. In Tennessee, a juvenile who has been waived to criminal court is entitled to an immediate de novo rehearing

on the issue at the adult criminal court level—but only if the waiver decision was made by a nonlawyer; otherwise, the juvenile must appeal the juvenile court’s waiver decision following a final conviction.

Twenty of the 35 States with direct file or statutory exclusion also have reverse waiver provisions.

- ◆ **States with reverse waivers:** Arizona, Arkansas, Colorado, Delaware, Georgia, Iowa, Maryland, Mississippi, Nebraska, Nevada, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Vermont, Virginia, Wisconsin, and Wyoming.
- ◆ **States without reverse waivers:** Alabama, Alaska, District of Columbia, Florida, Idaho, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Montana, New Mexico, Utah, and Washington.

## Once an Adult/Always an Adult

A special transfer category has been created in 31 States for juveniles who, having once been prosecuted as adults, are subsequently accused of new offenses. Most States with “once an adult/always an adult” provisions simply require criminal prosecution of all such subsequent offenses—by means of either a blanket exclusion or an automatic waiver mechanism. Others exclude or require waiver of only a broadly defined subset of these cases—those involving juveniles of a certain age, for instance, or those in which the subsequent offense is sufficiently serious.

Nearly all once an adult/always an adult provisions stipulate that the juvenile involved must have been convicted of the offense that triggered the adult prosecution. In California, however, this is not always necessary; a subsequent charge that would ordinarily require a fitness hearing in juvenile court may be filed directly in criminal court if the juvenile involved was previously declared unfit for juvenile handling and transferred to criminal court—even if no conviction followed the original transfer—provided the original unfitness determination was based on criteria (the juvenile’s delinquency history, failure of rehabilitation attempts, or both) unrelated to the juvenile’s guilt or innocence of the previous

charge. Likewise, in Delaware, the law does not require a conviction in the original case, provided a court (either the juvenile court in a discretionary waiver hearing or the criminal court following a reverse waiver request) had the opportunity to make a determination regarding the juvenile's amenability to the rehabilitative processes of the juvenile court. Idaho requires adult prosecution of a juvenile who has already been convicted as an adult, even if the original conviction was for a lesser offense that would not have been excluded from juvenile court jurisdiction. Mississippi requires no conviction on the first adult-prosecuted offense if the juvenile is subsequently accused of a felony.

Although most States require that, following a juvenile's conviction as an adult, all subsequent offenses be prosecuted in criminal court, three — Michigan, Minnesota, and Texas — restrict the coverage of their once an adult/always an adult provisions to cases in which juveniles are subsequently accused of felonies, and California specifies that the subsequent offense must be one for which waiver to criminal court would otherwise be allowed. Likewise, whereas most States make no distinction based on the ages of juveniles previously convicted as adults, California and Iowa limit the application of their once an adult/always an adult provisions to 16-year-olds. Oregon is the only State that leaves

the once an adult/always an adult decision to its juvenile courts, authorizing them, in connection with the waiver of jurisdiction over a juvenile of at least 16, to enter an order making waiver automatic in any subsequent case involving the same juvenile; however, if the juvenile is not convicted following the entry of such an order, the law requires that the order be vacated.

Many states require criminal prosecution of all subsequent offenses.

- ◆ **States with once an adult/always an adult provisions:** Alabama, Arizona, California, Delaware, District of Columbia, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.
- ◆ **States without once an adult/always an adult provisions:** Alaska, Arkansas, Colorado, Connecticut, Georgia, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, South Carolina, Vermont, West Virginia, and Wyoming.





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# Additional Analyses

## Transfer for Nonviolent Offenses

Although State laws requiring or allowing the prosecution of juveniles as adults are commonly thought to be legislative responses to increases in juvenile violence, a surprising number of such laws authorize criminal prosecution for nonviolent offenses.

Twenty-one States require or allow adult prosecution of juveniles accused of certain property offenses—most often arson or burglary. Statutes in 19 States authorize or mandate prosecution of juveniles accused of drug offenses in criminal court. Forty-six States allow waiver to criminal court for a range of offenses—personal and property, violent and nonviolent. If the accused juvenile is of sufficient age, 16 States (Alabama, Alaska, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Maryland, Mississippi, North Dakota, Tennessee, Washington, Wisconsin, and Wyoming) permit waivers for any criminal offense; 17 (Arizona, Colorado, District of Columbia, Hawaii, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, and Virginia) allow or require adult prosecution for any felony; 6 (Connecticut, Kentucky, Maine, Michigan, South Carolina, and Texas) allow or require adult prosecution for any felony of a particular grade; and 9 authorize or mandate adult handling of specified offenses that do not necessarily involve violence, such as escape (Arkansas, Illinois, Michigan, and Oregon), soliciting a minor to join a street gang (Arkansas), “aggravated driving under the influence” (Arizona), auto theft (New Jersey), perjury (Texas) and treason (West Virginia). In addition, many States require or allow prosecution of juveniles as adults for misdemeanors, ordinance violations, and summary statute violations (e.g., fish and game violations).

## Additional Pretransfer Findings Required

Statutes in 30 States expressly require that, before a case may be waived to criminal court, the juvenile court must find probable cause to believe that the juvenile actually committed the alleged offense. In three States, although a probable cause finding is not mandated, the list of factors for the court to consider in making its waiver determination includes the “prosecutive merit” of the case against the juvenile (see Transfer Criteria). In Maryland and the District of Columbia, on the other hand, the laws specify that, for purposes of the waiver determination, the juvenile’s guilt is to be assumed.

In seven States, in addition to other findings to support a waiver order, the court must determine that the accused juvenile is not a fit subject for treatment in an institution for the mentally ill or the mentally retarded.

## Clear and Convincing Evidence Standard

Generally, a prosecutor seeking a waiver to criminal court must make the case for waiver by “a preponderance of the evidence.” In six States, however, a higher burden is specified: proof by “clear and convincing evidence” that waiver is justified. Under certain circumstances, the laws of four States impose the “clear and convincing evidence” burden on the juvenile who opposes waiver or seeks a transfer from criminal to juvenile court.

**Minimum Age and Offenses for Which a Juvenile Can Be Transferred to Criminal Court in Every State, 1997**

State	Minimum Transfer Age	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
						Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alabama	14	14	16	16				16	
Alaska	NS	NS				NS	16		
Arizona	NS		NS		15	15			
Arkansas	14		14*	14	14	14			14
California	14	16	16		14	14	14	14	
Colorado	12		12*		12	12	14		14
Connecticut	14		14	14	14				
Delaware	NS	NS/14*	15		NS	NS*	16	16	
District of Columbia	NS	16*	15		15	15	15		NS
Florida	NS	NS		NS	14	NS*	14		14
Georgia	NS	15		NS	13	13	15		
Hawaii	NS		14*		NS				
Idaho	NS	14	NS		NS	NS	NS	NS	
Illinois	13	13	15		13*	15		15	15
Indiana	NS	14	NS		10*	16		16	16
Iowa	14	14*	16					16	16
Kansas	10	10	14			14		14	14
Kentucky	14		14	14					
Louisiana	14				14	14	15	15	
Maine	NS		NS		NS				
Maryland	NS	15		NS	16	16			16
Massachusetts	14		14		14	14			14
Michigan	14	14	14		14	14	14	14	
Minnesota	14		14		16				
Mississippi	13	13	13*	13					
Missouri	12		12						
Montana	12				12*	12*	16	16	16

(continued)

**Special Transfer Treatment Based on Prior Record**

Transfer statutes in 25 States single out juveniles with specified prior offense histories for adverse treatment. Of course, a sufficiently serious record of past involvement with the law would often be relevant to a waiver determination, and in fact this is one factor for consideration suggested in the U.S. Supreme Court's *Kent* decision (see Transfer Criteria). However, 25 States go further than this, either by defining a direct file or statutory exclusion category to include juveniles with previous delinquency adjudications or by requiring less of a showing for the waiver of juveniles with specified delinquency histories.

**Devices To Limit Prosecutorial Discretion**

Six States grant prosecutors discretion to decide when to try juveniles as adults in court proceedings but attempt to limit that discretion in some way. In Florida, for example, in cases involving specified age/offense categories, a State's Attorney must either attempt an adult prosecution or provide the juvenile court with written reasons for failing to do so. Before exercising direct file authority to prosecute juveniles as adults in Nebraska and Wyoming, prosecutors are required to give consideration to the same kinds of enumerated "factors" that are ordinarily weighed by courts making waiver determinations.

**Minimum Age and Offenses for Which a Juvenile Can Be Transferred to Criminal Court in Every State, 1997 (continued)**

State	Minimum Transfer Age	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
						Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Nebraska	NS	16	NS						
Nevada	NS	NS	14		NS	14			14
New Hampshire	13		15		13	13		15	
New Jersey	14	14			14	14	14	14	14
New Mexico	15				15				
New York	13				13*	14	14		
North Carolina	13		13	13					
North Dakota	14	16	14		14	14		14	
Ohio	14	14	14		14*	16	16		
Oklahoma	NS		NS		13	15*	15*	16	15
Oregon	NS		15		NS	NS*	15		
Pennsylvania	NS		14		NS*	15			
Rhode Island	NS		16	NS	17	17			
South Carolina	NS	16	14		NS	NS*		14	14
South Dakota	NS		NS						
Tennessee	NS	16			NS	NS			
Texas	14			14				14	
Utah	14		14		16	16	16		16
Vermont	10	16			10	10	10		
Virginia	14		14		14	14			
Washington	NS	NS			16	16	16		
West Virginia	NS		NS*		NS	NS	NS	NS	
Wisconsin	NS	15	14		10	NS	14	14	
Wyoming	13	13	14						

Note: "NS" indicates "none specified."

\*See appendix for more detail on State provisions.

## Minimum Age Provisions

Twenty-three States have at least one provision for transferring juveniles to criminal court for which no minimum age is specified. Other sections of the State statute may specify the lowest age for juvenile court delinquency jurisdiction, below which juveniles cannot be processed as delinquents in juvenile court (16 States), and/or the lowest age for criminal responsibility, below which children cannot be tried in criminal court (14 States).

As States lower the age at which youth can be transferred to criminal court, minimum age of criminal responsibility becomes important in deciding when and if a criminal court can accept jurisdiction of such youth. In two States, the juvenile code does not stipulate a minimum transfer age but the criminal code does specify a minimum age of criminal responsibility (Georgia for capital crimes; Nevada for murder).

## Lowest Age of Criminal Responsibility/Criminal Court Jurisdiction, 1997

Age (years)					
7	8	10	12	13	14
Oklahoma*	Nevada Washington†	Colorado	Oregon	Georgia Illinois New Hampshire New York	California Idaho New Jersey Texas Utah
No Specified Lowest Age					
Alabama	Indiana	Minnesota	Pennsylvania		
Alaska	Iowa	Mississippi	Rhode Island		
Arizona	Kansas	Missouri	South Carolina		
Arkansas	Kentucky	Montana	South Dakota		
Connecticut	Louisiana	Nebraska	Tennessee		
Delaware	Maine	New Mexico	Vermont		
District of Columbia	Maryland	North Carolina	Virginia		
Florida	Massachusetts	North Dakota	West Virginia		
Hawaii	Michigan	Ohio	Wisconsin		
			Wyoming		

\*For youth ages 7 to 14, the State must prove that, at the time of the act, the youth knew it was wrong.

†Youth ages 8 to 12 are presumed incapable of committing a crime.

## Lowest Age for Original Juvenile Court Jurisdiction in Delinquency Matters, 1997

Age (years)				
6	7	8	10	
North Carolina	Maryland Massachusetts New York	Arizona	Arkansas Colorado Kansas Minnesota Mississippi	Pennsylvania South Dakota Texas Vermont Wisconsin
No Specified Lowest Age				
Alabama Alaska California Connecticut Delaware District of Columbia Florida Georgia Hawaii	Idaho Illinois Indiana Iowa Kentucky Maine Michigan Missouri Montana	Nebraska Nevada New Mexico New Hampshire New Jersey New Mexico North Dakota Ohio Oklahoma	Oregon Rhode Island South Carolina Tennessee Utah Virginia Washington West Virginia Wyoming	





## **Appendix: Summary of Transfer Laws**



The State-by-State summary of transfer laws contained in the appendix is based on an analysis of statutory provisions authorizing or requiring adult criminal prosecution of juveniles for serious and violent crimes in all 50 States and the District of Columbia. The summary reflects the state of the law as amended through the 1997 legislative sessions.

## **Lower and Upper Ages**

For each State, the upper age of juvenile court jurisdiction is provided—this is the age beyond which the juvenile courts of that State have no original jurisdiction over individual offenders. In addition, if the State specifies a minimum age below which the juvenile courts have no jurisdiction for delinquency matters, that age is provided as well.

## **Discretionary Waiver**

If the State has a provision that gives juvenile court judges discretion to waive jurisdiction over individual cases involving minors to allow prosecution in adult criminal courts, the provision is described under Discretionary Waiver. (These and all descriptive summaries of statutory provisions are matters of analysis and interpretation; readers should consult the statutes on which these summaries are based for the exact law in a given jurisdiction.) Beneath this description is a list of offense categories for which discretionary waiver may be authorized: "any criminal" for provisions that allow waiver for any criminal offense; "certain felonies" when the offense must be a felony or one of a range of felonies; "capital" when the offense must be punishable by death or life imprisonment; "murder" for any sort of homicide or attempted homicide; "person" for all other offenses against the person; "property" for property offenses; "drug" for drug offenses; and "weapon" for offenses consisting of the unlawful possession, transfer, etc., of weapons. If the State allows waiver for a particular category of offense, additional information is entered next to that category. If the State allows waiver for a category of offense, but only for offenders of a certain age, the minimum age is specified; otherwise, "none specified" is entered. (To meet a minimum age requirement, the juvenile must have reached the age specified before the offense was committed.) Under "offense detail," a more specific description of the offense that may trigger the waiver is provided, including any requirements that the accused juvenile have a prior record of delinquency adjudications or criminal convictions.

## **Mandatory Waiver**

A State that requires its juvenile courts to waive cases under certain circumstances is specified under mandatory waiver. Mandatory waiver is not the same as statutory exclusion. In a mandatory waiver situation, the juvenile court must receive the case initially, conduct some sort of preliminary hearing to ensure that the mandatory waiver statute applies, and issue a transfer order and other necessary orders relating to appointment of counsel, interim detention, and so on. By contrast, when an offense has been excluded by law from juvenile court jurisdiction, the case originates in criminal court, and the juvenile court ordinarily has no involvement.

## **Presumptive Waiver**

If the State designates a category of cases in which waiver to criminal court is rebuttably presumed to be appropriate, a description of the pertinent law is included under Presumptive Waiver. Again, beneath the description is a breakdown of the offense categories triggering the presumption, any minimum age and prior record requirements that apply, and other details.

## **Direct File**

If the State allows prosecutors, in certain kinds of cases, to choose between filing a petition in juvenile court and proceeding against the juvenile in criminal court, a descriptive entry is made under Direct File.

## **Statutory Exclusion**

If the State simply excludes any category of cases from juvenile court jurisdiction, the provision is described under Statutory Exclusion.

## **Reverse Waiver**

Provisions that permit a juvenile who is being prosecuted as an adult in criminal court to petition to have the case transferred to juvenile court for adjudication or disposition are described under Reverse Waiver.

## **Once an Adult/Always**

If the State has a special provision that permanently terminates the juvenile court's jurisdiction over juveniles who have once been prosecuted as adults, the provision is described under the heading Once an Adult/Always.

## Alabama

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver      Alabama Code Sec. 12-15-34

On the motion of the prosecutor in the case of a child at least 14 years old accused of any criminal offense, the juvenile court must conduct a transfer hearing. If, after considering various factors specified by statute, along with a written report from probation services, the court finds that (1) it is in the interest of the child or the public to transfer the child for criminal prosecution, (2) there is probable cause to believe the child committed the crime alleged, and (3) there are no reasonable grounds to believe the child is committable to a mental institution, it may order a transfer. A child who is transferred for criminal prosecution is tried as an adult for the offense charged and for any lesser included offense.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	14	Any criminal offense.

### Statutory Exclusion      Alabama Code Sec. 12-15-34.1

A child meeting statutory age/offense criteria must be "charged, arrested, and tried as an adult."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	16	A class A felony, or any felony in which one necessary element is (1) the use of a deadly weapon, (2) the causing of death or serious injury, or (3) the use of a dangerous instrument against any of a number of listed public officials or employees, including law enforcement officers, corrections officers, parole or probation officers, juvenile court probation officers, prosecutors, judges, court officers, grand jurors, jurors or witnesses, and teachers, principals, and other employees of Alabama public schools.
Capital	16	A capital offense.
Drug	16	Trafficking in drugs.

### Once an Adult, Always      Alabama Code Sec. 12-15-34

When a transfer to adult court is followed by a criminal conviction or adjudication as a "youthful offender" (i.e. one who is tried but not sentenced as an adult), or when a child is tried as an adult for an excluded offense and not acquitted, the jurisdiction of the juvenile court over that child's future criminal acts or over pending allegations of delinquency is permanently terminated, except for the limited purpose of verifying a previous transfer, conviction or adjudication as a youthful offender.

## Alaska

Lower Age: None specified

Upper Age: 17

**Discretionary Waiver** Alaska Statutes Sec. 47.12.100  
Alaska Court Rules, Part VI, Rule 20

The juvenile court may waive jurisdiction if it finds after a hearing that (1) there is probable cause to believe that the minor is delinquent and (2) the minor is not amenable to treatment. A minor is considered unamenable to treatment if he cannot be rehabilitated by treatment before reaching 20 years of age. The law specifies various factors that the court must consider in making its finding on the minor's amenability to treatment.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	None specified	Any criminal offense.

**Presumptive Waiver** Alaska Statutes Sec. 47.12.100

In a waiver hearing, the prosecutor has the burden of proof with respect to the finding that there is probable cause to believe that the minor is delinquent. However, a minor charged with an unclassified or class A felony that constitutes a crime against the person is rebuttably presumed to be not amenable to treatment, and has the burden of showing otherwise by a preponderance of the evidence.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Person	None specified	Unclassified or class A felony that is a crime against the person.

**Statutory Exclusion** Alaska Statutes Sec. 47.12.030

A minor who was at least 16 years old at the time of allegedly committing an excluded offense is charged, prosecuted, and sentenced in superior court. However, if convicted of a lesser offense, the minor may attempt to show his amenability to treatment as a delinquent, and receive a disposition under the Alaska Delinquency Rules.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Person	16	Unclassified or class A felony that is a crime against the person.
Property	16	First degree arson.

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## Arizona

Lower Age: 8

Upper Age: 17

### Discretionary Waiver      Arizona Rev. Statutes Sec. 8-327

At the State's request, the juvenile court must hold a hearing to consider transferring jurisdiction over a child accused of any felony. The court may transfer a case for criminal prosecution in the appropriate adult court if it finds by a preponderance of the evidence that (1) there is probable cause to believe that the child committed the offense alleged and (2) "the public safety would best be served" by a transfer. The law specifies a number of factors that must be considered in making the transfer determination. The court's determination regarding transfer may not be deferred, and must be in writing.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
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Certain felonies	None specified	Any felony.
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### Presumptive Waiver      Ariz. Rules of Procedure--Juv. Ct., Rule 14

While subsequently enacted statutes have largely superseded a provision of an older court rule that created a presumption in favor of transfer under specified conditions (see Direct File and Statutory Exclusion), the provision is still technically applicable in the case of a juvenile of at least 16 years of age who (1) is charged with certain types of class 3 or 4 felonies and (2) has at least four previous delinquency adjudications, at least one for a serious offense, but (3) is not otherwise subject to prosecution as an adult under the direct file or statutory exclusion laws. In such a case, it is presumed that the public safety or public interest would best be served by a transfer. The presumption may be rebutted by evidence that the public will be adequately protected and the juvenile's rehabilitation better served if the case is retained.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
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Certain felonies	16	Provided the juvenile was previously adjudicated delinquent on 4 separate occasions, at least once for a serious offense, the presumption applies to any case in which the court finds probable cause that the juvenile committed (1) a class 3 felony not involving (a) a violation of any of the Criminal Code chapters qualifying the offense for direct file treatment (see Direct File), (b) use of a deadly weapon or dangerous instrument or (c) the intentional or knowing infliction of serious bodily harm, or (2) a class 4 felony not involving (b) or (c).
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*continued on next page*



**Arizona**

continued

**Direct File**

Arizona Rev. Statutes Sec. 13-501(B)

Arizona Rev. Statutes Sec. 8-302

In a case meeting statutory age/offense criteria, "the county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult." Where the ground for a direct file is that the child is alleged to be a "chronic felony offender" (that is, a child with two or more previous felony adjudications), the county attorney must specify this in charging the child, and the child is entitled to demand a hearing on the issue; see Reverse Waiver.

If, after filing a case of this kind in adult criminal court, the county attorney reconsiders and moves for a transfer to juvenile court, the criminal court must grant the motion.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Class 1 and 2 felonies; a class 3 felony involving a violation of any part of a number of listed Criminal Code chapters (relating to preparatory offenses, homicide, assault, kidnapping, sexual offenses, trespass and burglary, property damage, arson, robbery, organized crime and fraud); class 3, 4, 5 or 6 felonies involving the intentional or knowing infliction of serious injury or the use of a deadly weapon or dangerous instrument; aggravated driving under the influence; any felony committed by a child with two or more previous felony adjudications; any offense joined to/arising out of the same set of facts as any of the above offenses.

**Statutory Exclusion**

Arizona Rev. Statutes Sec. 13-501

In a case meeting statutory age/offense criteria, "the county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult." Where the ground for exclusion is that the child is alleged to be a "chronic felony offender" (that is, a child with two or more previous felony adjudications), the county attorney must specify this in charging the child, and the child is entitled to demand a hearing on the issue; see Reverse Waiver.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	15	Aggravated driving under the influence; any felony committed by a child with two or more previous felony adjudications; any offense joined to/arising out of the same set of facts as an excluded offense.
Murder	15	First or second degree murder.
Person	15	Forcible sexual assault, armed robbery, or any other violent felony.

**Reverse Waiver**

Arizona Rev. Statutes Sec. 13-501(D)

The county attorney may (or, in the case of a child of at least 15, must) bypass the juvenile court and bring a criminal prosecution where a felony is alleged to have been committed by a "chronic felony offender" (that is, a child with two or more previous adjudications for conduct that would have been felonious if committed by an adult). However, in such a case the child is entitled to demand a post-arraignment, pretrial hearing (in adult court) on the question of whether he or she qualifies as a chronic felony offender. If the county attorney fails to establish by a preponderance of the evidence that the child is a chronic felony offender, the court must transfer the child to juvenile court.

**Once an Adult, Always**

Arizona Rev. Statutes Sec. 13-501

"A criminal prosecution shall be brought" against a child "in the same manner as an adult" if the child is accused of any criminal offense and has a previous felony conviction.

## Arkansas

Lower Age: 10

Upper Age: 17

### Discretionary Waiver Ark. Code of 1987, Sec. 9-27-318

The juvenile court may retain jurisdiction or transfer any case in which it has concurrent jurisdiction with the circuit court, after a hearing on its own motion or that of any party. The law specifies various factors that the court must consider in making the determination. A finding that a child should be tried as an adult must be supported by clear and convincing evidence. Any party may appeal from an order granting or denying a transfer from one court to another.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14/16	14—Any felony committed by a habitual juvenile offender (3 felony adjudications in the previous 2 years); any felony while armed with a gun; and a number of listed felonies (including first and second degree escape and attempt, solicitation, or conspiracy to escape).  16—Any felony.
Capital	14	Capital murder.
Murder	14	First/second degree murder and attempt, solicitation, or conspiracy to commit murder.
Person	14	Kidnapping, aggravated robbery, rape, first and second degree battery, aggravated assault, and attempt, solicitation, or conspiracy to commit any of these acts; terroristic acts; and soliciting a minor to join a criminal street gang.
Weapon	14	Second-offense possession of a handgun; possession of a handgun by a previously adjudicated or convicted felon; possession of a handgun on school property; unlawful discharge of a firearm from a vehicle; and criminal use of prohibited weapons.

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**Arkansas**

continued

**Direct File**

Ark. Code of 1987, Sec. 9-27-318

The juvenile court and the circuit court have concurrent jurisdiction over a number of listed age/offense categories. If charges are filed against a juvenile in circuit court, additional nonconcurrent charges arising out of the same incident may be filed there as well, but only if, after a hearing in the juvenile division of chancery court, a motion to transfer is granted.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14/16	14—Any felony committed by a habitual juvenile offender (3 felony adjudications in the previous 2 years); any felony while armed with a gun; and a number of listed felonies (including first and second degree escape and attempt, solicitation, or conspiracy to escape).  16—Any felony.
Capital	14	Capital murder.
Murder	14	First/second degree murder, and attempt, solicitation, or conspiracy to commit first or second degree murder.
Person	14	Kidnapping, aggravated robbery, rape, first and second degree battery, aggravated assault, and attempt, solicitation, or conspiracy to commit any of these acts; terroristic acts; and soliciting a minor to join a criminal street gang.
Weapon	14	Second-offense possession of a handgun; possession of a handgun by a previously adjudicated or convicted felon; possession of a handgun on school property; unlawful discharge of a firearm from a vehicle; and criminal use of prohibited weapons.

**Reverse Waiver**

Ark. Code of 1987, Sec. 9-27-318

The circuit court may transfer any case in which it has concurrent jurisdiction with the juvenile court, after a hearing on its own motion or that of any party. The law specifies various factors that must be considered in making the determination. A finding that a juvenile should be tried as an adult must be supported by clear and convincing evidence. Any party may appeal an order granting or denying a transfer.

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## California

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver      Welf. & Inst. Code, Div. 2, Pt. 1, Ch. 2, Sec. 7

The juvenile court may declare that a minor meeting specified age/offense criteria is not amenable to the care, treatment, and training facilities available to it, and thus is "not a fit and proper subject to be dealt with under the juvenile court law." The law specifies that the minor's probation officer must investigate the issue and submit a report to the court, and that the report must be considered, along with various other listed factors, in making the fitness determination.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	16	
Murder	14	
Person	14	Forcible/violent rape, sodomy, or oral copulation; kidnapping for ransom or robbery, or with bodily harm; kidnapping of a victim under 14; and kidnapping in connection with a carjacking; escape involving intentional injury of an employee of a juvenile facility; torture; aggravated mayhem; attempted murder; any of a number of listed crimes (robbery, assault, rape, kidnapping, and carjacking), in the commission of which the minor personally used a firearm; and personally shooting a gun into an inhabited or occupied building.
Property	14	Burglary in which the minor personally used a firearm.
Drug	14	Manufacturing, compounding, or selling at least half an ounce of various listed controlled substances.

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**California**

continued

**Presumptive Waiver**

Welf. &amp; Inst. Code, Div. 2, Pt. 1, Ch. 2, Sec. 707

For various age/offense categories specified by statute, a minor is presumed to be not a fit and proper subject for treatment as a juvenile, but is entitled to present evidence to the contrary. The fitness determination must be based on evidence, including a probation officer's report, presented at a hearing, and on consideration of various factors listed in the statute.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	16	Any felony in which the minor used one of various listed illegal weapons.
Murder	14/16	14—First or second degree murder in which the minor either personally killed the victim, or (with the intent to kill) aided, asked, advised, or ordered any other person to kill the victim; and first degree murder in which the minor, while not the killer, acted with reckless indifference to human life while participating in any of various listed felonies (robbery, kidnapping, rape, rape by instrument, sodomy, lewd or lascivious acts with a child under 14, oral copulation, first or second degree burglary, arson, train wrecking, mayhem, and carjacking).  16—Any murder.
Person	16	Armed robbery; violent/forcible rape, sodomy, or oral copulation, certain lewd or lascivious acts, and penetration with a foreign object; kidnapping for ransom, robbery, or with bodily harm, and kidnapping of a child under 14; attempted murder; assault with a firearm, destructive device, or any means of force likely to produce serious injury; certain crimes against elderly, blind, or disabled victims; witness/victim bribery or intimidation; any violent felony committed for the benefit of, at the direction of, or in association with a criminal street gang; escape resulting in injury to a juvenile facility employee; torture; aggravated mayhem; armed carjacking, or carjacking in which a victim is kidnapped; explosion, ignition, or attempt to explode or ignite any explosive or destructive device with intent to kill; and firing a gun into an inhabited or occupied building, or from a motor vehicle.
Property	16	Arson
Drug	16	Manufacturing, compounding, or selling at least half an ounce of any of various listed controlled substances.

**Once an Adult, Always**

Welf. &amp; Inst., Div. 2, Pt.1, Ch. 2, Sec. 707.01

Once a minor has been transferred and convicted in a court of criminal jurisdiction, subsequent charges against the same minor need not be filed in juvenile court (that is, they may be filed in adult court, with no necessity for a juvenile court fitness hearing), provided (1) the minor was at least 16 years old at the time of the alleged violation and (2) the violation was one for which waiver is allowed. Even if the minor is not convicted following a transfer, subsequent charges may nevertheless be filed directly in adult criminal court, provided the two above conditions are met and the original unfitness decision was based solely on the minor's previous delinquency history, the failure of the juvenile court's previous attempts to rehabilitate the minor, or both.

## Colorado

Lower Age: 10

Upper Age: 17

### Discretionary Waiver Colo. Rev. Stat. Sec. 19-2-518

The juvenile court may certify a child meeting age/offense criteria for trial as an adult in district court if, after investigation and a hearing, it finds that (1) there is probable cause to believe that the child committed an offense for which judicial waiver is authorized and (2) "it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction." The law lists 14 specific factors to be considered in making the determination. While the presence of certain factors in a case constitutes prima facie evidence in favor of transfer (see Presumptive Waiver), the weight to be given to the various factors is otherwise committed to the court's discretion. Written reports may be considered in making the determination, but at the request of any party the authors must appear and be cross-examined.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	12/14	12—Class 1 or 2 felony.
		14—Any felony.
Murder	12	Murder, or the conspiracy or attempt to commit murder, where it involves either (1) the use, threatened use, or possession of a deadly weapon or (2) serious bodily injury or death.
Person	12	Any felonious unlawful sexual offense involving either bodily injury to the victim or the use of threats, intimidation, or force; any of a long list of crimes (first or second degree assault, kidnapping, sexual assault, aggravated robbery, escape, criminal extortion, first degree arson, first degree burglary, and crimes against at-risk adults or at-risk juveniles), if it involves either (1) the use, threatened use, or possession of a deadly weapon; or (2) the causing of serious bodily injury or death.

### Presumptive Waiver Colo. Rev. Stat. Sec. 19-2-518

At a juvenile court transfer hearing, the following constitute prima facie evidence that it would be contrary to the best interests of the juvenile or the community to retain jurisdiction: (1) two or more previously sustained delinquency petitions for felonies or (2) two or more previous juvenile probation revocations for felonies.

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**Colorado**

continued

**Direct File**

Colo. Rev. Stat. Sec. 19-2-517

Charges against juveniles in various age/offense categories may be filed directly in the district court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14/16	14—Class 1 or 2 felony; any felony committed by a person who has already been transferred to district court or subject to direct filing there for a previous offense (provided that if the previous case is still pending and the defendant is acquitted, the subsequent case must be remanded to juvenile court); any felony committed by a person determined to be a "habitual juvenile offender" (two prior felony adjudications); complicity in the commission of any of the above; or attempt, conspiracy, or solicitation to commit any of the above.  16—Any class 3 felony (except a crime qualifying as statutory rape solely because of the difference in age between the child and the victim) committed (or attempted or solicited, complied or conspired in) by a person who has been adjudicated for a felony within the previous 2 years.
Murder	14	Murder; complicity in, solicitation, conspiracy, or attempt to commit murder, where it involves either (1) the use, threatened use, or possession of a deadly weapon or (2) serious bodily injury or death; vehicular homicide; or complicity in, solicitation, conspiracy or attempt to commit vehicular homicide.
Person	14	Any felonious unlawful sexual offense involving either bodily injury to the victim or the use of threats, intimidation, or force; the use, threatened use, or possession of a deadly weapon during the commission of a felony offense against the person; any of a long list of crimes (first or second degree assault, kidnapping, sexual assault, aggravated robbery, escape, criminal extortion, first degree arson, first degree burglary, and crimes against at-risk adults or at-risk juveniles) involving either (1) the use, threatened use, or possession of a deadly weapon or (2) the causing of serious bodily injury or death; vehicular assault; and complicity in, solicitation, conspiracy, or attempt to commit any of the above.
Property	14	Felonious arson or complicity in, solicitation, conspiracy, or attempt to commit felonious arson.
Weapon	14	Any felony weapons offense except possession of a handgun by a juvenile; or complicity in, solicitation, conspiracy, or attempt to commit any such offense.

**Reverse Waiver**

Colo. Rev. Stat. Sec. 19-2-518

Following a transfer from juvenile court to district court, the district court judge has the power "to remand the case to the juvenile court for disposition at its discretion." (However, the court's sentencing discretion is restricted in the case of juveniles convicted of class 1 felonies and crimes of violence, and those classified as mandatory sentence offenders, violent juvenile offenders, and aggravated juvenile offenders.)



## Connecticut

Lower Age: None specified

Upper Age: 15

### Mandatory Waiver Conn. Gen. Stat. Sec. 46b-127

The case of any child at least 14 charged with a capital felony, a class A or B felony, or arson murder is "automatically" transferred from juvenile to superior court for arraignment. The juvenile court has no role other than to affirm that the child was at least 14 at the time of alleged commission and to appoint counsel if the child is indigent; the State's attorney need not make a motion for transfer, and the child's counsel is not permitted to make any argument or file any motion to oppose the transfer. (Note—A State's attorney who wishes to proceed in juvenile court against a child accused of a class B felony may do so, but only by seeking a transfer from superior court; see Reverse Waiver.)

If the State's attorney requests it, the case of a child at least 14 charged with an unclassified felony or a class C or D felony must also be transferred to superior court, provided the court finds (without notice, a hearing, or any participation on the part of the child or his counsel) probable cause to believe the child committed the offense alleged.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Class A, B, C and D felonies, unclassified felonies.
Capital	14	Capital felony.
Murder	14	Arson murder.

### Reverse Waiver Conn. Gen. Stat. Sec. 46b-127

In the case of a child accused of a class C or D felony or an unclassified felony and transferred from juvenile court upon motion of the state's attorney, the law authorizes the superior court to return the case to juvenile court, but does not specify grounds for such a retransfer, standards to be applied or factors to be considered.

In the case of a child accused of a class B felony and "automatically" transferred, the State's attorney may request a retransfer to juvenile court within 10 days. The superior court, "after hearing," is required to "decide such motion," but again the law does not indicate grounds, standards, or factors to be considered.

## Delaware

Lower Age: None specified  
Upper Age: 17

### Discretionary Waiver Del. Code, Tit. 10, Secs. 921, 1010

A child of any age who is found to be "not amenable to the rehabilitative processes" of the juvenile court may be referred to superior court for prosecution as an adult. (Note—The court itself can initiate the process regardless of the child's age, but the Attorney General is allowed to initiate the process only when the child is at least 14.) While waiver is discretionary, the court must at least hold a hearing to consider waiving jurisdiction whenever (1) the child is at least 14 and the Attorney General so moves, (2) the child is at least 14 and is charged with violating a restitution order or (3) the child is charged with having committed, after reaching the age of 16, manslaughter, first or second degree robbery, first degree burglary, or first degree arson. The law specifies various factors that must be considered by the court in determining amenability.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	None specified/14	The Attorney General may initiate the discretionary waiver process only in the case of a 14-year-old.

### Mandatory Waiver Del. Code, Tit. 10, Sec. 1010

A child of any age charged with any of various listed felonies, or a child who meets certain other age/offense criteria, "shall be proceeded against as an adult"; however, the juvenile court, "upon application," must first hold a preliminary hearing to determine "if the facts warrant" referral to adult court.

(Note—Under a separate criminal provision, apparently not subject to the above preliminary hearing requirement, a child at least 15 charged with possession of a firearm during commission of a felony must be tried as an adult; see Statutory Exclusion.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	15	Felony committed while escaping from specified juvenile facilities, and the court finds (following a hearing on its own or the Attorney General's motion) that there is "a fair likelihood that the child may be convicted of the charge."
Murder	None specified	First or second degree murder, or the attempt.
Person	None specified/16	None specified—First degree unlawful sexual intercourse, first degree unlawful sexual penetration, first degree kidnapping, or the attempt to commit any of these acts.  16—First degree conspiracy, second degree unlawful sexual intercourse, first degree burglary, first degree assault, first degree arson, or first degree robbery, where the accused has at least one previous felony adjudication.
Property	16	First degree burglary, first degree arson, or attempted first degree burglary or first degree arson, where the accused has at least one previous felony adjudication.
Drug	16	Trafficking or attempting to traffic in various enumerated illegal drugs, where the accused has at least one previous felony adjudication.

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**Delaware**

continued

**Statutory Exclusion** Del. Code, Tit. 10, Sec. 1447A

A criminal statute provides that, "notwithstanding any contrary provisions or statutes governing the Family Court or any other state law," a child at least 15 charged with possession of a firearm during commission of a felony must be tried as an adult. Apparently, therefore, in such a case no "preliminary hearing" in juvenile court is necessary to determine "if the facts warrant" referral to adult court (see Mandatory Waiver).

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	15	Possession of a firearm during the commission of a felony.

**Reverse Waiver** Del. Code, Tit. 10, Sec. 1011

The Attorney General may transfer a case involving a child from superior court to juvenile court without any hearing, whenever, in the Attorney General's opinion, "the interests of justice" would be served thereby. Otherwise, following a timely motion of the defendant, the superior court must hold a hearing to consider a transfer; the standard remains "the interests of justice," but the law specifies various factors that the court must consider in making the transfer decision. The superior court must retain jurisdiction where a child has previously (1) been declared nonamenable to the rehabilitative processes of the juvenile court, (2) applied for and been denied a transfer, or (3) been convicted (as an adult) of a felony.

**Once an Adult, Always** Del. Code, Tit. 10, Secs. 1010, 1011

A child who has previously been (1) declared nonamenable to the rehabilitative processes of the juvenile court (discretionary waiver) or (2) denied a request for a transfer from superior court to juvenile court (reverse waiver) must thereafter be referred to superior court for trial as an adult whenever charged with delinquency.

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## District of Columbia

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver D.C. Code of 1981, Pt. II, Sec. 16-2307

Upon motion of the corporation counsel in the case of a child who meets statutory age/offense criteria, the family division of the superior court must conduct a hearing to determine whether to transfer the child for criminal prosecution. If there are grounds to believe that the child may be mentally ill or mentally retarded, the division must stay proceedings and obtain a mental examination and, if necessary, order a commitment. Otherwise, the division must grant the transfer motion if it finds, at the conclusion of the transfer hearing—and assuming for purposes of the hearing that the child committed the offense alleged—that a transfer "is in the interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitation." The law specifies a number of factors that must be considered in making this determination. A written report containing information relevant to these factors must be submitted to the court by the director of social services prior to the hearing, with copies made available to all the parties. The judge who conducts the transfer hearing may not participate in any subsequent factfinding proceeding relating to the same offense, unless the child does not object.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	16/18	16—Any offense if child is already under commitment to an agency or institution as a delinquent child.  18—Any offense committed as a minor by a person who is now 18.
Certain felonies	15	Any felony.
Weapon	None specified	Illegal possession or control of a firearm within 1000 feet of a school, public swimming pool, playground, video arcade, or youth center, or an event sponsored by any of the above.

### Presumptive Waiver D.C. Code of 1981, Pt. II, Sec. 16-2307(e-2)

In the case of a child of at least 15 who meets offense/prior record criteria, there is a rebuttable presumption in favor of transfer.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	15	Any crime committed with a firearm.
Murder	15	Murder and any other offense properly joinable to it.
Person	15	Forcible rape, armed robbery, assault with intent to commit either of these offenses, and any other offense properly joinable to any of the above; any violent felony committed by a child with at least three previous delinquency adjudications.
Property	15	First degree burglary and any offense properly joinable to it.

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**District of Columbia** continued**Direct File** D.C. Code of 1981, Pt. II, Sec. 16-2301(3)

The term "child" for purposes of family division jurisdiction does not include anyone at least 16 years old who is charged by the U.S. Attorney with any of various listed offenses.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	16	Murder, assault with intent to murder, and any other offense properly joinable to either.
Person	16	First degree sexual abuse, armed robbery, assault with intent to commit either offense, and any other offense properly joinable to the above.
Property	16	First degree burglary or any other offense properly joinable to it.

**Once an Adult, Always** D.C. Code of 1981, Pt. II, Sec. 16-2307(h)

The transfer of a child for criminal prosecution terminates the family division's jurisdiction over the child for any subsequent offense, but jurisdiction is restored if (1) the criminal prosecution ends without a conviction, a guilty plea, or a verdict of not guilty by reason of insanity and (2) as of that time no new charges have been filed against the child alleging any post-transfer criminal offense. (Note—For purposes of this provision, the U.S. Attorney's direct-file charging of a 16-year-old as an adult has been deemed a "transfer" terminating the family division's jurisdiction.)

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**Florida**

Lower Age: None specified  
 Upper Age: 17

**Discretionary Waiver** Fla. Stat., Tit. XLVII, Sec. 985.226  
 Fla. Rules of Juv. Proc., Rule 8.105

At the request of the State's Attorney in the case of a child of at least 14, the juvenile court must hold a hearing to determine whether the child should be transferred for criminal prosecution. Prior to the hearing, the Department of Juvenile Justice must conduct a study and submit a report to the court regarding the child; all parties are entitled to question the author of the report at the hearing. The law lists a number of factors to be considered by the court in making the transfer determination and mandates that any order to transfer a child for criminal prosecution be supported by written findings of fact with respect to each such factor.

In the case of a child of at least 14 who has previously been adjudicated delinquent for any of a number of listed offenses (murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault), the State's Attorney must either file a motion requesting a transfer or make use of the direct file procedures (see Direct File). If a child of at least 14 is accused of a felony and has at least 3 previous adjudications for committing, attempting, or conspiring to commit felonies, one or more of which involved use or possession of a firearm or violence against a person, the State's Attorney must either make use of the direct file procedures (see Direct File), file a motion requesting a transfer, or provide the court with written reasons for failing to do so. If the State's Attorney does request a transfer, the juvenile court must either grant it or provide written reasons for not doing so. (Note—This procedure is described in the law under the heading "Mandatory involuntary waiver," but clearly it is not mandatory in a literal sense, since a judge wishing to retain jurisdiction need do no more than "provide written reasons.")

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	14	Any offense.

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**Florida**

continued

**Direct File**

Fla. Stat., Tit. XLVII, Sec. 985.227

Charges may be filed directly in the circuit court's criminal division whenever, in the State's Attorney's "judgment and discretion," the public interest requires it. (Note—While the law gives the State's Attorney discretion here, one who declines the option may be formally obliged to move for a transfer in juvenile court, or at least to provide the court with written reasons for failing to do so; see Discretionary Waiver.)

In addition, if a child is accused of a capital offense, the State's Attorney may present the case to a grand jury and seek an indictment. If the State's Attorney does not wish to seek an indictment, or if the grand jury does not return an indictment, the State's Attorney may inform the court in writing to that effect and the case will proceed in juvenile court. If the State's Attorney gets an indictment, the child will be tried as an adult not only for the capital offense but also for any included offenses.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	16	Any felony; misdemeanor with 2 prior adjudications, 1 for a felony.
Capital	None specified	Any offense punishable by death or life imprisonment.
Murder	14	Murder, manslaughter.
Person	14	Sexual battery, robbery, kidnapping, aggravated child abuse, aggravated assault, aggravated stalking, aggravated battery, lewd or lascivious assault or act in the presence of a child.
Property	14	Arson, armed burglary, burglary involving damage to a dwelling or structure, grand theft.
Weapon	14	Carrying, displaying, using, threatening, or attempting to use a weapon during the commission of a felony; unlawful throwing, placing, or discharging of a destructive device or bomb.

**Statutory Exclusion**

Fla. Stat., Tit. XLVII, Sec. 985.227

The State's Attorney must file charges directly in the criminal division of the circuit court against any child who meets various age/offense criteria specified by statute.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	None specified	Any criminal offense if 3 or more prior felony adjudications and resulting in 3 or more prior commitments.
Person	None specified/16	None specified—Involvement (either as a driver or willing passenger) in a motor vehicle theft that results in serious injury to a person not involved in the underlying offense.  16—Any violent crime against a person, if committed by someone already adjudicated for murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault.

**Once an Adult, Always**Fla. Stat., Tit. XLVII, Sec. 985.226  
Sec. 985.227; 225

A child who has been convicted and sentenced as an adult is thereafter "handled in every respect as an adult for any subsequent violation of state law."

## Georgia

Lower Age: None specified

Upper Age: 16

### Discretionary Waiver Code of Georgia, Sec. 15-11-39

Provided a juvenile meets age/offense requirements, the juvenile court may transfer his or her case to adult court for prosecution if it finds, after a proper hearing, that there are reasonable grounds to believe that (1) the juvenile committed the act alleged, (2) the juvenile is not subject to commitment to a mental institution, and (3) the best interests of the juvenile and the community require it.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	15	Any conduct designated a crime or public offense.
Capital	13	Any crime for which the punishment is loss of life or confinement for life in a penal institution.

### Mandatory Waiver Code of Georgia, Secs. 15-11-39, 15-11-39.1

The juvenile court "shall transfer" a case to the appropriate adult court if it finds, after a proper hearing, that there are reasonable grounds to believe that a juvenile meeting age requirements committed one of several crimes specified by statute. The court must at least hold a hearing to consider transfer in any case in which an accused juvenile burglar has at least three previous burglary adjudications; however, in such a case, following a transfer, the district attorney must investigate and report to the superior court as to whether the case should be retransferred to juvenile court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Murder or voluntary manslaughter while confined to a youth development center.
Person	14	Aggravated assault or aggravated battery while confined to a youth development center.
Property	15	Felony burglary committed by a juvenile previously found to have committed burglary on three or more occasions.

### Direct File Code of Georgia, Sec. 15-11-5

The juvenile and superior courts have concurrent jurisdiction over cases involving juveniles of any age accused of crimes punishable by death or life imprisonment, except for certain designated crimes placed under the exclusive jurisdiction of the superior court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Capital	None specified	Any crime punishable by death, life imprisonment without parole, or confinement for life in a penal institution, except those crimes over which the superior court has exclusive jurisdiction.

### Statutory Exclusion Code of Georgia, Sec. 15-11-5

The superior court has exclusive jurisdiction over the trial of a juvenile age 13 or older accused of certain enumerated offenses.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	13	Murder and voluntary manslaughter.
Person	13	Rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, and armed robbery committed with a firearm.



**Georgia**

continued

**Reverse Waiver**

Code of Georgia, Sec. 15-11-5

Before indictment, "for extraordinary cause," the prosecutor may "decline prosecution in superior court" of a case over which the superior court has exclusive jurisdiction, withdraw it and lodge it in the appropriate juvenile court instead. After indictment, "for extraordinary cause," the superior court may transfer a case over which it has exclusive jurisdiction to the juvenile court, unless it involves an offense punishable by life imprisonment or death.

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## Hawaii

Lower Age: None specified

Upper Age: 17

**Discretionary Waiver**      Haw. Rev. Stat., Div. 3, Tit. 31, Sec. 571-22  
 Sec. 571-22.5

In a case involving a minor who meets specified age/offense requirements, the family court may waive jurisdiction and order the minor held for criminal proceedings if, after a hearing, it makes certain findings; the requisite findings depend on the age/offense categories involved. In all cases, the court must find at a minimum that there is no evidence that the minor is committable to a mental institution. In a case in which the accused (regardless of age) is alleged to have committed an act that would constitute first or second degree murder or the attempt, that is all the court need find. In a case involving a 14- or 15-year-old accused of a felonious act other than murder or attempted murder, the court must also find that either (1) the act constituted a class A felony, (2) the act resulted in serious injury to the victim, or (3) the accused has previously been adjudicated for a felony. In the case of a minor accused of committing any felony after his 16th birthday, besides the requisite finding that the minor is not subject to commitment in a mental institution, the court must also find—on the basis of a "full investigation and hearing"—that either (1) the minor is not treatable in any children's institution or facility in the state or (2) the safety of the community requires that the minor be restrained beyond the period of his minority. Except where the minor is accused of murder or attempted murder, the court making the waiver decision must weigh various factors (the minor's maturity, the seriousness of the offense, etc.) specified by statute. An order waiving jurisdiction is not appealable until after trial.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14/16	14—Any class A felony; any felony resulting in serious bodily injury to the victim; any felony committed by a previously adjudicated felon.  16—Any felony.
Murder	None specified	First or second degree murder or first or second degree attempted murder.

**Once an Adult, Always**      Haw. Rev. Stat., Div. 3, Tit. 31, Sec. 571-22

A transfer for criminal proceedings terminates the family court's jurisdiction over any subsequent offenses committed by the same child.

## Idaho

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver Idaho Code Secs. 20-508, 20-509

The juvenile court may waive jurisdiction (after a hearing on its own motion or that of either party) over a case involving any juvenile meeting age/offense requirements. The law specifies various factors that must be considered by the court in making the waiver determination. In addition, in the case of a waiver of jurisdiction over someone who is currently 18 for any felonious act committed before he or she became 18, the court must find that (1) the accused is not committable to a mental institution, (2) the accused is not treatable in any available juvenile institution or facility, or (3) the safety of the community requires restraint.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	14	Any criminal offense not excluded from juvenile court jurisdiction.
Certain felonies	None specified	The juvenile court may waive jurisdiction over someone who is currently 18 for any felonious act committed before he or she became 18.
Murder	None specified	Murder of any degree or attempted murder.
Person	None specified	Robbery, rape, forcible sexual penetration, violent "crimes against nature," mayhem, or assault or battery with intent to commit any of the above.
Property	None specified	First degree or aggravated arson.
Drug	None specified	Controlled substance manufacture, delivery, or possession with intent to deliver within 1000 feet of a school or school-sponsored activity.

### Statutory Exclusion Idaho Code Sec. 20-509

Any juvenile who is at least 14 and is alleged to have committed any of a number of specified crimes "shall be charged, arrested and proceeded against...as an adult." All other charges arising out of the same transaction are also handled in adult court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Murder of any degree or attempted murder.
Person	14	Robbery, rape, forcible sexual penetration, violent "crimes against nature," mayhem, or assault or battery with intent to commit any of the above.
Property	14	First degree or aggravated arson.
Drug	14	Controlled substance manufacture, delivery, or possession with intent to deliver within 1000 feet of a school or school-sponsored activity.

### Once an Adult, Always Idaho Code Sec. 20-509

Once a juvenile has been convicted as an adult—or even once the juvenile has been found or pled guilty "to a lesser offense or amended charge growing out of or included within the original charge," whether or not that offense is excluded—the juvenile is treated as an adult for purposes of any subsequent violations of Idaho law.

## Illinois

Lower Age: None specified

Upper Age: 16

### Discretionary Waiver 705 ILCS 405/5-4

On motion of the State's attorney in the case of a child of at least 13, a juvenile judge specially designated to hear such motions may enter an order permitting criminal prosecution if the court finds, after investigation and a hearing, "that it is not in the best interests of the minor or the public" to proceed against the child as a juvenile. The law specifies a number of factors to be considered in making this determination.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	13	Any criminal offense.

### Presumptive Waiver 705 ILCS 405/5-4(3.3)

If the State's attorney moves for an order permitting criminal prosecution in the case of a child of at least 15 accused of any of a number of specified offenses, it is rebuttably presumed that the child is not a fit and proper subject for treatment as a juvenile. Accordingly, if the juvenile court finds probable cause to believe the State's allegations, it must enter an order permitting criminal prosecution, unless it also finds, based on the evidence, and considering a number of factors specified by statute, that the child "would be amenable to the care, treatment, and training programs" available through the juvenile court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	15	Class X felony other than armed violence; aggravated discharge of a firearm; armed violence with a firearm in connection with a class 1 or 2 felony committed in furtherance of the criminal activities of an organized gang; armed violence with a firearm in connection with a violation of any of various provisions of the Illinois Controlled Substances Act; and armed violence with a machine gun or other restricted weapon.

### Mandatory Waiver 705 ILCS 405/5-4(3.1) and (3.2)

If the State's attorney moves for an order permitting criminal prosecution of a child of at least 15 meeting statutory criteria and accused of committing a felony in furtherance of the criminal activities of an organized gang, the juvenile court must grant the order, provided it finds probable cause to believe the State's allegations.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	15	Any felony committed to further the criminal activities of an organized gang by a child previously adjudicated for a felony, as long as either the current or previously adjudicated felony is a forcible felony.

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**Illinois**

continued

**Statutory Exclusion** 705 ILCS 405/5-4(6), (7), (8), (9)

Children meeting specified age/offense criteria are excluded from the definition of "delinquent minor" for purposes of juvenile court jurisdiction, and are subject to criminal prosecution for the excluded offenses and all others arising out of the same incidents.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	15	Escape or bail bond violation while subject to prosecution in criminal court.
Murder	13/15	13—First degree murder committed during the course of aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping (but not including murder for which a child is merely held accountable).
		15—First degree murder.
Person	15	Aggravated criminal sexual assault, armed robbery with a firearm, aggravated vehicular hijacking committed with a firearm.
Drug	15	Specified Illinois Controlled Substances Act violations committed on school property, in a school conveyance, at a school activity, or near a school, or on or near public housing property.
Weapon	15	"Unlawful use of weapons" (including possessing a firearm in public or selling, manufacturing, purchasing, or possessing any of a list of outlawed weapons) where the violation occurred on school grounds.

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## Indiana

Lower Age: None specified  
 Upper Age: 17

**Discretionary Waiver**      Indiana Code Sec. 31-30-3-1  
    Sec. 31-30-3-2  
    Sec. 31-30-3-3  
    Sec. 31-30-3-4  
    Sec. 31-30-3-5  
    Sec. 31-30-3-10

Upon motion of the prosecutor and after investigation and a hearing, the juvenile court may waive jurisdiction over certain specified categories of juveniles. A waiver order must include specific findings of supporting facts. The waiver applies not only to the offense charged but to all lesser included offenses.

In the case of a child who was at least 14 at the time of commission, the court may waive jurisdiction if it finds (1) probable cause to believe the child committed an act that is either "heinous or aggravated" or "part of a repetitive pattern of illegal acts"; (2) that the child is "beyond rehabilitation under the juvenile justice system"; and (3) that it is "in the best interests of the safety and welfare of the community" that the child be tried as an adult.

In the case of a child who was at least 16 at the time of commission, the court may waive jurisdiction if it finds (1) probable cause to believe the child committed a felony relating to controlled substances and (2) that it is "in the best interests of the safety and welfare of the community" that the child be tried as an adult.

In the case of a child of at least 10 accused of murder or a child of at least 16 accused of involuntary manslaughter, reckless homicide, or any nondrug class A or B felony, the juvenile court "shall waive jurisdiction" if it makes the requisite probable cause finding, "unless it would be in the best interests of the child and of the safety and welfare of the community" for the court to deny the waiver. (Note—Although this last provision is not cast in terms of presumptive waiver, it appears to lie somewhere between Indiana's two wholly discretionary provisions (which specify that the court "may" waive) and its wholly mandatory one (which does not contain any "unless" clause or even require a probable cause finding.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	14	"Heinous or aggravated" act; act that is "part of a repetitive pattern of delinquent acts, even though less serious."
Certain felonies	16	Class A or B felony.
Murder	10/16	10—Murder.
		16—Involuntary manslaughter, reckless homicide.
Drug	16	Felony violation of controlled substances law.

**Mandatory Waiver**      Indiana Code Sec. 31-30-3-6

Upon motion of the prosecutor, the juvenile court "shall waive jurisdiction" over a case in which (1) a child of any age is charged with a felony and (2) the child has previously been convicted of a felony or nontraffic misdemeanor. (Note—The charge alone is sufficient here; no findings regarding probable cause or the public interest are necessary.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	None specified	Any felony committed by a child previously convicted for a felony or nontraffic misdemeanor.

## Indiana

continued

### Statutory Exclusion Indiana Code Sec. 31-30-1-4

The juvenile court has no jurisdiction over a child accused of having committed a statutorily excluded offense after reaching the age of 16. The court having adult criminal jurisdiction over an excluded offense also has jurisdiction over any offense that may be joined to it. The adult court retains jurisdiction even if the child is convicted or pleads guilty to a lesser included offense.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	16	Active and knowing/intentional participation in a criminal gang.
Murder	16	Murder.
Person	16	Kidnapping, rape, criminal deviate conduct, armed robbery, robbery resulting in bodily injury, carjacking, and criminal gang intimidation.
Drug	16	Dealing in cocaine, narcotic drugs, or Schedule I, II, III, or IV controlled substances.
Weapon	16	Carrying a handgun without a license, dealing in a sawed-off shotgun, and being a child in possession of a handgun or transferring a handgun to a child.

### Once an Adult, Always Indiana Code Sec. 31-30-1-2 Sec. 31-30-3-6

The "juvenile law does not apply to" a child who is accused of a crime and has previously been waived to adult court. In addition, even if there was no waiver involved in the previous case, a child who was convicted in adult court of a felony or nontraffic misdemeanor and is subsequently charged with a felony is automatically waived (see Mandatory Waiver).

**Iowa**

Lower Age: None specified  
 Upper Age: 17

**Discretionary Waiver** Iowa Code Sec. 232.45

In the case of a child of at least 14 accused of a public offense, on motion of either the child or the county attorney, the juvenile court must hold a hearing to determine whether to waive jurisdiction. Prior to the hearing, an investigative report on the child must be submitted to the court by the juvenile probation officer or other designated person. At the conclusion of the hearing, the court may waive jurisdiction if it finds (1) that there is probable cause to believe the child committed a public offense (or if it has already found probable cause at a previous detention hearing) and (2) that the State has established that there are no reasonable prospects for rehabilitation within the juvenile court system and that waiver would be in the best interests of the child and the community. The law specifies various factors to be considered by the court in making this determination.

(Note—Slightly different standards apply when the court is considering a motion for waiver for the purpose of prosecuting the child as a "youthful offender" rather than as an adult. (The trial of a youthful offender takes place in adult court, but upon conviction the sentencing is deferred, and supervision over the child is transferred back to the juvenile court, until the child's 18th birthday; at that time the adult court has a number of sentencing options, including continuing the child on youthful offender status, entering a sentence, suspending the sentence, placing the child on probation, etc.) Waiver for purposes of youthful offender prosecution is permitted in the case of a child no older than 15 if the court, after considering the best interests of the child and the community as well as a number of other determinative factors specified by statute, finds that (1) there is probable cause to believe the child committed an offense that would have been excluded from juvenile court jurisdiction if the child had been 16 and (2) the State has established that there are no reasonable prospects for rehabilitating the child before his 18th birthday within the juvenile court system.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	14	Any public offense.
Certain felonies	15	Felony or forcible felony.

**Statutory Exclusion** Iowa Code Sec. 232.8

Designated offenses committed by a child 16 or older are excluded from juvenile court jurisdiction and prosecuted in adult court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	16	Forcible felonies.
Drug	16	Manufacturing, delivering, or possessing controlled substances with intent to deliver, while in the immediate possession or control of a firearm or offensive weapon.
Weapon	16	Felony-grade weapons violations, or any weapons violation committed by a criminal street gang member for the benefit of, at the direction of, or in association with a criminal street gang.

**Reverse Waiver** Iowa Code Sec. 232.8

A child accused of an offense excluded from juvenile jurisdiction may nevertheless be transferred to juvenile court "upon motion and for good cause."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	14	Any public offense.



**Iowa**

continued

**Once an Adult, Always** Iowa Code Sec. 232.45A

Once a child 16 or older has been waived to and convicted of a felony or aggravated misdemeanor in district court, provided the child was prosecuted and convicted as an adult (and not as a youthful offender), proceedings against the child for any subsequent felonies or aggravated misdemeanors must be commenced in district court. If such a case is mistakenly begun in juvenile court, it must be immediately transferred to district court.

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## Kansas

Lower Age: 10

Upper Age: 17

### Discretionary Waiver Kansas Statutes Sec. 38-1636

Upon motion of the county or district attorney in the case of a child accused of any offense, the juvenile court must hold a hearing to decide whether to authorize prosecution of the child as an adult. Except where the child meets age/offense/prior record criteria creating a presumption in favor of adult prosecution (see Presumptive Waiver), juvenile treatment is presumed to be appropriate unless the prosecution shows that there is "good cause" for adult prosecution. If the child has had proper notice but fails to appear at the hearing on the motion to authorize adult prosecution, the hearing may be held in the child's absence following notice by publication. The law lists a number of factors that the court must consider in deciding whether to authorize prosecution as an adult, and permits the court to consult reports and other written materials bearing on these factors, but stipulates that "the insufficiency of evidence pertaining to any one or more of the factors...shall not in and of itself be determinative of the issue." An order authorizing adult prosecution must be supported by a finding of "substantial evidence" in its favor.

In the alternative, the county or district attorney may move to have the case designated an "extended jurisdiction juvenile prosecution." Even where the county or district attorney requests an authorization of adult prosecution, the court may instead designate the case an extended jurisdiction juvenile prosecution. The procedures, presumptions, and factors to be considered in determining whether to designate a case an extended jurisdiction juvenile prosecution are identical to those involved in a hearing to consider whether a child should be prosecuted as an adult. Moreover, like a child subject to adult prosecution, a child who is subject to extended jurisdiction juvenile prosecution has "the right to trial by jury, to the effective assistance of counsel and to all other rights of a defendant pursuant to the Kansas code of criminal procedure." However, different sentencing provisions apply.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	10	Any criminal offense.

### Presumptive Waiver Kansas Statutes Sec. 38-1636(a)(2) & (3)

Where the county or district attorney seeks adult prosecution in the case of a child who meets certain age/offense/prior record criteria, adult prosecution is presumed to be appropriate, and the burden is on the child to rebut the presumption. (If the issue is whether to designate the proceedings as an extended jurisdiction juvenile prosecution and the child meets the statutory criteria, the same presumption applies.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	14	Any offense committed while in possession of a firearm.
Certain felonies	14	Any nondrug felony of severity level 1 through 6; any felony (or combination of offenses including a felony) committed after having been adjudicated for or convicted of a felony; any "offgrid" (unclassified) felony.
Person	14	Any "person felony."
Drug	14	Any drug felony of severity level 1 or 2.

### Once an Adult, Always Kansas Statutes Sec. 38-1636

If a child is convicted following authorization of adult prosecution, the authorization "shall attach and apply to any future acts" committed by the same child. However, if the authorized prosecution is for an offense to which the presumption in favor of authorization applies (see Presumptive Waiver), and the child is not convicted of any of the offenses creating the presumption, the child is considered "a juvenile offender" and is sentenced under the Juvenile Offenders Code.

## Kentucky

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver      KRS Tit. LI, Sec. 635.020 Sec. 640.010

Upon motion of the county attorney, the district court must conduct a preliminary hearing to determine whether a child should be transferred to circuit court for trial as a "youthful offender." (A youthful offender is proceeded against in most respects as an adult. Before invoking the youthful offender provisions, the county attorney is required by law to consult with the Commonwealth's attorney.) Following the preliminary hearing, if the court determines that (1) there is probable cause to believe the child committed the offense alleged and otherwise meets statutory age/offense/prior record criteria and (2) at least two of a list of seven determinative factors specified by statute (one of which is "the best interest of the child and community") weigh in favor of transfer, it may issue an order transferring the child to circuit court. Whether the case of a child charged with a felony is handled in district court or circuit court, all offenses arising from the same course of conduct must be tried with the felony.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14/16	14—Class A or B felony; any felony committed by a child with a previous youthful offender conviction.  16—Class C or D felony committed by a child with a previous felony adjudication.
Capital	14	Capital offense.

### Mandatory Waiver      KRS Tit. LI, Sec. 635.020

A child of at least 14 accused of a felony in which a firearm was used must be transferred to circuit court for trial as an adult if the district court finds probable cause to believe that the child committed the offense alleged.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Felony in which a firearm was used.

### Reverse Waiver      KRS Tit. LI, Sec. 640.010(3)

If, after a transfer from district court to circuit court, a grand jury fails to return an indictment for an offense qualifying the child for youthful offender treatment, but instead indicts for some other offense, the child must be returned to district court to be tried as a juvenile.

## Louisiana

Lower Age: 10

Upper Age: 16

### Discretionary Waiver La. Children's Code, Tit. III, Ch. 4, Art. 857

A child who was at least 14 at the time of committing various listed offenses but is not otherwise subject to the original jurisdiction of the criminal court may be transferred following a hearing, either on the district attorney's or the court's own motion. (The law does not specify grounds for such a transfer or factors to be considered.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	First or second degree murder.
Person	14	Aggravated kidnapping, aggravated rape, aggravated battery involving discharge of a gun, armed robbery committed with a gun, aggravated oral sexual battery, and forcible rape committed upon a child at least 2 years younger than the rapist.

### Mandatory Waiver La. Children's Code, Tit. III, Ch. 4, Art. 305

If a child is accused of first or second degree murder, aggravated rape or aggravated kidnapping, and was at least 15 at the time of commission, but has not been indicted, the juvenile court has jurisdiction only until it determines, at a "continued custody hearing," that there is probable cause to believe the child committed the offense. Thereafter, the child is subject to the exclusive jurisdiction of the adult criminal court. The adult court's jurisdiction encompasses both the charged offenses and any lesser included offenses of which the child might be convicted. (For an alternative treatment of the same category of cases, see Statutory Exclusion.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	15	First or second degree murder.
Person	15	Aggravated rape, aggravated kidnapping.

### Direct File La. Children's Code, Tit. III, Ch. 4, Art. 305

If the case meets specified age/offense criteria, the district attorney may choose between (1) obtaining a grand jury indictment against the child, which bypasses the juvenile court altogether; (2) filing criminal charges without first securing a grand jury indictment, in which case the juvenile court's only involvement with the case will be to determine whether there is probable cause to believe that the child committed the offense; or (3) filing a delinquency petition, in which case jurisdiction remains in the juvenile court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	15	Attempted first degree murder, attempted second degree murder, manslaughter.
Person	15	Armed robbery, simple or forcible rape, second degree kidnapping, aggravated oral sexual battery, aggravated battery committed with a firearm, a second or subsequent aggravated battery.
Property	15	Aggravated burglary, a second or subsequent burglary of an inhabited dwelling.
Drug	15	A second or subsequent felony-grade violation of listed statutes governing controlled dangerous substances.

**Louisiana**

continued

**Statutory Exclusion**

La. Children's Code, Tit. III, Ch. 4, Art. 305

The case of a child who has been indicted for first or second degree murder, aggravated rape or aggravated kidnapping, and was at least 15 at the time of commission, is under the exclusive jurisdiction of the adult criminal court. The adult court's jurisdiction encompasses both the charged offenses and any lesser included offenses of which the child might be convicted. (Note—In other words, if the district attorney bypasses juvenile court and seeks an indictment from a grand jury in such a case, then no juvenile court hearing to determine probable cause need be held, and the child is treated as an adult from the moment the indictment is returned. For the alternative scenario, see Mandatory Waiver.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	15	First or second degree murder.
Person	15	Aggravated rape, aggravated kidnapping.

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## Maine

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver MRS Tit. 15, Pt. 6, Ch. 503, Sec. 3101

At the request of the prosecuting attorney in a case meeting statutory age/offense criteria, the juvenile (district) court must conduct a "bind-over hearing" to determine whether to waive jurisdiction. At the hearing, reports and other written materials may be considered by the court in ruling on a waiver, but any party may demand that the authors of such materials appear as witnesses for questioning. The court may waive jurisdiction, bind the child over to superior court, and certify the case for proceedings before a grand jury if it finds (1) that there is probable cause to believe the child committed a waivable offense and (2) that, when various factors specified by statute are considered (including the seriousness of the offense, the characteristics of the child, and the adequacy of the dispositional alternatives available to the juvenile court), "the preponderance of the evidence" indicates that prosecuting the child as an adult would be "appropriate."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	None specified	Class A, B, or C crime.
Murder	None specified	Murder.

### Once an Adult, Always MRS Tit. 15, Pt. 6, Ch. 503, Sec. 3101

Any person bound over and convicted as an adult must be proceeded against as an adult in all prosecutions for subsequent crimes.

## Maryland

Lower Age: 7

Upper Age: 17

### Discretionary Waiver      Code of Md., Sec. 3-817 Maryland Rule 913

The juvenile court may waive its exclusive jurisdiction over a child who meets specified age/offense criteria if it finds, after ordering an investigation and holding a hearing, that the child is not a fit subject for juvenile rehabilitative measures. The law lists various factors to be considered in making the waiver determination. For purposes of waiver the court must assume that the child actually committed the offenses in the petition. An order waiving jurisdiction is not immediately appealable.

When a child over whom juvenile jurisdiction has previously been waived comes before the juvenile court on a new offense, the court may waive its jurisdiction following a summary review, without a hearing. (Also, as noted in Reverse Waiver, once a child has been (1) convicted of an excluded offense or (2) adjudicated delinquent following a reverse waiver, he can never get a transfer from adult to juvenile court again.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	15	
Capital	None specified	Act punishable by death or life imprisonment.

### Statutory Exclusion      Code of Md., Sec. 3-804

The juvenile court "does not have jurisdiction over" various age/offense categories, unless the adult criminal court waives its jurisdiction and transfers the case to the juvenile court. (See Reverse Waiver.) If a child meets age/offense criteria for exclusion, all other charges against the child arising out of the same incident are also heard in adult criminal court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Capital	14	Crime punishable by death or life imprisonment.
Murder	16	Second degree murder or the attempt, manslaughter.
Person	16	Abduction, kidnapping, first degree assault, armed robbery or the attempt, second degree rape, second and third degree sexual offenses in violation of specified statutes, attempted rape, attempted second degree sexual assault, carjacking and armed carjacking.
Weapon	16	Certain firearms violations, including wearing, carrying, or transporting a handgun on the person or in a vehicle without a permit; possessing or using a machine gun for aggressive purposes or in the perpetration or attempted perpetration of a crime of violence; violating restrictions on the transfer, sale, or possession of regulated firearms; knowingly possessing, selling, or transferring a stolen regulated firearm; possessing a short-barreled rifle or shotgun; and using, wearing, carrying, or transporting firearms during and in relation to a drug trafficking crime.

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**Maryland**

continued

**Reverse Waiver**

Code of 1957, Art. 27, Sec. 594A

Generally, a court with criminal jurisdiction over a case excluded by statute from juvenile jurisdiction may waive it and transfer the child to juvenile court if such a transfer is "in the interests of the child or society." However, the court may not transfer a case of any child who (1) has previously been convicted of an excluded offense; (2) has previously been waived/transferred to juvenile court and adjudicated delinquent; or (3) is accused of first degree murder and was at least 16 at the time of commission. The law specifies various factors that must be considered in making a reverse waiver determination.

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## Massachusetts

Lower Age: 7

Upper Age: 16

### Direct File

Mass. Gen. Laws, Ch. 119, Sec. 54

Cases that meet statutory age/offense criteria may be commenced either in juvenile court (or a juvenile session of district court) or by indictment. A complaint and indictment for a qualifying offense, as well as any other offense properly joined to it, are brought in "the usual course and manner of criminal proceedings."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Any offense punishable by imprisonment if the accused was previously committed to the Department of Youth Services.
Person	14	Any offense punishable by imprisonment if it involves the infliction or threat of serious bodily harm.
Weapon	14	Distribution, sale, or transfer of specified quantities of firearms; unlawful carrying of a firearm; possession of a machine gun; and ownership, possession, or carrying of a sawed-off shotgun.

### Statutory Exclusion

Mass. Gen. Laws, Ch. 119, Sec. 74

The juvenile court has no jurisdiction over a child of at least 14 charged with first or second degree murder. Complaints and indictments for murder, along with any other offense properly joined, are brought in "the usual course and manner of criminal proceedings."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	First or second degree murder.

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## Michigan

Lower Age: None specified

Upper Age: 16

### Discretionary Waiver MCL Sec. 712A.4

On the motion of the prosecutor, and after a hearing, the juvenile court may waive jurisdiction over the case of a child of at least 14 accused of a felony (or any other offense, whether or not designated a felony, that is punishable by more than one year's imprisonment) if it finds that (1) there is probable cause to believe the child committed the offense alleged and (2) the best interests of the child and the public would be served thereby. The law specifies a number of factors that must be considered in making this determination, but mandates that the court give the most weight to two: the seriousness of the offense and the child's prior record.

(Note—Under a separate provision, Sec. 712A.2d, at the request of the prosecutor in a case that is not subject to direct file, the juvenile court may "designate the case as a case in which the juvenile is to be tried in the same manner as an adult"—but in juvenile court. The necessary findings, and the considerations that must be weighed, are the same as in a discretionary waiver hearing. However, if the court grants the request, the trial and sentencing take place in juvenile court, with "all procedural protections and guarantees to which the juvenile would be entitled if being tried for the offense in a court of general criminal jurisdiction.")

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	14	Any felony or other offense punishable by imprisonment for more than 1 year.

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**Michigan**

continued

**Direct File****MCL Sec. 600.606**

In the case of a child of at least 14 accused of a "specified juvenile violation," the juvenile court has jurisdiction only "if the prosecuting attorney files a petition in the court instead of authorizing a complaint and warrant." Otherwise, the circuit court has jurisdiction. Jurisdiction over a specified juvenile violation includes jurisdiction over any lesser included offense and over any other offense arising out of the same transaction.

(Note—Under a separate provision, Sec. 712A.2d, in a case subject to direct file the prosecutor may "designate the case as a case in which the juvenile is to be tried in the same manner as an adult." In such a case, the trial and sentencing take place in juvenile court, but with "all procedural protections and guarantees to which the juvenile would be entitled if being tried for the offense in a court of general criminal jurisdiction.")

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Escape or attempted escape from certain juvenile facilities; conspiracy or solicitation to escape.
Murder	14	First and second degree murder; attempted murder; conspiracy or solicitation to commit murder.
Person	14	Assault with intent to commit murder; assault with intent to maim; armed assault with intent to rob and steal; armed assault with intent to do great bodily harm; kidnapping; first degree criminal sexual conduct; armed robbery; carjacking; attempt, conspiracy, or solicitation to commit any of these offenses.
Property	14	Arson of a dwelling; bank, safe, and vault robbery; first degree home invasion while armed; attempt, conspiracy, or solicitation to commit any of these offenses.
Drug	14	Unlawful manufacture, creation or delivery of a minimum quantity of certain designated controlled substances, or possession with intent to manufacture, create, or deliver the same; any attempt, conspiracy, or solicitation to commit any of these offenses.

**Once an Adult, Always** MCL Sec. 712A.4(5)

The juvenile court must waive jurisdiction over any child who has previously been subject to adult court jurisdiction if it finds probable cause to believe the child committed a felony.

## Minnesota

Lower Age: 10  
 Upper Age: 17

### Discretionary Waiver Minn. Statutes Sec. 260.125

On motion of the prosecutor in the case of a child of at least 14 accused of a felony, the juvenile court may, after a hearing, certify the proceeding for adult criminal prosecution if it finds (1) probable cause to believe that the child committed the offense alleged and (2) that the prosecutor has shown by clear and convincing evidence that the public safety would not be served by retaining the proceeding in juvenile court. (Note—The "clear and convincing" standard does not apply to certain age/offense categories; see Presumptive Waiver.) The law specifies various factors that must be considered in making the public safety determination, but requires that two be given greater weight than the others: the seriousness of the offense and the child's prior record. Whether the court decides for or against certification, it must issue written findings in support of its decision.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Any felony.

### Presumptive Waiver Minn. Statutes Sec. 260.125

If a child of at least 16 is accused of (1) an offense that would result in a presumptive commitment to prison under applicable laws and sentencing guidelines or (2) a felony committed with a firearm, there is a presumption that certification for trial as an adult is appropriate. In such a case, if the court finds probable cause to believe that the child committed the offense alleged, the child has the burden of showing by clear and convincing evidence that the public safety would be served by retaining the case in juvenile court. If the court decides to order certification, it need not issue written findings regarding the public safety determination. However, if it decides not to certify in such a case, it must designate the proceeding an extended jurisdiction juvenile prosecution and include in its decision written findings to support its determination with regard to public safety.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	16	A felony committed while using a firearm, or any offense that would result in a presumptive commitment to prison under applicable laws and sentencing guidelines.

### Statutory Exclusion Minn. Statutes Sec. 260.015

The term "delinquent child" does not include a child of at least 16 who is accused of first degree murder.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	16	First degree murder.

### Once an Adult, Always Minn. Statutes Sec. 260.125

The juvenile court must order certification for trial as an adult in any case in which the prosecutor shows that a child accused of a felony was (1) previously certified and (2) thereafter convicted, either of the offense for which he was certified or of a lesser included offense that itself constituted a felony.

## Mississippi

Lower Age: 10

Upper Age: 17

**Discretionary Waiver** Miss. Code 1972, Sec. 43-21-157  
 Sec. 43-23-29  
 Sec. 43-23-31

The youth court may waive jurisdiction over the case of a child of at least 13 if it finds, following a bifurcated transfer hearing, (1) probable cause to believe the child committed the alleged offense and (2) no reasonable prospects of rehabilitation within the juvenile justice system. The child may waive the probable cause phase of the hearing. The law lists various factors that must be considered in making the finding that there are no prospects of rehabilitation, and specifies that the finding must be supported by clear and convincing evidence. Once a case is transferred, the adult court has jurisdiction over the offense described in the original petition as well as any lesser included offense. (Note—There are special provisions (Secs. 43-23-29, 43-23-31) governing waiver procedures in "family courts"—as opposed to youth courts—which apply only to Harrison County. Under these provisions, transfer is permitted in the case of a 13-year-old accused of a felony. In addition, when a 13-year-old is brought before a justice of the peace or municipal court and accused of a misdemeanor, the family court may issue an order allowing prosecution there, but it retains jurisdiction to stay the execution of any sentence.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	13	Any criminal offense.

**Statutory Exclusion** Miss. Code 1972, Sec. 43-21-151

Certain categories of crime are "in the original jurisdiction of the circuit court" rather than the youth court; however, a child must have reached his 13th birthday to be held criminally responsible.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	13/17	13—Any felony attempted or committed with the use of a shotgun, rifle, or deadly weapon.  17—Any felony.
Capital	13	Punishable by life imprisonment or death.

**Reverse Waiver** Miss. Code 1972, Sec. 43-21-159  
 Sec. 43-21-157(8)

Following youth court's waiver and on the motion of a child who has been transferred from youth court to circuit court, the circuit court may review the transfer proceedings. It must remand the case to the youth court if the transfer order is not supported by substantial evidence.

Excluded Offenses: Generally, the circuit court may also waive its original jurisdiction over a child accused of an excluded offense, and transfer the case to youth court if it finds "that it would be in the best interests of such child and in the interest of justice." However, the circuit court may not transfer the case of a child who has previously been convicted as an adult, either for an excluded offense or following a waiver.

(Note—There is no equivalent provision for waiver/transfer from circuit court to "family court.")

**Once an Adult, Always** Miss. Code 1972, Sec. 43-21-157(8)

Youth court jurisdiction over a child is terminated once the child has been convicted in circuit court. In addition, once a child has been transferred to or otherwise appeared in circuit court, even if not convicted, the circuit court retains jurisdiction, without any further transfer proceedings, over any subsequent felony case involving the child.

## Missouri

Lower Age: None specified  
 Upper Age: 16

### **Discretionary Waiver** Mo. Stat., Tit. XII, Sec. 211.071

Upon its own motion or that of any party in the case of a child of at least 12 accused of a felony, the juvenile court may order a hearing to consider whether to dismiss the delinquency petition and transfer the child for adult prosecution. (However, the court must at least hold a hearing to consider transfer where the child is accused of one of a number of listed offenses—first or second degree murder, first degree assault, forcible rape, forcible sodomy, first degree robbery, or distribution of drugs—or has committed two or more previous felonies.) Before the hearing, a written report on the child's history, record, offense, rehabilitation prospects, etc., must be prepared for the juvenile court's consideration. Following the hearing, the court may dismiss the case to permit adult prosecution if it finds that the child is not a proper subject to be dealt with under the juvenile law, taking into account a number of determinative considerations (including "racial disparity in certification") specified by law. An order of dismissal to permit adult prosecution must be supported by written findings.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	12	Any felony.

### **Once an Adult, Always** Mo. Stat., Tit. XII, Sec. 211.071

Once the juvenile court has dismissed a petition to permit prosecution of a child as an adult, its jurisdiction over that child with respect to future offenses is forever terminated, unless the child is subsequently found not guilty in adult court.

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## Montana

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver Montana Code Sec. 41-5-203

A jurisdictional provision specifies that the youth court "has jurisdiction to...transfer a youth court case to the district court after notice and a hearing," but says nothing regarding any age or offense restrictions on this transfer authority, grounds for such a transfer, or standards that govern the decision.

### Direct File Montana Code Sec. 41-5-206

If a child otherwise meets specified age/offense criteria, but was under 17 at the time of the alleged offense, the county attorney has discretion to file either (1) a delinquency petition in youth court or (2) a motion in district court asking for leave to file there. (If the child was 17 at the time of the offense, the county attorney must ask leave to file in district court; see Statutory Exclusion.) The district court must grant the county attorney leave to file there if it finds both that there is probable cause to believe the child committed the alleged offense and "that, considering the seriousness of the offense and in the interests of community protection, the case should be filed in the district court." A separate offense that "arises during the commission of" but is not one of the offenses qualifying for direct file treatment may either be tried in youth court or "transferred" (sic) to district court upon the county attorney's motion and the district court's order.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	12/16	12—Deliberate homicide, mitigated deliberate homicide, the attempt to commit either, or accountability for the commission of either.
		16—Negligent homicide, attempted negligent homicide, or accountability for negligent homicide.
Person	12/16	12—Sexual intercourse without consent.
		16—Aggravated or felony assault, robbery, aggravated kidnapping; the attempt to commit any of the above offenses; accountability for any of the above offenses; use of threat or violence to coerce criminal street gang membership.
Property	16	Arson, burglary or aggravated burglary; the attempt to commit any of these offenses or accountability for any of these offenses.
Drug	16	Criminal sale, production, or manufacture of dangerous drugs; the attempt to commit any of these offenses, or accountability for any of these offenses.
Weapon	16	Possession, attempt to possess, or accountability for the possession of explosives.

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**Montana**

continued

**Statutory Exclusion**

Montana Code Sec. 41-5-206

The prosecutor must petition the district court for leave to file charges against a child of at least 17 accused of various enumerated offenses. The district court must grant the county attorney leave to file there if it finds both that there is probable cause to believe the child committed the alleged offense and "that, considering the seriousness of the offense and in the interests of community protection, the case should be filed in the district court."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	17	Deliberate homicide, mitigated deliberate homicide, the attempt to commit either, or accountability for the commission of either; negligent homicide, attempted negligent homicide, or accountability for negligent homicide.
Person	17	Aggravated or felony assault; robbery; aggravated kidnapping; the attempt to commit any of the above offenses; accountability for any of the above offenses; use of threat or violence to coerce criminal street gang membership; sexual intercourse without consent.
Property	17	Arson, burglary or aggravated burglary; the attempt to commit any of these offenses, or accountability for any of these offenses.
Drug	17	Criminal sale, production, or manufacture of dangerous drugs; the attempt to commit any of these offenses, or accountability for any of these offenses.
Weapon	17	Possession, attempt to possess, or accountability for the possession of explosives.

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## Nebraska

Lower Age: None specified

Upper Age: 17

### Direct File

Neb. Rev. Stat. Sec. 43-247

Sec. 43-276

The juvenile court's jurisdiction is concurrent with those of the district/county courts in cases that meet age/offense criteria. The law specifies a number of factors (including, among many others, "the best interests of the juvenile and the security of the public") that must be considered by the county attorney in deciding how to file.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	16	Any nontraffic misdemeanor.
Certain felonies	None specified	Any felony.

### Reverse Waiver

Neb. Rev. Stat. Sec. 43-261

Sec. 29-1816

Sec. 43-276

When a juvenile is charged in criminal court (see Direct File), the juvenile may move the court, orally or in writing, to waive jurisdiction to the juvenile court. If the county attorney does not object, the case may be transferred without any formal findings. Otherwise, after a hearing in which both sides present evidence bearing on the same considerations that the county attorney was required to take into account in making the original filing decision (see Direct File), the court must transfer the case "unless a sound basis exists for retaining jurisdiction." The court must set forth findings for its decision, but the grant or denial of a transfer is not immediately appealable.

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## Nevada

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver Nev. Rev. Stat. Sec. 62.080 Sec. 62.081

If a child accused of a felony was at least 14 at the time of the alleged offense, a juvenile court may, upon motion of the district attorney, either retain jurisdiction of the case or certify the child for criminal proceedings. The law does not specify grounds for certification or factors to be considered in such cases. A child certified for one offense will also be tried as an adult for any other offense arising out of the same facts, regardless of its nature.

In addition, a child of at least 14 who escapes or attempts to escape from a juvenile facility may be certified for trial as an adult for the escape or attempted escape as well as any related offense arising out of it, provided either (1) the child was placed in the facility in the first place after being charged with or adjudicated delinquent for a felony or (2) the escape or attempted escape involved the use of a dangerous weapon.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Any felony; escape or attempted escape from a juvenile facility, if (1) the child was placed in the facility in the first place after being charged with or adjudicated delinquent for a felony or (2) the escape or attempted escape involved the use of a dangerous weapon.

### Presumptive Waiver Nev. Rev. Stat. Sec. 62.080

Upon the district attorney's motion in the case of a child meeting age/offense criteria, the juvenile court must certify the child for adult prosecution unless it finds, by clear and convincing evidence, that "the child's actions were substantially the result of his substance abuse or emotional or behavioral problems and such substance abuse or problems may be appropriately treated through the jurisdiction of the juvenile court." A child certified for one offense will also be tried as an adult for any other offense arising out of the same facts, regardless of its nature.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	14	Any offense or attempted offense involving the use or threatened use of a firearm.
Person	14	Sexual assault involving the use or threat of force.

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**Nevada**

continued

**Statutory Exclusion** Nev. Rev. Stat. Sec. 62.040(2)

Certain defined offenses are not deemed "delinquent acts" and thus are not within the juvenile court's jurisdiction.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	None specified	Any offense committed by a person with a previous criminal conviction.
Murder	None specified	Murder, attempted murder, or any related offense arising out of the same facts.
Person	16	Sexual assault or attempted sexual assault committed by a child with a previous felony adjudication, or any related offense arising out of the same facts.
Weapon	16	Any offense or attempted offense committed by a child with a previous felony adjudication and involving use or threatened use of a firearm, or any related offense arising out of the same facts.

**Reverse Waiver** Nev. Rev. Stat. Sec. 62.080(4)

A child certified for adult prosecution may petition the adult court for transfer back to juvenile court "upon a showing of exceptional circumstances." Once the case is transferred back, the juvenile court must also "determine whether the exceptional circumstances warrant accepting jurisdiction."

**Once an Adult, Always** Nev. Rev. Stat. Sec. 62.040(2)(d)

Any offense committed by a child who has previously been convicted as an adult is not deemed to be a "delinquent act" coming under the juvenile court's jurisdiction. (See Statutory Exclusion.)

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## New Hampshire

Lower Age: None specified

Upper Age: 16

**Discretionary Waiver** NHS Tit. XII, Sec. 169-B:24  
Sec. 628:1

The case of a child 15 or older charged with any felony, or that of a child of at least 13 charged with one of a list of specified felonies, may be transferred to superior court following a transfer hearing at which the child is entitled to the assistance of counsel. The juvenile court must consider a number of criteria in making the transfer determination, and any transfer order must be supported by "a written statement of findings and reasons." Following a transfer order, if the case is "accepted by the superior court," that court "may dispose of all criminal charges arising out of the incident which led to" the transfer.

If the petition for transfer to superior court is filed by a child of at least 16, the juvenile court may transfer the child without making the findings that would otherwise be required.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	15	Any felony.
Murder	13	First and second degree murder, manslaughter, attempted murder.
Person	13	First and second degree assault, kidnapping, aggravated felonious sexual assault, criminal restraint, class A felony robbery.

**Presumptive Waiver** NHS Tit. XII, Sec. 169-B:24(IV)

In cases that meet statutory age/offense/prior record criteria, the law creates a presumption that the factors that must be considered by the juvenile court in ruling on a transfer petition support a transfer to the superior court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	15	Any felony committed by a child with at least 4 separate delinquency adjudications.
Murder	15	First and second degree murder, manslaughter, attempted murder.
Person	15	First degree assault; second degree assault (except when it consists merely of purposely or knowingly injuring a child under 13); kidnapping; aggravated felonious sexual assault; criminal restraint; class A felony robbery.
Drug	15	Manufacturing, selling, prescribing, administering, or transporting controlled drugs in specified quantities, or possessing them with intent to sell, dispense, or compound them.

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**New Hampshire**

continued

**Direct File**

NHS Tit. XII, Sec. 169-B:25

A special provision applies to a child of 17 who is charged with a felony but is outside the State's jurisdiction. In such a case, the county attorney or attorney general may file a petition with the municipal or district court that would otherwise have jurisdiction, setting forth the nature of the offense and asking to be allowed to bring regular criminal proceedings as though the child were an adult. The court "may summarily authorize" this procedure. (However, the superior court must subsequently—presumably after the child has been brought back into the State—hold a hearing to determine whether the child should be treated as a child or an adult; see Reverse Waiver.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	17	Any felony committed by a juvenile who is currently outside the State's jurisdiction.

**Reverse Waiver**

NHS Tit. XII, Sec. 169-B:25

In the special case of a child of 17 who is charged with a felony but is outside the State's jurisdiction, and against whom the county attorney or attorney general has been "summarily" authorized to proceed as though the child were an adult, the superior court must subsequently (presumably after the child has been brought back into the State) hold a hearing to determine "whether such person shall be treated as a juvenile under the provisions of this section or whether the case shall be disposed of according to regular criminal procedures."

**Once an Adult, Always**

NHS Tit. XII, Sec. 169-B:27

A child who has been tried and convicted as an adult is thereafter treated as an adult in connection with any criminal offense with which the child may be charged.

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## New Jersey

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver NJS Sec. 2A:4A-26

On motion of the prosecutor, the juvenile court may waive jurisdiction over a child of at least 14 who meets statutory offense/record criteria, if it finds (1) that there is probable cause to believe the child committed the alleged offense and (2) that the State has proven "that the nature and circumstances of the charge or the prior record of the juvenile are sufficiently serious that the interests of the public require waiver." Whether the court grants or denies the motion, it must state its reasons in writing. If the motion is granted, the order referring the case for adult prosecution covers not only the main offense but all other offenses arising out of or related to the same transaction.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	14	Any crime committed by a person previously adjudicated delinquent for/convicted of any of a number of listed offenses (criminal homicide other than death by auto, strict liability for a drug-induced death, first degree robbery, aggravated sexual assault, sexual assault, second degree aggravated assault, kidnapping, or aggravated arson); any crime committed by a person previously confined in an adult penal institution; any crime that is part of a continuing criminal activity in concert with at least two others where circumstances indicate that the offender "knowingly devoted himself to criminal activity as a source of livelihood."
Murder	14	Death by auto if the child was driving under the influence.
Person	14	Any offense against the person committed in an aggressive, violent, and willful manner, or any attempt or conspiracy to commit any such offense.
Property	14	Arson; any attempt or conspiracy to commit arson; auto theft.
Weapon	14	Unlawful possession of a firearm, destructive device, or other prohibited weapon, or any attempt or conspiracy to possess such a weapon.

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**New Jersey**

continued

**Presumptive Waiver**

NJS Sec. 2A:4A-26(a)(3)

In a waiver hearing involving a child meeting age/offense criteria for presumptive waiver, the State need not make a showing that the public interest requires a waiver; the court need only find probable cause in order to waive jurisdiction. However, even in such a case, if the child "can show that the probability of his rehabilitation by the use of the procedures, services and facilities available to the court prior to...reaching the age of 19 substantially outweighs the reasons for waiver, waiver shall not be granted."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Criminal homicide other than death by auto, strict liability for a drug-induced death, or any attempt or conspiracy to commit these offenses.
Person	14	First degree robbery, aggravated sexual assault, sexual assault, second degree aggravated assault, kidnapping, or any attempt or conspiracy to commit these offenses.
Property	14	Aggravated arson or any attempt or conspiracy to commit aggravated arson.
Drug	14	Distribution of controlled substances for pecuniary gain while on or near school property or on a school bus, or any attempt or conspiracy to commit this offense.

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## New York

Lower Age: 7  
Upper Age: 15

**Statutory Exclusion** Penal Law Secs. 30.00, 70.05  
Crim. Proc. Law Secs. 1.20, 180.75, 210.43

A child who meets statutory age/offense criteria is "criminally responsible" as a "juvenile offender," and thus is tried in superior court rather than family court. (A juvenile offender, while otherwise handled as an adult, enjoys somewhat more lenient sentencing treatment.) Initially, the child is arraigned in local criminal court, which must conduct a hearing to determine whether there is "reasonable cause" to believe the child committed an excluded offense. If so, the case is sent to the grand jury of the appropriate superior court; if not, assuming the local criminal court finds reasonable cause to believe the child committed some delinquent act falling short of exclusion, the case is removed to family court.

However, even where the local criminal court finds reasonable cause to believe the child committed an excluded offense, adult treatment is not entirely automatic. At the district attorney's request, the local criminal court may remove such a case to family court if, after considering a number of factors specified by law, it concludes that to do so would be "in the interests of justice." However, if the child is accused of certain enumerated serious crimes (second degree murder, first degree rape, first degree sodomy, or an armed felony), the court must also make one of the following additional findings: (1) mitigating circumstances directly bearing on the way the crime was committed; (2) relatively minor participation in the crime on the child's part; or (3) possible deficiencies in proof of the crime. In any case in which the court orders removal to family court, it must state its reasons for doing so on the record, "in detail and not in conclusory terms." Likewise, where the district attorney has consented to removal and such consent is required, the district attorney must state detailed reasons for consenting on the record.

The child may also request removal to family court, but only once the case has already, in one way or another, reached superior court (see Reverse Waiver).

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	13/14	13—Second degree murder.
		14—First degree manslaughter, attempted second degree murder.
Person	14	First degree kidnapping or the attempt, first degree assault, first degree rape, first degree sodomy, aggravated sexual abuse, or first or second degree robbery.
Property	14	First or second degree arson, first or second degree burglary.

**Reverse Waiver** Crim. Proc. Law Secs. 180.75, 210.43

The superior court may order removal of a statutorily excluded case if it finds, after consideration of various factors enumerated by statute, that "to do so would be in the interests of justice." In most cases, the court may order a removal on the motion of any party or on its own motion. (If the reasonable cause hearing in local criminal court has not commenced, the child may avoid it altogether and bring a motion in superior court to have the case removed to family court; otherwise, the child may make the motion after arraignment and upon indictment.) However, in the case of a child accused of second degree murder, first degree rape, first degree sodomy, or an armed felony, (1) the district attorney must give consent to the removal and (2) the court must also find either (A) mitigating circumstances directly bearing on the way the crime was committed, (B) relatively minor participation in the crime on the child's part, or (C) possible deficiencies in proof of the crime. In a case in which the district attorney's consent is required, the district attorney must give reasons for consenting on the record. Likewise, if the court orders removal to family court, it must state its reasons on the record "in detail and not in conclusory terms."

## North Carolina

Lower Age: 6

Upper Age: 15

### Discretionary Waiver GSNC Sec. 7A-608

After notice and a hearing, the juvenile court may transfer a case to superior court if it finds there is probable cause to believe that a child of at least 13 committed a felony. Apart from the probable cause determination, the law says nothing further regarding grounds for such a transfer or factors to be considered.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	13	Any felony.

### Mandatory Waiver GSNC Sec. 7A-608

After notice and a hearing, the juvenile court must transfer a case to superior court if it finds there is probable cause to believe that a child of at least 13 committed a Class A felony punishable by death or life imprisonment.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Capital	13	Class A felony punishable by death or life imprisonment.

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## North Dakota

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver N.D. Century Code Sec. 27-20-34

After notice and a hearing, the juvenile court must transfer a case meeting age/offense criteria to adult court if it determines that there are reasonable grounds to believe that (1) the child committed the delinquent act alleged; (2) the child is not amenable to treatment or rehabilitation through available juvenile programs; (3) the child is not treatable in a mental institution; and (4) the community interest requires that the child be placed under legal restraint. In addition, in the case of a 14- or 15-year-old, the court must find that (5) the child committed a delinquent act involving the infliction or threat of serious bodily harm. The law specifies various factors to be considered in making the determination regarding amenability to treatment and rehabilitation. (Note—In cases involving certain specified violent offenses and felonies committed by repeat offenders, the child carries the burden of proof on the amenability issue; see Presumptive Waiver.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	16	Any delinquent act.
Person	14	Any delinquent act involving the infliction or threat of serious bodily harm.

### Presumptive Waiver N.D. Century Code Sec. 27-20-34

At a transfer hearing, the burden of proof on amenability to treatment or rehabilitation as a juvenile rests with any child who (1) is accused of various listed offenses or (2) is accused of any felony and has two or more previous felony adjudications.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Any felony committed by a child with at least 2 previous felony adjudications.
Murder	14	Manslaughter.
Person	14	Aggravated assault, robbery, arson involving an inhabited structure, escape involving the use of a dangerous weapon.

### Mandatory Waiver N.D. Century Code Sec. 27-20-34

The juvenile court must transfer a case to adult court if (1) the child is at least 16 and requests the transfer or (2) the court finds probable cause that a child of at least 14 committed any of various listed offenses.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Murder or attempted murder.
Person	14	Gross sexual imposition or attempted gross sexual imposition by force or the threat of death, serious injury or kidnapping.
Drug	14	Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance (with exceptions for less than a pound of marijuana and certain gratuitous deliveries).

### Once an Adult, Always N.D. Century Code Sec. 27-20-34(4)

A transfer (except one requested by the child) that is followed by a criminal conviction for the offense giving rise to the transfer terminates the juvenile court's jurisdiction over the child with respect to any future offense.



**Ohio**

continued

**Mandatory Waiver**

ORC Tit. XXI, Sec. 2151.26

Following a hearing to determine probable cause, the juvenile court "shall transfer" the case of any child who meets statutory age/offense/prior record criteria. If the same child is alleged to have committed two offenses, one of which comes within statutory criteria for mandatory transfer, and the other of which comes within statutory criteria for a discretionary transfer, and motions to transfer are filed in both instances, the juvenile court must first make a determination regarding transfer of the mandatory offense; if it finds that the mandatory transfer provisions apply, it may also transfer the discretionary offense, assuming it finds probable cause, without regard to the factors it would otherwise be required to consider before making a discretionary transfer, without any investigation, and without making any determination regarding the child's rehabilitative prospects or the public safety.

Once a case is transferred, the adult criminal court has jurisdiction to convict the child for the offense that formed the basis of the transfer, any lesser included offense, or "another offense that is different from the offense charged."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	14	Any offense committed by a child previously transferred and convicted of a felony in adult court; any offense committed by a child whose domicile is in another State, if the offense would be an excluded offense in that State.
Murder	14/16	14—Aggravated murder, murder, or the attempt to commit aggravated murder or murder, if the accused was previously placed in department of youth services custody following a delinquency adjudication for (1) any of the above ("category 1 offenses") or (2) voluntary manslaughter, first degree involuntary manslaughter, kidnapping, aggravated arson, aggravated robbery, aggravated burglary, rape, or the former crime of felonious sexual penetration ("category 2 offenses").
		16—Aggravated murder, murder, or the attempt to commit aggravated murder or murder; also voluntary or first degree involuntary manslaughter, if committed (1) with a firearm or (2) by a child previously placed in department of youth services custody following a delinquency adjudication for a "category 1" or "category 2" offense.
Person	16	Rape or aggravated robbery committed (1) with a firearm or (2) by a child previously placed in department of youth services custody following a delinquency adjudication for a "category 1" or "category 2" offense.
Property	16	Aggravated arson or aggravated burglary, if committed (1) with a firearm or (2) by a child previously placed in department of youth services custody following a delinquency adjudication for a "category 1" or "category 2" offense.

**Once an Adult, Always** ORC Tit. XXI, Sec. 2151.011(B)(6)

Once a child has been transferred to adult court and convicted of (or pleaded guilty to) any felony, he or she is thereafter "deemed not to be a child" in any case involving alleged offenses committed before or after the transfer, provided the juvenile court has not already disposed of them. Future complaints against the child must be filed initially in juvenile court, but the court's only role is to confirm the previous conviction and order a mandatory transfer to adult criminal court upon a finding of probable cause. (See Mandatory Waiver.)

## Oklahoma

Lower Age: None specified  
 Upper Age: 17

### Discretionary Waiver Okla. Stat., Tit. 10, Sec. 7303-4.3

In the case of a child accused of any felony, the court may, on its own motion or that of the district attorney, first hold a preliminary hearing "to determine whether there is prosecutive merit" in the charges and, if so, following an investigation, conduct a further hearing to determine whether the child should be certified for trial as an adult. The law specifies various factors to be considered in making the latter determination, which must be supported by clear and convincing evidence.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	None specified	Any felony.

### Direct File Okla. Stat., Tit. 10, Secs. 7306-2.1--7306-2.12

When a child meets statutory age/offense criteria for "youthful offender" status, the district attorney may, after a preliminary investigation conducted by the Department of Juvenile Justice or the county juvenile bureau, file either a delinquency petition or criminal charges against the child. If the district attorney elects to file criminal charges under the Youthful Offender Act, "(a)ll proceedings shall be as for a criminal action;" however, following a conviction, different sentencing provisions apply.

The district attorney must use the youthful offender procedures if the child has previously been prosecuted and sentenced as a youthful offender; see *Once an Adult/Always an Adult*.

After the district attorney has elected to file criminal charges, and before the preliminary hearing, the accused youthful offender may move the court to be "reverse certified" to the juvenile system; see *Reverse Waiver*.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	15	Second degree murder; first degree manslaughter.
Person	15/16	15—Kidnapping for the purpose of extortion; armed robbery/attempted armed robbery; first degree rape/attempted first degree rape; rape by instrumentation/attempted rape by instrumentation; forcible sodomy; lewd molestation; shooting with intent to kill.
		16—Aggravated assault and battery of a police officer; witness intimidation; assault or assault and battery with a deadly weapon; maiming; second degree rape.
Property	15/16	15—First degree arson/attempted first degree arson.
		16—First degree burglary/attempted first degree burglary; second degree burglary after two or more delinquency adjudications for first degree burglary or residential second degree burglary.
Drug	16	Trafficking in or manufacturing illegal drugs.
Weapon	15	Discharging a firearm or other weapon from a vehicle.

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**Oklahoma**

continued

**Statutory Exclusion**

Okla. Stat. Tit. 10, Sec. 7306-2.5

A child of at least 13 charged with first degree murder "shall be held accountable for his acts as if he were an adult." A case against such a child is commenced with the filing of criminal charges. (Note, however, that except where a child has previously been certified for adult trial or adult sentencing, the court may order the child certified as a juvenile or youthful offender; see Reverse Waiver.)

(Note—Sec. 7306-1.1, which formerly provided for statutory exclusions of selected offenses from juvenile jurisdiction, now applies only to offenses committed before 1998.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	13	First degree murder.

**Reverse Waiver**

Okla. Stat., Tit. 10, Sec. 7306-2.5

Sec. 7306-2.6

A child charged with first degree murder as an adult (see Statutory Exclusion) may file a "motion for certification as a youthful offender or a juvenile before the start of the criminal preliminary hearing." Likewise, a child charged as a youthful offender (see Direct File) "may file a motion for certification to the juvenile system before the start of the criminal preliminary hearing." (In the latter case, where a child has been charged as a youthful offender, the court may also hold a "reverse certification" hearing on its own motion at the conclusion of the preliminary hearing.) In either instance, once a motion to certify has been filed, the child's whole juvenile record must be made available to both sides. At the conclusion of the State's case at the preliminary hearing, the child may offer evidence in support of reverse certification. The court must rule on the motion before binding the child over for trial, giving consideration to a list of "guidelines." (Note—The guidelines applicable to reverse certification of those charged as youthful offenders are almost but not quite identical to the guidelines applicable to the reverse certification of those charged as adults.) The court's certification decision need not address each of the guidelines individually, but must state that the court considered them in deliberating over its decision. An order granting or denying the motion for certification is immediately appealable.

**Once an Adult, Always**

Okla. Stat., Tit. 10, Sec. 7303-4.3

Sec. 7306-2.4

A child must be tried as an adult in all subsequent criminal proceedings (and may not be "reverse certified") if any of the following applies: (1) The child was previously certified to stand trial as an adult, or was tried as an adult following the denial of a "reverse certification" motion, and was subsequently convicted or had the imposition of judgment and sentencing against him deferred. (2) The child, in a previous youthful offender proceeding, was certified for adult sentencing and was subsequently convicted or had the imposition of judgment and sentencing against him deferred. (Certification for imposition of adult sentencing is a special procedure available in youthful offender proceedings upon the district attorney's motion.) (3) The child is at least 17 and has been tried and convicted as an adult in another State, or has had the imposition of judgment and sentencing against him deferred.

In addition, a child who has previously been prosecuted and sentenced as a youthful offender must be prosecuted as a youthful offender in all subsequent proceedings.

## Oregon

Lower Age: None specified  
Upper Age: 17

**Discretionary Waiver** 1997 ORS Tit. 34, Sec. 419C.340  
Sec. 419C.349  
Sec. 419C.352  
Sec. 419C.355  
Sec. 419C.358  
Sec. 419C.361

In a case meeting statutory age/offense criteria, the juvenile court may, after a hearing, waive a child to a circuit, justice, or municipal court for prosecution as an adult if it finds (1) that the child at the time of the alleged offense was sophisticated and mature enough "to appreciate the nature and quality of the conduct involved" and (2) that, taking into consideration a number of factors specified by statute, the preponderance of the evidence indicates that retaining jurisdiction "will not serve the best interests of the youth and of society and therefore is not justified." A waiver determination must be supported by "specific, detailed, written findings of fact." No waiver is allowed in the case of a child under 15 unless the child is represented by counsel during the waiver proceedings. If a case is waived for adult prosecution, nonwaivable offenses arising out of the same act or transaction are consolidated with the waivable charge; however, if the child is convicted only of a nonwaivable offense, the case must be returned to juvenile court for disposition.

(Note—The law still provides that the case of a child of at least 15 accused of murder or aggravated murder is waivable, but this category has apparently been superseded by a separate statute specifically requiring that 15-year-olds accused of murder or aggravated murder be prosecuted as adults.)

<i>Offense Category</i>	<i>Minimum Age</i>	<i>Offense Detail</i>
Certain felonies	15	Class A or B felony; escape.
Murder	None specified	Murder or aggravated murder.
Person	None specified/15	None specified—First degree rape, first degree sodomy, first degree unlawful sexual penetration. 15—Third degree assault, coercion, third degree robbery.
Property	15	Second degree arson.

**Statutory Exclusion** 1997 ORS Tit. 14, Sec. 137.707

A child of at least 15 accused of any of a number of listed offenses "must be prosecuted as an adult in criminal court." When a child is charged with an excluded offense, other offenses based on the same act or transaction must be consolidated with it for trial; however, on motion of either party claiming to be prejudiced by consolidation, the court may order separate trials or other relief.

<i>Offense Category</i>	<i>Minimum Age</i>	<i>Offense Detail</i>
Murder	15	Murder or aggravated murder, attempt or conspiracy to commit murder or aggravated murder, first or second degree manslaughter.
Person	15	First or second degree assault, first or second degree kidnapping, first or second degree rape, first or second degree sodomy, first or second degree unlawful sexual penetration, first degree sexual abuse, first or second degree robbery, first degree arson involving a threat of serious physical injury, using a child in a display of sexually explicit conduct, or compelling prostitution.



**Oregon**

continued

**Reverse Waiver**1997 ORS Tit. 14, Sec. 137.707  
1997 ORS Tit. 34, Sec. 419C.361

Following a discretionary waiver in juvenile court, the adult "court of waiver" must return the case to the juvenile court unless charges of an appropriate waivable offense are filed in the court of waiver. (In addition, if a waived child or a child charged with an excluded offense is only convicted of a nonwaivable offense, the adult court must return the case to the juvenile court for disposition.)

When a child who was originally charged with an excluded offense is convicted of a consolidated or lesser included offense that is merely waivable, the adult court must, upon motion of the district attorney, conduct a hearing to determine whether to retain sentencing jurisdiction or transfer the case to juvenile court for disposition. The court must make its determination on the basis of the same criteria as those a juvenile court uses in a discretionary waiver hearing.

**Once an Adult, Always** 1997 ORS Tit. 34, Sec. 419C.364  
Sec. 419C.367  
Sec. 419C.355

Once the juvenile court has waived a child of at least 16 to an adult court, it may also "enter a subsequent order providing that in all future cases involving the same youth, the youth shall be waived to the appropriate court without further proceedings." However, the juvenile court may vacate the order in any case and at any time, and must vacate if the child is not convicted in the waived case that occasioned the order, or if the order is not supported by "specific, detailed, written findings of fact."

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## Pennsylvania

Lower Age: 10

Upper Age: 17

### Discretionary Waiver 42 Pa. C. S. Sec. 6355

When a child of at least 14 is accused of a felony, the juvenile court, after a hearing, may transfer the case for criminal prosecution if it finds that (1) there is a prima facie case that the child committed the offense alleged and (2) there are "reasonable grounds to believe" that (a) "the public interest is served" by the transfer and (b) the child is not subject to commitment to a mental institution. The law specifies a number of factors that must be considered in making the public interest determination— including the child's amenability to treatment, supervision, and rehabilitation, which must in turn be determined with reference to a long list of subfactors. Except under certain special circumstances (see Presumptive Waiver), the Commonwealth has the burden of establishing by a preponderance of the evidence that the public interest would be served by a transfer and that the child is not amenable to treatment, supervision, and rehabilitation. The court's decision to grant or deny a transfer is not immediately appealable.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Any felony.

### Presumptive Waiver 42 Pa. C. S. Sec. 6355(g)

The burden of establishing by a preponderance of the evidence that the public interest would not be served by a transfer and that the child is amenable to treatment, supervision, and rehabilitation rests with the child rather than the Commonwealth where a prima facie case is made out that (1) a child of at least 14 used a deadly weapon in the commission of a felony or (2) a child of at least 15 committed any offense that would be excluded from the definition of "delinquent act" (see Statutory Exclusion) if it had been committed with a deadly weapon.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Any felony in which a deadly weapon was used.
Murder	15	Attempted murder; voluntary manslaughter or the attempt, conspiracy, or solicitation to commit it.
Person	15	Rape, involuntary deviate sexual intercourse, aggravated assault, robbery, robbery of a motor vehicle, aggravated indecent assault, kidnapping, or any attempt, conspiracy, or solicitation to commit any of these offenses.

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**Pennsylvania**

continued

**Statutory Exclusion**

42 Pa. C. S. Sec. 6302

The definition of the term "delinquent act" excludes the crime of murder as well as a number of other offenses meeting age/offense/prior record criteria.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	None specified/15	None specified—Murder.  15—Voluntary manslaughter or the attempt, conspiracy, or solicitation to commit murder or voluntary manslaughter, if (1) a deadly weapon was used or (2) the child was previously adjudicated delinquent for rape, involuntary deviate sexual intercourse, robbery, robbery of a motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, or any attempt, conspiracy, or solicitation to commit murder or any of these offenses.
Person	15	Rape, involuntary deviate sexual intercourse, aggravated assault, robbery, robbery of a motor vehicle, aggravated indecent assault, kidnapping, or any attempt, conspiracy, or solicitation to commit any of these offenses if a deadly weapon was used; also any of the above offenses (except aggravated assault) if committed by a child who was previously adjudicated delinquent for one of the same offenses, or for voluntary manslaughter or the attempt, conspiracy, or solicitation to commit murder or voluntary manslaughter.

**Reverse Waiver**

42 Pa. C. S. Sec. 6322

If a child accused of an excluded offense (see Statutory Exclusion) files a petition requesting a transfer from criminal to juvenile court and establishes by a preponderance of the evidence that a transfer will serve the public interest, the court may order such a transfer. The court must make the transfer determination after considering the same factors that bear on a juvenile court's decision to transfer a case for criminal prosecution (see Discretionary Waiver). Any transfer order must be supported by "specific references to the evidence," and is subject to expedited appellate review. Once a case has been transferred from adult criminal court, the juvenile court may not retransfer it to adult court.

**Once an Adult, Always**

42 Pa. C. S. Sec. 6302

The term "delinquent act" does not include a crime committed by a child who has been found guilty in a criminal proceeding of anything other than a summary offense.

## Rhode Island

Lower Age: None specified

Upper Age: 17

### **Discretionary Waiver** Gen. Laws R.I., Sec. 14-1-7 Sec. 14-1-7.1

Upon motion by the attorney general in a case involving a child meeting statutory age/offense criteria, the family court must conduct a hearing to determine whether or not to waive jurisdiction over the child. At the conclusion of the hearing, the court may waive jurisdiction and refer the child to the appropriate adult court if it finds that the attorney general has proven by a preponderance of the evidence that (1) there is probable cause to believe the child committed the offense alleged (assuming this has not already been established at a previous hearing) and (2) in view of the child's record or treatment history or the heinous or premeditated nature of the offense, "the interests of society or the protection of the public necessitates the waiver of jurisdiction." A waiver covers not only the offense upon which the waiver motion was based, but all other pending or subsequent offenses of which the child is accused; however, if the child is acquitted of the offense upon which the waiver was based, the blanket waiver must be vacated.

(Note—An alternative course called "certification" is open to the family court, and in fact the court is authorized to consider certification whenever presented with a motion for waiver. A child of any age charged with a felony may be certified if the court, in addition to probable cause and public interest/protection findings resembling those called for in a waiver proceeding, also finds rehabilitation unlikely during the period of the court's usual jurisdiction. A child who has been certified remains in family court, but is afforded the right to a jury trial and, if convicted, may be sentenced to prison time to be served upon reaching 21. A 16-year-old who is accused of a drug felony and has already been adjudicated for another drug felony committed since turning 16 must either be waived or certified. The same is true of a 16-year-old who is accused of any felony and has already been adjudicated for two indictable offenses committed since turning 16. However, these provisions do not qualify as mandatory waiver requirements, since in any given case the certification option may keep the child within the family court's jurisdiction.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	16	Any felony.
Capital	None specified	Any offense punishable by life imprisonment.

### **Presumptive Waiver** Gen. Laws R.I., Sec. 14-1-7.3

A family court's previous certification of a child (see note, Discretionary Waiver) constitutes presumptive evidence of the child's nonamenability to treatment. Accordingly, if the child is accused of a subsequent offense, the court must waive jurisdiction unless the child presents clear and convincing evidence rebutting the presumption.

### **Mandatory Waiver** Gen. Laws R.I., Sec. 14-1-3

The term "adult" is defined to include a 17-year-old charged with any of a list of offenses; such a person "shall not be subject to the jurisdiction of the family court" if, after a hearing, the family court determines that there is probable cause to believe that he or she committed the offense alleged.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	17	Murder.
Person	17	First degree sexual assault, first degree child molestation, assault with intent to commit murder.

**Rhode Island**

continued

**Once an Adult, Always** Gen. Laws R.I., Sec. 14-1-7.1  
Sec. 14-1-7.3

The family court's waiver of jurisdiction over a child applies to all "pending and subsequent offenses of whatever nature" involving the same child; however, if the child is acquitted of the offense upon which the waiver was based, the blanket waiver "shall be vacated." (In addition, the family court's "certification" of a child constitutes presumptive evidence of the child's nonamenability to treatment; faced with a subsequent offense involving the same child, the court must waive jurisdiction unless clear and convincing evidence is presented to rebut the presumption. See Presumptive Waiver.)

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## South Carolina

Lower Age: None specified

Upper Age: 16

### Discretionary Waiver CLSC Sec. 20-7-7605

The case of a child who meets age/offense criteria may be transferred to the appropriate adult criminal court if the family court "considers it contrary to the best interest of the child or of the public to retain jurisdiction." (Note—In the case of 16-year-olds coming within the discretionary waiver provision, the law does not specify that the court's decision should be made "after full investigation and hearing," as it does for 14- and 15-year-olds; it says only "after full investigation.") In addition, at the request of the petitioner, a child of any age accused of murder or criminal sexual conduct may be transferred to adult court at the discretion of the family court; if the family court denies the request, the petitioner may appeal immediately to the circuit court, which also is given unfettered discretion to assert jurisdiction or yield it to the family court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	16	Misdemeanor, Class E or F felony, or felony punishable by maximum of no more than 10 years imprisonment.
Certain felonies	14	Class A, B, C or D felony, or felony punishable by a maximum of at least 15 years imprisonment.
Murder	None specified	Murder.
Person	None specified/14	None specified—Criminal sexual conduct. 14—Assault and battery of a high and aggravated nature.
Drug	14	Distributing, selling, purchasing, manufacturing, or unlawfully possessing controlled substances with intent to distribute them on or near school property.
Weapon	14	Carrying weapons on school property; unlawful carrying of a pistol.

### Mandatory Waiver CLSC Sec. 20-7-7605

A child of 14 or more accused of an offense carrying at least a 10-year sentence and previously adjudicated/convicted of similar offenses on two or more occasions "shall" be transferred to adult court. For purposes of the adjudication/conviction requirement, the second adjudication/conviction is counted only if commission of the offense occurs after imposition of the sentence for the first offense.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Offense punishable by imprisonment for at least 10 years, if committed by a child with at least 2 previous adjudications or convictions for similar offenses.

### Statutory Exclusion CLSC Sec. 20-7-6605

As a result of the definition of "child" for purposes of family court jurisdiction, the cases of 16-year-olds charged with a range of felony offenses, together with any "additional or accompanying charges associated" with them, are excluded. (Note, however, that such excluded cases "may be remanded to the family court for disposition of the charge at the discretion of the solicitor"; see Reverse Waiver.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	16	Class A, B, C, or D felony, or felony punishable by a maximum of at least 15 years imprisonment.

**South Carolina**

continued

**Reverse Waiver**

CLSC Sec. 20-7-6605

Sec. 20-7-7605(3)

When an action is brought in a circuit court that, in the court's opinion, falls within the family court's jurisdiction, the circuit court may transfer the action on its own motion or that of any party. In addition, statutorily excluded cases "may be remanded to the family court for disposition of the charge at the discretion of the solicitor," apparently without any hearing. (Accordingly, this is in some respects the functional equivalent of a direct file statute.)

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## South Dakota

Lower Age: 10

Upper Age: 17

### Discretionary Waiver S.D. Cod. Laws Sec. 26-11-4

Whenever a child is accused of a felony, the circuit court may "permit such child to be proceeded against in accordance with the laws...governing the commission of crimes," following a hearing to determine whether failure to do so would be "contrary to the best interests of the child and of the public." (Note—Since South Dakota has a one-tier trial court system, proceedings against both adults and children take place in circuit court, with children petitioned as delinquents treated on the juvenile side and those charged as adults on the adult side. Accordingly, although the decision to allow a child to be prosecuted as an adult is designated a "transfer," no actual transfer out of circuit court occurs.) The law specifies various factors that "may" be considered in making this determination, among which is "prosecutive merit"; but the State is not required to show "probable cause" to get a transfer. At the hearing, the court may not take into account any written report or other document relating to the child unless the author appears and is subject to cross-examination.

Offense Category    Minimum Age    Offense Detail

Certain felonies    None specified    Any felony.

### Statutory Exclusion S.D. Cod. Laws Sec. 26-11-3.1

A child of at least 16 who is charged with a class A or B, class 1 or 2 felony "shall be tried in circuit court as an adult." (Note—South Dakota has a one-tier trial court system, under which the cases of both children and adults are handled in circuit court; see Discretionary Waiver.) However, such a child may request a hearing "to determine if it is in the best interest of the public that the child be tried in circuit court as an adult"; see Reverse Waiver.

Offense Category    Minimum Age    Offense Detail

Certain felonies    16    Class A or B, Class 1 or 2 felonies.

### Reverse Waiver S.D. Cod. Laws Sec. 26-11-3.1

A child who is at least 16 and is accused of a class A or B, class 1 or 2 felony—and thus is subject to trial in circuit court as an adult (see Statutory Exclusion)—may request a hearing "to determine if it is in the best interest of the public that the child be tried in circuit court as an adult." (While the law designates this a "transfer" hearing, in fact South Dakota has a one-tier trial court system, with the cases of both adults and children handled in circuit court; accordingly, the issue is not whether to move the child's case out of circuit court, but rather how to treat it there.) The hearing resembles a hearing to determine whether the court should exercise its discretion to allow adult prosecution of a child accused of a felony (see Discretionary Waiver), except that (1) only the public interest is at issue, not the interests of the public and the child, and (2) there is a rebuttable presumption that the public would be better served by trying the child as an adult.

### Once an Adult, Always S.D. Cod. Laws Sec. 26-11-4

If the circuit court permits a child to be prosecuted as an adult on the basis of a finding that doing so "is in the best interest of the child and of the public," and the child is thereafter convicted of the offense, "the finding is definitive, during the balance of the child's minority, as to the subsequent commission of any crime."



## Tennessee

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver      Tenn. Code Sec. 37-1-134

Following a hearing, a child meeting age/offense criteria may be transferred to adult criminal court if the juvenile court finds that there are reasonable grounds to believe that (1) the child committed the offense alleged, (2) the child is not committable to a mental institution, and (3) the interests of the community require that the child be placed under legal restraint. The law lists various factors to be considered by the court in making these findings. Generally, the juvenile court's decision is not immediately appealable; however, if a nonlawyer makes the decision to transfer the case, a special provision entitles the child to an immediate de novo rehearing at the criminal court level. (See Reverse Waiver.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	16	Any criminal offense.
Murder	None specified	First or second degree murder or the attempt.
Person	None specified	Rape, aggravated rape, aggravated or especially aggravated robbery, kidnapping, aggravated or especially aggravated kidnapping, or the attempt to commit any of these offenses.

### Reverse Waiver      Tenn. Code Sec. 37-1-159

A child who has been transferred from juvenile court by the decision of a nonlawyer is entitled to an immediate rehearing on the transfer issue at the criminal court level, provided he files a motion for rehearing within 10 days of the transfer order. The rehearing is de novo—the issue, the standards, and the factors to be considered are the same as at the juvenile court level, and the criminal court need not give any weight to the juvenile court's original decision. Following the hearing, the criminal court may either accept jurisdiction or remand the case to the juvenile court. If the court remands, the State may appeal immediately on the ground of abuse of discretion; otherwise, the appeal of the court's decision must await a final conviction.

### Once an Adult, Always      Tenn. Code Sec. 37-1-134

A transfer to adult court terminates juvenile court jurisdiction over the child for any subsequent offense, unless the transfer is followed by an acquittal or a dismissal of the charge that resulted in the transfer.

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## Texas

Lower Age: 10

Upper Age: 16

### Discretionary Waiver      Family Code, Sec. 54.02

The juvenile court may waive its exclusive original jurisdiction over a child who meets age/offense criteria if it finds, after a full investigation and hearing, that (1) there is probable cause to believe the child committed the offense alleged and (2) because of the offense's seriousness or the child's background the welfare of the community requires a transfer for criminal proceedings. The prehearing investigation must include a diagnostic study, a social evaluation, and an investigation of the child, his circumstances, and the circumstances surrounding the offense. The law recites various factors that must be considered in making the transfer determination. If the court transfers (or retains) jurisdiction over one offense, it must likewise transfer (or retain) jurisdiction over all others arising out of the same criminal transaction. Once the juvenile court transfers jurisdiction of a case, the adult criminal court may not remand it.

(Note—Lesser standards apply to the transfer of someone who is already 18 but is accused of an offense committed as a juvenile, as long as the State shows that it exercised due diligence.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14/15	14—First degree felony.
		15—Second or third degree felony or State jail felony.
Capital	14	Capital felony.
Drug	14	Aggravated controlled substance felony.

### Statutory Exclusion      Family Code, Sec. 51.03

A jurisdictional provision specifies that "nothing in (the Juvenile Justice Code) prevents criminal proceedings against a child for perjury."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	None specified	Perjury.

### Once an Adult, Always      Family Code, Sec. 54.02(m) and (n)

If a child has previously been transferred to adult court, the juvenile court must waive jurisdiction over any subsequent felony offense, without the elaborate investigation required in connection with discretionary waivers, unless the child was acquitted or not indicted, won a dismissal with prejudice, or had his conviction reversed on a final appeal in the previous case.

## Utah

Lower Age: None specified

Upper Age: 17

**Discretionary Waiver** Utah Code Sec. 78-3a-603  
Sec. 78-3a-502(3)

A case involving a child of at least 14 who is alleged to have committed a felony may be commenced in juvenile court with the filing of criminal charges (rather than a delinquency petition) and a motion requesting certification; under these circumstances, the juvenile court must hold a preliminary hearing to determine whether to certify the child for adult prosecution in district court. At the hearing, the State has the burden of showing that there is probable cause to believe that the child committed the offense alleged, but this is not necessary if the prosecutor has already secured an indictment from a grand jury. The State must also show, by a preponderance of the evidence, that "it would be contrary to the best interests of the minor or of the public" for the court to retain jurisdiction. The law specifies a number of factors that must be taken into account in making this determination, but adds that the amount of weight to be given each factor is discretionary with the court. The court may consider reports and other written materials relating to the child in making its decision, but at the request of any interested party the authors of such materials must appear at the hearing and submit to questioning. If the court orders the child certified to the district court for criminal proceedings, the juvenile court's jurisdiction over the child is terminated with regard to the certified offense, any other offense arising from the same criminal episode, and any subsequent offense; however, the juvenile court regains jurisdiction over the child upon an acquittal, a not guilty finding, or a dismissal of the charges in district court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Any felony.

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**Utah**

continued

**Presumptive Waiver**

Utah Code Sec. 78-3a-602

A case meeting statutory age/offense/special conditions criteria must be commenced with the filing of criminal charges in juvenile court. The State has the initial burden of establishing probable cause to believe that the child committed the offense alleged, unless it has already secured an indictment against the child, rendering a probable cause finding unnecessary; in any case, where appropriate the State must also satisfy the court that any additional statutory conditions—relating to use of a weapon and prior record—are met. At that point the juvenile court must order the child bound over to district court for prosecution as an adult, unless the child presents evidence that (1) the child has no previous felony adjudications involving use of a dangerous weapon; (2) if there are codefendants, the child is the least culpable among them; and (3) the child's part in the offense was not performed in a violent, aggressive, or premeditated manner. Only if the court finds by clear and convincing evidence that these conditions are satisfied may it retain jurisdiction over the child, treating the criminal charges as though they were a juvenile petition. When considering whether to bind over a child charged with multiple offenses, the juvenile court must make probable cause determinations regarding not only the offenses that qualify for transfer, but all offenses arising from the same criminal episode, and any subsequent offenses charged against the child; if the child is to be bound over, it must be for all of the offenses for which the court finds probable cause.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	16	Any felony involving the use of a dangerous weapon, if previously adjudicated/convicted of a felony involving use of a dangerous weapon.
Murder	16	Attempted murder, attempted aggravated murder.
Person	16	Aggravated assault involving intentionally causing serious bodily harm; aggravated kidnapping; aggravated robbery; aggravated sexual assault.
Property	16	Aggravated arson, aggravated burglary.
Weapon	16	Discharge of a firearm from a vehicle.

**Statutory Exclusion**

Utah Code Sec. 78-3a-601

The district court is given "exclusive original jurisdiction" over specified age/offense categories.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	16	Any felony committed by someone previously confined in a secure facility.
Murder	16	Murder or aggravated murder.

**Once an Adult, Always**

Utah Code Sec. 78-3a-603

Once a child is certified for adult prosecution or has criminal charges filed against him in adult court, the juvenile court's jurisdiction over the child is terminated with regard to that offense, any other offense arising from the same criminal episode, and any subsequent offense. However, the juvenile court regains jurisdiction over the child upon an acquittal, a not guilty finding, or a dismissal of the charge in district court.

## Vermont

Lower Age: 10

Upper Age: 17

### Discretionary Waiver Vermont Stat., Tit. 33, Sec. 5506

Upon motion of the State's attorney, and following a hearing, the juvenile court may transfer jurisdiction over a child meeting age/offense criteria to a court of criminal jurisdiction, if it finds that (1) there is probable cause to believe the child committed the alleged offense and (2) "public safety and the interests of the community would not be served" by treating the child as a juvenile. The law specifies various factors that may be considered in making the transfer determination. The order granting or denying transfer is not immediately appealable. A transfer terminates the juvenile court's jurisdiction over all the delinquent acts alleged in the original delinquency petition. (However, if the transferred child was less than 16 at the time of the alleged offense and is convicted only of a lesser included offense that would not itself have justified the transfer, the conviction is treated as a delinquency adjudication and the juvenile court reacquires jurisdiction for purposes of disposition.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	10	Murder, manslaughter, or arson causing death.
Person	10	Assault and robbery with a dangerous weapon or causing bodily injury, aggravated assault, kidnapping, maiming, sexual assault and aggravated sexual assault.
Property	10	Burglary of sleeping apartments in nighttime.

### Direct File Vermont Stat., Tit. 33, Sec. 5505

As long as the offense is not one of those excluded by statute (see Statutory Exclusion) and the child was at least 16 at the time of commission, the State's attorney may also file in juvenile court or criminal court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	16	Any offense not subject to statutory exclusion.

### Statutory Exclusion Vermont Stat., Tit. 33, Sec. 5502 Sec. 5506

A person alleged to have committed specified offenses after reaching the age of 14 "shall be subject to criminal proceedings as in cases commenced against adults," unless the case is transferred from adult to juvenile court. (See Reverse Waiver.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Murder, manslaughter, or arson causing death.
Person	14	Assault and robbery with a dangerous weapon or causing bodily injury, aggravated assault, kidnapping, maiming, sexual assault and aggravated sexual assault.
Property	14	Burglary of sleeping apartments in nighttime.

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**Vermont**

continued

**Reverse Waiver**Vermont Stat., Tit. 33, Sec. 5505  
Sec. 5506

Any case against a child that is initially filed in adult criminal court—because it involves either a child of at least 16 (and thus subject to direct-file discretion) or a child of at least 14 accused of an excluded offense—may be transferred to juvenile court. (The law does not state any grounds for such a transfer, standards to be observed, or factors to be considered.)

In addition, if a child tried as an adult was less than 16 at the time of the alleged offense and is convicted only of a lesser included offense (i.e., one that would not by itself have justified treatment as an adult), the conviction is treated as a delinquency adjudication and the juvenile court acquires jurisdiction for purposes of disposition.

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## Virginia

Lower Age: None specified

Upper Age: 17

**Discretionary Waiver** Virginia Code Sec. 16.1-269.1(A)  
 Sec. 16.1-269.3  
 Sec. 16.1-269.4

On motion of the attorney for the Commonwealth in the case of a child of at least 14 accused of a felony, the juvenile court must hold a transfer hearing, following which the court may transfer the case to the circuit court if it finds that (1) there is probable cause to believe the child committed the alleged offense or any lesser included felony; (2) the child is competent to stand trial (with the burden of proof being on the party denying competence); and (3) the preponderance of the evidence indicates that the child "is not a proper person to remain within the jurisdiction of the juvenile court." The law lists a multitude of factors to be considered in making the "proper person" determination, but specifies that a transfer decision is not reversible merely because the court failed to consider any one of them. Either party may appeal the juvenile court's transfer/retention decision to circuit court immediately. The transfer of a case divests the juvenile court of jurisdiction over any allegations of delinquency arising from the same transaction that gave rise to the transfer.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Any felony.

**Mandatory Waiver** Virginia Code Sec. 16.1-269.1(B)

When a child of at least 14 is charged with murder in violation of specified provisions or aggravated malicious wounding, the juvenile court must hold a preliminary hearing to determine probable cause. If the court finds that there is probable cause to believe the child was of the proper age and committed the offense alleged, it must certify the charge, together with any ancillary charges, to the grand jury, after which its jurisdiction is terminated. (But note—If the juvenile court does not find probable cause, the attorney for the Commonwealth may then seek a direct indictment in circuit court.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Capital murder, first and second degree murder, and lynching.
Person	14	Aggravated malicious wounding.

**Direct File** Virginia Code Sec. 16.1-269.1(C)

When a child of at least 14 is charged with various listed violent felonies, the juvenile court must hold a preliminary hearing to determine probable cause if the attorney for the Commonwealth gives notice of intent to elect this procedure. Following a finding of probable cause to believe the child was of the proper age and committed the offense alleged, the juvenile court must certify the charge, together with any ancillary charges, to the grand jury, after which its jurisdiction is terminated. (But note—If the juvenile court does not find probable cause, the attorney for the Commonwealth may then seek a direct indictment in circuit court.)

On the other hand, in such a case the Commonwealth attorney may also elect not to give notice, and either seek a discretionary waiver or proceed with the case in juvenile court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Accidental homicide committed in the course of a felony.
Person	14	Felonious injury by mob, abduction, malicious wounding, malicious wounding of a police officer, felonious poisoning, adulteration of products, robbery, carjacking, rape, forcible sodomy, or sexual penetration with an object.

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**Virginia**

continued

**Reverse Waiver** Virginia Code Sec. 16.1-269.6

Following an appeal from a discretionary transfer decision, the circuit court must determine whether the juvenile court substantially complied with the requirements for discretionary transfers (but without revisiting the probable cause determination); if not, it may remand the case to the juvenile court.

**Once an Adult, Always** Virginia Code Sec. 16.1-269.6  
Sec. 16.1-271

A child's conviction as an adult terminates the juvenile court's jurisdiction over the child with respect to (1) any future criminal acts and (2) any pending allegations of delinquency.

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## Washington

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver RCW Sec. 13.40.110

Following a "decline hearing" held at the request of either party or on its own motion, the juvenile court may order the case of any child transferred for adult criminal prosecution, if it finds that the transfer "would be in the best interest of the juvenile or the public." However, in certain categories of cases the juvenile court must at least hold a decline hearing to consider a transfer, unless the parties, their counsel, and the court all affirmatively waive it: (1) where a child of at least 15 is accused of a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony; (2) where a child of at least 17 is accused of second degree assault, first degree extortion, indecent liberties, second degree child molestation, second degree kidnapping, or second degree robbery; and (3) where a child serving a minimum juvenile sentence to age 21 is accused of escape.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	None specified	Any criminal offense.

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**Washington**

continued

**Statutory Exclusion**

RCW Sec. 13.04.030

Adult criminal court is given exclusive original jurisdiction over cases involving specified age/offense categories. In those categories requiring that the accused have a specified "criminal history," an alleged offense is included in a child's criminal history if (1) a court found the allegation in the criminal complaint to be correct or (2) the complaint was diverted by agreement after the child was advised that the complaint would be considered part of his criminal history. In the case of a challenge, the State must establish the child's criminal history by a preponderance of the evidence, but the State need not prove that a guilty plea was entered knowingly and voluntarily.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	16	First and second degree murder, homicide by abuse, first degree manslaughter, and any attempt, criminal solicitation, or criminal conspiracy to commit any of these offenses; specified forms of vehicular homicide and second degree manslaughter committed by a person with a specified criminal history (at least one prior "serious violent" offense, at least two prior "violent" offenses, or some combination of at least three prior class A felony, class B felony, vehicular assault, or second degree manslaughter offenses, all committed after the child's 13th birthday and separately prosecuted).
Person	16	(1) First degree assault, first degree assault of a child, first degree kidnapping, first degree rape, or any attempt, criminal solicitation, or criminal conspiracy to commit any of these offenses. (2) First degree robbery, first degree child rape, or drive-by shooting. (3) Any "violent offense" (any class A felony, or any attempt, solicitation, or conspiracy to commit a class A felony; forcible indecent liberties; second degree kidnapping; second degree assault; second degree assault of a child; first degree extortion; second degree robbery; vehicular assault) when committed (a) with a firearm or (b) by a person with a specified criminal history (at least one prior serious violent offense, at least two prior violent offenses, or some combination of at least three prior class A felony, class B felony, vehicular assault, or second degree manslaughter offenses, all committed after the child's 13th birthday and separately prosecuted).
Property	16	First degree burglary committed by a person with at least one prior felony or misdemeanor offense; second degree arson when committed (a) while carrying a firearm or (b) by a person with a specified criminal history (at least one prior serious violent offense, at least two prior violent offenses, or some combination of at least three prior class A felony, class B felony, vehicular assault, or second degree manslaughter offenses, all committed after the child's 13th birthday and separately prosecuted).

**Once an Adult, Always**

RCW Sec. 13.40.020(14)

The definitions of "juvenile," "youth" and "child" exclude anyone previously transferred to adult court or otherwise under adult court jurisdiction.

## West Virginia

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver West Virginia Code 1966, Sec. 49-5-10

Upon the written motion of the prosecutor, and after a hearing, the juvenile court is authorized to transfer juvenile proceedings to criminal jurisdiction if it finds that there is probable cause to believe a child younger than 14 committed an offense that would have mandated a transfer if the child had been 14 or older at the time (see Mandatory Waiver). In addition, "upon consideration of the juvenile's mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors," the court may transfer a case if it finds that there is probable cause to believe that (1) a child under 14 committed an offense that, given the child's record of prior adjudications, would have mandated transfer if the child had been at least 14 at the time (see Mandatory Waiver); (2) a child of any age committed a specified drug felony; or (3) a child of at least 14 committed a felony (a) involving use or threat of force against a person, (b) after having previously been adjudicated for a felony, or (c) involving use of a deadly weapon. The prosecutor's motion for transfer must specify which of the above grounds for transfer will be relied on, and the prosecutor has the burden of establishing those grounds by "clear and convincing evidence." An order granting a transfer is immediately appealable to the supreme court of appeals, but the child may also opt to reserve appeal until after conviction.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	None specified/14	None specified—Treason; any violent felony committed by a child previously adjudicated for a violent felony; any felony committed by a child with at least two previous felony adjudications.  14—Any violent felony; any felony committed by a child with a previous felony adjudication; any felony involving use of a deadly weapon.
Murder	None specified	Murder.
Person	None specified	Armed robbery; kidnapping; first degree sexual assault.
Property	None specified	First degree arson.
Drug	None specified	Feloniously manufacturing, delivering, or possessing a narcotic drug with intent to deliver.

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**West Virginia**

continued

**Mandatory Waiver**

West Virginia Code 1966, Sec. 49-5-10

Upon the written motion of the prosecutor, and after a hearing, the juvenile court must transfer juvenile proceedings to criminal court if it finds that there is probable cause to believe a child of at least 14 committed any of various specified offenses or meets statutory offense/prior record criteria. The prosecutor's motion for transfer must specify the grounds for transfer being asserted, and the prosecutor has the burden of establishing those grounds by "clear and convincing evidence." There is no provision allowing immediate appeal of a mandatory transfer.

(Note—The court must also transfer a case in which a child of at least 14 demands a transfer on the record.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain felonies	14	Treason; any violent felony committed by a child previously adjudicated for a violent felony; any felony committed by a child with at least two previous felony adjudications.
Murder	14	Murder.
Person	14	Armed robbery; kidnapping; first degree sexual assault.
Property	14	First degree arson.

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## Wisconsin

Lower Age: 10

Upper Age: 16

### Discretionary Waiver Wis. Statutes Sec. 938.18

On motion of any party, the juvenile court may, after a hearing, waive jurisdiction over a case meeting statutory age/offense criteria if it finds that (1) the case has prosecutive merit and (2) it has been "established by clear and convincing evidence that it would be contrary to the best interests of the juvenile or of the public to hear the case." (A judge may also initiate a waiver petition on his or her own, but may not then preside over the waiver hearing, or otherwise participate further in the case.) The law specifies a number of detailed "criteria" upon which a decision to waive jurisdiction must be based. Prior to the waiver hearing, the court may designate an agency "to submit a report analyzing the criteria," and may "rely on the facts stated in the report in making its findings" regarding those criteria. Parties are entitled to copies of the report at least 3 days before the hearing.

The child must be represented by counsel at the waiver hearing. However, if the child flees before the hearing, the hearing may proceed in the child's absence, and a waiver may be granted subject to the child's right to make a subsequent showing of good cause for failure to appear.

If a petition for waiver is uncontested, the court need not hear testimony at the waiver hearing, so long as it is satisfied that the child's decision not to contest was knowingly, intelligently, and voluntarily made; however, the court must still base its waiver decision on the criteria specified by statute.

Once a waiver has been granted, the court of criminal jurisdiction has exclusive jurisdiction over the case, with no restrictions on the court's authority to convict the child of any offense.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	15	Any violation of State criminal law.
Certain felonies	14	Any felony committed at the request or for the benefit of a criminal gang.
Murder	14	Felony murder, second degree reckless homicide.
Person	14	First or second degree sexual assault, hostage taking, kidnapping, armed robbery.
Property	14	Burglary in which the burglar is armed, uses explosives, or commits battery while inside the enclosure.
Drug	14	Manufacture, distribution, or delivery of a controlled substance or controlled substance analog.

### Statutory Exclusion Wis. Statutes Sec. 938.183

Courts of criminal jurisdiction have exclusive original jurisdiction over a number of specified age/offense categories.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	10	First degree intentional homicide, attempted first degree intentional homicide, first degree reckless homicide, second degree intentional homicide.
Person	None specified	Assault or battery committed by an adjudicated delinquent against an employee, officer, inmate or visitor while confined in a secured facility; battery committed by an adjudicated delinquent against a probation, parole, or aftercare agent.

**Wisconsin**

continued

**Reverse Waiver**

Wis. Statutes Sec. 970.03

Generally, if a preliminary examination is held in the case of a child accused of an offense subject to original adult court jurisdiction (with certain exceptions for homicide cases, as noted below), the court must initially determine whether there is probable cause to believe the child committed the offense under circumstances satisfying the jurisdictional statute. If not, it must discharge the child, but further proceedings may be brought under the Juvenile Justice Code. If so, it must decide whether to transfer the case to juvenile court or retain jurisdiction. The court must retain jurisdiction unless the child proves by a preponderance of the evidence that (1) if convicted, the child "could not receive adequate treatment in the criminal justice system"; (2) transferring jurisdiction to the juvenile court "would not depreciate the seriousness of the offense"; and (3) "retaining jurisdiction is not necessary to deter the child or other children" from committing the offense of which the child is accused. However, this reverse waiver procedure is not available in the case of a child of at least 15 accused of first degree intentional homicide, attempted first degree intentional homicide, first degree reckless homicide, or second degree intentional homicide.

**Once an Adult, Always** Wis. Statutes Sec. 938.183

Adult courts have original criminal jurisdiction over a child accused of any offense who (1) has already been waived to criminal court and convicted of a previous violation; (2) has been waived to criminal court and still has a case pending there; (3) has been convicted of an offense over which adult courts have original jurisdiction; or (4) has a case pending in adult court involving an offense over which adult courts have original jurisdiction.

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## Wyoming

Lower Age: None specified

Upper Age: 17

### Discretionary Waiver Wyoming Statutes Sec. 14-6-237

The juvenile court has "concurrent jurisdiction" over all offenses (except status offenses) committed by a child of at least 13; however, except for certain cases meeting statutory age/offense criteria (see Direct File), a prosecutor wishing to prosecute a child as an adult must nevertheless file in juvenile court initially and seek a transfer. A juvenile court may hold a transfer hearing on its own motion or that of any party. The court may order the transfer of any case within its concurrent jurisdiction "if it finds that proper reason therefor exists" after considering various factors prescribed by statute.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	13	All criminal offenses.

### Direct File Wyoming Statutes Sec. 14-6-203

Cases that meet statutory age/offense criteria may be filed either in juvenile court or in district court (or other inferior court having jurisdiction). However, where the law authorizes filing in district court solely because the child is 17, the prosecuting attorney is first obliged to give consideration to the same "determinative factors" that a court would weigh in ruling on a transfer request.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any criminal	17	All criminal offenses.
Certain felonies	14	Violent felony, or felony committed by a child with at least two previous felony adjudications.

### Reverse Waiver Wyoming Statutes Sec. 14-6-237

When a case within the concurrent jurisdiction of the juvenile court is filed in district court (see Direct File), the district court may, after a hearing held on its own motion or that of any party, order the case transferred to juvenile court if it finds that the case is "more properly suited to disposition" there.

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The following list highlights popular and recently published OJJDP documents and videotapes, grouped by topical areas.

The *Office of Juvenile Justice and Delinquency Prevention Brochure* (1996, NCJ 144527 (23 pp.)) offers more information about the agency. The *OJJDP Publications List* (BC000115) offers a complete list of OJJDP publications and is also available online.

## Corrections and Detention

*Beyond the Walls: Improving Conditions of Confinement for Youth in Custody*. 1998, NCJ 164727 (116 pp.).

*Boot Camps for Juvenile Offenders*. 1997, NCJ 164258 (42 pp.).

*Conditions of Confinement Teleconference* (Video). 1993, NCJ 147531 (90 min.), \$14.00.

*Effective Programs for Serious, Violent and Chronic Juvenile Offenders Teleconference* (Video). 1996, NCJ 160947 (120 min.), \$17.00.

*Juvenile Arrests* 1996. 1997, NCJ 167578 (12 pp.).

*Juvenile Boot Camps Teleconference* (Video). 1996, NCJ 160949 (120 min.), \$17.00.

*Juvenile Court Statistics* 1995. 1998, NCJ 170607 (112 pp.).

## Courts

*Has the Juvenile Court Outlived Its Usefulness? Teleconference* (Video). 1996, NCJ 163929 (120 min.), \$17.00.

*Offenders in Juvenile Court, 1995*. 1997, NCJ 167885 (12 pp.).

*RESTTA National Directory of Restitution and Community Service Programs*. 1998, NCJ 166365 (500 pp.), \$33.50.

## Delinquency Prevention

*1997 Report to Congress: Title V Incentive Grants for Local Delinquency Prevention Programs*. 1998, NCJ 170605 (71 pp.).

*Allegheny County, PA: Mobilizing To Reduce Juvenile Crime*. 1997, NCJ 165693 (12 pp.).

*Combating Violence and Delinquency: The National Juvenile Justice Action Plan* (Report). 1996, NCJ 157106 (200 pp.).

*Combating Violence and Delinquency: The National Juvenile Justice Action Plan* (Summary). 1996, NCJ 157105 (36 pp.).

*Communities Working Together Teleconference* (Video). 1996, NCJ 160946 (120 min.), \$17.00.

*Mentoring—A Proven Delinquency Prevention Strategy*. 1997, NCJ 164834 (8 pp.).

*Mentoring for Youth in Schools and Communities Teleconference* (Video). 1997, NCJ 166376 (120 min.), \$17.00

*Mobilizing Communities To Prevent Juvenile Crime*. 1997, NCJ 165928 (8 pp.).

*Reaching Out to Youth Out of the Education Mainstream*. 1997, NCJ 163920 (12 pp.).

*Serious and Violent Juvenile Offenders*. 1998, NCJ 170027 (8 pp.).

*Treating Serious Anti-Social Behavior in Youth: The MST Approach*. 1997, NCJ 165151 (8 pp.).

*The Youngest Delinquents: Offenders Under Age 15*. 1997, NCJ 165256 (12 pp.).

*Youth-Oriented Community Policing Teleconference* (Video). 1996, NCJ 160947 (120 min.), \$17.00.

*Youth Out of the Education Mainstream Teleconference* (Video). 1996, NCJ 163386 (120 min.), \$17.00.

## Gangs

*1995 National Youth Gang Survey*. 1997, NCJ 164728 (41 pp.).

*Gang Members and Delinquent Behavior*. 1997, NCJ 165154 (6 pp.).

*Youth Gangs: An Overview*. 1998, NCJ 167249 (20 pp.).

*Youth Gangs in America Teleconference* (Video). 1997, NCJ 164937 (120 min.), \$17.00.

## General Juvenile Justice

*Comprehensive Juvenile Justice in State Legislatures Teleconference* (Video). 1998, NCJ 169593 (120 min.), \$17.00.

*Developmental Pathways in Boys' Disruptive and Delinquent Behavior*. 1997, NCJ 165692 (20 pp.).

*Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support*. 1998, NCJ 167248 (52 pp.).

*Juvenile Justice*, Volume III, Number 2. 1997, NCJ 165925 (32 pp.).

*Juvenile Justice*, Volume IV, Number 2. 1997, NCJ 166823 (28 pp.).

*Juvenile Justice*, Volume V, Number 1. 1998, NCJ 170025 (32 pp.).

*Juvenile Justice Reform Initiatives in the States 1994-1996*. 1997, NCJ 165697 (81 pp.).

*A Juvenile Justice System for the 21st Century*. 1998, NCJ 169726 (8 pp.).

*Juvenile Offenders and Victims: 1997 Update on Violence*. 1997, NCJ 165703 (32 pp.).

*Juvenile Offenders and Victims: A National Report*. 1995, NCJ 153569 (188 pp.).

*Keeping Young People in School: Community Programs That Work*. 1997, NCJ 162783 (12 pp.).

*Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs*. 1997, NCJ 163705 (52 pp.).

## Missing and Exploited Children

*Court Appointed Special Advocates: A Voice for Abused and Neglected Children in Court*. 1997, NCJ 164512 (4 pp.).

*Federal Resources on Missing and Exploited Children: A Directory for Law Enforcement and Other Public and Private Agencies*. 1997, NCJ 168962 (156 pp.).

*In the Wake of Childhood Maltreatment*. 1997, NCJ 165257 (16 pp.).

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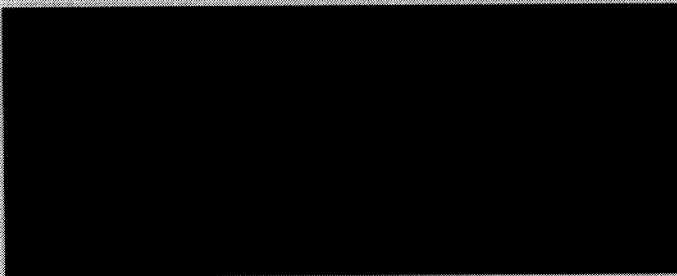
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