

**Joint Legislative Task Force
Juvenile Sentencing Reform**
2014 Briefing Paper

**Transferring Juveniles to Adult Criminal Jurisdiction
Decline Hearing - Factors Considered by the Court**

Under RCW 13.40.110(3), when the court is conducting a decline hearing (either discretionary or mandatory), the court must determine whether decline is in the best interest of the juvenile or the public.

Kent v. United States

When making its decision, the juvenile court must address the eight standards set out in *Kent v. United States*, 383 U.S. 541, 16 L.Ed.2d 84, 86 S.Ct. 1045 (1966):

1. The seriousness of the charged offense and whether protection of the community requires prosecution in adult court;
2. Whether the offense was committed in an aggressive, violent, premeditated or willful manner;
3. Whether the offense was against persons or property;
4. The prosecutive merit of the case;
5. Whether the defendant had an adult accomplice;
6. The defendant's sophistication and maturity;
7. The defendant's prior record; and
8. The prospects for adequate protection of the public and rehabilitation of the juvenile in the juvenile system.

The court's findings must be supported by a preponderance of the evidence produced at the declination hearing. The *Kent* factors are only intended to provide focus and guidance to the juvenile court. It is not required that each factor support declination.

Colorado Legislation

In 2012, Colorado passed legislation allowing juveniles to petition to be transferred back to juvenile court (reverse waiver). In making the determination whether to return the juvenile back to the juvenile system, the court must consider the following factors:

1. The seriousness of the alleged offense and whether the protection of the community requires response or consequence beyond that afforded by the juvenile system;
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
3. Whether the alleged offense was against persons or property;
4. The age and maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, and pattern of living;
5. The record and previous history of the juvenile in prior court-related matters;
6. The current and past mental health status of the juvenile as evidenced by relevant mental health or psychological assessments or screenings that are made available to both the district attorney and defense counsel;
7. The likelihood of the juvenile's rehabilitation by use of the sentencing options available in the juvenile courts;

8. The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;
9. The impact of the offense on the victim;
10. Whether the juvenile was previously committed to the Department of Human Services following an adjudication for a delinquent act that constitutes a felony; and
11. Whether the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of the delinquent act.

Miller v. Alabama

The Supreme Court has determined that children are constitutionally different from adults for sentencing purposes because of their lack of maturity, underdeveloped sense of responsibility, vulnerability to negative influences, lack of control over their environments, and possibility for rehabilitation. *Miller v. Alabama*, specifically relates to a court's determination of whether to impose a sentence of life without parole for juvenile homicide offenders. However, mitigating factors discussed by the court may also be useful in the context of a decline determination.

Some factors suggested by the court in *Miller* that may be relevant in analyzing the differences between a juvenile and adult are as follows:

- the offender's age at the time of offense;
- the offender's level of participation in the offense;
- the offender's intellectual capacity;
- the offender's ability to appreciate the risks and consequences of his or her conduct;
- the degree of familial or peer pressure exerted upon the offender in the commission of the offense;
- the offender's familial and community environment;
- the offender's educational history;
- any history of trauma in the offender's life;
- the offender's faith and community involvement;
- the offender's involvement in the child welfare system;
- the offender's potential for rehabilitation;
- the outcomes of a professional mental health examination of the offender; and
- any other mitigating factors.