



Transfer of Juveniles to Adult Jurisdiction

Approaches and ideas
from around the Country

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Transfer Mechanisms

Transfer mechanisms generally fall into one of three categories:

- **Judicial Waiver:** allows the juvenile court to waive jurisdiction on a case-by-case basis. Transfer generally after formal hearing and court's determination based on articulated standards.
- **Prosecutorial Discretion:** some states define a class of cases that may be brought in either juvenile or criminal court. No court hearing held.
- **Statutory Exclusion:** criminal courts granted exclusive jurisdiction over certain classes of cases involving juvenile age offenders.

Additional Features

In addition to having at least one of the transfer mechanisms, many states have one or more of the following:

- **Once an adult, always an adult:** a special form of exclusion requiring criminal prosecution in adult court of any juvenile who has been criminally prosecuted as an adult in the past, usually without regard to the seriousness of the offense.
- **Reverse waiver:** a law that allows a juvenile whose case is in adult criminal court to petition to have jurisdiction transferred back to juvenile court.
- **Blended sentencing:** a juvenile is given a blended sentence of juvenile and criminal sanctions.

Once an adult, always . . .

- 34 states incorporate a rule for once an adult, always an adult.
- Washington's provision has been part of the definition of "juvenile" in RCW 13.40.020 since the statute's inception in 1977:

" 'Juvenile,' 'youth' and 'child' mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court jurisdiction *pursuant to RCW 13.40.110.*"
- In 1994, the legislature adopted automatic transfer for 16 and 17 year olds under certain circumstances. The definition was amended to clarify the once an adult rule only applies in those circumstances where a decline hearing has been held.

Reverse Waiver

A reverse waiver hearing is sometimes allowed when either the juvenile is automatically transferred to adult jurisdiction or the state allows direct filing and the prosecutor has filed the case in adult court.

Colorado recently passed legislation allowing a reverse waiver hearing in direct file cases. Criteria the court must consider are as follows:

- The seriousness of the alleged offense and whether the protection of the community requires response or consequence beyond that afforded this article;
- Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

Reverse Waiver

Criteria (cont.):

- The age of the juvenile and the maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, and pattern of living;
- The record and previous history of the juvenile in prior court-related matters;
- The current and past mental health status of the juvenile as evidence by relevant mental health or psychological assessments or screenings that are made available to both the district attorney and defense counsel;
- The likelihood of the juvenile's rehabilitation by use of the sentencing options available in the juvenile courts and district courts;
- The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;
- The impact of the offense on the victim;
- Whether the juvenile was previously committed to the Department of Human Services following an adjudication for a delinquent act that constitutes a felony; and
- Whether the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of the delinquent act.

Blended Sentencing Models

Blended sentencing can originate in juvenile court or adult criminal court.

- **Juvenile – Exclusive Blend:** Juvenile court imposes either juvenile or adult criminal sanctions;
- **Juvenile – Inclusive Blend:** Juvenile court imposes both juvenile and adult sanctions, typically suspending the adult sanction;
- **Juvenile – Contiguous:** Juvenile court imposes juvenile sanctions that would be in force beyond age of extended jurisdiction. At that point, court determines if remainder of sanctions should be served in an adult criminal corrections system;

Blended Sentencing Models

- **Criminal – Exclusive Blend:** The criminal court imposes either juvenile or adult criminal sanctions;
- **Criminal – Inclusive Blend:** The criminal court imposes both juvenile and adult sanctions, typically suspending the criminal sanction.

Blended Sentencing Models

By providing the juvenile justice system with an intermediary response to juvenile offending, blended sentencing has the potential to be an important step in a juvenile justice system that provides a “graduated” response to juvenile offending. . . .Our research, however, suggests that in states employing juvenile-inclusive blended sentencing, minorities will be disproportionately overrepresented among transfers . . .

The most promising solution to “rationalize” the use of blended sentencing and to avoid disparities in its use is to incorporate the principles of “risk and needs” in its application.

Fred Cheesman. A DECADE OF NCSC RESEARCH ON BLENDED SENTENCING OF JUVENILE OFFENDERS: WHAT HAVE WE LEARNED ABOUT "WHO GETS A SECOND CHANCE?". (2011). *National Center for State Courts, Future Trends in State Courts 2011*.

Trends in Legislation

Several jurisdictions have expanded the upper age of jurisdiction of the juvenile court. In 2013, Illinois and Massachusetts raised the age of juvenile jurisdiction to age 18.

- 38 states set the maximum age at 17;
- 10 states set the maximum age at 16;
- 2 states set the maximum age at 15

Trends in Legislation

Many states have reformed their transfer and direct file laws.

- A youth must actually be convicted of an offense that requires transfer in order for “once and adult, always an adult” to apply (Virginia, Missouri);
 - See WA ESSB 5746 (2009)
- Raising the age at which young offenders may be charged as adults for more serious crimes (Colorado, Nevada);
 - WA ESSB 5746 (2009) eliminated mandatory decline hearing for 15 year olds.

Trends in Legislation

Reforming transfer and direct file laws (continued)

- The juvenile court is authorized to determine whether to decline jurisdiction (Nevada, Mississippi, Utah);
- Eliminating or limiting direct file in criminal court by the prosecutor (Colorado);
- A reverse transfer or remand hearing is allowed for youth transferred to adult criminal court (Colorado, Arizona).

Trends in Legislation

11 states and local jurisdictions have removed youth from adult jails and prisons in the last several years.

- Youth being tried as an adult may not be held in an adult jail or pretrial facility unless the court finds it is appropriate (Colorado, Ohio);
- Youth transferred to adult court may request placement in a juvenile facility prior to sentencing (Nevada);
- As an alternative sentence, a judge may send a youth convicted as an adult to a juvenile correctional facility until the youth turns 18. At age 18, the judge to may reassess the youth's sentence to determine whether to send the youth: (1) to prison to serve the criminal sentence; (2) to a community-based program in order for the youth to transition back into society successfully; or (3) discharge the youth. (Indiana)