

Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws

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This report summarizes research on the juvenile transfer and blended sentencing statutes of all 50 states and the District of Columbia. It updates and expands on *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*, a widely consulted analysis of state transfer laws published by the Office of Juvenile Justice and Delinquency Prevention in December 1998, and written by Patrick Griffin, Patricia Torbet, and Linda Szymanski of the National Center for Juvenile Justice. The original *Trying Juveniles* was based on state transfer laws as amended through the 1997 legislative sessions. The current update not only reflects all changes in state law made through the 2002 legislative sessions, but also broadens the focus of the analysis to take in laws that authorize criminal *sentencing* as well as criminal prosecution of juveniles.

For detailed summaries of individual states' transfer and blended sentencing laws, readers are encouraged to turn to a kind of on-line appendix to this report, which is available at the National Center for Juvenile Justice's *State Juvenile Justice Profiles* web site at www.ncjj.org/stateprofiles/.

The original 1998 *Trying Juveniles* can still be accessed on-line at ojjdp.ncjrs.org/pubs/tryingjuvasadult/toc.html.

All states expose juveniles to the risk of adult criminal sanctions under some circumstances.

Mechanisms for taking “hard cases” out of the juvenile justice system have been available for as long as there have been juvenile courts.¹ But in recent years, and especially in the past decade, these mechanisms have become a much more prominent feature of states' approaches to serious juvenile offending. *Transfer* laws—which spell out conditions under which juveniles may be prosecuted in the same manner as adults—have tended to proliferate, to become more expansive in their scope and more automatic in their operation. And *blended sentencing* laws—which can expose even those who remain under juvenile court jurisdiction to the risk of adult criminal sanctions—have become commonplace as well.

The following discussion of state law² in this area is intended to provide a broad overview of the current mechanisms by which juveniles may reach the criminal justice system as a result of offenses committed as juveniles.

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Together, transfer and blended sentencing laws regulate all movement across the borders separating the juvenile and criminal justice systems

State transfer laws define categories of juveniles who, because of their ages, their past records, or the seriousness of the charges against them, may—or in some cases must—be tried in courts of criminal jurisdiction. Transfer laws are concerned exclusively with the forum in which cases against serious juvenile offenders will be heard.

Blended sentencing laws, on the other hand, focus not on the trial forum but on the correctional system (juvenile or adult) in which the serious juvenile offender will be sanctioned. Some blended sentencing provisions permit a juvenile who has been “moved up” to the criminal court system for trial to be “moved down” again for sanctioning. Others perform the reverse function, essentially giving juvenile court judges the power to send uncooperative juveniles to prison.

Transfer laws are classified primarily according to where they locate responsibility for determining the trial forum:

- 46 states have *judicial waiver* provisions, in which juvenile court judges clear the way for criminal court prosecutions by waiving jurisdiction over individual juveniles. Under a waiver law, a case against an offender of juvenile age must at least originate in juvenile court; it cannot be channeled elsewhere without a juvenile court judge’s formal approval. While all states prescribe standards that must be consulted in waiver decision-

making, most leave the decision largely to the judge’s discretion. However, some set up presumptions in favor of waiver in certain classes of cases, and some even specify circumstances under which waiver is mandatory.

- 15 states have *direct file* laws, which leave it up to prosecutors to decide, at least in specified classes of cases, whether to initiate cases in juvenile or criminal courts.
- 29 states have *statutory exclusion* provisions that grant criminal courts original jurisdiction over certain classes of cases involving juveniles. Legislatures in these states have essentially predetermined the question of the appropriate forum for prosecution—taking the decision out of both prosecutors’ and judges’ hands.

Although blended sentencing laws are sometimes considered as a single group, it is more useful to classify them according to whether they provide juvenile court judges with criminal sentencing options, or allow criminal court judges to impose juvenile dispositions:

- 15 states have *juvenile blended sentencing* schemes that empower juvenile courts to impose adult criminal sanctions on certain categories of serious juvenile offenders. Most of these laws authorize the court to combine a juvenile disposition with a suspended criminal sentence—which functions as a kind of

guarantee of good behavior. If the juvenile cooperates, he or she will remain in the juvenile sanctioning system; if not, he or she may be sent to the adult one. Although the practical effect of a sentencing provision of this type may depend on a number of factors—including how it interacts with the state’s transfer laws—juvenile blended sentencing generally increases the overall hazard that a juvenile offender will receive an adult criminal sentence, either immediately or eventually. In that sense, although it may be more flexible, it functions somewhat like an expanded transfer law.

- 17 states have *criminal blended sentencing* laws, on the other hand, under which criminal courts, in sentencing transferred juveniles, may impose sanctions that would ordinarily be available only to juvenile courts. Criminal blended sentencing provides a mechanism whereby individual juveniles who have left the juvenile system for criminal prosecution may be returned to it for sanctioning purposes. Again, sometimes the return to the juvenile system is only conditional, with a suspended adult sentence serving as a guarantee of good behavior. But the overall tendency of criminal blended sentencing is to soften or mitigate the effects of existing transfer laws, at least in individual cases.

Table 1. Transfer/Blended Sentencing Provisions

	Judicial Waiver			Direct File	Statutory Exclusion	Reverse Waiver	Once Adult/ Always Adult	Juvenile Blended	Criminal Blended
	Discretionary	Presumptive	Mandatory						
Total States	45	15	15	15	29	25	34	15	17
Alabama	X				X		X		
Alaska	X	X			X			X	
Arizona	X			X	X	X	X		
Arkansas	X			X		X		X	X
California	X	X		X	X	X	X		X
Colorado	X	X		X		X		X	X
Connecticut			X			X		X	
Delaware	X		X		X	X	X		
District of Columbia	X	X		X			X		
Florida	X			X	X		X		X
Georgia	X		X	X	X	X			
Hawaii	X						X		
Idaho	X				X		X		X
Illinois	X	X	X		X	X	X	X	X
Indiana	X		X		X		X		
Iowa	X				X	X	X		X
Kansas	X	X					X	X	
Kentucky	X		X			X			X
Louisiana	X		X	X	X				
Maine	X	X					X		
Maryland	X				X	X	X		
Massachusetts					X			X	X
Michigan	X			X			X	X	X
Minnesota	X	X			X		X	X	
Mississippi	X				X	X	X		
Missouri	X						X		X
Montana				X	X	X		X	
Nebraska				X		X			X
Nevada	X	X			X	X	X		
New Hampshire	X	X					X		
New Jersey	X	X	X						
New Mexico					X			X	X
New York					X	X			
North Carolina	X		X				X		
North Dakota	X	X	X				X		
Ohio	X		X				X	X	
Oklahoma	X			X	X	X	X		X
Oregon	X				X	X	X		
Pennsylvania	X	X			X	X	X		
Rhode Island	X	X	X				X	X	
South Carolina	X		X		X				
South Dakota	X				X	X	X		
Tennessee	X					X	X		
Texas	X						X	X	
Utah	X	X			X		X		
Vermont	X			X	X	X		X	
Virginia	X		X	X		X	X		X
Washington	X				X		X		
West Virginia	X		X						X
Wisconsin	X				X	X	X		X
Wyoming	X			X		X			

The traditional discretionary waiver provision remains the most common form of transfer law

A total of 45 states give juvenile court judges discretion to waive jurisdiction over individual cases involving minors, so as to allow prosecution in adult criminal courts (Table 2). Terminology varies from state to state—some call the process a “certification” for adult prosecution, for example, or a “transfer,” “bind-over” or “decline” rather than a waiver proceeding—but all laws in this category have the effect of authorizing but not requiring juvenile courts, following a hearing, to designate appropriate cases for adult prosecution.

Waiver proceedings must be conducted in accordance with due process principles articulated by the U.S. Supreme Court in *Kent v. United States*.³ Nearly all discretionary waiver statutes lay out broad stan-

dards to be applied in these proceedings—“the best interests of the child and the public,” for instance—and/or specific factors to be weighed by the court in deciding whether or not to waive jurisdiction. The latter are usually at least loosely based on a set of eight factors suggested for determinations of this kind in the *Kent* decision (see sidebar below).

In addition, almost all discretionary waiver laws specify threshold criteria 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, a few do not. In Alaska, for instance, a juvenile of any age, accused of any

offense, may be waived if after a hearing the court finds, in addition to probable cause, that the juvenile is not amenable to treatment as a juvenile.⁴ Washington has a similar provision, authorizing waiver of any child, regardless of age or offense, if the juvenile court finds that it “would be in the best interest of the juvenile or the public.”⁵ Although Delaware law permits the Attorney General to *request* waiver only for juveniles of at least 14, it allows the court on its own initiative to consider waiving any youth who is “not amenable to the rehabilitative processes” of the juvenile court, regardless of age or offense.⁶ Finally, Kansas has a provision that is nearly as broad as these others, authorizing transfer of juveniles accused of any offense, as long as they were at least 10 at the time.⁷

State waiver laws reflect the influence of the U.S. Supreme Court’s 1966 *Kent* decision

An appendix to *Kent v. United States* listed 8 factors that the Court suggested should be considered in ruling on the propriety of transfer in a discretionary waiver proceeding. These factors have been widely incorporated into state waiver laws:

1. “The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.”
2. “Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.”
3. “Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.”
4. “The prosecutive merit of the complaint....”
5. “The desirability of trial and disposition of the entire offense in one court when the juvenile’s associates in the alleged offense are adults....”
6. “The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.”
7. “The record and previous history of the juvenile, including previous contacts with the [juvenile justice agency], other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation...or prior commitments to juvenile institutions.”
8. “The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.”

Table 2. Discretionary Waiver

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

Note: An entry in the column below an offense category means that there is some offense or offenses in that category for which a juvenile may be waived for criminal prosecution. The number indicates the youngest possible age at which a juvenile accused of an offense in that category may be waived. “NS” means no age restriction is specified for an offense in that category.

Example: In Tennessee, a juvenile may be waived for criminal prosecution of any offense committed after reaching the age of 16 (Any Offense—16). In addition, a juvenile of any age may be waived for prosecution of first or second degree murder or attempted first or second degree murder (Murder—NS). Finally, a juvenile of any age may be waived for prosecution of rape, aggravated rape, aggravated or especially aggravated robbery, kidnapping, aggravated or especially aggravated kidnapping, or the attempt to commit any of these offenses (Person Offense—NS).

While the prosecution bears the burden of proof in a discretionary waiver proceeding, under presumptive waiver statutes this burden may be shifted

Generally, a prosecutor seeking a waiver to criminal court must affirmatively make the case for waiver. But 15 states have “presumptive waiver” laws, which designate a category of cases in which waiver to criminal court is rebuttably presumed to be appropriate (Table 3). In such cases, if a juvenile meeting age, offense, or other statutory criteria triggering the presumption fails to make an adequate showing against transfer, the juvenile court must send the case to criminal court.

Statutory criteria triggering presumptive waiver fall into three broad categories:

- *Offense-based.* In some states, it is primarily the offense that matters. In Alaska, for example, children of any age charged with certain violent felonies are rebuttably presumed to be “unamenable to treatment.”⁸ Maine also applies presumptions against juveniles accused of certain serious offenses, regardless of their age.⁹
- *Age-based.* Older juveniles are singled out by other states, even when the offenses of which they are accused would not otherwise be considered serious enough to shift the burden of proof. 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.¹⁰

- *Record-based.* Still other states emphasize the juvenile’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.¹¹

Table 3. Presumptive Waiver

State	Any Offense	Certain Felonies	Capital Crime	Murder	Person Offense	Property Offense	Drug Offense	Weapons Offense
Alaska					NS			
California		14		14	14	14	14	
Colorado		12*		12*	12*			
District of Columbia	15†			15	15	15		
Illinois		15						
Kansas	14†	14			14		14	
Maine				NS	NS			
Minnesota		16						
Nevada	14†				14			
New Hampshire		15		15	15		15	
New Jersey		14		14	14	14	14	14
North Dakota		14		14	14			
Pennsylvania				14	14			
Rhode Island	NS*							
Utah		16		16	16	16		16

Note: An entry in the column below an offense category means that there is some offense or offenses in that category for which a juvenile is presumed to be an appropriate candidate for waiver to criminal court. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to the presumption. “NS” means no age restriction is attached to the presumption for an offense in that category.

* In Colorado and Rhode Island, the presumption is applied against juveniles with certain kinds of previous histories.

† In the District of Columbia, Kansas, and Nevada, the presumption applies to any offense committed with a firearm.

Mandatory waiver provisions require juvenile courts to transfer certain cases for criminal prosecution

The statutes of 15 states provide for mandatory waiver in cases that meet certain age/offense or prior record criteria (Table 4). Proceedings against juveniles subject to mandatory waiver are initiated in juvenile court, but the court has no other role than to confirm that the statutory requirements for mandatory waiver are met. Once it has done so, it *must* send the case to a court of criminal jurisdiction. Accordingly, a mandatory waiver law functions like a legislative exclusion, removing a designated category of cases from juvenile court jurisdiction. However, the juvenile court

may retain power to oversee preliminary matters and make necessary orders relating to appointment of counsel, detention, and so on.

Like presumptive waiver laws, some mandatory waiver laws turn primarily on the seriousness laws of the offense charged, others on the fact that a juvenile is older, and still others on the extensiveness of the offender's previous history with the juvenile justice system.

Generally, in a mandatory waiver situation, the juvenile court is called

upon to make a probable cause finding—that is, to determine that there is probable cause to believe a juvenile of the requisite age or having the requisite history committed an offense falling within the mandatory waiver law. However, even this is not always necessary: in South Carolina¹² and Indiana,¹³ which require waiver in cases involving juveniles with sufficiently serious prior records, the juvenile court, once it has confirmed the juvenile's record, may apparently leave the probable cause determination to the criminal court.

Table 4. Mandatory Waiver

State	Certain Felonies	Capital Crime	Murder	Person Offense	Property Offense	Drug Offense	Weapons Offense
Connecticut	14	14	14				
Delaware	15		NS	NS	16	16	
Georgia			14	14	15		
Illinois	15						
Indiana	NS						
Kentucky	14						
Louisiana			15	15			
New Jersey	16		16	16	16	16	16
North Carolina		13					
North Dakota			14	14		14	
Ohio	14		14	16	16		
Rhode Island			17	17			
South Carolina	14						
Virginia			14	14			
West Virginia	14		14	14	14		

Note: An entry in the column below an offense category means that there is some offense or offenses in that category for which waiver to criminal court is mandatory. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to mandatory waiver. "NS" means no age restriction is specified for an offense in that category.

Example: Louisiana provides for mandatory waiver of juveniles of at least 15 who are accused of first or second degree murder (Murder—15) or of aggravated rape or aggravated kidnapping (Person Offense—15).

Statutory exclusion laws bypass the juvenile courts altogether

A total of 29 states have statutes that simply exclude certain categories of offenders from the jurisdiction of their juvenile courts (Table 5). Exclusion laws generally define the term “delinquent child,” for juvenile court jurisdictional purposes, to leave out anyone who comes within certain age/offense or prior record categories. Juveniles coming within these categories are initially prosecuted in whatever criminal court has jurisdiction over adults charged with the same offenses. However, as is discussed later, many states also provide “reverse waiver” mechanisms under which criminal

courts may order excluded cases transferred to juvenile courts, and some apply special ameliorative sentencing provisions to juveniles.

Murder is the most commonly excluded offense; in New Mexico, for example, only first degree murder committed by a child of at least 15 is excluded.¹⁴ But some states exclude less serious offenses where older juveniles are involved—for example, Mississippi excludes all felonies committed by 17-year-olds.¹⁵ 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 and dispositions for offenses that would have been felonies if committed by an adult.¹⁶

In all, there are 38 states that provide for “automatic transfers”—either by legislatively excluding a class of offenders from juvenile court jurisdiction (Table 5) or by mandating judicial waiver of some class of cases (Table 4).

Table 5. Statutory Exclusion

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

Note: An entry in the column below an offense category means that there is some offense or offenses in that category that are excluded from juvenile court jurisdiction. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to the exclusion. “NS” means no age restriction is specified for an offense in that category.

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

Transfer, Age Distinctions and Adjudicative Competence

If a criminal trial is to be fair, the defendant must be “competent”—that is, must have “the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense....” * Adults generally have these basic capacities, unless they are disabled or mentally ill. But what about juveniles *tried as adults*?

Recent research on adjudicative competence seems to point to age 16 as an important developmental boundary for competence purposes: juveniles who are less than 16 years old appear to be much more likely than older juveniles and young adults to lack the basic cognitive skills needed to understand court proceedings, effectively cooperate with their attorneys, and make sensible decisions about plea bargains and similar matters. In fact, in tests conducted on a large sample of 11- to 24-year-olds with regard to these abilities, about a third of the 11- to 13-year-olds, and about a fifth of the 14- and 15-year-olds, performed at a level comparable to that of severely mentally impaired adults. The performance of 16- and 17-year-olds, on the other hand, did not differ significantly from that of young adults.†

State laws governing criminal prosecution of juveniles do not directly or explicitly take account of the issue of adjudicative competence, or make distinctions among juveniles on the basis of their current capacity to participate in criminal proceedings. Nevertheless, transfer statutes in 29 states do draw a clear line at age 16, distinguishing between youths who have reached their 16th birthdays and youths who have not:

- In Alabama, Alaska, Iowa, Minnesota, Nebraska, New Jersey, South Carolina, South Dakota, Utah, and Washington, for example, while juveniles under 16 may be waived to criminal court, only 16-year-olds are ever excluded or subject to mandatory waiver. This is generally true in Indiana, Maryland, and Nevada as well, although with narrow exceptions.
- Likewise, in Arkansas and the District of Columbia, only 16-year-olds are subject to direct file. In Montana this is generally true also, again with some exceptions.
- Hawaii has only discretionary waiver, but the offense threshold is lower for 16-year-olds.

- California, Delaware, Florida, Kentucky, North Dakota, Ohio, Rhode Island, and Tennessee distinguish between juveniles who have and have not reached 16, but not quite so sharply. In California and Florida, for example, offense categories subject to direct file are narrower for 14-year-olds than for 16-year-olds. The same is true of mandatory waiver offense categories in Ohio.
- In some ways, Connecticut, New York, and North Carolina draw the sharpest possible distinction here, in that juvenile court jurisdiction in these states ends at the 16th birthday—so that *all* 16-year-old offenders are subject to criminal prosecution. Similarly, in Vermont, all 16-year-olds are subject to concurrent jurisdiction.

By contrast, statutes in the remaining 22 states make no clear distinction, for transfer purposes, between juvenile who are at least 16 and juveniles who are not. These states either draw lines at other ages, or else draw no distinct age-based lines at all:

- In Colorado, Idaho, Massachusetts, Michigan, Virginia, and West Virginia, the critical age threshold for most transfer-related purposes is 14.
- Illinois, Louisiana, New Mexico, Oregon, Pennsylvania generally draw the line at 15.
- Kansas, Maine, Missouri, and New Hampshire have only non-mandatory waiver provisions, but these make no distinction between 16-year-olds and younger juveniles. In fact, Maine sets no age threshold at all, only offense thresholds.
- Some states set multiple age thresholds. For instance, Arizona draws one distinct line at 14 (below which no juvenile can be direct filed into criminal court) and another at 15 (below which none are excluded from juvenile court jurisdiction). Mississippi sets one transfer threshold at age 13 (certain serious felonies excluded) and another at 17 (all felonies excluded). In Georgia, Texas, Wisconsin, and Wyoming, there are several significant threshold ages for transfer purposes, but none of them is 16. While Oklahoma draws one distinction at age 16 (direct file for some offenses), it draws equally significant lines at 13 (exclusion) and 15 (direct file for other offenses).

**Drope v. Missouri*, 420 U.S. 162, 171, 43 L. Ed. 2d 103, 95 S. Ct. 896 (1975).

† Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, F., Repucci, N., and Schwartz, R. (August 2003). “Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants.” *Law and Human Behavior*, 27(4), 333-363.

Direct file laws give both juvenile and criminal courts jurisdiction to hear cases, leaving it to prosecutors to choose the forum

Statutes in 15 states define a category of cases in which prosecutors may determine whether to proceed initially in juvenile or criminal court. The jurisdiction of each court is concurrent with the other. However, again, in states with “reverse waiver” provisions, the prosecutor’s choice of forum may not be final.

Generally, the 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. So Florida allows even misdemeanors to be prosecuted in criminal court if the child involved is at least 16 and has a sufficiently serious record.¹⁷

Three states grant prosecutors direct file discretion, 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.¹⁸ On the other hand, before exercising direct file authority to prosecute juveniles as adults in Nebraska¹⁹ and Wyoming,²⁰ prosecutors are required to give consideration to the same kinds of enumerated factors that are ordinarily weighed by courts making waiver determinations.

Table 6. Direct File

State	Any Offense	Certain Felonies	Capital Crime	Murder	Person Offense	Property Offense	Drug Offense	Weapons Offense
Arizona		14						
Arkansas		16	14	14	14			
California		14	14	14	14	14	14	
Colorado		14		14	14	14		14
District of Columbia				16	16	16		
Florida	16	16	NS	14	14	14		14
Georgia			NS					
Louisiana				15	15	15	15	
Michigan		14		14	14	14	14	
Montana				12	12	16	16	16
Nebraska	16	NS						
Oklahoma		16		15	15	15	16	15
Vermont	16							
Virginia				14	14			
Wyoming		14		14	14	14		

Note: An entry in the column below an offense category means that there is some offense or offenses in that category which may be handled in juvenile or criminal court, at the prosecutor’s option. The number indicates the youngest possible age at which a juvenile accused of an offense in that category is subject to criminal prosecution at the prosecutor’s option. “NS” means no age restriction is specified for an offense in that category.

Example: Wyoming provides for concurrent jurisdiction of the following offenses committed by 14-year-olds: any felony committed by a juvenile with at least two previous felony adjudications (Certain Felonies—14); murder or manslaughter (Murder—14); kidnapping, first- or second-degree sexual assault, robbery, aggravated assault, or aircraft high-jacking (Person Offense—14); first- or second-degree arson and aggravated burglary (Property Offense—14).

In most states, one transfer to criminal court renders a juvenile an “adult” for all subsequent prosecutions

A special automatic transfer category has been created in 34 states for juveniles who, having once been prosecuted as adults, are subsequently accused of new offenses (Table 1). 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.

Generally, once an adult/always an adult provisions stipulate that the juvenile involved must have been convicted of the offense that triggered the original 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.²¹ Likewise, in Delaware, the law does not require a conviction in the original case, as long as some 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.²² 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 itself have been excluded from juvenile court jurisdiction.²³ Mississippi requires no conviction on the first adult-prosecuted offense if the juvenile is subsequently accused of a felony.²⁴

Although most states require that, following a juvenile’s conviction as an adult, all subsequent offenses be

prosecuted in criminal court, Maryland,²⁵ Michigan,²⁶ Minnesota,²⁷ and Texas²⁸ restrict the coverage of their once an adult/always an adult provisions to cases in which juveniles are subsequently accused of felonies, and California²⁹ 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, Iowa³⁰ and California 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.³¹

State legislatures continue to expand the reach of transfer laws, but the pace has slowed considerably in recent years

A total of 31 states made substantive changes to their laws governing the criminal prosecution and sentencing of juveniles during the five-year period from 1998 to 2002.* In general, the changes tended to expand the reach of these laws. But legislative activity was less frequent and less dramatic during the 1998–2002 period (especially during the latter years of the period) than in the years 1992 through 1997, when nearly all states took significant steps to toughen up their laws in this area, and many rewrote them completely.

Eighteen states expanded their transfer laws in some way from 1998 through 2002.† By far the most comprehensive movement in this direction took place in California, where Proposition 21, approved by voters in March of 2000, not only added a number of broad new categories of juveniles eligible for prosecution in criminal courts, but also established entirely new direct file and exclusion mechanisms for initiating such prosecutions.

By comparison, expansions in most other states were minor, usually consisting of the addition of new items to the lists of transfer-eligible offenses. But New Jersey created a new mandatory waiver mechanism for some 16-year-olds, in addition to greatly expanding its existing discretionary

and presumptive waiver provisions applicable to juveniles of at least 14. Likewise, Maine created a new category of presumptive waiver offenses. Three states (Illinois, Maryland, and North Carolina) added “once an adult, always an adult” provisions, under which juveniles who have previously been tried as adults are automatically excluded from juvenile court jurisdiction thereafter.

In most cases, there was no particular pattern evident in amendments that expanded lists of transfer-eligible offenses. However, apparently in response to Columbine and similar tragedies, three states (Illinois, Nevada, and New York) changed their transfer laws to ensure that violent offenses committed on school property would be prosecuted as adult crimes.

On the other hand, an amendment to Iowa law designated one offense—animal torture, at least when committed by a juvenile under 17—that cannot be judicially waived, effectively (if only slightly) narrowing the scope of the state’s otherwise broad discretionary waiver provision. Iowa was among the six states that took steps in this direction.‡ Most were small steps. For instance, Louisiana removed aggravated oral sexual battery from the list of offenses subject to (depending on the

juvenile’s age at commission) discretionary waiver or direct file. But Arkansas and Wyoming, in amending their direct file laws, went somewhat further. The Arkansas amendment cut back the number of crimes that had been subject to criminal prosecution at the prosecutor’s option—for instance, removing all attempts, solicitations, and conspiracies to commit covered crimes. And Wyoming narrowed the coverage of its direct file law where 17-year-olds are concerned, removing all non-felony cases.

Four states enacted laws during the 1998–2002 period giving juvenile courts the power to impose adult criminal sentences under some circumstances.** As is discussed further on, whether juvenile blended sentencing laws serve to *increase* juvenile offenders’ exposure to the risk of adult sanctions—or simply to allow for more flexibility in the handling of youths who would otherwise have been prosecuted as adults under transfer laws anyway—depends largely on how these laws are actually used. But in two of the states enacting new blended sentencing laws, Arkansas and Ohio, criminal sanctioning options have been made available in cases involving juveniles who would *not* be subject to criminal prosecution under applicable transfer laws.

* Alaska, Arizona, Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming.

† Alaska, California, Florida, Georgia, Illinois, Kansas, Maine, Maryland, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Vermont, and West Virginia.

‡ Arkansas, Indiana, Iowa, Louisiana, Washington, and Wyoming.

** Alaska, Arkansas, Illinois, and Ohio.

Like transfer laws, juvenile blended sentencing laws increase the risk of criminal penalties for some juveniles

A total of 15 states empower their juvenile courts to impose criminal sanctions on some category of serious juvenile offenders (Table 7). Juvenile blended sentencing laws bear a broad resemblance to transfer laws—in that they define some group of juveniles who may be treated as though they were adults, at least for sanctioning purposes. Though the specific effects of juvenile blended sentencing laws may depend on many factors, their general tendency is to expand the sanctioning powers of the juvenile court, and thus to increase the hazards and penalties to which young offenders may be exposed.

The most common type of juvenile blended sentencing scheme—sometimes called “inclusive” blended sentencing³²—allows juvenile court judges to impose both juvenile and suspended adult sanctions on certain categories of offenders. In Kansas, for example, following a plea or finding of guilty in an “extended jurisdiction juvenile” (EJJ) prosecution, the court must impose a juvenile disposition and an adult criminal sentence, with the execution of the latter “stayed on the condition that the juvenile offender not violate the provisions of the juvenile sentence and not commit a new offense.”³³ Juvenile blended sentencing

laws in 11 states follow this inclusive model. A juvenile offender subject to a combination sentence in one of these states is allowed to remain in the juvenile sanctioning system only conditionally, with a criminal sentence dangling overhead as a way of encouraging cooperation and discouraging future misconduct.

Most of the states with inclusive blended sentencing statutes simply require courts to impose combination sentences in qualifying cases. But two states—Massachusetts and Michigan—give courts other options. In Massachusetts, following a

Table 7. Juvenile Blended Sentencing

State	Statute Type*	Any Offense	Certain Felonies	Capital Crime	Murder	Person Offense	Property Offense	Drug Offense	Weapons Offense
Alaska	I					16			
Arkansas	I		14		NS	14			14
Colorado	C		NS			NS			
Connecticut	I		14			NS			
Illinois	I		13						
Kansas	I	10							
Massachusetts	I		14			14			14
Michigan	I	NS	NS		NS	NS	NS	NS	
Minnesota	I		14						
Montana	I		12		NS	NS	NS	NS	NS
New Mexico	E		14		14	14	14		
Ohio	I		10		10				
Rhode Island	C		NS						
Texas	C		NS		NS	NS		NS	
Vermont	I†								

Note: An entry in the column below an offense category means that there is some offense or offenses in that category for which a juvenile may receive a blended sentence in juvenile court. The number indicates the youngest possible age at which a juvenile committing an offense in that category is subject to blended sentencing. “NS” means no age restriction is specified for an offense in that category.

* Statute types are coded “I” for Inclusive, “E” for Exclusive, and “C” for Contiguous.

† Vermont has an anomalous juvenile blended sentencing provision, which permits a juvenile entering a plea of guilty or nolo contendere in a *criminal* proceeding to petition for transfer to family court for disposition. Following the transfer, the family court must impose both a juvenile disposition and a suspended criminal sentence. However, there is no minimum age/offense threshold for juvenile blended sentencing in such a case—the provision applies to all juveniles transferred from criminal court for Youthful Offender disposition.

Youthful Offender adjudication, the court may impose (1) an extended juvenile commitment to the Department of Youth Services until age 21, (2) a straight criminal sentence, or (3) a combination of the two, with the adult sentence suspended pending successful completion of the juvenile commitment.³⁴ Likewise, in Michigan, the court may impose (1) an ordinary juvenile disposition, (2) an ordinary adult sentence, or (3) a juvenile disposition with imposition of an unspecified adult sentence “delayed” subject to annual review.³⁵

Four states have juvenile blended sentencing schemes that do not feature combination sentences. New Mexico has an “exclusive” blended sentencing provision, which simply gives the juvenile court the option of imposing an immediately effective criminal sanction on a qualifying Youthful Offender, in lieu of a juvenile one.³⁶ The three remaining states—Texas,³⁷ Colorado,³⁸ and Rhode Island³⁹—have variations on the “contiguous” form of blended sentencing, under which a juvenile court in certain types of cases is authorized to impose a sentence of commitment that would be in force beyond (sometimes far beyond) the

age of its extended jurisdiction. At least initially, the commitment is to the juvenile correctional authority, but the offender may later be transferred to an adult facility. There is no combination sentence—and no assurance that the transfer to adult corrections will occur only in the event of misbehavior on the juvenile’s part. In fact, the juvenile may well be required to serve out the whole sentence without any proof of subsequent misconduct. But at the time of any proposed transfer from juvenile to adult correctional authorities, the sentence must be formally reconsidered.⁴⁰

Juveniles’ procedural rights in blended sentencing cases are the same as those of adults in criminal proceedings

In all states in which juvenile offenders are exposed to the risk of adult sanctions in juvenile court, juveniles are entitled to the basic procedural rights afforded to criminal defendants, including at a minimum the right to be tried by a jury, and often the right to be indicted by a grand jury as well. Kansas, for example, guarantees juveniles in EJJ cases “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.”* In Texas, if a petition alleging violent or habitual felony conduct has been referred to and approved by a grand jury, the juvenile is entitled not only to be tried

by a jury but to have *sentence* determined by a jury.[†]

Generally, a juvenile given the right to be tried by a jury may waive it and be tried before a juvenile court judge. In Connecticut, however, a juvenile subject to adult sanctions in a “serious juvenile repeat offender” or “serious sexual offender” prosecution *must* waive jury trial rights in order to remain in juvenile court; if the juvenile is not willing to be tried before a judge, the case must be transferred to criminal court.[‡]

Although Vermont’s “Youthful Offender” disposition statute is classified as a juvenile blended sentencing law, there

is no question of a jury trial here, because a Youthful Offender case can only reach the family court for disposition through a transfer from criminal court, following the entry of a guilty or no contest plea there. Accordingly, even though the Vermont law does empower a family court to impose a combination juvenile/suspended criminal sentence, it functions more like a *criminal* blended sentencing statute than a juvenile one, in that it allows a criminal court to send an amenable juvenile who is not a danger to the public back to the juvenile system, at least conditionally, in lieu of imposing a straight adult sentence.**

* Kansas Statutes §38-1636(f)(2).

† Texas Family Code §54.04.

‡ Connecticut General Statutes §§46b-133c, 46b-133d.

** Vermont Statutes §§5505, 5529b—5529e.

Threshold criteria qualifying juveniles for blended sentencing are similar to—but generally broader than—criteria for transfer to criminal court

Statutes that define eligibility for juvenile blended sentencing focus on age, offense, and prior record characteristics, just as state transfer laws do. In fact, juvenile blended sentencing statutes in two states—Kansas and Minnesota—have the same eligibility criteria as existing transfer laws. Arguably, in these states, juvenile blended sentencing simply provides a more flexible, less severe, “last chance” alternative to transfer. In Minnesota, for example, a juvenile accused of a felony committed when he or she was at least 14 may be certified for adult criminal prosecution at the juvenile court’s discretion, or instead subjected to an extended juvenile jurisdiction (EJJ) prosecution in juvenile court.⁴¹ In Kansas, which authorizes waiver of juveniles as young as 10, the county or district attorney may instead move to have any waiver-eligible case designated an EJJ prosecution. Not only the eligibility requirements, but the procedures, presumptions, and factors to be considered in determining whether to designate a case an EJJ prosecution are identical to those involved in a hearing to consider whether a juvenile should be prosecuted as an adult.⁴²

Juvenile blended sentencing eligibility criteria in two other states—Alaska⁴³ and Illinois⁴⁴—are drawn more narrowly than transfer criteria, and thus cover only a subset of those who are technically eligible for transfer.

But juvenile blended sentencing provisions in ten states—Arkansas,⁴⁵

Colorado,⁴⁶ Connecticut,⁴⁷ Massachusetts,⁴⁸ Michigan,⁴⁹ Montana,⁵⁰ New Mexico,⁵¹ Ohio,⁵² Rhode Island,⁵³ and Texas⁵⁴—*expand* the categories of juveniles for whom adult sanctions are a possibility, in some cases significantly. For example, Montana’s EJJ statute simply leaves out the minimum age requirements that restrict the scope of the state’s transfer laws. With limited exceptions, Montana’s direct file law permits criminal prosecution only of 16-year-olds, and its statutory exclusions apply only to 17-year-olds. But EJJ provisions may be invoked at the prosecutor’s option on juveniles of any age who are accused of offenses covered by the direct file and statutory exclusion laws.⁵⁵

Similarly, in Ohio, there are no transfer categories, discretionary or automatic, that apply to juveniles under 14. But under Ohio’s blended sentencing law for “Serious Youthful Offenders” (SYOs), enacted in 2001, juveniles as young as 10 may receive suspended adult sentences following adjudication for certain serious offenses. It is true that the suspended adult portion of an SYO sentence may not be invoked until after the juvenile has reached the age of 14. But the offense/misconduct threshold that must be satisfied at that point is quite low: the adult sentence may be triggered, for example, by conduct that “creates a substantial risk to the safety or security” of the community, the victim, or (in the case of juveniles who are still in custody) the institution, as long as the misconduct “demonstrates that the person is unlikely to be rehabilitated during the remain-

ing period of juvenile jurisdiction.”⁵⁶

In states in which blended sentencing eligibility is broader than transfer eligibility, juvenile blended sentencing clearly expands the pool of offenders *potentially* at risk of adult sanctions. But whether it *actually* sends more juveniles to prison depends on many factors, including the way it is used by decision-makers—whether as a mitigating alternative to transfer, or as a new tool for an “in-between” category of cases that would not otherwise have merited transfer.

Conversely, even blended sentencing provisions that apply only to juveniles who are already technically at risk of adult sanctions (on account of transfer laws) may nevertheless increase their actual risk. In a state such as Kansas, for instance, in which virtually all cases are waiver-eligible—at least on paper—it is possible that some set of juveniles will be found “EJJ-worthy” who would never be considered “waiver-worthy.” For one thing, the EJJ designation is not nearly so final or irrevocable. Not only is the adult sanction stayed on condition of good behavior, but the juvenile is entitled at age 18 to a hearing reviewing the necessity of continuing the juvenile disposition. If necessary, another review must be held no more than three years later. However, if the court at any time finds by substantial evidence that the juvenile has violated the conditions of the juvenile disposition, it must revoke the stay and impose the adult sentence.⁵⁷

Criminal blended sentencing laws permit juveniles tried as adults to be sanctioned in the juvenile rather than the criminal justice system

A total of 17 states authorize their criminal courts, in sentencing juveniles who have been tried and convicted as adults, to impose juvenile dispositions rather than criminal ones under some circumstances (Table 8). Like blended sentences imposed by juvenile courts, criminal blended sentences may sometimes consist of a combination of juvenile and criminal sanctions—with the latter suspended as long as the offender cooperates in the dispositional program. But all criminal blended sentencing provisions permit individual juveniles who have already left the juvenile system for criminal prosecution to be returned to it, at least conditionally, for supervision, treatment, and rehabilitative programs available only to juveniles.

Criminal blended sentencing laws can be broadly divided into “exclusive” and “inclusive” types. Exclusive blended sentencing laws give courts an either/or choice between juvenile and adult sanctions. Inclusive laws allow them to impose both in combination.

The most common form of criminal blended sentencing scheme is exclusive. A provision of this kind can serve as a kind of “emergency exit” from the criminal justice system for those who, at the time of sentencing, appear to be still capable of benefiting from the juvenile one.

Ten states have exclusive criminal blended sentencing provisions of one kind or another. These laws vary considerably in scope, however. The broadest make juvenile sanctions available to the sentencing court whenever a juvenile has

been prosecuted as an adult, and regardless of the offense. In West Virginia, any juvenile who has been tried and convicted following transfer may receive a juvenile disposition in lieu of a criminal sentence.⁵⁸ Similarly, Nebraska authorizes a criminal court to impose a juvenile disposition on any juvenile except one convicted of a crime for which a life term is required by law.⁵⁹

On the other hand, Kentucky⁶⁰ and Massachusetts⁶¹ have the narrowest possible form of criminal blended sentencing, applicable only in one restricted set of circumstances—when a juvenile in criminal court pleads or is found guilty of a lesser offense that would not have been subject to criminal prosecution in the first place. In such cases, laws in both states give courts no option but to impose juvenile dispositions.

Some other states have exclusive criminal blended sentencing laws that apply only to juveniles being sentenced for offenses less serious than the ones for which they were prosecuted; however, they give courts somewhat more flexibility. For instance, in New Mexico, a juvenile who is prosecuted as an adult for first-degree murder but convicted of a lesser offense is subject to disposition as a “Youthful Offender”—and thus may receive either juvenile or criminal penalties.⁶² Wisconsin requires a criminal court to opt for a juvenile disposition when a juvenile is found to have committed an offense that would not have qualified for exclusion or waiver, but it also permits the court to consider the juvenile disposition option for offenses that *would* have

qualified, if the juvenile demonstrates by clear and convincing evidence that “it would be in the best interests of the juvenile and of the public.”⁶³

Several states, like Wisconsin, call for a kind of formal “fitness hearing” when a juvenile is to be sentenced for a lesser offense. An Illinois criminal court, when sentencing a juvenile who has been tried for an offense excluded from juvenile jurisdiction but found to have committed an offense that is not excluded, must impose a juvenile disposition, unless the state requests a hearing to determine if the juvenile should be sentenced as an adult. At the hearing, the court must consider factors similar to those the juvenile court takes into account in deciding whether to grant a motion to transfer a juvenile for criminal proceedings.⁶⁴

California has a provision that is similar in effect, but considerably more complicated in design. First, when a juvenile is convicted of an offense that, in combination with the juvenile’s age, would not have qualified for transfer to criminal court in the first place, the sentencing court must choose a juvenile disposition—or else remand the matter to the juvenile court for a disposition hearing. If a juvenile who was criminally prosecuted without the benefit of a preliminary fitness hearing (that is, for an offense qualifying for direct file or statutory exclusion) is convicted of an offense that, in combination with the juvenile’s age, would merely have permitted a transfer to criminal court upon a showing of unfitness,

the juvenile is entitled to a juvenile disposition or a remand, unless the prosecutor requests a fitness hearing and shows by a preponderance of the evidence that the juvenile is not “a fit and proper subject to be dealt with under the juvenile court law.” If the same juvenile is convicted of an offense that would have given rise to a rebuttable presumption of unfitness, the court may impose a criminal sanction unless the *juvenile* requests and prevails at a post-conviction fitness hearing. Finally, subject to certain limitations, the court may order a juvenile disposition in any case in which (1) the juvenile and prosecutor agree and (2) the court finds that the order “would serve the best interests of justice, protection of the community, and the person being sentenced.”⁶⁵

Table 8. Criminal Blended Sentencing Laws

State	Exclusive Laws (10)	Inclusive Laws (7)
Arkansas		X
California	X	
Colorado	X	
Florida		X
Idaho		X
Illinois	X	
Iowa		X
Kentucky	X	
Massachusetts	X	
Michigan		X
Missouri		X
Nebraska	X	
New Mexico	X	
Oklahoma	X	
Virginia		X
West Virginia	X	
Wisconsin	X	

“Inclusive” states authorize criminal courts to impose combination juvenile-adult sentences

The criminal blended sentencing schemes of seven states feature combination sentencing, in which a juvenile receives both a juvenile disposition and a suspended criminal sentence. In Missouri, for instance, a criminal court that does not wish to impose a straight criminal sentence on a juvenile must impose a combination sentence, with execution of the criminal portion of the sentence suspended pending successful completion of the juvenile disposition. If the juvenile thereafter commits a violation or a new offense, the court may continue the juvenile disposition or revoke it and impose the adult sentence, as it sees fit. When the juvenile reaches the age of 17, a hearing must be held, after which the court must (1) continue the juvenile disposition, (2) place the juvenile on probation, or (3) revoke the suspension and transfer the juvenile to the Department of Corrections.⁶⁶

There are a number of variations on this basic theme. In several, the sentence is not formally denominated a combination sentence, but it functions as one. So in Iowa, the criminal sentencing of a “Youthful Offender” following a plea or verdict of guilty is deferred, and the youth is transferred back to the juvenile court for disposition. Before turning 18, however, the juvenile is returned to the trial court for a reconsideration hearing. After considering the juvenile court’s report on the juvenile, the services available, and the interests of the juvenile and the community, the trial court may either continue the juvenile on Youthful Offender status or enter a criminal

sentence, which may be a suspended sentence.⁶⁷

Florida and Michigan are other states that authorize what are in effect, though not in form, conditional sentences. In Florida, a juvenile may receive a straight juvenile disposition following prosecution in the criminal division of the circuit court. But if the juvenile thereafter “proves not to be suitable” for the disposition, he or she is liable to be recalled and resentenced as an adult. Florida juveniles may be found unsuitable for juvenile sanctions if they break the law while under sanctions or violate conditions imposed as part of their sanctions. In such cases, following a hearing, the sentencing court “may revoke the previous adjudication [of delinquency], impose an adjudication of guilt, and impose any sentence which it may lawfully impose” under the criminal sentencing laws.⁶⁸

In Michigan, a juvenile tried in circuit court must be sentenced “in the same manner as an adult” if convicted of any of a number of specified crimes. Otherwise, the court must conduct a sentencing hearing to determine whether to impose an adult sentence or order the juvenile placed on probation and committed to a juvenile facility. The court must impose an adult sentence unless it finds by a preponderance of the evidence that “the best interests of the public would be served” by a juvenile commitment. However, even in such a case, the court retains jurisdiction over the juvenile throughout the disposition, and must “conduct an annual review of the services be-

ing provided to the juvenile, the juvenile’s placement, and the juvenile’s progress in that placement.” The court may order changes in the juvenile’s placement on the basis of these reviews, “including, but not limited to, committing the juvenile to the jurisdiction of the department of corrections.”⁶⁹

Of the states that give criminal courts other options than combination sentences in dealing with juveniles tried as adults, only two permit them to impose a juvenile disposition and leave it at that. In Idaho, upon conviction of any juvenile tried as an adult, the sentencing court is authorized to impose either a juvenile disposition or a suspended criminal sentence combined with a commitment to the custody of the Department of Juvenile Corrections.⁷⁰ Likewise, under Virginia law, if a juvenile who has been tried as an adult is convicted of a merely waivable nonviolent felony, the court may choose from among three sentencing options: (1) a juvenile disposition, (2) an adult sentence, or (3) an adult sentence suspended on condition of successful completion of a juvenile disposition. If the juvenile is convicted of a violent felony qualifying for mandatory waiver or direct file treatment, however, the court must choose from among (1) a juvenile disposition combined with a suspended criminal sentence, (2) a “serious juvenile offender” disposition (involving an extended juvenile commitment up to seven years or age 21, whichever comes first) followed by a criminal sentence, or (3) a straight criminal sentence.⁷¹

“Fail-safe” mechanisms ensure that juveniles prosecuted as adults are given some chance to show that they belong in the juvenile system

The laws of most states either dictate criminal handling of certain defined categories of juvenile offenders, or else place decisions about that handling solely in the hands of prosecutors. However, many of these states also have what might be called judicial corrective or “fail-safe” mechanisms, by means of which, at some point in the process, criminal court judges may review the circumstances and make individualized determinations of juveniles’ suitability for criminal prosecution or criminal sanctions. The two basic forms of fail-safe mechanism are reverse waiver and criminal blended sentencing:

Reverse waiver. The laws of 25 states allow a juvenile subject to prosecution in criminal court to petition to have the case transferred—or transferred back—to juvenile court (Table 1). Generally, a criminal court judge making such a reverse waiver decision is guided by the same kinds of broad standards and considerations as a juvenile court in a waiver proceeding. In most cases, a reverse waiver hearing is held prior to trial, and if the reverse waiver is granted, the case is adjudicated in juvenile court. But three states—California,⁷² Colorado,⁷³ and Oregon⁷⁴—permit reverse waiver only after the offender’s guilt has been established; reverse waiver in these states is for disposition only.

Criminal blended sentencing. Even juveniles whose cases are handled in the criminal court system may ultimately be *sanctioned* in the juvenile correctional system. As noted above, 17 states have criminal blended sentencing laws authorizing their criminal courts, at least under some circumstances, to im-

pose juvenile dispositions rather than criminal ones (Table 8).

By enacting a reverse waiver or criminal blended sentencing law, a state may simultaneously define a broad category of cases that it believes merit criminal handling and also ensure that its courts will have an opportunity to consider whether such handling is actually appropriate in individual cases. But fail-safe mechanisms vary considerably in their scope and flexibility. Some cover every case subject to direct file or automatic exclusion, and grant courts unfettered authority to make individualized exceptions. Others do not. With regard to this issue, states can be divided into four rough categories:

- **States with comprehensive fail-safes.** In 15 states, no juvenile can be subject to trial and sentencing as an adult—either automatically or at the prosecutor’s option—without having some opportunity to contest his or her own individual suitability for adult handling: Arkansas, Colorado, Delaware, Idaho, Iowa, Mississippi, Montana, Nebraska, Oklahoma, Pennsylvania, South Dakota, Tennessee, Vermont, West Virginia, and Wyoming.
- **States with partial fail-safes.** In 15 other states, fail-safe mechanisms do not cover every case, or restrict courts’ authority to make exceptions to the general rules: Arizona, California, Connecticut, Florida, Georgia, Illinois, Kentucky, Maryland, Massachusetts, Michigan, Nevada, New York, Oregon, Wisconsin, and Virginia. Under some circumstances, for example, California

allows a criminal court to impose a juvenile disposition (or remand the case to juvenile court for disposition) following a juvenile’s conviction, but *not* if that conviction is for an offense subject to direct file or exclusion. Maryland and Wisconsin have fail-safe measures that cover every case except those involving murder.

- **States without fail-safes.** In 15 more states that subject juveniles to exclusion or direct file, the law provides no opportunity to petition for reverse waiver or to argue for juvenile sanctions in lieu of adult ones: Alabama, Alaska, the District of Columbia, Indiana, Louisiana, Minnesota, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Utah, and Washington. In some of these states, broad categories are affected. In Minnesota and New Mexico, however, the only juveniles who reach criminal court for the first time without benefit of a prior waiver hearing are those accused of first-degree murder.
- **States that need no fail-safes.** Finally, there are six states in which the lack of a fail-safe mechanism has no consequences: Hawaii, Kansas, Maine, Missouri, New Hampshire, and Texas. In these states, a case against a juvenile can only reach the criminal court *after* a judge has had a chance, in a waiver proceeding, to make an individualized determination regarding the juvenile’s suitability for adult handling or sanctions.

Further details on state transfer and blended sentencing laws are available free from NCJJ on-line

Readers who want to learn more about individual states' laws governing the criminal prosecution and sentencing statutes of juveniles can access detailed state-by-state summaries on-line at www.ncjj.org/stateprofiles/.

The National Center for Juvenile Justice's *State Juvenile Justice Profiles* website was designed to provide a detailed overview of every state's unique approach to juvenile justice—including information on the ways juvenile courts, probation departments, and detention and commitment agencies are organized and administered, how delinquency services are funded and delivered, and how such matters as intake, assessment, diversion, supervision, release, and parole of juveniles are handled—along with useful links to pertinent laws, crime and population statistics, resources and professional contacts. The site was developed and is maintained by NCJJ with funding from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

The transfer and blended sentencing law summaries currently posted on the site are based on state law as amended through 2002. They describe and classify each state's

transfer/blended sentencing schemes in terms of age/offense thresholds, procedures, hearing requirements, standards and burdens of proof:

- *Transfer mechanisms.* For each transfer mechanism available in the state—waiver, exclusion, direct file, etc.—an overview lays out nuts and bolts: who must request it, what sort of hearing must be held, how burdens of production and proof are allocated, what standards govern and what findings must be made in arriving at the transfer decision.
- *Age/offense criteria.* A state's threshold requirements for transfer are arranged into general categories for purposes of analysis. If a juvenile must be a certain age to be transferred, the minimum age is specified. Details concerning the exact offenses or offense grades that qualify for transfer are given.
- *Related provisions.* Procedural and other details are given regarding "reverse waiver" provisions that permit a transferred juvenile to petition to have the case transferred to juvenile court for adjudication or disposition,

as well as "once an adult, always an adult" clauses that permanently terminate juvenile court jurisdiction over future offenses committed by juveniles who have been criminally prosecuted.

- *Juvenile blended sentencing.* In states that allow their juvenile courts to impose blended sentences, detailed descriptions of procedures, standards, burdens of proof, and threshold offense and minimum age requirements are provided.
- *Criminal blended sentencing.* In states allowing blended sentencing at the criminal court level, details regarding qualifications and procedures are also provided.

To see a summary of a particular state's transfer/blended sentencing laws, go to www.ncjj.org/stateprofiles/, select that state from the drop-down box under "State Profiles," then select "Trying Juveniles as Adults" from the drop-down box under "Select a topic" on the profile (Figure 1). To access all the summaries, select "Trying Juveniles as Adults" from the "National Overviews" drop-down box, and click on the main table.

Figure 1. Sample Page from State Juvenile Justice Profiles

The screenshot shows the NCJJ website interface. At the top left is the NCJJ logo. To its right are two navigation sections: 'State Profiles:' with a dropdown menu currently set to 'Alabama', and 'National Overviews:' with a dropdown menu set to 'Select an overview'. Below these is a dark blue navigation bar with the text 'State Juvenile Justice Profiles' and links for 'Home | Using State Profiles | Glossary | Links | Feedback | Contact Us'. A copyright notice '© 2003 National Center for Juvenile Justice' is visible. The main content area has a blue header with an Alabama state icon, the word 'Alabama', and a 'Select a topic:' dropdown menu set to 'Trying Juveniles as Adults'. A link for 'Print transfer provisions' is also present. The main content displays 'Alabama Transfer Provisions' with a subtitle 'as amended through the 2002 legislative session'. It lists 'Lower Age: None specified' and 'Upper Age: 17'. A section titled 'Discretionary Waiver' contains a paragraph of text and a table with three columns: 'Offense Category', 'Minimum Age', and 'Offense Detail'. The table has one row: 'Any criminal', '14', and 'Any criminal offense.'. Below this is a 'Statutory Exclusion' section with a single line of text: 'A child meeting statutory age/offense criteria must be "charged, arrested, and tried as an adult."'.

NCJJ

State Profiles: Alabama

National Overviews: Select an overview

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Alabama Select a topic: Trying Juveniles as Adults [Print transfer provisions](#)

Alabama Transfer Provisions
as amended through the 2002 legislative session

Lower Age: None specified
 Upper Age: 17

Discretionary Waiver

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

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

Endnotes

- ¹ Tanenhaus, D. (2000). “The Evolution of Transfer out of the Juvenile Court.” *The Changing Borders of Juvenile Justice*. Chicago, IL: University of Chicago Press.
- ² All discussion of state law is based on state statutes as amended through the 2002 legislative sessions. The term “state” as used in this report includes the District of Columbia.
- ³ 383 U.S. 541, 86 S. Ct. 1045 (1966).
- ⁴ Alaska Statutes §47.12.100.
- ⁵ Revised Code of Washington §13.40.110.
- ⁶ Delaware Code, Title 10, §§921, 1009, 1010.
- ⁷ Kansas Statutes §38-1636.
- ⁸ Alaska Statutes §47.12.100.
- ⁹ Maine Revised Statutes §3101.
- ¹⁰ New Hampshire Statutes §169-B:24(IV).
- ¹¹ Colorado Revised Statutes §19-2-518.
- ¹² Code of Laws of South Carolina §20-7-7605.
- ¹³ Indiana Code §31-30-3-6.
- ¹⁴ New Mexico Statutes §32A-1-8.
- ¹⁵ Mississippi Code §43-21-151.
- ¹⁶ Arizona Revised Statutes §13-501.
- ¹⁷ Florida Statutes §985.227.
- ¹⁸ *Ibid.*
- ¹⁹ Nebraska Revised Statutes §43-247, 43-276.
- ²⁰ Wyoming Statutes §14-6-203.
- ²¹ California Welfare & Institutions Code §707.01.
- ²² Delaware Code §§1010, 1011.
- ²³ Idaho Code §20-509.
- ²⁴ Mississippi Code §43-21-157(8).
- ²⁵ Code of Maryland §3-8A-03.
- ²⁶ Michigan Compiled Laws §712A.4(5).
- ²⁷ Minnesota Statutes §260B.125.
- ²⁸ Texas Family Code §54.02(m) and (n).
- ²⁹ California Welfare & Institutions Code §707.01.
- ³⁰ Iowa Code §232.45A.
- ³¹ Oregon Revised Statutes §§419C.364, 419C.367, 419C.355.
- ³² The basic blended sentencing classification scheme used here—dividing states into “inclusive,” “exclusive,” and “contiguous” categories—is taken from the pioneering blended sentencing analysis found in Torbet, P., Gable, R., Hurst, H., Montgomery, I., Syzmanski, L., and Thomas, D. (1996). *State Responses to Serious and Violent Juvenile Crime*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
- ³³ Kansas Statutes §38-1636, 38-16,126.
- ³⁴ Massachusetts General Laws, Ch. 119, §54.
- ³⁵ Michigan Compiled Laws §§712A.2d, 712A.18(1)(n), 712A.18i.
- ³⁶ New Mexico Statutes §§32A-2-3, 32A-2-20.
- ³⁷ Texas Family Code §§51.031, 53.045, 54.04, 54.11; Texas Human Resources Code §61.079.
- ³⁸ Colorado Revised Statutes §§19-2-516, 19-2-601.
- ³⁹ General Laws of Rhode Island §§14-1-7—14-1-7.4.
- ⁴⁰ Note that “juvenile contiguous” blended sentencing laws must be distinguished from those that merely authorize very severe or restrictive juvenile dispositions. Several states now have laws providing for mandatory incarceration for certain offenses, fixed or minimum commitments, and even commitments that extend well beyond the age of ordinary juvenile jurisdiction.
- New Jersey authorizes extraordinarily long periods of institutional commitment—up to 20 years—in some juvenile cases. But because these juveniles remain in the custody of juvenile authorities, the commitments are not considered adult criminal sanctions. A more difficult conceptual problem is presented by the possibility of disciplinary transfers from juvenile facilities to adult prisons. In at least three states (Hawaii, New Hampshire, and Washington), juveniles given extended commitments to juvenile facilities—generally to age 21—face the risk of disciplinary transfer.
- ⁴¹ Minnesota Statutes §§260B.125, 260B.130.
- ⁴² Kansas Statutes §§38-1636, 38-16,126.
- ⁴³ Alaska Statutes §§47.12.065, 47.12.120(j), 47.12.160.
- ⁴⁴ 705 Illinois Compiled Statutes 405/5-810.
- ⁴⁵ Arkansas Code §§9-27-501—9-27-509.
- ⁴⁶ Colorado Revised Statutes §§19-2-516, 19-2-601.
- ⁴⁷ Connecticut General Statutes §§46b-133c, 46b-133d.
- ⁴⁸ Massachusetts General Laws, Ch. 119, Sec. 54.
- ⁴⁹ Michigan Compiled Laws §§712A.2d, 712A.18(1)(n), 712A.18i.
- ⁵⁰ Montana Code §§41-5-1602 et seq.
- ⁵¹ New Mexico Statutes §§32A-2-3, 32A-2-20.
- ⁵² Ohio Revised Code §§ 2152.11, 2152.13, 2152.14.
- ⁵³ General Laws of Rhode Island §§14-1-7—14-1-7.4.
- ⁵⁴ Texas Family Code §§51.031, 53.045, 54.04, 54.11; Texas Human Resources Code §61.079.
- ⁵⁵ Montana Code §41-5-1602.

⁵⁶ Ohio Revised Code §§ 2152.11, 2152.13, 2152.14.

⁵⁷ Kansas Statutes §§38-1636, 38-16,126.

⁵⁸ West Virginia Code §§49-5-13(e), §49-5-16.

⁶⁹ Nebraska Revised Statutes §29-2204(3).

⁶⁰ Kentucky Revised Statutes §640.040(4).

⁶¹ Massachusetts General Laws, Ch. 119, §72B.

⁶² New Mexico Statutes §32A-2-20.

⁶³ Wisconsin Statutes §938.183.

⁶⁴ 705 Illinois Compiled Statutes 405/5-130.

⁶⁵ California Penal Code §§1170.17, 1170.19.

⁶⁶ Missouri Statutes §211.073.

⁶⁷ Iowa Code §§232.45, 907.3A.

⁶⁸ Florida Statutes §985.233.

⁶⁹ Michigan Compiled Laws §769.1.

⁷⁰ Idaho Code §§20-508, 20-509.

⁷¹ Virginia Code §16.1-272.

⁷² California Penal Code §§1170.17, 1170.19.

⁷³ Colorado Revised Statutes §19-2-518.

⁷⁴ Oregon Revised Statutes §§137.707, 419C.361.

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NCJJ is a nonprofit organization that conducts research on a broad range of juvenile justice topics and provides technical assistance to the field. For additional information concerning the material in this report, contact:

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