

How Other States Treat Adolescent Offenders

Joel Rosch

Across the country, states use a wide range of approaches for trying and sentencing adolescent offenders. The following discussion summarizes the range of approaches.

The minimum age at which states may try adolescent offenders in adult court varies greatly. In most states, the jurisdiction of the adult criminal justice system begins at age 18. In the remaining states:

- Three have a minimum age of 16 for adult jurisdiction (North Carolina, Connecticut, and New York)
- Ten states set the minimum age for adult jurisdiction at age 17 (Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin)

Regardless of the minimum age, all states have provisions for using the adult system to handle certain adolescent offenders. These provisions usually depend on the severity of the offense and the youth's offense history.

The table on the next page outlines the transfer and blended sentencing provisions used by each state, as of October 2003.

Trying and Sentencing Youth Under 18 in the Juvenile and Adult Courts

Transfer and blended sentencing laws regulate whether adolescent offenders are processed in the juvenile or adult criminal justice system, or as is the case in some states, whether they move back and forth between the two. States generally use three kinds of transfer laws to determine whether adolescent offenders will be tried in the juvenile or adult system: waivers, direct file, and exclusion laws. Following trial and conviction, some states allow for flexibility in the punishment applied. This practice is called blended sentencing.

Transfer Laws:

State transfer laws define categories of adolescents who, because of their age, past record, or the seriousness of the charges against them, may—or in some cases must—be tried in criminal court.

Waivers are the most common form of transfer law. Also called **bindovers**, waivers allow judges to move defendants who would normally be classified as juveniles into adult courts because of the nature of their crime, criminal record, or other statutorily-defined reason. States may use more than one type of waiver. Law generally determines the types of crimes that are subject to waivers. There are three types of waivers:

	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
Colorado	X	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
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	X
Kentucky	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			

SOURCE: Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws, Patrick Griffin, October 2003

Discretionary waivers are used in 45 states. Under these waivers, the *prosecution* bears the burden of proof for moving a youth to adult court to be tried. State law often defines the cases that can and cannot be transferred. Twenty-seven states have a minimum age at which adolescents can be transferred to adult court.

Presumptive waivers are used in 15 states. Under these waivers, the *defense* bears the burden of proof for moving a youth to adult court to be tried. Presumptive waivers are usually triggered by offense type, age, and criminal record.

Mandatory waivers are used in 15 states. Under mandatory waivers, *state law* defines age, offense, or prior record criteria for moving a youth to adult court. North Carolina has mandatory waivers beginning at age 13 for those charged with capital crimes, such as murder.

Direct file is used in 15 states. In these states, *prosecutors* are responsible for determining whether to proceed in juvenile or criminal court. For example, in Vermont and Nebraska, all 16-year-olds are subject to direct file statutes, regardless of the crime. Florida allows direct file in misdemeanor cases depending on the offender's prior record but the prosecution may opt not to use direct file. If the prosecution does not choose direct file, the case remains in juvenile court. For example, if a 16-year-old is arrested with a gun, the prosecutor can file the case in either the juvenile or adult system.

Exclusion laws exist in 29 states. These states have statutory exclusion provisions where *state law* defines certain types of crimes involving adolescent offenders that must be sent directly to adult criminal courts. This approach takes the decision out of both prosecutors' and judges' hands. For example, Maryland automatically handles almost all crimes against persons and all crimes involving a weapon by anyone 16 or older in the adult system.

Twenty-five states allow for a **reverse waiver**. Under reverse waivers, an adolescent offender subject to prosecution in adult criminal court can petition to have his or her case transferred to juvenile court. This usually takes place in states that have **mandatory waivers, direct file, or exclusions laws** where there is little discretion about where a case is filed. Reverse waivers are generally guided by the same broad standards and considerations found in a juvenile court waiver proceeding. In most cases, a reverse waiver hearing is held prior to trial. If the reverse waiver is granted, the case is tried in juvenile court. Three states (California, Colorado, and Oregon) permit reverse waivers only after the offender's guilt has been established. In these cases, the reverse waiver is used only for decisions about sentencing, not for determining innocence or guilt.

North Carolina is one of 34 states with an automatic transfer category for adolescents who were previously prosecuted as adults. This means that if an adolescent is prosecuted as an adult for one crime, he or she will be prosecuted as an adult for all future crimes. This is referred to as a "**Once Adult/Always Adult**" provision.

Blended Sentencing Laws:

Blended sentencing laws focus not on whether the adolescent offender is tried in juvenile or criminal court but on whether the offender is sentenced in the juvenile or adult correctional system.

Juvenile blended sentences are used by 15 states. Juvenile blended sentences empower the juvenile courts to impose *both* adult criminal sanctions and juvenile sanctions on serious juvenile offenders. The most common type of juvenile blended sentencing—sometimes called "inclusive" blended sentencing—allows juvenile court judges to impose both juvenile and suspended adult sentences on certain categories of offenders.

Seventeen states have **criminal blended** sentencing laws. Under these laws, adult criminal courts may impose sanctions that would ordinarily be available only to juvenile

courts. This provides a mechanism for adolescents to be sentenced to the juvenile system even if they have been prosecuted in the adult system. Depending on whether a state's blended sentencing law is inclusive or exclusive, the offender may return to the juvenile system for sentencing or the adult court may impose a juvenile sentence.

Ten states have **exclusive blended** sentences. These sentences allow judges to process adolescent offenders in *either* the juvenile or adult system.

Seven states have **inclusive blended** sentences. These sentences allow judges to process adolescent offenders in *both* the juvenile and adult systems. For example, a 14-year-old tried and convicted in adult criminal court for homicide in a state with inclusive blended sentences could begin his or her sentence in a juvenile facility and at age 18 (or 21, depending on the state) be transferred to an adult facility to complete the sentence.

Current North Carolina law:

- Sets the minimum age for adult jurisdiction is 16
- Has mandatory waivers beginning at 13 for those charged with capital crimes
- Allows discretionary waivers
- Has an automatic transfer category for adolescents who were once prosecuted as adults

SOURCES:

Fact Sheet: Views from the National Council on Crime and Delinquency, Christopher Hartney, June 2006

Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws, Patrick Griffin, October 2003