

IDENTIFICATION OF AND RESPONSE TO VICTIMS

POLICY GOAL: Juvenile court jurisdiction extends to all minors under 18 charged with a law violation.

Juvenile courts were created to provide a non-adversarial and rehabilitative approach for children who had engaged in criminal activity.¹ The juvenile justice system promotes an individualized approach to treat, supervise, and rehabilitate children.² This system recognizes children as malleable, and juvenile courts are given the discretion to divert children away from the consequences of formal court proceedings.³ Juvenile courts afford minors with specific protections: proceedings are not open to the public, proceeding information is confidential, and juvenile adjudications are not considered convictions.⁴

Unfortunately, the protections of the juvenile justice system do not extend to all minors. Some barriers keep minors out of juvenile court from the outset. Almost half of states exclude certain crimes, usually violent felonies, from the jurisdiction of juvenile courts.⁵ Additionally, some states restrict access to the juvenile justice system by limiting its jurisdiction to those under 17, and five states limit juvenile court jurisdiction to children under age 16.⁶ A few states limit access further by allowing prosecutors to choose, for certain offenses, whether to try the case in adult court or juvenile court.⁷ Lastly, many states follow a “once an adult, always an adult” practice that requires juveniles to be prosecuted in adult criminal court if they have been tried as an adult in the past.⁸ Troublingly, states allow judicial waiver/transfer of cases out of juvenile court for children as young as 10, and about one-third of states have no minimum age requirement.⁹

Recognizing the risks associated with transferring a minor to adult court, some jurisdictions (less than one-third of states) limit transfers to “judicially controlled transfers,” requiring all juveniles to start their cases in juvenile

court, regardless of the crime charged. Importantly, this practice removes automatic statutory exclusion that would otherwise bar certain children from juvenile court jurisdiction and replaces unchecked prosecutorial discretion to try juveniles charged with certain crimes in adult court with a deliberative process.¹⁰

When juveniles are tried in adult criminal court, they lose many protections afforded in juvenile proceedings discussed above. For example, adult courts are open to the public and focused on punishment, while juvenile proceedings are closed to the public and rehabilitation-focused. Juvenile adjudications are typically sealed while adult conviction records are publicly accessible.¹¹ Additionally, convictions in adult court can lead to harsher sentences and imprisonment with adults. When children are imprisoned with adults, they face physical, psychological, and social harms. Juveniles housed with adults are more likely to be physically and sexually assaulted.¹² Children who are victimized may be placed in solitary confinement for their own safety, which can lead to serious mental health problems, including depression and suicidal ideations. Juveniles placed in adult populations “face suicide rates 36 times higher than juveniles held in juvenile facilities.”¹³ Adult prisons also lack the educational and rehabilitative programming available in the juvenile justice system, and children surrounded by incarcerated adults are more likely to recidivate and identify themselves as a “criminal.”¹⁴ Specific to sex trafficked and commercially sexually exploited children, adult prisons are not equipped to provide an age-appropriate and trauma-informed response to address their victimization.

To ensure the provision of a developmentally appropriate response, state law should ensure that all minors under

18 are afforded the protection and rehabilitative-focused services that are connected to the juvenile justice system

and specific barriers related to type of crime committed and age should be removed from statute.

DRAFTING CONSIDERATIONS: *To accomplish this policy goal, state law should...*

- ▶ Extend juvenile court jurisdiction to all minors under 18.
- ▶ Ensure all cases involving minors originate in the juvenile court regardless of the offense.
- ▶ Establish a process for transferring cases to the adult criminal court.
- ▶ Ensure transfer to criminal court is not determined by prosecutorial discretion alone.

RELATED ISSUES:

- 2.4** State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.
- 3.3** State law requires specialized services for identified sex trafficked children and youth in the juvenile justice system.
- 6.2** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.
- 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

SUPPORTING RESOURCES:

- ▶ [VOI blog series \(addressing CST victims sentenced in adult court\)](#)
- ▶ [Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders](#)

² Peterson Tavil, *Mandatory Transfer of Juveniles to Adult Court: A Deviation from the Purpose of the Juvenile Justice System and a Violation of their Eight Amendment Rights*, 52 REV. JURIDICA U. INTER. P.R. 377, 385 (2017).

³ *Id.* at 390.

⁴ *Id.* at 390–92; see *United States v. Brian N.*, 900 F.2d 218, 220 (10th Cir. 1990) (“Under [the Juvenile Justice and Delinquency Prevention Act], prosecution results in an adjudication of status—not a criminal conviction.”); see also U.S. DEP’T OF JUSTICE, CRM 123, Adjudication as a Juvenile Delinquent (2020), <https://www.justice.gov/archives/jm/criminal-resource-manual-123-adjudication-juvenile-delinquent> (last visited Nov. 11, 2020).

⁵ *Juvenile Waiver (Transfer to Adult Court)*, FINDLAW, <https://criminal.findlaw.com/juvenile-justice/juvenile-waiver-transfer-to-adult-court.html> (last visited Apr. 9, 2020).

⁶ *Id.*; THOMAS A. JACOBS & NATALIE C. JACOBS, CHILDREN AND THE LAW: RIGHTS AND OBLIGATIONS § 8:5 (2019 ed.).

⁷ *Id.*

⁸ *Juvenile Waiver (Transfer to Adult Court)*, FINDLAW, <https://criminal.findlaw.com/juvenile-justice/juvenile-waiver-transfer-to-adult-court.html> (last visited Apr. 9, 2020).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Stephanie Tabashneck, *Raise the Age Legislation: Developmentally Tailored Justice*, 32 CRIM JUST. 13 (2018).

¹³ *Id.* at 15.

¹⁴ *Id.*