

# Alabama

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Alabama Code Sec. 12-15-34

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

Alabama Code Sec. 12-15-34.1

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

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	16	A class A felony, or any felony in which one necessary element is (1) the use of a deadly weapon, (2) the causing of death or serious injury, or (3) the use of a dangerous instrument against any of a number of listed public officials or employees, including law enforcement officers, corrections officers, parole or probation officers, juvenile court probation officers, prosecutors, judges, court officers, grand jurors, jurors or witnesses, and teachers, principals, and other employees of Alabama public schools.
Capital	16	A capital offense.
Drug	16	Trafficking in drugs.

## Once an Adult, Always

Alabama Code Sec. 12-15-34

When a transfer to adult court is followed by a criminal conviction or adjudication as a "youthful offender" (i.e. one who is tried but not sentenced as an adult), or when a child is tried as an adult for an excluded offense and not acquitted, the jurisdiction of the juvenile court over that child's future criminal acts or over pending allegations of delinquency is permanently terminated, except for the limited purpose of verifying a previous transfer, conviction or adjudication as a youthful offender.

# Alaska

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Alaska Statutes Sec. 47.12.100

Alaska Court Rules, Part VI, Rule 20

The juvenile court may waive jurisdiction if it finds after a hearing that (1) there is probable cause to believe that the minor is delinquent and (2) the minor is not amenable to treatment. A minor is considered unamenable to treatment if he cannot be rehabilitated by treatment before reaching 20 years of age. The law specifies various factors that the court must consider in making its finding on the minor's amenability to treatment.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	None specified	Any criminal offense.

## Presumptive Waiver

Alaska Statutes Sec. 47.12.100

In a waiver hearing, the prosecutor has the burden of proof with respect to the finding that there is probable cause to believe that the minor is delinquent. However, a minor charged with an unclassified or class A felony that constitutes a crime against the person is rebuttably presumed to be not amenable to treatment, and has the burden of showing otherwise by a preponderance of the evidence.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Person	None specified	Unclassified or class A felony that is a crime against the person.

## Statutory Exclusion

Alaska Statutes Sec. 47.12.030

A minor who was at least 16 years old at the time of allegedly committing an excluded offense is charged, prosecuted, and sentenced in superior court. However, if convicted of a lesser offense, the minor may attempt to show his amenability to treatment as a delinquent, and receive a disposition under the Alaska Delinquency Rules.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Person	16	Unclassified or class A felony that is a crime against the person.
Property	16	First degree arson.

# Arizona

Lower Age: 8

Upper Age: 17

## Discretionary Waiver

Arizona Rev. Statutes Sec. 8-327

At the State's request, the juvenile court must hold a hearing to consider transferring jurisdiction over a child accused of any felony. The court may transfer a case for criminal prosecution in the appropriate adult court if it finds by a preponderance of the evidence that (1) there is probable cause to believe that the child committed the offense alleged and (2) "the public safety would best be served" by a transfer. The law specifies a number of factors that must be considered in making the transfer determination. The court's determination regarding transfer may not be deferred, and must be in writing.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	None specified	Any felony.

## Presumptive Waiver

Ariz. Rules of Procedure--Juv. Ct., Rule 14

While subsequently enacted statutes have largely superseded a provision of an older court rule that created a presumption in favor of transfer under specified conditions (see Direct File and Statutory Exclusion), the provision is still technically applicable in the case of a juvenile of at least 16 years of age who (1) is charged with certain types of class 3 or 4 felonies and (2) has at least four previous delinquency adjudications, at least one for a serious offense, but (3) is not otherwise subject to prosecution as an adult under the direct file or statutory exclusion laws. In such a case, it is presumed that the public safety or public interest would best be served by a transfer. The presumption may be rebutted by evidence that the public will be adequately protected and the juvenile's rehabilitation better served if the case is retained.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	16	Provided the juvenile was previously adjudicated delinquent on 4 separate occasions, at least once for a serious offense, the presumption applies to any case in which the court finds probable cause that the juvenile committed (1) a class 3 felony not involving (a) a violation of any of the Criminal Code chapters qualifying the offense for direct file treatment (see Direct File), (b) use of a deadly weapon or dangerous instrument or (c) the intentional or knowing infliction of serious bodily harm, or (2) a class 4 felony not involving (b) or (c).

## Direct File

Arizona Rev. Statutes Sec. 13-501(B)

In a case meeting statutory age/offense criteria, "the county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult." Where the ground for a direct file is that the child is alleged to be a "chronic felony offender" (that is, a child with two or more previous felony adjudications), the county attorney must specify this in charging the child, and the child is entitled to demand a hearing on the issue; see Reverse Waiver.

If, after filing a case of this kind in adult criminal court, the county attorney reconsiders and moves for a transfer to juvenile court, the criminal court must grant the motion.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Class 1 and 2 felonies; a class 3 felony involving a violation of any part of a number of listed Criminal Code chapters (relating to preparatory offenses, homicide, assault, kidnapping, sexual offenses, trespass and burglary, property damage, arson, robbery, organized crime and fraud); class 3, 4, 5 or 6 felonies involving the intentional or knowing infliction of serious injury or the use of a deadly weapon or dangerous instrument; aggravated driving under the influence; any felony committed by a child with two or more previous felony adjudications; any offense joined to/arising out of the same set of facts as any of the above offenses.

## Statutory Exclusion

Arizona Rev. Statutes Sec. 13-501

In a case meeting statutory age/offense criteria, "the county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult." Where the ground for exclusion is that the child is alleged to be a "chronic felony offender" (that is, a child with two or more previous felony adjudications), the county attorney must specify this in charging the child, and the child is entitled to demand a hearing on the issue; see Reverse Waiver.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	15	Aggravated driving under the influence; any felony committed by a child with two or more previous felony adjudications; any offense joined to/arising out of the same set of facts as an excluded offense.
Murder	15	First or second degree murder.
Person	15	Forcible sexual assault, armed robbery, or any other violent felony.

## Reverse Waiver

Arizona Rev. Statutes Sec. 13-501(D)

The county attorney may (or, in the case of a child of at least 15, must) bypass the juvenile court and bring a criminal prosecution where a felony is alleged to have been committed by a "chronic felony offender" (that is, a child with two or more previous adjudications for conduct that would have been felonious if committed by an adult). However, in such a case the child is entitled to demand a post-arraignment, pretrial hearing (in adult court) on the question of whether he or she qualifies as a chronic felony offender. If the county attorney fails to establish by a preponderance of the evidence that the child is a chronic felony offender, the court must transfer the child to juvenile court.

"A criminal prosecution shall be brought" against a child "in the same manner as an adult" if the child is accused of any criminal offense and has a previous felony conviction.

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## Once an Adult, Always

Arizona Rev. Statutes Sec. 13-501

Arizona Rev. Statutes Sec. 8-302

# Arkansas

Lower Age: 10

Upper Age: 17

## Discretionary Waiver

Ark. Code of 1987, Sec. 9-27-318

The juvenile court may retain jurisdiction or transfer any case in which it has concurrent jurisdiction with the circuit court, after a hearing on its own motion or that of any party. The law specifies various factors that the court must consider in making the determination. A finding that a child should be tried as an adult must be supported by clear and convincing evidence. Any party may appeal from an order granting or denying a transfer from one court to another.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14/16	14—Any felony committed by a habitual juvenile offender (3 felony adjudications in the previous 2 years); any felony while armed with a gun; and a number of listed felonies (including first and second degree escape and attempt, solicitation, or conspiracy to escape).  16—Any felony.
Capital	14	Capital murder.
Murder	14	First/second degree murder and attempt, solicitation, or conspiracy to commit murder.
Person	14	Kidnapping, aggravated robbery, rape, first and second degree battery, aggravated assault, and attempt, solicitation, or conspiracy to commit any of these acts; terroristic acts; and soliciting a minor to join a criminal street gang.
Weapon	14	Second-offense possession of a handgun; possession of a handgun by a previously adjudicated or convicted felon; possession of a handgun on school property; unlawful discharge of a firearm from a vehicle; and criminal use of prohibited weapons.

## Direct File

Ark. Code of 1987, Sec. 9-27-318

The juvenile court and the circuit court have concurrent jurisdiction over a number of listed age/offense categories. If charges are filed against a juvenile in circuit court, additional nonconcurrent charges arising out of the same incident may be filed there as well, but only if, after a hearing in the juvenile division of chancery court, a motion to transfer is granted.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14/16	14—Any felony committed by a habitual juvenile offender (3 felony adjudications in the previous 2 years); any felony while armed with a gun; and a number of listed felonies (including first and second degree escape and attempt, solicitation, or conspiracy to escape).  16—Any felony.
Capital	14	Capital murder.
Murder	14	First/second degree murder, and attempt, solicitation, or conspiracy to commit first or second degree murder.
Person	14	Kidnapping, aggravated robbery, rape, first and second degree battery, aggravated assault, and attempt, solicitation, or conspiracy to commit any of these acts; terroristic acts; and soliciting a minor to join a criminal street gang.
Weapon	14	Second-offense possession of a handgun; possession of a handgun by a previously adjudicated or convicted felon; possession of a handgun on school property; unlawful discharge of a firearm from a vehicle; and criminal use of prohibited weapons.

## Reverse Waiver

Ark. Code of 1987, Sec. 9-27-318

The circuit court may transfer any case in which it has concurrent jurisdiction with the juvenile court, after a hearing on its own motion or that of any party. The law specifies various factors that must be considered in making the determination. A finding that a juvenile should be tried as an adult must be supported by clear and convincing evidence. Any party may appeal an order granting or denying a transfer.

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# California

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Welf. &amp; Inst. Code, Div. 2, Pt. 1, Ch. 2, Sec. 7

The juvenile court may declare that a minor meeting specified age/offense criteria is not amenable to the care, treatment, and training facilities available to it, and thus is "not a fit and proper subject to be dealt with under the juvenile court law." The law specifies that the minor's probation officer must investigate the issue and submit a report to the court, and that the report must be considered, along with various other listed factors, in making the fitness determination.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	16	
Murder	14	
Person	14	Forcible/violent rape, sodomy, or oral copulation; kidnapping for ransom or robbery, or with bodily harm; kidnapping of a victim under 14; and kidnapping in connection with a carjacking; escape involving intentional injury of an employee of a juvenile facility; torture; aggravated mayhem; attempted murder; any of a number of listed crimes (robbery, assault, rape, kidnapping, and carjacking), in the commission of which the minor personally used a firearm; and personally shooting a gun into an inhabited or occupied building.
Property	14	Burglary in which the minor personally used a firearm.
Drug	14	Manufacturing, compounding, or selling at least half an ounce of various listed controlled substances.

## Presumptive Waiver

Welf. &amp; Inst. Code, Div. 2, Pt. 1, Ch. 2, Sec. 707

For various age/offense categories specified by statute, a minor is presumed to be not a fit and proper subject for treatment as a juvenile, but is entitled to present evidence to the contrary. The fitness determination must be based on evidence, including a probation officer's report, presented at a hearing, and on consideration of various factors listed in the statute.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	16	Any felony in which the minor used one of various listed illegal weapons.
Murder	14/16	14—First or second degree murder in which the minor either personally killed the victim, or (with the intent to kill) aided, asked, advised, or ordered any other person to kill the victim; and first degree murder in which the minor, while not the killer, acted with reckless indifference to human life while participating in any of various listed felonies (robbery, kidnapping, rape, rape by instrument, sodomy, lewd or lascivious acts with a child under 14, oral copulation, first or second degree burglary, arson, train wrecking, mayhem, and carjacking).  16—Any murder.
Person	16	Armed robbery; violent/forcible rape, sodomy, or oral copulation, certain lewd or lascivious acts, and penetration with a foreign object; kidnapping for ransom, robbery, or with bodily harm, and kidnapping of a child under 14; attempted murder; assault with a firearm, destructive device, or any means of force likely to produce serious injury; certain crimes against elderly, blind, or disabled victims; witness/victim bribery or intimidation; any violent felony committed for the benefit of, at the direction of, or in association with a criminal street gang; escape resulting in injury to a juvenile facility employee; torture; aggravated mayhem; armed carjacking, or carjacking in which a victim is kidnapped; explosion, ignition, or attempt to explode or ignite any explosive or destructive device with intent to kill; and firing a gun into an inhabited or occupied building, or from a motor vehicle.
Property	16	Arson

Drug

16

Manufacturing, compounding, or selling at least half an ounce of any of various listed controlled substances.

**Once an Adult, Always**

Welf. &amp; Inst., Div. 2, Pt.1, Ch. 2, Sec. 707.01

Once a minor has been transferred and convicted in a court of criminal jurisdiction, subsequent charges against the same minor need not be filed in juvenile court (that is, they may be filed in adult court, with no necessity for a juvenile court fitness hearing), provided (1) the minor was at least 16 years old at the time of the alleged violation and (2) the violation was one for which waiver is allowed. Even if the minor is not convicted following a transfer, subsequent charges may nevertheless be filed directly in adult criminal court, provided the two above conditions are met and the original unfitness decision was based solely on the minor's previous delinquency history, the failure of the juvenile court's previous attempts to rehabilitate the minor, or both.

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# Colorado

Lower Age: 10

Upper Age: 17

## Discretionary Waiver

Colo. Rev. Stat. Sec. 19-2-518

The juvenile court may certify a child meeting age/offense criteria for trial as an adult in district court if, after investigation and a hearing, it finds that (1) there is probable cause to believe that the child committed an offense for which judicial waiver is authorized and (2) "it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction." The law lists 14 specific factors to be considered in making the determination. While the presence of certain factors in a case constitutes prima facie evidence in favor of transfer (see Presumptive Waiver), the weight to be given to the various factors is otherwise committed to the court's discretion. Written reports may be considered in making the determination, but at the request of any party the authors must appear and be cross-examined.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	12/14	12—Class 1 or 2 felony.
		14—Any felony.
Murder	12	Murder, or the conspiracy or attempt to commit murder, where it involves either (1) the use, threatened use, or possession of a deadly weapon or (2) serious bodily injury or death.
Person	12	Any felonious unlawful sexual offense involving either bodily injury to the victim or the use of threats, intimidation, or force; any of a long list of crimes (first or second degree assault, kidnapping, sexual assault, aggravated robbery, escape, criminal extortion, first degree arson, first degree burglary, and crimes against at-risk adults or at-risk juveniles), if it involves either (1) the use, threatened use, or possession of a deadly weapon; or (2) the causing of serious bodily injury or death.

## Presumptive Waiver

Colo. Rev. Stat. Sec. 19-2-518

At a juvenile court transfer hearing, the following constitute prima facie evidence that it would be contrary to the best interests of the juvenile or the community to retain jurisdiction: (1) two or more previously sustained delinquency petitions for felonies or (2) two or more previous juvenile probation revocations for felonies.

## Direct File

Colo. Rev. Stat. Sec. 19-2-517

Charges against juveniles in various age/offense categories may be filed directly in the district court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14/16	14—Class 1 or 2 felony; any felony committed by a person who has already been transferred to district court or subject to direct filing there for a previous offense (provided that if the previous case is still pending and the defendant is acquitted, the subsequent case must be remanded to juvenile court); any felony committed by a person determined to be a "habitual juvenile offender" (two prior felony adjudications); complicity in the commission of any of the above; or attempt, conspiracy, or solicitation to commit any of the above.
		16—Any class 3 felony (except a crime qualifying as statutory rape solely because of the difference in age between the child and the victim) committed (or attempted or solicited, complied or conspired in) by a person who has been adjudicated for a felony within the previous 2 years.
Murder	14	Murder; complicity in, solicitation, conspiracy, or attempt to commit murder, where it involves either (1) the use, threatened use, or possession of a deadly weapon or (2) serious bodily injury or death; vehicular homicide; or complicity in, solicitation, conspiracy or attempt to commit vehicular homicide.

Any felonious unlawful sexual offense involving either bodily injury to the victim or the use of threats, intimidation, or force; the use, threatened use, or possession of a deadly weapon during the commission of a felony offense against the person; any of a long list of crimes (first or second degree assault, kidnapping, sexual assault, aggravated robbery, escape, criminal extortion, first degree arson, first degree burglary, and crimes against at-risk adults or at-risk juveniles) involving either (1) the use, threatened use, or possession of a deadly weapon or (2) the causing of serious bodily injury or death; vehicular assault; and complicity in, solicitation, conspiracy, or attempt to commit any of the above.

## Reverse Waiver

Colo. Rev. Stat. Sec. 19-2-518

Following a transfer from juvenile court to district court, the district court judge has the power "to remand the case to the juvenile court for disposition at its discretion." (However, the court's sentencing discretion is restricted in the case of juveniles convicted of class 1 felonies and crimes of violence, and those classified as mandatory sentence offenders, violent juvenile offenders, and aggravated juvenile offenders.)

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# Connecticut

Lower Age: None specified

Upper Age: 15

## Mandatory Waiver

Conn. Gen. Stat. Sec. 46b-127

The case of any child at least 14 charged with a capital felony, a class A or B felony, or arson murder is "automatically" transferred from juvenile to superior court for arraignment. The juvenile court has no role other than to affirm that the child was at least 14 at the time of alleged commission and to appoint counsel if the child is indigent; the State's attorney need not make a motion for transfer, and the child's counsel is not permitted to make any argument or file any motion to oppose the transfer. (Note—A State's attorney who wishes to proceed in juvenile court against a child accused of a class B felony may do so, but only by seeking a transfer from superior court; see Reverse Waiver.)

If the State's attorney requests it, the case of a child at least 14 charged with an unclassified felony or a class C or D felony must also be transferred to superior court, provided the court finds (without notice, a hearing, or any participation on the part of the child or his counsel) probable cause to believe the child committed the offense alleged.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Class A, B, C and D felonies, unclassified felonies.
Capital	14	Capital felony.
Murder	14	Arson murder.

## Reverse Waiver

Conn. Gen. Stat. Sec. 46b-127

In the case of a child accused of a class C or D felony or an unclassified felony and transferred from juvenile court upon motion of the state's attorney, the law authorizes the superior court to return the case to juvenile court, but does not specify grounds for such a retransfer, standards to be applied or factors to be considered.

In the case of a child accused of a class B felony and "automatically" transferred, the State's attorney may request a retransfer to juvenile court within 10 days. The superior court, "after hearing," is required to "decide such motion," but again the law does not indicate grounds, standards, or factors to be considered.

# Delaware

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Del. Code, Tit. 10, Secs. 921, 1010

A child of any age who is found to be "not amenable to the rehabilitative processes" of the juvenile court may be referred to superior court for prosecution as an adult. (Note--The court itself can initiate the process regardless of the child's age, but the Attorney General is allowed to initiate the process only when the child is at least 14.) While waiver is discretionary, the court must at least hold a hearing to consider waiving jurisdiction whenever (1) the child is at least 14 and the Attorney General so moves, (2) the child is at least 14 and is charged with violating a restitution order or (3) the child is charged with having committed, after reaching the age of 16, manslaughter, first or second degree robbery, first degree burglary, or first degree arson. The law specifies various factors that must be considered by the court in determining amenability.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	None	The Attorney General may initiate the discretionary waiver process only in the case of a 14-year-old.

## Mandatory Waiver

Del. Code, Tit. 10, Sec. 1010

A child of any age charged with any of various listed felonies, or a child who meets certain other age/offense criteria, "shall be proceeded against as an adult"; however, the juvenile court, "upon application," must first hold a preliminary hearing to determine "if the facts warrant" referral to adult court.

[Note--Under a separate criminal provision, apparently not subject to the above preliminary hearing requirement, a child at least 15 charged with possession of a firearm during commission of a felony must be tried as an adult; see Statutory Exclusion.]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	15	Felony committed while escaping from specified juvenile facilities, and the court finds (following a hearing on its own or the Attorney General's motion) that there is "a fair likelihood that the child may be convicted of the charge."
Murder	None specified	First or second degree murder, or the attempt.
Person	None Specified/16	None specified--First degree unlawful sexual intercourse, first degree unlawful sexual penetration, first degree kidnapping, or the attempt to commit any of these acts.  16--First degree conspiracy, second degree unlawful sexual intercourse, first degree burglary, first degree assault, first degree arson, or first degree robbery, where the accused has at least one previous felony adjudication.
Property	16	First degree burglary, first degree arson, or attempted first degree burglary or first degree arson, where the accused has at least one previous felony adjudication.
Drug	16	Trafficking or attempting to traffic in various enumerated illegal drugs, where the accused has at least one previous felony adjudication.

## Statutory Exclusion

Del. Code, Tit. 10, Sec. 1447A

A criminal statute provides that, "notwithstanding any contrary provisions or statutes governing the Family Court or any other state law," a child at least 15 charged with possession of a firearm during commission of a felony must be tried as an adult. Apparently, therefore, in such a case no "preliminary hearing" in juvenile court is necessary to determine "if the facts warrant" referral to adult court (see Mandatory Waiver).

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	15	Possession of a firearm during the commission of a felony.

## Reverse Waiver

Del. Code, Tit. 10, Sec. 1011

The Attorney General may transfer a case involving a child from superior court to juvenile court without any hearing, whenever, in the Attorney General's opinion, "the interests of justice" would be served thereby. Otherwise, following a timely motion of the defendant, the superior court must hold a hearing to consider a transfer; the standard remains "the interests of justice," but the law specifies various factors that the court must consider in making the transfer decision. The superior court must retain jurisdiction where a child has previously (1) been declared nonamenable to the rehabilitative processes of the juvenile court, (2) applied for and been denied a transfer, or (3) been convicted (as an adult) of a felony.

## Once an Adult, Always

Del. Code, Tit. 10, Secs. 1010, 1011

A child who has previously been (1) declared nonamenable to the rehabilitative processes of the juvenile court (discretionary waiver) or (2) denied a request for a transfer from superior court to juvenile court (reverse waiver) must thereafter be referred to superior court for trial as an adult whenever charged with delinquency.

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# District of Columbia

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

D.C. Code of 1981, Pt. II, Sec. 16-2307

Upon motion of the corporation counsel in the case of a child who meets statutory age/offense criteria, the family division of the superior court must conduct a hearing to determine whether to transfer the child for criminal prosecution. If there are grounds to believe that the child may be mentally ill or mentally retarded, the division must stay proceedings and obtain a mental examination and, if necessary, order a commitment. Otherwise, the division must grant the transfer motion if it finds, at the conclusion of the transfer hearing—and assuming for purposes of the hearing that the child committed the offense alleged—that a transfer "is in the interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitation." The law specifies a number of factors that must be considered in making this determination. A written report containing information relevant to these factors must be submitted to the court by the director of social services prior to the hearing, with copies made available to all the parties. The judge who conducts the transfer hearing may not participate in any subsequent factfinding proceeding relating to the same offense, unless the child does not object.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	16/18	16—Any offense if child is already under commitment to an agency or institution as a delinquent child.  18—Any offense committed as a minor by a person who is now 18.
Certain Felonies	15	Any felony.
Weapon	None specified	Illegal possession or control of a firearm within 1000 feet of a school, public swimming pool, playground, video arcade, or youth center, or an event sponsored by any of the above.

## Presumptive Waiver

D.C. Code of 1981, Pt. II, Sec. 16-2307(e-2)

In the case of a child of at least 15 who meets offense/prior record criteria, there is a rebuttable presumption in favor of transfer.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	15	Any crime committed with a firearm.
Murder	15	Murder and any other offense properly joinable to it.
Person	15	Forcible rape, armed robbery, assault with intent to commit either of these offenses, and any other offense properly joinable to any of the above; any violent felony committed by a child with at least three previous delinquency adjudications.
Property	15	First degree burglary and any offense properly joinable to it.

## Direct File

D.C. Code of 1981, Pt. II, Sec. 16-2301(3)

The term "child" for purposes of family division jurisdiction does not include anyone at least 16 years old who is charged by the U.S. Attorney with any of various listed offenses.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	16	Murder, assault with intent to murder, and any other offense properly joinable to either.
Person	16	First degree sexual abuse, armed robbery, assault with intent to commit either offense, and any other offense properly joinable to the above.
Property	16	First degree burglary or any other offense properly joinable to it.

## Once an Adult, Always

D.C. Code of 1981, Pt. II, Sec. 16-2307(h)

The transfer of a child for criminal prosecution terminates the family division's jurisdiction over the child for any subsequent offense, but jurisdiction is restored if (1) the criminal prosecution ends without a conviction, a guilty plea, or a verdict of not guilty by reason of insanity and (2) as of that time no new charges have been filed against the child alleging any post-transfer criminal offense. (Note—For purposes of this provision, the U.S. Attorney's direct-file charging of a 16-year-old as an adult has been deemed a "transfer" terminating the family division's jurisdiction.)

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# Florida

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Fla. Stat., Tit. XLVII, Sec. 985.226

Fla. Rules of Juv. Proc., Rule 8.105

At the request of the State's Attorney in the case of a child of at least 14, the juvenile court must hold a hearing to determine whether the child should be transferred for criminal prosecution. Prior to the hearing, the Department of Juvenile Justice must conduct a study and submit a report to the court regarding the child; all parties are entitled to question the author of the report at the hearing. The law lists a number of factors to be considered by the court in making the transfer determination and mandates that any order to transfer a child for criminal prosecution be supported by written findings of fact with respect to each such factor.

In the case of a child of at least 14 who has previously been adjudicated delinquent for any of a number of listed offenses (murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault), the State's Attorney must either file a motion requesting a transfer or make use of the direct file procedures (see Direct File). If a child of at least 14 is accused of a felony and has at least 3 previous adjudications for committing, attempting, or conspiring to commit felonies, one or more of which involved use or possession of a firearm or violence against a person, the State's Attorney must either make use of the direct file procedures (see Direct File), file a motion requesting a transfer, or provide the court with written reasons for failing to do so. If the State's Attorney does request a transfer, the juvenile court must either grant it or provide written reasons for not doing so. [Note—This procedure is described in the law under the heading "Mandatory involuntary waiver," but clearly it is not mandatory in a literal sense, since a judge wishing to retain jurisdiction need do no more than "provide written reasons."]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	14	Any offense.

## Direct File

Fla. Stat., Tit. XLVII, Sec. 985.227

Charges may be filed directly in the circuit court's criminal division whenever, in the State's Attorney's "judgment and discretion," the public interest requires it. (Note—While the law gives the State's Attorney discretion here, one who declines the option may be formally obliged to move for a transfer in juvenile court, or at least to provide the court with written reasons for failing to do so; see Discretionary Waiver.)

In addition, if a child is accused of a capital offense, the State's Attorney may present the case to a grand jury and seek an indictment. If the State's Attorney does not wish to seek an indictment, or if the grand jury does not return an indictment, the State's Attorney may inform the court in writing to that effect and the case will proceed in juvenile court. If the State's Attorney gets an indictment, the child will be tried as an adult not only for the capital offense but also for any included offenses.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	16	Any felony; misdemeanor with 2 prior adjudications, 1 for a felony.
Capital	None specified	Any offense punishable by death or life imprisonment.
Murder	14	Murder, manslaughter.
Person	14	Sexual battery, robbery, kidnapping, aggravated child abuse, aggravated assault, aggravated stalking, aggravated battery, lewd or lascivious assault or act in the presence of a child.
Property	14	Arson, armed burglary, burglary involving damage to a dwelling or structure, grand theft.
Weapon	14	Carrying, displaying, using, threatening, or attempting to use a weapon during the commission of a felony; unlawful throwing, placing, or discharging of a destructive device or bomb.

## Statutory Exclusion

Fla. Stat., Tit. XLVII, Sec. 985.227

The State's Attorney must file charges directly in the criminal division of the circuit court against any child who meets various age/offense criteria specified by statute.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	None specified	Any criminal offense if 3 or more prior felony adjudications and resulting in 3 or more prior commitments.
Person	None Specified/16	None specified—Involvement (either as a driver or willing passenger) in a motor vehicle theft that results in serious injury to a person not involved in the underlying offense.  16—Any violent crime against a person, if committed by someone already adjudicated for murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault.

## **Once an Adult, Always**

Sec. 985.227; 225 Fla. Stat., Tit. XLVII,

Sec. 985.226

A child who has been convicted and sentenced as an adult is thereafter "handled in every respect as an adult for any subsequent violation of state law."

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# Georgia

Lower Age: None specified

Upper Age: 16

## Discretionary Waiver

Code of Georgia, Sec. 15-11-39

Provided a juvenile meets age/offense requirements, the juvenile court may transfer his or her case to adult court for prosecution if it finds, after a proper hearing, that there are reasonable grounds to believe that (1) the juvenile committed the act alleged, (2) the juvenile is not subject to commitment to a mental institution, and (3) the best interests of the juvenile and the community require it.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	15	Any conduct designated a crime or public offense.
Capital	13	Any crime for which the punishment is loss of life or confinement for life in a penal institution.

## Mandatory Waiver

Code of Georgia, Secs. 15-11-39, 15-11-39.1

The juvenile court "shall transfer" a case to the appropriate adult court if it finds, after a proper hearing, that there are reasonable grounds to believe that a juvenile meeting age requirements committed one of several crimes specified by statute. The court must at least hold a hearing to consider transfer in any case in which an accused juvenile burglar has at least three previous burglary adjudications; however, in such a case, following a transfer, the district attorney must investigate and report to the superior court as to whether the case should be retransferred to juvenile court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Murder or voluntary manslaughter while confined to a youth development center.
Person	14	Aggravated assault or aggravated battery while confined to a youth development center.
Property	15	Felony burglary committed by a juvenile previously found to have committed burglary on three or more occasions.

## Direct File

Code of Georgia, Sec. 15-11-5

The juvenile and superior courts have concurrent jurisdiction over cases involving juveniles of any age accused of crimes punishable by death or life imprisonment, except for certain designated crimes placed under the exclusive jurisdiction of the superior court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Capital	None specified	Any crime punishable by death, life imprisonment without parole, or confinement for life in a penal institution, except those crimes over which the superior court has exclusive jurisdiction.

## Statutory Exclusion

Code of Georgia, Sec. 15-11-5

The superior court has exclusive jurisdiction over the trial of a juvenile age 13 or older accused of certain enumerated offenses.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	13	Murder and voluntary manslaughter.
Person	13	Rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, and armed robbery committed with a firearm.

## Reverse Waiver

Code of Georgia, Sec. 15-11-5

Before indictment, "for extraordinary cause," the prosecutor may "decline prosecution in superior court" of a case over which the superior court has exclusive jurisdiction, withdraw it and lodge it in the appropriate juvenile court instead. After indictment, "for extraordinary cause," the superior court may transfer a case over which it has exclusive jurisdiction to the juvenile court, unless it involves an offense punishable by life imprisonment or death.

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# Hawaii

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Haw. Rev. Stat., Div. 3, Tit. 31, Sec. 571-22

Sec. 571-22.5

In a case involving a minor who meets specified age/offense requirements, the family court may waive jurisdiction and order the minor held for criminal proceedings if, after a hearing, it makes certain findings; the requisite findings depend on the age/offense categories involved. In all cases, the court must find at a minimum that there is no evidence that the minor is committable to a mental institution. In a case in which the accused (regardless of age) is alleged to have committed an act that would constitute first or second degree murder or the attempt, that is all the court need find. In a case involving a 14- or 15-year-old accused of a felonious act other than murder or attempted murder, the court must also find that either (1) the act constituted a class A felony, (2) the act resulted in serious injury to the victim, or (3) the accused has previously been adjudicated for a felony. In the case of a minor accused of committing any felony after his 16th birthday, besides the requisite finding that the minor is not subject to commitment in a mental institution, the court must also find—on the basis of a "full investigation and hearing"—that either (1) the minor is not treatable in any children's institution or facility in the state or (2) the safety of the community requires that the minor be restrained beyond the period of his minority. Except where the minor is accused of murder or attempted murder, the court making the waiver decision must weigh various factors (the minor's maturity, the seriousness of the offense, etc.) specified by statute. An order waiving jurisdiction is not appealable until after trial.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14/16	14—Any class A felony; any felony resulting in serious bodily injury to the victim; any felony committed by a previously adjudicated felon.  16—Any felony.
Murder	None specified	First or second degree murder or first or second degree attempted murder.

## Once an Adult, Always

Haw. Rev. Stat., Div. 3, Tit. 31, Sec. 571-22

A transfer for criminal proceedings terminates the family court's jurisdiction over any subsequent offenses committed by the same child.

# Idaho

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Idaho Code Secs. 20-508, 20-509

The juvenile court may waive jurisdiction (after a hearing on its own motion or that of either party) over a case involving any juvenile meeting age/offense requirements. The law specifies various factors that must be considered by the court in making the waiver determination. In addition, in the case of a waiver of jurisdiction over someone who is currently 18 for any felonious act committed before he or she became 18, the court must find that (1) the accused is not committable to a mental institution, (2) the accused is not treatable in any available juvenile institution or facility, or (3) the safety of the community requires restraint.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	14	Any criminal offense not excluded from juvenile court jurisdiction.
Certain Felonies	None specified	The juvenile court may waive jurisdiction over someone who is currently 18 for any felonious act committed before he or she became 18.
Murder	None specified	Murder of any degree or attempted murder.
Person	None specified	Robbery, rape, forcible sexual penetration, violent "crimes against nature," mayhem, or assault or battery with intent to commit any of the above.
Property	None specified	First degree or aggravated arson.
Drug	None specified	Controlled substance manufacture, delivery, or possession with intent to deliver within 1000 feet of a school or school-sponsored activity.

## Statutory Exclusion

Idaho Code Sec. 20-509

Any juvenile who is at least 14 and is alleged to have committed any of a number of specified crimes "shall be charged, arrested and proceeded against...as an adult." All other charges arising out of the same transaction are also handled in adult court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Murder of any degree or attempted murder.
Person	14	Robbery, rape, forcible sexual penetration, violent "crimes against nature," mayhem, or assault or battery with intent to commit any of the above.
Property	14	First degree or aggravated arson.
Drug	14	Controlled substance manufacture, delivery, or possession with intent to deliver within 1000 feet of a school or school-sponsored activity.

## Once an Adult, Always

Idaho Code Sec. 20-509

Once a juvenile has been convicted as an adult—or even once the juvenile has been found or pled guilty "to a lesser offense or amended charge growing out of or included within the original charge," whether or not that offense is excluded—the juvenile is treated as an adult for purposes of any subsequent violations of Idaho law.

# Illinois

Lower Age: None specified

Upper Age: 16

## Discretionary Waiver

705 ILCS 405/5-4

On motion of the State's attorney in the case of a child of at least 13, a juvenile judge specially designated to hear such motions may enter an order permitting criminal prosecution if the court finds, after investigation and a hearing, "that it is not in the best interests of the minor or the public" to proceed against the child as a juvenile. The law specifies a number of factors to be considered in making this determination.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	13	Any criminal offense.

## Presumptive Waiver

705 ILCS 405/5-4(3.3)

If the State's attorney moves for an order permitting criminal prosecution in the case of a child of at least 15 accused of any of a number of specified offenses, it is rebuttably presumed that the child is not a fit and proper subject for treatment as a juvenile. Accordingly, if the juvenile court finds probable cause to believe the State's allegations, it must enter an order permitting criminal prosecution, unless it also finds, based on the evidence, and considering a number of factors specified by statute, that the child "would be amenable to the care, treatment, and training programs" available through the juvenile court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	15	Class X felony other than armed violence; aggravated discharge of a firearm; armed violence with a firearm in connection with a class 1 or 2 felony committed in furtherance of the criminal activities of an organized gang; armed violence with a firearm in connection with a violation of any of various provisions of the Illinois Controlled Substances Act; and armed violence with a machine gun or other restricted weapon.

## Mandatory Waiver

705 ILCS 405/5-4(3.1) and (3.2)

If the State's attorney moves for an order permitting criminal prosecution of a child of at least 15 meeting statutory criteria and accused of committing a felony in furtherance of the criminal activities of an organized gang, the juvenile court must grant the order, provided it finds probable cause to believe the State's allegations.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	15	Any felony committed to further the criminal activities of an organized gang by a child previously adjudicated for a felony, as long as either the current or previously adjudicated felony is a forcible felony.

## Statutory Exclusion

705 ILCS 405/5-4(6), (7), (8), (9)

Children meeting specified age/offense criteria are excluded from the definition of "delinquent minor" for purposes of juvenile court jurisdiction, and are subject to criminal prosecution for the excluded offenses and all others arising out of the same incidents.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	15	Escape or bail bond violation while subject to prosecution in criminal court.
Murder	13/15	13—First degree murder committed during the course of aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping (but not including murder for which a child is merely held accountable).  15—First degree murder.
Person	15	Aggravated criminal sexual assault, armed robbery with a firearm, aggravated vehicular hijacking committed with a firearm.

## Illinois' Transfer Laws

Drug	15	Specified Illinois Controlled Substances Act violations committed on school property, in a school conveyance, at a school activity, or near a school, or on or near public housing property.
Weapon	15	"Unlawful use of weapons" (including possessing a firearm in public or selling, manufacturing, purchasing, or possessing any of a list of outlawed weapons) where the violation occurred on school grounds.

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# Indiana

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Indiana Code Sec. 31-30-3-1

Sec. 31-30-3-2

Sec. 31-30-3-3

Sec. 31-30-3-4

Sec. 31-30-3-5

Sec. 31-30-3-10

Upon motion of the prosecutor and after investigation and a hearing, the juvenile court may waive jurisdiction over certain specified categories of juveniles. A waiver order must include specific findings of supporting facts. The waiver applies not only to the offense charged but to all lesser included offenses.

In the case of a child who was at least 14 at the time of commission, the court may waive jurisdiction if it finds (1) probable cause to believe the child committed an act that is either "heinous or aggravated" or "part of a repetitive pattern of illegal acts"; (2) that the child is "beyond rehabilitation under the juvenile justice system"; and (3) that it is "in the best interests of the safety and welfare of the community" that the child be tried as an adult.

In the case of a child who was at least 16 at the time of commission, the court may waive jurisdiction if it finds (1) probable cause to believe the child committed a felony relating to controlled substances and (2) that it is "in the best interests of the safety and welfare of the community" that the child be tried as an adult.

In the case of a child of at least 10 accused of murder or a child of at least 16 accused of involuntary manslaughter, reckless homicide, or any nondrug class A or B felony, the juvenile court "shall waive jurisdiction" if it makes the requisite probable cause finding, "unless it would be in the best interests of the child and of the safety and welfare of the community" for the court to deny the waiver. [Note—Although this last provision is not cast in terms of presumptive waiver, it appears to lie somewhere between Indiana's two wholly discretionary provisions (which specify that the court "may" waive) and its wholly mandatory one (which does not contain any "unless" clause or even require a probable cause finding.)]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	14	"Heinous or aggravated" act; act that is "part of a repetitive pattern of delinquent acts, even though less serious."
Certain Felonies	16	Class A or B felony.
Murder	10/16	10—Murder.  16—Involuntary manslaughter, reckless homicide.

## Mandatory Waiver

Indiana Code Sec. 31-30-3-6

Upon motion of the prosecutor, the juvenile court "shall waive jurisdiction" over a case in which (1) a child of any age is charged with a felony and (2) the child has previously been convicted of a felony or nontraffic misdemeanor. [Note—The charge alone is sufficient here; no findings regarding probable cause or the public interest are necessary.]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	None specified	Any felony committed by a child previously convicted for a felony or nontraffic misdemeanor.

## Statutory Exclusion

Indiana Code Sec. 31-30-1-4

## Indiana's Transfer Laws

The juvenile court has no jurisdiction over a child accused of having committed a statutorily excluded offense after reaching the age of 16. The court having adult criminal jurisdiction over an excluded offense also has jurisdiction over any offense that may be joined to it. The adult court retains jurisdiction even if the child is convicted or pleads guilty to a lesser included offense.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	16	Active and knowing/intentional participation in a criminal gang.
Murder	16	Murder.
Person	16	Kidnapping, rape, criminal deviate conduct, armed robbery, robbery resulting in bodily injury, carjacking, and criminal gang intimidation.
Drug	16	Dealing in cocaine, narcotic drugs, or Schedule I, II, III, or IV controlled substances.
Weapon	16	Carrying a handgun without a license, dealing in a sawed-off shotgun, and being a child in possession of a handgun or transferring a handgun to a child.

## Once an Adult, Always

Sec. 31-30-3-6 Indiana Code Sec. 31-30-1-2

The "juvenile law does not apply to" a child who is accused of a crime and has previously been waived to adult court. In addition, even if there was no waiver involved in the previous case, a child who was convicted in adult court of a felony or nontraffic misdemeanor and is subsequently charged with a felony is automatically waived (see Mandatory Waiver).

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# Iowa

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Iowa Code Sec. 232.45

In the case of a child of at least 14 accused of a public offense, on motion of either the child or the county attorney, the juvenile court must hold a hearing to determine whether to waive jurisdiction. Prior to the hearing, an investigative report on the child must be submitted to the court by the juvenile probation officer or other designated person. At the conclusion of the hearing, the court may waive jurisdiction if it finds (1) that there is probable cause to believe the child committed a public offense (or if it has already found probable cause at a previous detention hearing) and (2) that the State has established that there are no reasonable prospects for rehabilitation within the juvenile court system and that waiver would be in the best interests of the child and the community. The law specifies various factors to be considered by the court in making this determination.

[Note—Slightly different standards apply when the court is considering a motion for waiver for the purpose of prosecuting the child as a "youthful offender" rather than as an adult. (The trial of a youthful offender takes place in adult court, but upon conviction the sentencing is deferred, and supervision over the child is transferred back to the juvenile court, until the child's 18th birthday; at that time the adult court has a number of sentencing options, including continuing the child on youthful offender status, entering a sentence, suspending the sentence, placing the child on probation, etc.) Waiver for purposes of youthful offender prosecution is permitted in the case of a child no older than 15 if the court, after considering the best interests of the child and the community as well as a number of other determinative factors specified by statute, finds that (1) there is probable cause to believe the child committed an offense that would have been excluded from juvenile court jurisdiction if the child had been 16 and (2) the State has established that there are no reasonable prospects for rehabilitating the child before his 18th birthday within the juvenile court system.]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	14	Any public offense.
Certain Felonies	15	Felony or forcible felony.

## Statutory Exclusion

Iowa Code Sec. 232.8

Designated offenses committed by a child 16 or older are excluded from juvenile court jurisdiction and prosecuted in adult court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	16	Forcible felonies.
Drug	16	Manufacturing, delivering, or possessing controlled substances with intent to deliver, while in the immediate possession or control of a firearm or offensive weapon.
Weapon	16	Felony-grade weapons violations, or any weapons violation committed by a criminal street gang member for the benefit of, at the direction of, or in association with a criminal street gang.

## Reverse Waiver

Iowa Code Sec. 232.8

A child accused of an offense excluded from juvenile jurisdiction may nevertheless be transferred to juvenile court "upon motion and for good cause."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	14	Any public offense.

## Once an Adult, Always

Iowa Code Sec. 232.45A

Once a child 16 or older has been waived to and convicted of a felony or aggravated misdemeanor in district court, provided the child was prosecuted and convicted as an adult (and not as a youthful offender), proceedings against the child for any subsequent felonies or aggravated misdemeanors must be commenced in district court. If such a case is mistakenly begun in juvenile court, it must be immediately transferred to district court.



# Kansas

Lower Age: 10

Upper Age: 17

## Discretionary Waiver

Kansas Statutes Sec. 38-1636

Upon motion of the county or district attorney in the case of a child accused of any offense, the juvenile court must hold a hearing to decide whether to authorize prosecution of the child as an adult. Except where the child meets age/offense/prior record criteria creating a presumption in favor of adult prosecution (see Presumptive Waiver), juvenile treatment is presumed to be appropriate unless the prosecution shows that there is "good cause" for adult prosecution. If the child has had proper notice but fails to appear at the hearing on the motion to authorize adult prosecution, the hearing may be held in the child's absence following notice by publication. The law lists a number of factors that the court must consider in deciding whether to authorize prosecution as an adult, and permits the court to consult reports and other written materials bearing on these factors, but stipulates that "the insufficiency of evidence pertaining to any one or more of the factors...shall not in and of itself be determinative of the issue." An order authorizing adult prosecution must be supported by a finding of "substantial evidence" in its favor.

In the alternative, the county or district attorney may move to have the case designated an "extended jurisdiction juvenile prosecution." Even where the county or district attorney requests an authorization of adult prosecution, the court may instead designate the case an extended jurisdiction juvenile prosecution. The procedures, presumptions, and factors to be considered in determining whether to designate a case an extended jurisdiction juvenile prosecution are identical to those involved in a hearing to consider whether a child should be prosecuted as an adult. Moreover, like a child subject to adult prosecution, a child who is subject to extended jurisdiction juvenile prosecution has "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." However, different sentencing provisions apply.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	10	Any criminal offense.

## Presumptive Waiver

Kansas Statutes Sec. 38-1636(a)(2) &amp; (3)

Where the county or district attorney seeks adult prosecution in the case of a child who meets certain age/offense/prior record criteria, adult prosecution is presumed to be appropriate, and the burden is on the child to rebut the presumption. (If the issue is whether to designate the proceedings as an extended jurisdiction juvenile prosecution and the child meets the statutory criteria, the same presumption applies.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	14	Any offense committed while in possession of a firearm.
Certain Felonies	14	Any nondrug felony of severity level 1 through 6; any felony (or combination of offenses including a felony) committed after having been adjudicated for or convicted of a felony; any "offgrid" (unclassified) felony.
Person	14	Any "person felony."
Drug	14	Any drug felony of severity level 1 or 2.

## Once an Adult, Always

Kansas Statutes Sec. 38-1636

If a child is convicted following authorization of adult prosecution, the authorization "shall attach and apply to any future acts" committed by the same child. However, if the authorized prosecution is for an offense to which the presumption in favor of authorization applies (see Presumptive Waiver), and the child is not convicted of any of the offenses creating the presumption, the child is considered "a juvenile offender" and is sentenced under the Juvenile Offenders Code.

# Kentucky

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

KRS Tit. LI, Sec. 635.020 Sec. 640.010

Upon motion of the county attorney, the district court must conduct a preliminary hearing to determine whether a child should be transferred to circuit court for trial as a "youthful offender." (A youthful offender is proceeded against in most respects as an adult. Before invoking the youthful offender provisions, the county attorney is required by law to consult with the Commonwealth's attorney.) Following the preliminary hearing, if the court determines that (1) there is probable cause to believe the child committed the offense alleged and otherwise meets statutory age/offense/prior record criteria and (2) at least two of a list of seven determinative factors specified by statute (one of which is "the best interest of the child and community") weigh in favor of transfer, it may issue an order transferring the child to circuit court. Whether the case of a child charged with a felony is handled in district court or circuit court, all offenses arising from the same course of conduct must be tried with the felony.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14/16	14—Class A or B felony; any felony committed by a child with a previous youthful offender conviction.
		16—Class C or D felony committed by a child with a previous felony adjudication.
Capital	14	Capital offense.

## Mandatory Waiver

KRS Tit. LI, Sec. 635.020

A child of at least 14 accused of a felony in which a firearm was used must be transferred to circuit court for trial as an adult if the district court finds probable cause to believe that the child committed the offense alleged.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Felony in which a firearm was used.

## Reverse Waiver

KRS Tit. LI, Sec. 640.010(3)

If, after a transfer from district court to circuit court, a grand jury fails to return an indictment for an offense qualifying the child for youthful offender treatment, but instead indicts for some other offense, the child must be returned to district court to be tried as a juvenile.

# Louisiana

Lower Age: 10

Upper Age: 16

## Discretionary Waiver

La. Children's Code, Tit. III, Ch. 4, Art. 857

A child who was at least 14 at the time of committing various listed offenses but is not otherwise subject to the original jurisdiction of the criminal court may be transferred following a hearing, either on the district attorney's or the court's own motion. (The law does not specify grounds for such a transfer or factors to be considered.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	First or second degree murder.
Person	14	Aggravated kidnapping, aggravated rape, aggravated battery involving discharge of a gun, armed robbery committed with a gun, aggravated oral sexual battery, and forcible rape committed upon a child at least 2 years younger than the rapist.

## Mandatory Waiver

La. Children's Code, Tit. III, Ch. 4, Art. 305

If a child is accused of first or second degree murder, aggravated rape or aggravated kidnapping, and was at least 15 at the time of commission, but has not been indicted, the juvenile court has jurisdiction only until it determines, at a "continued custody hearing," that there is probable cause to believe the child committed the offense. Thereafter, the child is subject to the exclusive jurisdiction of the adult criminal court. The adult court's jurisdiction encompasses both the charged offenses and any lesser included offenses of which the child might be convicted. (For an alternative treatment of the same category of cases, see Statutory Exclusion.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	15	First or second degree murder.
Person	15	Aggravated rape, aggravated kidnapping.

## Direct File

La. Children's Code, Tit. III, Ch. 4, Art. 305

If the case meets specified age/offense criteria, the district attorney may choose between (1) obtaining a grand jury indictment against the child, which bypasses the juvenile court altogether; (2) filing criminal charges without first securing a grand jury indictment, in which case the juvenile court's only involvement with the case will be to determine whether there is probable cause to believe that the child committed the offense; or (3) filing a delinquency petition, in which case jurisdiction remains in the juvenile court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	15	Attempted first degree murder, attempted second degree murder, manslaughter.
Person	15	Armed robbery, simple or forcible rape, second degree kidnapping, aggravated oral sexual battery, aggravated battery committed with a firearm, a second or subsequent aggravated battery.
Property	15	Aggravated burglary, a second or subsequent burglary of an inhabited dwelling.
Drug	15	A second or subsequent felony-grade violation of listed statutes governing controlled dangerous substances.

## Statutory Exclusion

La. Children's Code, Tit. III, Ch. 4, Art. 305

The case of a child who has been indicted for first or second degree murder, aggravated rape or aggravated kidnapping, and was at least 15 at the time of commission, is under the exclusive jurisdiction of the adult criminal court. The adult court's jurisdiction encompasses both the charged offenses and any lesser included offenses of which the child might be convicted. (Note—In other words, if the district attorney bypasses juvenile court and seeks an indictment from a grand jury in such a case, then no juvenile court hearing to determine probable cause need be held, and the child is treated as an adult from the moment the indictment is returned. For the alternative scenario, see Mandatory Waiver.)

## Louisiana's Transfer Laws

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	15	First or second degree murder.
Person	15	Aggravated rape, aggravated kidnapping.

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# Maine

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

MRS Tit. 15, Pt. 6, Ch. 503, Sec. 3101

At the request of the prosecuting attorney in a case meeting statutory age/offense criteria, the juvenile (district) court must conduct a "bind-over hearing" to determine whether to waive jurisdiction. At the hearing, reports and other written materials may be considered by the court in ruling on a waiver, but any party may demand that the authors of such materials appear as witnesses for questioning. The court may waive jurisdiction, bind the child over to superior court, and certify the case for proceedings before a grand jury if it finds (1) that there is probable cause to believe the child committed a waivable offense and (2) that, when various factors specified by statute are considered (including the seriousness of the offense, the characteristics of the child, and the adequacy of the dispositional alternatives available to the juvenile court), "the preponderance of the evidence" indicates that prosecuting the child as an adult would be "appropriate."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	None specified	Class A, B, or C crime.
Murder	None specified	Murder.

## Once an Adult, Always

MRS Tit. 15, Pt. 6, Ch. 503, Sec. 3101

Any person bound over and convicted as an adult must be proceeded against as an adult in all prosecutions for subsequent crimes.

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# Maryland

Lower Age: 7

Upper Age: 17

## Discretionary Waiver

Code of Md., Sec. 3-817 Maryland Rule 913

The juvenile court may waive its exclusive jurisdiction over a child who meets specified age/offense criteria if it finds, after ordering an investigation and holding a hearing, that the child is not a fit subject for juvenile rehabilitative measures. The law lists various factors to be considered in making the waiver determination. For purposes of waiver the court must assume that the child actually committed the offenses in the petition. An order waiving jurisdiction is not immediately appealable.

When a child over whom juvenile jurisdiction has previously been waived comes before the juvenile court on a new offense, the court may waive its jurisdiction following a summary review, without a hearing. (Also, as noted in Reverse Waiver, once a child has been (1) convicted of an excluded offense or (2) adjudicated delinquent following a reverse waiver, he can never get a transfer from adult to juvenile court again.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	15	
Capital	None specified	Act punishable by death or life imprisonment.

## Statutory Exclusion

Code of Md., Sec. 3-804

The juvenile court "does not have jurisdiction over" various age/offense categories, unless the adult criminal court waives its jurisdiction and transfers the case to the juvenile court. (See Reverse Waiver.) If a child meets age/offense criteria for exclusion, all other charges against the child arising out of the same incident are also heard in adult criminal court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Capital	14	Crime punishable by death or life imprisonment.
Murder	16	Second degree murder or the attempt, manslaughter.
Person	16	Abduction, kidnapping, first degree assault, armed robbery or the attempt, second degree rape, second and third degree sexual offenses in violation of specified statutes, attempted rape, attempted second degree sexual assault, carjacking and armed carjacking.
Weapon	16	Certain firearms violations, including wearing, carrying, or transporting a handgun on the person or in a vehicle without a permit; possessing or using a machine gun for aggressive purposes or in the perpetration or attempted perpetration of a crime of violence; violating restrictions on the transfer, sale, or possession of regulated firearms; knowingly possessing, selling, or transferring a stolen regulated firearm; possessing a short-barreled rifle or shotgun; and using, wearing, carrying, or transporting firearms during and in relation to a drug trafficking crime.

## Reverse Waiver

Code of 1957, Art. 27, Sec. 594A

Generally, a court with criminal jurisdiction over a case excluded by statute from juvenile jurisdiction may waive it and transfer the child to juvenile court if such a transfer is "in the interests of the child or society." However, the court may not transfer a case of any child who (1) has previously been convicted of an excluded offense; (2) has previously been waived/transferred to juvenile court and adjudicated delinquent; or (3) is accused of first degree murder and was at least 16 at the time of commission. The law specifies various factors that must be considered in making a reverse waiver determination.

# Massachusetts

Lower Age: 7

Upper Age: 16

## Direct File

Mass. Gen. Laws, Ch. 119, Sec. 54

Cases that meet statutory age/offense criteria may be commenced either in juvenile court (or a juvenile session of district court) or by indictment. A complaint and indictment for a qualifying offense, as well as any other offense properly joined to it, are brought in "the usual course and manner of criminal proceedings."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Any offense punishable by imprisonment if the accused was previously committed to the Department of Youth Services.
Person	14	Any offense punishable by imprisonment if it involves the infliction or threat of serious bodily harm.
Weapon	14	Distribution, sale, or transfer of specified quantities of firearms; unlawful carrying of a firearm; possession of a machine gun; and ownership, possession, or carrying of a sawed-off shotgun.

## Statutory Exclusion

Mass. Gen. Laws, Ch. 119, Sec. 74

The juvenile court has no jurisdiction over a child of at least 14 charged with first or second degree murder. Complaints and indictments for murder, along with any other offense properly joined, are brought in "the usual course and manner of criminal proceedings."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	First or second degree murder.

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# Michigan

Lower Age: None specified

Upper Age: 16

## Discretionary Waiver

MCL Sec. 712A.4

On the motion of the prosecutor, and after a hearing, the juvenile court may waive jurisdiction over the case of a child of at least 14 accused of a felony (or any other offense, whether or not designated a felony, that is punishable by more than one year's imprisonment) if it finds that (1) there is probable cause to believe the child committed the offense alleged and (2) the best interests of the child and the public would be served thereby. The law specifies a number of factors that must be considered in making this determination, but mandates that the court give the most weight to two: the seriousness of the offense and the child's prior record.

[Note—Under a separate provision, Sec. 712A.2d, at the request of the prosecutor in a case that is not subject to direct file, the juvenile court may "designate the case as a case in which the juvenile is to be tried in the same manner as an adult"—but in juvenile court. The necessary findings, and the considerations that must be weighed, are the same as in a discretionary waiver hearing. However, if the court grants the request, the trial and sentencing take place in juvenile court, with "all procedural protections and guarantees to which the juvenile would be entitled if being tried for the offense in a court of general criminal jurisdiction."]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	14	Any felony or other offense punishable by imprisonment for more than 1 year.

## Direct File

MCL Sec. 600.606

In the case of a child of at least 14 accused of a "specified juvenile violation," the juvenile court has jurisdiction only "if the prosecuting attorney files a petition in the court instead of authorizing a complaint and warrant." Otherwise, the circuit court has jurisdiction. Jurisdiction over a specified juvenile violation includes jurisdiction over any lesser included offense and over any other offense arising out of the same transaction.

[Note—Under a separate provision, Sec. 712A.2d, in a case subject to direct file the prosecutor may "designate the case as a case in which the juvenile is to be tried in the same manner as an adult." In such a case, the trial and sentencing take place in juvenile court, but with "all procedural protections and guarantees to which the juvenile would be entitled if being tried for the offense in a court of general criminal jurisdiction."]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Escape or attempted escape from certain juvenile facilities; conspiracy or solicitation to escape.
Murder	14	First and second degree murder; attempted murder; conspiracy or solicitation to commit murder.
Person	14	Assault with intent to commit murder; assault with intent to maim; armed assault with intent to rob and steal; armed assault with intent to do great bodily harm; kidnapping; first degree criminal sexual conduct; armed robbery; carjacking; attempt, conspiracy, or solicitation to commit any of these offenses.
Property	14	Arson of a dwelling; bank, safe, and vault robbery; first degree home invasion while armed; attempt, conspiracy, or solicitation to commit any of these offenses.
Drug	14	Unlawful manufacture, creation or delivery of a minimum quantity of certain designated controlled substances, or possession with intent to manufacture, create, or deliver the same; any attempt, conspiracy, or solicitation to commit any of these offenses.

## Once an Adult, Always

MCL Sec. 712A.4(5)

The juvenile court must waive jurisdiction over any child who has previously been subject to adult court jurisdiction if it finds probable cause to believe the child committed a felony.

# Minnesota

Lower Age: 10

Upper Age: 17

## Discretionary Waiver

Minn. Statutes Sec. 260.125

On motion of the prosecutor in the case of a child of at least 14 accused of a felony, the juvenile court may, after a hearing, certify the proceeding for adult criminal prosecution if it finds (1) probable cause to believe that the child committed the offense alleged and (2) that the prosecutor has shown by clear and convincing evidence that the public safety would not be served by retaining the proceeding in juvenile court. (Note—The "clear and convincing" standard does not apply to certain age/offense categories; see Presumptive Waiver.) The law specifies various factors that must be considered in making the public safety determination, but requires that two be given greater weight than the others: the seriousness of the offense and the child's prior record. Whether the court decides for or against certification, it must issue written findings in support of its decision.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Any felony.

## Presumptive Waiver

Minn. Statutes Sec. 260.125

If a child of at least 16 is accused of (1) an offense that would result in a presumptive commitment to prison under applicable laws and sentencing guidelines or (2) a felony committed with a firearm, there is a presumption that certification for trial as an adult is appropriate. In such a case, if the court finds probable cause to believe that the child committed the offense alleged, the child has the burden of showing by clear and convincing evidence that the public safety would be served by retaining the case in juvenile court. If the court decides to order certification, it need not issue written findings regarding the public safety determination. However, if it decides not to certify in such a case, it must designate the proceeding an extended jurisdiction juvenile prosecution and include in its decision written findings to support its determination with regard to public safety.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	16	A felony committed while using a firearm, or any offense that would result in a presumptive commitment to prison under applicable laws and sentencing guidelines.

## Statutory Exclusion

Minn. Statutes Sec. 260.015

The term "delinquent child" does not include a child of at least 16 who is accused of first degree murder.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	16	First degree murder.

## Once an Adult, Always

Minn. Statutes Sec. 260.125

The juvenile court must order certification for trial as an adult in any case in which the prosecutor shows that a child accused of a felony was (1) previously certified and (2) thereafter convicted, either of the offense for which he was certified or of a lesser included offense that itself constituted a felony.

# Mississippi

Lower Age: 10

Upper Age: 17

## Discretionary Waiver

Miss. Code 1972, Sec. 43-21-157

Sec. 43-23-29

Sec. 43-23-31

The youth court may waive jurisdiction over the case of a child of at least 13 if it finds, following a bifurcated transfer hearing, (1) probable cause to believe the child committed the alleged offense and (2) no reasonable prospects of rehabilitation within the juvenile justice system. The child may waive the probable cause phase of the hearing. The law lists various factors that must be considered in making the finding that there are no prospects of rehabilitation, and specifies that the finding must be supported by clear and convincing evidence. Once a case is transferred, the adult court has jurisdiction over the offense described in the original petition as well as any lesser included offense. (Note—There are special provisions [Secs. 43-23-29, 43-23-31] governing waiver procedures in "family courts"—as opposed to youth courts—which apply only to Harrison County. Under these provisions, transfer is permitted in the case of a 13-year-old accused of a felony. In addition, when a 13-year-old is brought before a justice of the peace or municipal court and accused of a misdemeanor, the family court may issue an order allowing prosecution there, but it retains jurisdiction to stay the execution of any sentence.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	13	Any criminal offense.

## Statutory Exclusion

Miss. Code 1972, Sec. 43-21-151

Certain categories of crime are "in the original jurisdiction of the circuit court" rather than the youth court; however, a child must have reached his 13th birthday to be held criminally responsible.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	13/17	13—Any felony attempted or committed with the use of a shotgun, rifle, or deadly weapon.  17—Any felony.
Capital	13	Punishable by life imprisonment or death.

## Reverse Waiver

Miss. Code 1972, Sec. 43-21-159

Sec. 43-21-157(8)

Following youth court's waiver and on the motion of a child who has been transferred from youth court to circuit court, the circuit court may review the transfer proceedings. It must remand the case to the youth court if the transfer order is not supported by substantial evidence.

Excluded Offenses: Generally, the circuit court may also waive its original jurisdiction over a child accused of an excluded offense, and transfer the case to youth court if it finds "that it would be in the best interests of such child and in the interest of justice." However, the circuit court may not transfer the case of a child who has previously been convicted as an adult, either for an excluded offense or following a waiver.

[Note—There is no equivalent provision for waiver/transfer from circuit court to "family court."]

## Once an Adult, Always an

Miss. Code 1972, Sec. 43-21-157(8)

Youth court jurisdiction over a child is terminated once the child has been convicted in circuit court. In addition, once a child has been transferred to or otherwise appeared in circuit court, even if not convicted, the circuit court retains jurisdiction, without any further transfer proceedings, over any subsequent felony case involving the child.



# Missouri

Lower Age: None specified

Upper Age: 16

## Discretionary Waiver

Mo. Stat., Tit. XII, Sec. 211.071

Upon its own motion or that of any party in the case of a child of at least 12 accused of a felony, the juvenile court may order a hearing to consider whether to dismiss the delinquency petition and transfer the child for adult prosecution. (However, the court must at least hold a hearing to consider transfer where the child is accused of one of a number of listed offenses—first or second degree murder, first degree assault, forcible rape, forcible sodomy, first degree robbery, or distribution of drugs—or has committed two or more previous felonies.) Before the hearing, a written report on the child's history, record, offense, rehabilitation prospects, etc., must be prepared for the juvenile court's consideration. Following the hearing, the court may dismiss the case to permit adult prosecution if it finds that the child is not a proper subject to be dealt with under the juvenile law, taking into account a number of determinative considerations (including "racial disparity in certification") specified by law. An order of dismissal to permit adult prosecution must be supported by written findings.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	12	Any felony.

## Once an Adult, Always

Mo. Stat., Tit. XII, Sec. 211.071

Once the juvenile court has dismissed a petition to permit prosecution of a child as an adult, its jurisdiction over that child with respect to future offenses is forever terminated, unless the child is subsequently found not guilty in adult court.

# Montana

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Montana Code Sec. 41-5-203

A jurisdictional provision specifies that the youth court "has jurisdiction to...transfer a youth court case to the district court after notice and a hearing," but says nothing regarding any age or offense restrictions on this transfer authority, grounds for such a transfer, or standards that govern the decision.

## Direct File

Montana Code Sec. 41-5-206

If a child otherwise meets specified age/offense criteria, but was under 17 at the time of the alleged offense, the county attorney has discretion to file either (1) a delinquency petition in youth court or (2) a motion in district court asking for leave to file there. (If the child was 17 at the time of the offense, the county attorney must ask leave to file in district court; see Statutory Exclusion.) The district court must grant the county attorney leave to file there if it finds both that there is probable cause to believe the child committed the alleged offense and "that, considering the seriousness of the offense and in the interests of community protection, the case should be filed in the district court." A separate offense that "arises during the commission of" but is not one of the offenses qualifying for direct file treatment may either be tried in youth court or "transferred" [sic] to district court upon the county attorney's motion and the district court's order.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	12/16	12—Deliberate homicide, mitigated deliberate homicide, the attempt to commit either, or accountability for the commission of either.
		16—Negligent homicide, attempted negligent homicide, or accountability for negligent homicide.
Person	12/16	12—Sexual intercourse without consent.
		16—Aggravated or felony assault, robbery, aggravated kidnapping; the attempt to commit any of the above offenses; accountability for any of the above offenses; use of threat or violence to coerce criminal street gang membership.
Property	16	Arson, burglary or aggravated burglary; the attempt to commit any of these offenses or accountability for any of these offenses.
Drug	16	Criminal sale, production, or manufacture of dangerous drugs; the attempt to commit any of these offenses, or accountability for any of these offenses.
Weapon	16	Possession, attempt to possess, or accountability for the possession of explosives.

## Statutory Exclusion

Montana Code Sec. 41-5-206

The prosecutor must petition the district court for leave to file charges against a child of at least 17 accused of various enumerated offenses. The district court must grant the county attorney leave to file there if it finds both that there is probable cause to believe the child committed the alleged offense and "that, considering the seriousness of the offense and in the interests of community protection, the case should be filed in the district court."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	17	Deliberate homicide, mitigated deliberate homicide, the attempt to commit either, or accountability for the commission of either; negligent homicide, attempted negligent homicide, or accountability for negligent homicide.
Person	17	Aggravated or felony assault; robbery; aggravated kidnapping; the attempt to commit any of the above offenses; accountability for any of the above offenses; use of threat or violence to coerce criminal street gang membership; sexual intercourse without consent.
Property	17	Arson, burglary or aggravated burglary; the attempt to commit any of these offenses, or accountability for any of these offenses.
Drug	17	Criminal sale, production, or manufacture of dangerous drugs; the attempt to commit any of these offenses, or accountability for any of these offenses.



# Nebraska

Lower Age: None specified

Upper Age: 17

## Direct File

Neb. Rev. Stat. Sec. 43-27

Sec. 43-276

The juvenile court's jurisdiction is concurrent with those of the district/county courts in cases that meet age/offense criteria. The law specifies a number of factors (including, among many others, "the best interests of the juvenile and the security of the public") that must be considered by the county attorney in deciding how to file.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	16	Any nontraffic misdemeanor.
Certain Felonies	None specified	Any felony.

## Reverse Waiver

Neb. Rev. Stat. Sec. 43-261

Sec. 29-1816

Sec. 43-276

When a juvenile is charged in criminal court (see Direct File), the juvenile may move the court, orally or in writing, to waive jurisdiction to the juvenile court. If the county attorney does not object, the case may be transferred without any formal findings. Otherwise, after a hearing in which both sides present evidence bearing on the same considerations that the county attorney was required to take into account in making the original filing decision (see Direct File), the court must transfer the case "unless a sound basis exists for retaining jurisdiction." The court must set forth findings for its decision, but the grant or denial of a transfer is not immediately appealable.

# Nevada

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Nev. Rev. Stat. Sec. 62.080

Sec. 62.081

If a child accused of a felony was at least 14 at the time of the alleged offense, a juvenile court may, upon motion of the district attorney, either retain jurisdiction of the case or certify the child for criminal proceedings. The law does not specify grounds for certification or factors to be considered in such cases. A child certified for one offense will also be tried as an adult for any other offense arising out of the same facts, regardless of its nature.

In addition, a child of at least 14 who escapes or attempts to escape from a juvenile facility may be certified for trial as an adult for the escape or attempted escape as well as any related offense arising out of it, provided either (1) the child was placed in the facility in the first place after being charged with or adjudicated delinquent for a felony or (2) the escape or attempted escape involved the use of a dangerous weapon.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Any felony; escape or attempted escape from a juvenile facility, if (1) the child was placed in the facility in the first place after being charged with or adjudicated delinquent for a felony or (2) the escape or attempted escape involved the use of a dangerous weapon.

## Presumptive Waiver

Nev. Rev. Stat. Sec. 62.080

Upon the district attorney's motion in the case of a child meeting age/offense criteria, the juvenile court must certify the child for adult prosecution unless it finds, by clear and convincing evidence, that "the child's actions were substantially the result of his substance abuse or emotional or behavioral problems and such substance abuse or problems may be appropriately treated through the jurisdiction of the juvenile court." A child certified for one offense will also be tried as an adult for any other offense arising out of the same facts, regardless of its nature.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	14	Any offense or attempted offense involving the use or threatened use of a firearm.
Person	14	Sexual assault involving the use or threat of force.

## Statutory Exclusion

Nev. Rev. Stat. Sec. 62.040(2)

Certain defined offenses are not deemed "delinquent acts" and thus are not within the juvenile court's jurisdiction.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	None specified	Any offense committed by a person with a previous criminal conviction.
Murder	None specified	Murder, attempted murder, or any related offense arising out of the same facts.
Person	16	Sexual assault or attempted sexual assault committed by a child with a previous felony adjudication, or any related offense arising out of the same facts.
Weapon	16	Any offense or attempted offense committed by a child with a previous felony adjudication and involving use or threatened use of a firearm, or any related offense arising out of the same facts.

## Reverse Waiver

Nev. Rev. Stat. Sec. 62.080(4)

A child certified for adult prosecution may petition the adult court for transfer back to juvenile court "upon a showing of exceptional circumstances." Once the case is transferred back, the juvenile court must also "determine whether the exceptional circumstances warrant accepting jurisdiction."

## **Once an Adult, Always**

Nev. Rev. Stat. Sec. 62.040(2)(d)

Any offense committed by a child who has previously been convicted as an adult is not deemed to be a "delinquent act" coming under the juvenile court's jurisdiction. (See Statutory Exclusion.)

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# New Hampshire

Lower Age: None specified

Upper Age: 16

## Discretionary Waiver

NHS Tit. XII, Sec. 169-B:24

Sec. 628:1

The case of a child 15 or older charged with any felony, or that of a child of at least 13 charged with one of a list of specified felonies, may be transferred to superior court following a transfer hearing at which the child is entitled to the assistance of counsel. The juvenile court must consider a number of criteria in making the transfer determination, and any transfer order must be supported by "a written statement of findings and reasons." Following a transfer order, if the case is "accepted by the superior court," that court "may dispose of all criminal charges arising out of the incident which led to" the transfer.

If the petition for transfer to superior court is filed by a child of at least 16, the juvenile court may transfer the child without making the findings that would otherwise be required.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	15	Any felony.
Murder	13	First and second degree murder, manslaughter, attempted murder.
Person	13	First and second degree assault, kidnapping, aggravated felonious sexual assault, criminal restraint, class A felony robbery.

## Presumptive Waiver

NHS Tit. XII, Sec. 169-B:24(IV)

In cases that meet statutory age/offense/prior record criteria, the law creates a presumption that the factors that must be considered by the juvenile court in ruling on a transfer petition support a transfer to the superior court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	15	Any felony committed by a child with at least 4 separate delinquency adjudications.
Murder	15	First and second degree murder, manslaughter, attempted murder.
Person	15	First degree assault; second degree assault (except when it consists merely of purposely or knowingly injuring a child under 13); kidnapping; aggravated felonious sexual assault; criminal restraint; class A felony robbery.
Drug	15	Manufacturing, selling, prescribing, administering, or transporting controlled drugs in specified quantities, or possessing them with intent to sell, dispense, or compound them.

## Direct File

NHS Tit. XII, Sec. 169-B:25

A special provision applies to a child of 17 who is charged with a felony but is outside the State's jurisdiction. In such a case, the county attorney or attorney general may file a petition with the municipal or district court that would otherwise have jurisdiction, setting forth the nature of the offense and asking to be allowed to bring regular criminal proceedings as though the child were an adult. The court "may summarily authorize" this procedure. (However, the superior court must subsequently—presumably after the child has been brought back into the State—hold a hearing to determine whether the child should be treated as a child or an adult; see Reverse Waiver.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	17	Any felony committed by a juvenile who is currently outside the State's jurisdiction.

## **Reverse Waiver**

NHS Tit. XII, Sec. 169-B:25

In the special case of a child of 17 who is charged with a felony but is outside the State's jurisdiction, and against whom the county attorney or attorney general has been "summarily" authorized to proceed as though the child were an adult, the superior court must subsequently (presumably after the child has been brought back into the State) hold a hearing to determine "whether such person shall be treated as a juvenile under the provisions of this section or whether the case shall be disposed of according to regular criminal procedures."

## **Once an Adult, Always**

NHS Tit. XII, Sec. 169-B:27

A child who has been tried and convicted as an adult is thereafter treated as an adult in connection with any criminal offense with which the child may be charged.

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# New Jersey

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

NJS Sec. 2A:4A-26

On motion of the prosecutor, the juvenile court may waive jurisdiction over a child of at least 14 who meets statutory offense/record criteria, if it finds (1) that there is probable cause to believe the child committed the alleged offense and (2) that the State has proven "that the nature and circumstances of the charge or the prior record of the juvenile are sufficiently serious that the interests of the public require waiver." Whether the court grants or denies the motion, it must state its reasons in writing. If the motion is granted, the order referring the case for adult prosecution covers not only the main offense but all other offenses arising out of or related to the same transaction.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	14	Any crime committed by a person previously adjudicated delinquent for/convicted of any of a number of listed offenses (criminal homicide other than death by auto, strict liability for a drug-induced death, first degree robbery, aggravated sexual assault, sexual assault, second degree aggravated assault, kidnapping, or aggravated arson); any crime committed by a person previously confined in an adult penal institution; any crime that is part of a continuing criminal activity in concert with at least two others where circumstances indicate that the offender "knowingly devoted himself to criminal activity as a source of livelihood."
Murder	14	Death by auto if the child was driving under the influence.
Person	14	Any offense against the person committed in an aggressive, violent, and willful manner, or any attempt or conspiracy to commit any such offense.
Property	14	Arson; any attempt or conspiracy to commit arson; auto theft.
Weapon	14	Unlawful possession of a firearm, destructive device, or other prohibited weapon, or any attempt or conspiracy to possess such a weapon.

## Presumptive Waiver

NJS Sec. 2A:4A-26(a)(3)

In a waiver hearing involving a child meeting age/offense criteria for presumptive waiver, the State need not make a showing that the public interest requires a waiver; the court need only find probable cause in order to waive jurisdiction. However, even in such a case, if the child "can show that the probability of his rehabilitation by the use of the procedures, services and facilities available to the court prior to...reaching the age of 19 substantially outweighs the reasons for waiver, waiver shall not be granted."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Criminal homicide other than death by auto, strict liability for a drug-induced death, or any attempt or conspiracy to commit these offenses.
Person	14	First degree robbery, aggravated sexual assault, sexual assault, second degree aggravated assault, kidnapping, or any attempt or conspiracy to commit these offenses.
Property	14	Aggravated arson or any attempt or conspiracy to commit aggravated arson.
Drug	14	Distribution of controlled substances for pecuniary gain while on or near school property or on a school bus, or any attempt or conspiracy to commit this offense.

# New Mexico

Lower Age:        None specified

Upper Age:        17

## Statutory Exclusion

New Mex. Stat. 1978, Sec. 32A-1-8

Sec. 32A-2-3

A "serious youthful offender"—that is, a child who is at least 15 and is indicted and bound over for first degree murder—is not a "delinquent child" coming within the juvenile court's jurisdiction.

[Note—New Mexico also has a "youthful offender" category for children of at least 14 who meet statutory offense/prior record criteria. Youthful offenders are "subject to adult or juvenile sanctions," but are still considered to be "delinquent children" subject to the exclusive original jurisdiction of the juvenile court.]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	15	First degree murder.

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# New York

Lower Age: 7

Upper Age: 15

## Statutory Exclusion

Penal Law Secs. 30.00, 70.05

Crim. Proc. Law Secs. 1.20, 180.75, 210.43

A child who meets statutory age/offense criteria is "criminally responsible" as a "juvenile offender," and thus is tried in superior court rather than family court. (A juvenile offender, while otherwise handled as an adult, enjoys somewhat more lenient sentencing treatment.) Initially, the child is arraigned in local criminal court, which must conduct a hearing to determine whether there is "reasonable cause" to believe the child committed an excluded offense. If so, the case is sent to the grand jury of the appropriate superior court; if not, assuming the local criminal court finds reasonable cause to believe the child committed some delinquent act falling short of exclusion, the case is removed to family court.

However, even where the local criminal court finds reasonable cause to believe the child committed an excluded offense, adult treatment is not entirely automatic. At the district attorney's request, the local criminal court may remove such a case to family court if, after considering a number of factors specified by law, it concludes that to do so would be "in the interests of justice." However, if the child is accused of certain enumerated serious crimes (second degree murder, first degree rape, first degree sodomy, or an armed felony), the court must also make one of the following additional findings: (1) mitigating circumstances directly bearing on the way the crime was committed; (2) relatively minor participation in the crime on the child's part; or (3) possible deficiencies in proof of the crime. In any case in which the court orders removal to family court, it must state its reasons for doing so on the record, "in detail and not in conclusory terms." Likewise, where the district attorney has consented to removal and such consent is required, the district attorney must state detailed reasons for consenting on the record.

The child may also request removal to family court, but only once the case has already, in one way or another, reached superior court (see Reverse Waiver).

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	13/14	13—Second degree murder.
		14—First degree manslaughter, attempted second degree murder.
Person	14	First degree kidnapping or the attempt, first degree assault, first degree rape, first degree sodomy, aggravated sexual abuse, or first or second degree robbery.
Property	14	First or second degree arson, first or second degree burglary.

## Reverse Waiver

Crim. Proc. Law Secs. 180.75, 210.43

The superior court may order removal of a statutorily excluded case if it finds, after consideration of various factors enumerated by statute, that "to do so would be in the interests of justice." In most cases, the court may order a removal on the motion of any party or on its own motion. (If the reasonable cause hearing in local criminal court has not commenced, the child may avoid it altogether and bring a motion in superior court to have the case removed to family court; otherwise, the child may make the motion after arraignment and upon indictment.) However, in the case of a child accused of second degree murder, first degree rape, first degree sodomy, or an armed felony, (1) the district attorney must give consent to the removal and (2) the court must also find either (A) mitigating circumstances directly bearing on the way the crime was committed, (B) relatively minor participation in the crime on the child's part, or (C) possible deficiencies in proof of the crime. In a case in which the district attorney's consent is required, the district attorney must give reasons for consenting on the record. Likewise, if the court orders removal to family court, it must state its reasons on the record "in detail and not in conclusory terms."

# North Carolina

Lower Age: 6

Upper Age: 15

## Discretionary Waiver

GSNC Sec. 7A-608

After notice and a hearing, the juvenile court may transfer a case to superior court if it finds there is probable cause to believe that a child of at least 13 committed a felony. Apart from the probable cause determination, the law says nothing further regarding grounds for such a transfer or factors to be considered.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	13	Any felony.

## Mandatory Waiver

GSNC Sec. 7A-608

After notice and a hearing, the juvenile court must transfer a case to superior court if it finds there is probable cause to believe that a child of at least 13 committed a Class A felony punishable by death or life imprisonment.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Capital	13	Class A felony punishable by death or life imprisonment.

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# North Dakota

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

N.D. Century Code Sec. 27-20-34

After notice and a hearing, the juvenile court must transfer a case meeting age/offense criteria to adult court if it determines that there are reasonable grounds to believe that (1) the child committed the delinquent act alleged; (2) the child is not amenable to treatment or rehabilitation through available juvenile programs; (3) the child is not treatable in a mental institution; and (4) the community interest requires that the child be placed under legal restraint. In addition, in the case of a 14- or 15-year-old, the court must find that (5) the child committed a delinquent act involving the infliction or threat of serious bodily harm. The law specifies various factors to be considered in making the determination regarding amenability to treatment and rehabilitation. (Note—In cases involving certain specified violent offenses and felonies committed by repeat offenders, the child carries the burden of proof on the amenability issue; see Presumptive Waiver.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	16	Any delinquent act.
Person	14	Any delinquent act involving the infliction or threat of serious bodily harm.

## Presumptive Waiver

N.D. Century Code Sec. 27-20-34

At a transfer hearing, the burden of proof on amenability to treatment or rehabilitation as a juvenile rests with any child who (1) is accused of various listed offenses or (2) is accused of any felony and has two or more previous felony adjudications.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Any felony committed by a child with at least 2 previous felony adjudications.
Murder	14	Manslaughter.
Person	14	Aggravated assault, robbery, arson involving an inhabited structure, escape involving the use of a dangerous weapon.

## Mandatory Waiver

N.D. Century Code Sec. 27-20-34

The juvenile court must transfer a case to adult court if (1) the child is at least 16 and requests the transfer or (2) the court finds probable cause that a child of at least 14 committed any of various listed offenses.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Murder or attempted murder.
Person	14	Gross sexual imposition or attempted gross sexual imposition by force or the threat of death, serious injury or kidnapping.
Drug	14	Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance (with exceptions for less than a pound of marijuana and certain gratuitous deliveries).

## Once an Adult, Always

N.D. Century Code Sec. 27-20-34(4)

A transfer (except one requested by the child) that is followed by a criminal conviction for the offense giving rise to the transfer terminates the juvenile court's jurisdiction over the child with respect to any future offense.

# Ohio

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

ORC Tit. XXI, Sec. 2151.26

Sec. 2151.23(H)

When a child of at least 14 is charged with a felony, the juvenile court, after investigation and a hearing, may transfer the case for criminal prosecution if it finds that (1) there is probable cause to believe the child committed the offense alleged and (2) there are reasonable grounds to believe that (a) the child is not amenable to care or rehabilitation in any facility for delinquent children and (b) the "safety of the community may require that the child be placed under legal restraint," if necessary for a period extending beyond the child's majority. The required prehearing investigation includes a mental examination of the child, unless competently waived or refused. The law lists various factors that must be considered in making the transfer determination. Once a case is transferred, the adult criminal court has jurisdiction to convict the child for the offense that formed the basis of the transfer, any lesser included offense, or "another offense that is different from the offense charged."

[Note—When a child alleged to have committed an offense requiring a mandatory transfer as well as an offense that is subject to discretionary transfer, the juvenile court is authorized to transfer the discretionary offense along with the mandatory one, without any investigation or special findings beyond a probable cause determination; see Mandatory Waiver.]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Any felony.

## Mandatory Waiver

ORC Tit. XXI, Sec. 2151.26

Following a hearing to determine probable cause, the juvenile court "shall transfer" the case of any child who meets statutory age/offense/prior record criteria. If the same child is alleged to have committed two offenses, one of which comes within statutory criteria for mandatory transfer, and the other of which comes within statutory criteria for a discretionary transfer, and motions to transfer are filed in both instances, the juvenile court must first make a determination regarding transfer of the mandatory offense; if it finds that the mandatory transfer provisions apply, it may also transfer the discretionary offense, assuming it finds probable cause, without regard to the factors it would otherwise be required to consider before making a discretionary transfer, without any investigation, and without making any determination regarding the child's rehabilitative prospects or the public safety.

Once a case is transferred, the adult criminal court has jurisdiction to convict the child for the offense that formed the basis of the transfer, any lesser included offense, or "another offense that is different from the offense charged."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	14	Any offense committed by a child previously transferred and convicted of a felony in adult court; any offense committed by a child whose domicile is in another State, if the offense would be an excluded offense in that State.
Murder	14/16	14—Aggravated murder, murder, or the attempt to commit aggravated murder or murder, if the accused was previously placed in department of youth services custody following a delinquency adjudication for (1) any of the above ("category 1 offenses") or (2) voluntary manslaughter, first degree involuntary manslaughter, kidnapping, aggravated arson, aggravated robbery, aggravated burglary, rape, or the former crime of felonious sexual penetration ("category 2 offenses").  16—Aggravated murder, murder, or the attempt to commit aggravated murder or murder; also voluntary or first degree involuntary manslaughter, if committed (1) with a firearm or (2) by a child previously placed in department of youth services custody following a delinquency adjudication for a "category 1" or "category 2" offense.
Person	16	Rape or aggravated robbery committed (1) with a firearm or (2) by a child previously placed in department of youth services custody following a delinquency adjudication for a "category 1" or "category 2" offense.
Property	16	Aggravated arson or aggravated burglary, if committed (1) with a firearm or (2) by a child previously placed in department of youth services custody following a delinquency adjudication for a "category 1" or "category 2" offense.

## Once an Adult, Always

ORC Tit. XXI, Sec. 2151.011(B)(6)

Once a child has been transferred to adult court and convicted of (or pleaded guilty to) any felony, he or she is thereafter "deemed not to be a child" in any case involving alleged offenses committed before or after the transfer, provided the juvenile court has not already disposed of them. Future complaints against the child must be filed initially in juvenile court, but the court's only role is to confirm the previous conviction and order a mandatory transfer to adult criminal court upon a finding of probable cause. (See Mandatory Waiver.)

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# Oklahoma

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Okla. Stat., Tit. 10, Sec. 7303-4.3

In the case of a child accused of any felony, the court may, on its own motion or that of the district attorney, first hold a preliminary hearing "to determine whether there is prosecutive merit" in the charges and, if so, following an investigation, conduct a further hearing to determine whether the child should be certified for trial as an adult. The law specifies various factors to be considered in making the latter determination, which must be supported by clear and convincing evidence.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	None specified	Any felony.

## Direct File

Okla. Stat., Tit. 10, Secs. 7306-2.1--7306-2.12

When a child meets statutory age/offense criteria for "youthful offender" status, the district attorney may, after a preliminary investigation conducted by the Department of Juvenile Justice or the county juvenile bureau, file either a delinquency petition or criminal charges against the child. If the district attorney elects to file criminal charges under the Youthful Offender Act, "[a]ll proceedings shall be as for a criminal action;" however, following a conviction, different sentencing provisions apply.

The district attorney must use the youthful offender procedures if the child has previously been prosecuted and sentenced as a youthful offender; see *Once an Adult/Always an Adult*.

After the district attorney has elected to file criminal charges, and before the preliminary hearing, the accused youthful offender may move the court to be "reverse certified" to the juvenile system; see *Reverse Waiver*.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	15	Second degree murder; first degree manslaughter.
Person	15/16	15—Kidnapping for the purpose of extortion; armed robbery/attempted armed robbery; first degree rape/attempted first degree rape; rape by instrumentation/attempted rape by instrumentation; forcible sodomy; lewd molestation; shooting with intent to kill.  16—Aggravated assault and battery of a police officer; witness intimidation; assault or assault and battery with a deadly weapon; maiming; second degree rape.
Property	15/16	15—First degree arson/attempted first degree arson.  16—First degree burglary/attempted first degree burglary; second degree burglary after two or more delinquency adjudications for first degree burglary or residential second degree burglary.
Drug	16	Trafficking in or manufacturing illegal drugs.
Weapon	15	Discharging a firearm or other weapon from a vehicle.

## Statutory Exclusion

Okla. Stat. Tit. 10, Sec. 7306-2.5

A child of at least 13 charged with first degree murder "shall be held accountable for his acts as if he were an adult." A case against such a child is commenced with the filing of criminal charges. (Note, however, that except where a child has previously been certified for adult trial or adult sentencing, the court may order the child certified as a juvenile or youthful offender; see *Reverse Waiver*.)

[Note—Sec. 7306-1.1, which formerly provided for statutory exclusions of selected offenses from juvenile jurisdiction, now applies only to offenses committed before 1998.]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	13	First degree murder.

## Reverse Waiver

Okla. Stat., Tit. 10, Sec. 7306-2.5

Sec. 7306-2.6

A child charged with first degree murder as an adult (see Statutory Exclusion) may file a "motion for certification as a youthful offender or a juvenile before the start of the criminal preliminary hearing." Likewise, a child charged as a youthful offender (see Direct File) "may file a motion for certification to the juvenile system before the start of the criminal preliminary hearing." (In the latter case, where a child has been charged as a youthful offender, the court may also hold a "reverse certification" hearing on its own motion at the conclusion of the preliminary hearing.) In either instance, once a motion to certify has been filed, the child's whole juvenile record must be made available to both sides. At the conclusion of the State's case at the preliminary hearing, the child may offer evidence in support of reverse certification. The court must rule on the motion before binding the child over for trial, giving consideration to a list of "guidelines." [Note—The guidelines applicable to reverse certification of those charged as youthful offenders are almost but not quite identical to the guidelines applicable to the reverse certification of those charged as adults.] The court's certification decision need not address each of the guidelines individually, but must state that the court considered them in deliberating over its decision. An order granting or denying the motion for certification is immediately appealable.

## Once an Adult, Always

Okla. Stat., Tit. 10, Sec. 7303-4.3

Sec. 7306-2.4

A child must be tried as an adult in all subsequent criminal proceedings (and may not be "reverse certified") if any of the following applies: (1) The child was previously certified to stand trial as an adult, or was tried as an adult following the denial of a "reverse certification" motion, and was subsequently convicted or had the imposition of judgment and sentencing against him deferred. (2) The child, in a previous youthful offender proceeding, was certified for adult sentencing and was subsequently convicted or had the imposition of judgment and sentencing against him deferred. (Certification for imposition of adult sentencing is a special procedure available in youthful offender proceedings upon the district attorney's motion.) (3) The child is at least 17 and has been tried and convicted as an adult in another State, or has had the imposition of judgment and sentencing against him deferred.

In addition, a child who has previously been prosecuted and sentenced as a youthful offender must be prosecuted as a youthful offender in all subsequent proceedings.

# Oregon

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

1997 ORS Tit. 34, Sec. 419C.340

Sec. 419C.349

Sec. 419C.352

Sec. 419C.355

Sec. 419C.358

Sec. 419C.361

In a case meeting statutory age/offense criteria, the juvenile court may, after a hearing, waive a child to a circuit, justice, or municipal court for prosecution as an adult if it finds (1) that the child at the time of the alleged offense was sophisticated and mature enough "to appreciate the nature and quality of the conduct involved" and (2) that, taking into consideration a number of factors specified by statute, the preponderance of the evidence indicates that retaining jurisdiction "will not serve the best interests of the youth and of society and therefore is not justified." A waiver determination must be supported by "specific, detailed, written findings of fact." No waiver is allowed in the case of a child under 15 unless the child is represented by counsel during the waiver proceedings. If a case is waived for adult prosecution, nonwaivable offenses arising out of the same act or transaction are consolidated with the waivable charge; however, if the child is convicted only of a nonwaivable offense, the case must be returned to juvenile court for disposition.

[Note—The law still provides that the case of a child of at least 15 accused of murder or aggravated murder is waivable, but this category has apparently been superseded by a separate statute specifically requiring that 15-year-olds accused of murder or aggravated murder be prosecuted as adults.]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	15	Class A or B felony; escape.
Murder	None specified	Murder or aggravated murder.
Person	None	None specified—First degree rape, first degree sodomy, first degree unlawful sexual penetration.  15—Third degree assault, coercion, third degree robbery.
Property	15	Second degree arson.

## Statutory Exclusion

1997 ORS Tit. 14, Sec. 137.707

A child of at least 15 accused of any of a number of listed offenses "must be prosecuted as an adult in criminal court." When a child is charged with an excluded offense, other offenses based on the same act or transaction must be consolidated with it for trial; however, on motion of either party claiming to be prejudiced by consolidation, the court may order separate trials or other relief.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	15	Murder or aggravated murder, attempt or conspiracy to commit murder or aggravated murder, first or second degree manslaughter.
Person	15	First or second degree assault, first or second degree kidnapping, first or second degree rape, first or second degree sodomy, first or second degree unlawful sexual penetration, first degree sexual abuse, first or second degree robbery, first degree arson involving a threat of serious physical injury, using a child in a display of sexually explicit conduct, or compelling prostitution.

## Reverse Waiver

1997 ORS Tit. 14, Sec. 137.707

1997 ORS Tit. 34, Sec. 419C.361

Following a discretionary waiver in juvenile court, the adult "court of waiver" must return the case to the juvenile court unless charges of an appropriate waivable offense are filed in the court of waiver. (In addition, if a waived child or a child charged with an excluded offense is only convicted of a nonwaivable offense, the adult court must return the case to the juvenile court for disposition.)

When a child who was originally charged with an excluded offense is convicted of a consolidated or lesser included offense that is merely waivable, the adult court must, upon motion of the district attorney, conduct a hearing to determine whether to retain sentencing jurisdiction or transfer the case to juvenile court for disposition. The court must make its determination on the basis of the same criteria as those a juvenile court uses in a discretionary waiver hearing.

### **Once an Adult, Always**

1997 ORS Tit. 34, Sec. 419C.364

Sec. 419C.367

Sec. 419C.355

Once the juvenile court has waived a child of at least 16 to an adult court, it may also "enter a subsequent order providing that in all future cases involving the same youth, the youth shall be waived to the appropriate court without further proceedings." However, the juvenile court may vacate the order in any case and at any time, and must vacate if the child is not convicted in the waived case that occasioned the order, or if the order is not supported by "specific, detailed, written findings of fact."

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# Pennsylvania

Lower Age: 10

Upper Age: 17

## Discretionary Waiver

42 Pa. C. S. Sec. 6355

When a child of at least 14 is accused of a felony, the juvenile court, after a hearing, may transfer the case for criminal prosecution if it finds that (1) there is a prima facie case that the child committed the offense alleged and (2) there are "reasonable grounds to believe" that (a) "the public interest is served" by the transfer and (b) the child is not subject to commitment to a mental institution. The law specifies a number of factors that must be considered in making the public interest determination— including the child's amenability to treatment, supervision, and rehabilitation, which must in turn be determined with reference to a long list of subfactors. Except under certain special circumstances (see Presumptive Waiver), the Commonwealth has the burden of establishing by a preponderance of the evidence that the public interest would be served by a transfer and that the child is not amenable to treatment, supervision, and rehabilitation. The court's decision to grant or deny a transfer is not immediately appealable.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Any felony.

## Presumptive Waiver

42 Pa. C. S. Sec. 6355(g)

The burden of establishing by a preponderance of the evidence that the public interest would not be served by a transfer and that the child is amenable to treatment, supervision, and rehabilitation rests with the child rather than the Commonwealth where a prima facie case is made out that (1) a child of at least 14 used a deadly weapon in the commission of a felony or (2) a child of at least 15 committed any offense that would be excluded from the definition of "delinquent act" (see Statutory Exclusion) if it had been committed with a deadly weapon.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Any felony in which a deadly weapon was used.
Murder	15	Attempted murder; voluntary manslaughter or the attempt, conspiracy, or solicitation to commit it.
Person	15	Rape, involuntary deviate sexual intercourse, aggravated assault, robbery, robbery of a motor vehicle, aggravated indecent assault, kidnapping, or any attempt, conspiracy, or solicitation to commit any of these offenses.

## Statutory Exclusion

42 Pa. C. S. Sec. 6302

The definition of the term "delinquent act" excludes the crime of murder as well as a number of other offenses meeting age/offense/prior record criteria.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	None	None specified—Murder.  15—Voluntary manslaughter or the attempt, conspiracy, or solicitation to commit murder or voluntary manslaughter, if (1) a deadly weapon was used or (2) the child was previously adjudicated delinquent for rape, involuntary deviate sexual intercourse, robbery, robbery of a motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, or any attempt, conspiracy, or solicitation to commit murder or any of these offenses.
Person	15	Rape, involuntary deviate sexual intercourse, aggravated assault, robbery, robbery of a motor vehicle, aggravated indecent assault, kidnapping, or any attempt, conspiracy, or solicitation to commit any of these offenses if a deadly weapon was used; also any of the above offenses (except aggravated assault) if committed by a child who was previously adjudicated delinquent for one of the same offenses, or for voluntary manslaughter or the attempt, conspiracy, or solicitation to commit murder or voluntary manslaughter.

## Reverse Waiver

42 Pa. C. S. Sec. 6322

## Pennsylvania's Transfer Laws

If a child accused of an excluded offense (see Statutory Exclusion) files a petition requesting a transfer from criminal to juvenile court and establishes by a preponderance of the evidence that a transfer will serve the public interest, the court may order such a transfer. The court must make the transfer determination after considering the same factors that bear on a juvenile court's decision to transfer a case for criminal prosecution (see Discretionary Waiver). Any transfer order must be supported by "specific references to the evidence," and is subject to expedited appellate review. Once a case has been transferred from adult criminal court, the juvenile court may not retransfer it to adult court.

### **Once an Adult, Always**

42 Pa. C. S. Sec. 6302

The term "delinquent act" does not include a crime committed by a child who has been found guilty in a criminal proceeding of anything other than a summary offense.

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# Rhode Island

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Gen. Laws R.I., Sec. 14-1-7

Sec. 14-1-7.1

Upon motion by the attorney general in a case involving a child meeting statutory age/offense criteria, the family court must conduct a hearing to determine whether or not to waive jurisdiction over the child. At the conclusion of the hearing, the court may waive jurisdiction and refer the child to the appropriate adult court if it finds that the attorney general has proven by a preponderance of the evidence that (1) there is probable cause to believe the child committed the offense alleged (assuming this has not already been established at a previous hearing) and (2) in view of the child's record or treatment history or the heinous or premeditated nature of the offense, "the interests of society or the protection of the public necessitates the waiver of jurisdiction." A waiver covers not only the offense upon which the waiver motion was based, but all other pending or subsequent offenses of which the child is accused; however, if the child is acquitted of the offense upon which the waiver was based, the blanket waiver must be vacated.

[Note—An alternative course called "certification" is open to the family court, and in fact the court is authorized to consider certification whenever presented with a motion for waiver. A child of any age charged with a felony may be certified if the court, in addition to probable cause and public interest/protection findings resembling those called for in a waiver proceeding, also finds rehabilitation unlikely during the period of the court's usual jurisdiction. A child who has been certified remains in family court, but is afforded the right to a jury trial and, if convicted, may be sentenced to prison time to be served upon reaching 21. A 16-year-old who is accused of a drug felony and has already been adjudicated for another drug felony committed since turning 16 must either be waived or certified. The same is true of a 16-year-old who is accused of any felony and has already been adjudicated for two indictable offenses committed since turning 16. However, these provisions do not qualify as mandatory waiver requirements, since in any given case the certification option may keep the child within the family court's jurisdiction.]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	16	Any felony.
Capital	None specified	Any offense punishable by life imprisonment.

## Presumptive Waiver

Gen. Laws R.I., Sec. 14-1-7.3

A family court's previous certification of a child (see note, Discretionary Waiver) constitutes presumptive evidence of the child's nonamenability to treatment. Accordingly, if the child is accused of a subsequent offense, the court must waive jurisdiction unless the child presents clear and convincing evidence rebutting the presumption.

## Mandatory Waiver

Gen. Laws R.I., Sec. 14-1-3

The term "adult" is defined to include a 17-year-old charged with any of a list of offenses; such a person "shall not be subject to the jurisdiction of the family court" if, after a hearing, the family court determines that there is probable cause to believe that he or she committed the offense alleged.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	17	Murder.
Person	17	First degree sexual assault, first degree child molestation, assault with intent to commit murder.

## Once an Adult, Always

Sec. 14-1-7.3 Gen. Laws R.I., Sec. 14-1-7.1

The family court's waiver of jurisdiction over a child applies to all "pending and subsequent offenses of whatever nature" involving the same child; however, if the child is acquitted of the offense upon which the waiver was based, the blanket waiver "shall be vacated." (In addition, the family court's "certification" of a child constitutes presumptive evidence of the child's nonamenability to treatment; faced with a subsequent offense involving the same child, the court must waive jurisdiction unless clear and convincing evidence is presented to rebut the presumption. See Presumptive Waiver.)

# South Carolina

Lower Age: None specified

Upper Age: 16

## Discretionary Waiver

CLSC Sec. 20-7-7605

The case of a child who meets age/offense criteria may be transferred to the appropriate adult criminal court if the family court "considers it contrary to the best interest of the child or of the public to retain jurisdiction." [Note—In the case of 16-year-olds coming within the discretionary waiver provision, the law does not specify that the court's decision should be made "after full investigation and hearing," as it does for 14- and 15-year-olds; it says only "after full investigation."] In addition, at the request of the petitioner, a child of any age accused of murder or criminal sexual conduct may be transferred to adult court at the discretion of the family court; if the family court denies the request, the petitioner may appeal immediately to the circuit court, which also is given unfettered discretion to assert jurisdiction or yield it to the family court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	16	Misdemeanor, Class E or F felony, or felony punishable by maximum of no more than 10 years imprisonment.
Certain Felonies	14	Class A, B, C or D felony, or felony punishable by a maximum of at least 15 years imprisonment.
Murder	None specified	Murder.
Person	None	None specified—Criminal sexual conduct.  14—Assault and battery of a high and aggravated nature.
Drug	14	Distributing, selling, purchasing, manufacturing, or unlawfully possessing controlled substances with intent to distribute them on or near school property.
Weapon	14	Carrying weapons on school property; unlawful carrying of a pistol.

## Mandatory Waiver

CLSC Sec. 20-7-7605

A child of 14 or more accused of an offense carrying at least a 10-year sentence and previously adjudicated/convicted of similar offenses on two or more occasions "shall" be transferred to adult court. For purposes of the adjudication/conviction requirement, the second adjudication/conviction is counted only if commission of the offense occurs after imposition of the sentence for the first offense.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Offense punishable by imprisonment for at least 10 years, if committed by a child with at least 2 previous adjudications or convictions for similar offenses.

## Statutory Exclusion

CLSC Sec. 20-7-6605

As a result of the definition of "child" for purposes of family court jurisdiction, the cases of 16-year-olds charged with a range of felony offenses, together with any "additional or accompanying charges associated" with them, are excluded. (Note, however, that such excluded cases "may be remanded to the family court for disposition of the charge at the discretion of the solicitor"; see Reverse Waiver.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	16	Class A, B, C, or D felony, or felony punishable by a maximum of at least 15 years imprisonment.

## Reverse Waiver

CLSC Sec. 20-7-6605 Sec. 20-7-7605(3)

## South Carolina's Transfer Laws

When an action is brought in a circuit court that, in the court's opinion, falls within the family court's jurisdiction, the circuit court may transfer the action on its own motion or that of any party. In addition, statutorily excluded cases "may be remanded to the family court for disposition of the charge at the discretion of the solicitor," apparently without any hearing. (Accordingly, this is in some respects the functional equivalent of a direct file statute.)

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# South Dakota

Lower Age: 10

Upper Age: 17

## Discretionary Waiver

S.D. Cod. Laws Sec. 26-11-4

Whenever a child is accused of a felony, the circuit court may "permit such child to be proceeded against in accordance with the laws...governing the commission of crimes," following a hearing to determine whether failure to do so would be "contrary to the best interests of the child and of the public." (Note—Since South Dakota has a one-tier trial court system, proceedings against both adults and children take place in circuit court, with children petitioned as delinquents treated on the juvenile side and those charged as adults on the adult side. Accordingly, although the decision to allow a child to be prosecuted as an adult is designated a "transfer," no actual transfer out of circuit court occurs.) The law specifies various factors that "may" be considered in making this determination, among which is "prosecutive merit"; but the State is not required to show "probable cause" to get a transfer. At the hearing, the court may not take into account any written report or other document relating to the child unless the author appears and is subject to cross-examination.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	None specified	Any felony.

## Statutory Exclusion

S.D. Cod. Laws Sec. 26-11-3.1

A child of at least 16 who is charged with a class A or B, class 1 or 2 felony "shall be tried in circuit court as an adult." (Note—South Dakota has a one-tier trial court system, under which the cases of both children and adults are handled in circuit court; see Discretionary Waiver.) However, such a child may request a hearing "to determine if it is in the best interest of the public that the child be tried in circuit court as an adult"; see Reverse Waiver.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	16	Class A or B, Class 1 or 2 felonies.

## Reverse Waiver

S.D. Cod. Laws Sec. 26-11-3.1

A child who is at least 16 and is accused of a class A or B, class 1 or 2 felony—and thus is subject to trial in circuit court as an adult (see Statutory Exclusion)—may request a hearing "to determine if it is in the best interest of the public that the child be tried in circuit court as an adult." (While the law designates this a "transfer" hearing, in fact South Dakota has a one-tier trial court system, with the cases of both adults and children handled in circuit court; accordingly, the issue is not whether to move the child's case out of circuit court, but rather how to treat it there.) The hearing resembles a hearing to determine whether the court should exercise its discretion to allow adult prosecution of a child accused of a felony (see Discretionary Waiver), except that (1) only the public interest is at issue, not the interests of the public and the child, and (2) there is a rebuttable presumption that the public would be better served by trying the child as an adult.

## Once an Adult, Always

S.D. Cod. Laws Sec. 26-11-4

If the circuit court permits a child to be prosecuted as an adult on the basis of a finding that doing so "is in the best interest of the child and of the public," and the child is thereafter convicted of the offense, "the finding is definitive, during the balance of the child's minority, as to the subsequent commission of any crime."

# Tennessee

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Tenn. Code Sec. 37-1-134

Following a hearing, a child meeting age/offense criteria may be transferred to adult criminal court if the juvenile court finds that there are reasonable grounds to believe that (1) the child committed the offense alleged, (2) the child is not committable to a mental institution, and (3) the interests of the community require that the child be placed under legal restraint. The law lists various factors to be considered by the court in making these findings. Generally, the juvenile court's decision is not immediately appealable; however, if a nonlawyer makes the decision to transfer the case, a special provision entitles the child to an immediate de novo rehearing at the criminal court level. (See Reverse Waiver.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	16	Any criminal offense.
Murder	None specified	First or second degree murder or the attempt.
Person	None specified	Rape, aggravated rape, aggravated or especially aggravated robbery, kidnapping, aggravated or especially aggravated kidnapping, or the attempt to commit any of these offenses.

## Reverse Waiver

Tenn. Code Sec. 37-1-159

A child who has been transferred from juvenile court by the decision of a nonlawyer is entitled to an immediate rehearing on the transfer issue at the criminal court level, provided he files a motion for rehearing within 10 days of the transfer order. The rehearing is de novo—the issue, the standards, and the factors to be considered are the same as at the juvenile court level, and the criminal court need not give any weight to the juvenile court's original decision. Following the hearing, the criminal court may either accept jurisdiction or remand the case to the juvenile court. If the court remands, the State may appeal immediately on the ground of abuse of discretion; otherwise, the appeal of the court's decision must await a final conviction.

## Once an Adult, Always

Tenn. Code Sec. 37-1-134

A transfer to adult court terminates juvenile court jurisdiction over the child for any subsequent offense, unless the transfer is followed by an acquittal or a dismissal of the charge that resulted in the transfer.

# Texas

Lower Age: 10

Upper Age: 16

## Discretionary Waiver

Family Code, Sec. 54.02

The juvenile court may waive its exclusive original jurisdiction over a child who meets age/offense criteria if it finds, after a full investigation and hearing, that (1) there is probable cause to believe the child committed the offense alleged and (2) because of the offense's seriousness or the child's background the welfare of the community requires a transfer for criminal proceedings. The prehearing investigation must include a diagnostic study, a social evaluation, and an investigation of the child, his circumstances, and the circumstances surrounding the offense. The law recites various factors that must be considered in making the transfer determination. If the court transfers (or retains) jurisdiction over one offense, it must likewise transfer (or retain) jurisdiction over all others arising out of the same criminal transaction. Once the juvenile court transfers jurisdiction of a case, the adult criminal court may not remand it.

[Note—Lesser standards apply to the transfer of someone who is already 18 but is accused of an offense committed as a juvenile, as long as the State shows that it exercised due diligence.]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14/15	14—First degree felony.
		15—Second or third degree felony or State jail felony.
Capital	14	Capital felony.
Drug	14	Aggravated controlled substance felony.

## Statutory Exclusion

Family Code, Sec. 51.03

A jurisdictional provision specifies that "nothing in [the Juvenile Justice Code] prevents criminal proceedings against a child for perjury."

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	None specified	Perjury.

## Once an Adult, Always

Family Code, Sec. 54.02(m) and (n)

If a child has previously been transferred to adult court, the juvenile court must waive jurisdiction over any subsequent felony offense, without the elaborate investigation required in connection with discretionary waivers, unless the child was acquitted or not indicted, won a dismissal with prejudice, or had his conviction reversed on a final appeal in the previous case.

# Utah

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Utah Code Sec. 78-3a-603

Sec. 78-3a-502(3)

A case involving a child of at least 14 who is alleged to have committed a felony may be commenced in juvenile court with the filing of criminal charges (rather than a delinquency petition) and a motion requesting certification; under these circumstances, the juvenile court must hold a preliminary hearing to determine whether to certify the child for adult prosecution in district court. At the hearing, the State has the burden of showing that there is probable cause to believe that the child committed the offense alleged, but this is not necessary if the prosecutor has already secured an indictment from a grand jury. The State must also show, by a preponderance of the evidence, that "it would be contrary to the best interests of the minor or of the public" for the court to retain jurisdiction. The law specifies a number of factors that must taken into account in making this determination, but adds that the amount of weight to be given each factor is discretionary with the court. The court may consider reports and other written materials relating to the child in making its decision, but at the request of any interested party the authors of such materials must appear at the hearing and submit to questioning. If the court orders the child certified to the district court for criminal proceedings, the juvenile court's jurisdiction over the child is terminated with regard to the certified offense, any other offense arising from the same criminal episode, and any subsequent offense; however, the juvenile court regains jurisdiction over the child upon an acquittal, a not guilty finding, or a dismissal of the charges in district court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Any felony.

## Presumptive Waiver

Utah Code Sec. 78-3a-602

A case meeting statutory age/offense/special conditions criteria must be commenced with the filing of criminal charges in juvenile court. The State has the initial burden of establishing probable cause to believe that the child committed the offense alleged, unless it has already secured an indictment against the child, rendering a probable cause finding unnecessary; in any case, where appropriate the State must also satisfy the court that any additional statutory conditions—relating to use of a weapon and prior record—are met. At that point the juvenile court must order the child bound over to district court for prosecution as an adult, unless the child presents evidence that (1) the child has no previous felony adjudications involving use of a dangerous weapon; (2) if there are codefendants, the child is the least culpable among them; and (3) the child's part in the offense was not performed in a violent, aggressive, or premeditated manner. Only if the court finds by clear and convincing evidence that these conditions are satisfied may it retain jurisdiction over the child, treating the criminal charges as though they were a juvenile petition. When considering whether to bind over a child charged with multiple offenses, the juvenile court must make probable cause determinations regarding not only the offenses that qualify for transfer, but all offenses arising from the same criminal episode, and any subsequent offenses charged against the child; if the child is to be bound over, it must be for all of the offenses for which the court finds probable cause.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	16	Any felony involving the use of a dangerous weapon, if previously adjudicated/convicted of a felony involving use of a dangerous weapon.
Murder	16	Attempted murder, attempted aggravated murder.
Person	16	Aggravated assault involving intentionally causing serious bodily harm; aggravated kidnapping; aggravated robbery; aggravated sexual assault.
Property	16	Aggravated arson, aggravated burglary.
Weapon	16	Discharge of a firearm from a vehicle.

## Statutory Exclusion

Utah Code Sec. 78-3a-601

The district court is given "exclusive original jurisdiction" over specified age/offense categories.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	16	Any felony committed by someone previously confined in a secure facility.

## **Once an Adult, Always**

Utah Code Sec. 78-3a-603

Once a child is certified for adult prosecution or has criminal charges filed against him in adult court, the juvenile court's jurisdiction over the child is terminated with regard to that offense, any other offense arising from the same criminal episode, and any subsequent offense. However, the juvenile court regains jurisdiction over the child upon an acquittal, a not guilty finding, or a dismissal of the charge in district court.

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# Vermont

Lower Age: 10

Upper Age: 17

## Discretionary Waiver

Vermont Stat., Tit. 33, Sec. 5506

Upon motion of the State's attorney, and following a hearing, the juvenile court may transfer jurisdiction over a child meeting age/offense criteria to a court of criminal jurisdiction, if it finds that (1) there is probable cause to believe the child committed the alleged offense and (2) "public safety and the interests of the community would not be served" by treating the child as a juvenile. The law specifies various factors that may be considered in making the transfer determination. The order granting or denying transfer is not immediately appealable. A transfer terminates the juvenile court's jurisdiction over all the delinquent acts alleged in the original delinquency petition. (However, if the transferred child was less than 16 at the time of the alleged offense and is convicted only of a lesser included offense that would not itself have justified the transfer, the conviction is treated as a delinquency adjudication and the juvenile court reacquires jurisdiction for purposes of disposition.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	10	Murder, manslaughter, or arson causing death.
Person	10	Assault and robbery with a dangerous weapon or causing bodily injury, aggravated assault, kidnapping, maiming, sexual assault and aggravated sexual assault.
Property	10	Burglary of sleeping apartments in nighttime.

## Direct File

Vermont Stat., Tit. 33, Sec. 5505

As long as the offense is not one of those excluded by statute (see Statutory Exclusion) and the child was at least 16 at the time of commission, the State's attorney may also file in juvenile court or criminal court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	16	Any offense not subject to statutory exclusion.

## Statutory Exclusion

Vermont Stat., Tit. 33, Sec. 5502

Sec. 5506

A person alleged to have committed specified offenses after reaching the age of 14 "shall be subject to criminal proceedings as in cases commenced against adults," unless the case is transferred from adult to juvenile court. (See Reverse Waiver.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Murder, manslaughter, or arson causing death.
Person	14	Assault and robbery with a dangerous weapon or causing bodily injury, aggravated assault, kidnapping, maiming, sexual assault and aggravated sexual assault.
Property	14	Burglary of sleeping apartments in nighttime.

## Reverse Waiver

Sec. 5506 Vermont Stat., Tit. 33, Sec. 5505

Any case against a child that is initially filed in adult criminal court—because it involves either a child of at least 16 (and thus subject to direct-file discretion) or a child of at least 14 accused of an excluded offense—may be transferred to juvenile court. (The law does not state any grounds for such a transfer, standards to be observed, or factors to be considered.)

## Vermont's Transfer Laws

In addition, if a child tried as an adult was less than 16 at the time of the alleged offense and is convicted only of a lesser included offense (i.e., one that would not by itself have justified treatment as an adult), the conviction is treated as a delinquency adjudication and the juvenile court acquires jurisdiction for purposes of disposition.

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# Virginia

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Virginia Code Sec. 16.1-269.1(A)

Sec. 16.1-269.3

Sec. 16.1-269.4

On motion of the attorney for the Commonwealth in the case of a child of at least 14 accused of a felony, the juvenile court must hold a transfer hearing, following which the court may transfer the case to the circuit court if it finds that (1) there is probable cause to believe the child committed the alleged offense or any lesser included felony; (2) the child is competent to stand trial (with the burden of proof being on the party denying competence); and (3) the preponderance of the evidence indicates that the child "is not a proper person to remain within the jurisdiction of the juvenile court." The law lists a multitude of factors to be considered in making the "proper person" determination, but specifies that a transfer decision is not reversible merely because the court failed to consider any one of them. Either party may appeal the juvenile court's transfer/retention decision to circuit court immediately. The transfer of a case divests the juvenile court of jurisdiction over any allegations of delinquency arising from the same transaction that gave rise to the transfer.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Any felony.

## Mandatory Waiver

Virginia Code Sec. 16.1-269.1(B)

When a child of at least 14 is charged with murder in violation of specified provisions or aggravated malicious wounding, the juvenile court must hold a preliminary hearing to determine probable cause. If the court finds that there is probable cause to believe the child was of the proper age and committed the offense alleged, it must certify the charge, together with any ancillary charges, to the grand jury, after which its jurisdiction is terminated. (But note—If the juvenile court does not find probable cause, the attorney for the Commonwealth may then seek a direct indictment in circuit court.)

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Capital murder, first and second degree murder, and lynching.
Person	14	Aggravated malicious wounding.

## Direct File

Virginia Code Sec. 16.1-269.1(C)

When a child of at least 14 is charged with various listed violent felonies, the juvenile court must hold a preliminary hearing to determine probable cause if the attorney for the Commonwealth gives notice of intent to elect this procedure. Following a finding of probable cause to believe the child was of the proper age and committed the offense alleged, the juvenile court must certify the charge, together with any ancillary charges, to the grand jury, after which its jurisdiction is terminated. (But note—If the juvenile court does not find probable cause, the attorney for the Commonwealth may then seek a direct indictment in circuit court.)

On the other hand, in such a case the Commonwealth attorney may also elect not to give notice, and either seek a discretionary waiver or proceed with the case in juvenile court.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	14	Accidental homicide committed in the course of a felony.
Person	14	Felonious injury by mob, abduction, malicious wounding, malicious wounding of a police officer, felonious poisoning, adulteration of products, robbery, carjacking, rape, forcible sodomy, or sexual penetration with an object.

## Reverse Waiver

Virginia Code Sec. 16.1-269.6

Following an appeal from a discretionary transfer decision, the circuit court must determine whether the juvenile court substantially complied with the requirements for discretionary transfers (but without revisiting the probable cause determination); if not, it may remand the case to the juvenile court.

## **Once an Adult, Always**

Virginia Code Sec. 16.1-269.6

Sec. 16.1-271

A child's conviction as an adult terminates the juvenile court's jurisdiction over the child with respect to (1) any future criminal acts and (2) any pending allegations of delinquency.

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# Washington

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

RCW Sec. 13.40.110

Following a "decline hearing" held at the request of either party or on its own motion, the juvenile court may order the case of any child transferred for adult criminal prosecution, if it finds that the transfer "would be in the best interest of the juvenile or the public." However, in certain categories of cases the juvenile court must at least hold a decline hearing to consider a transfer, unless the parties, their counsel, and the court all affirmatively waive it: (1) where a child of at least 15 is accused of a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony; (2) where a child of at least 17 is accused of second degree assault, first degree extortion, indecent liberties, second degree child molestation, second degree kidnapping, or second degree robbery; and (3) where a child serving a minimum juvenile sentence to age 21 is accused of escape.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	None specified	Any criminal offense.

## Statutory Exclusion

RCW Sec. 13.04.030

Adult criminal court is given exclusive original jurisdiction over cases involving specified age/offense categories. In those categories requiring that the accused have a specified "criminal history," an alleged offense is included in a child's criminal history if (1) a court found the allegation in the criminal complaint to be correct or (2) the complaint was diverted by agreement after the child was advised that the complaint would be considered part of his criminal history. In the case of a challenge, the State must establish the child's criminal history by a preponderance of the evidence, but the State need not prove that a guilty plea was entered knowingly and voluntarily.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	16	First and second degree murder, homicide by abuse, first degree manslaughter, and any attempt, criminal solicitation, or criminal conspiracy to commit any of these offenses; specified forms of vehicular homicide and second degree manslaughter committed by a person with a specified criminal history (at least one prior "serious violent" offense, at least two prior "violent" offenses, or some combination of at least three prior class A felony, class B felony, vehicular assault, or second degree manslaughter offenses, all committed after the child's 13th birthday and separately prosecuted).
Person	16	(1) First degree assault, first degree assault of a child, first degree kidnapping, first degree rape, or any attempt, criminal solicitation, or criminal conspiracy to commit any of these offenses. (2) First degree robbery, first degree child rape, or drive-by shooting. (3) Any "violent offense" (any class A felony, or any attempt, solicitation, or conspiracy to commit a class A felony; forcible indecent liberties; second degree kidnapping; second degree assault; second degree assault of a child; first degree extortion; second degree robbery; vehicular assault) when committed (a) with a firearm or (b) by a person with a specified criminal history (at least one prior serious violent offense, at least two prior violent offenses, or some combination of at least three prior class A felony, class B felony, vehicular assault, or second degree manslaughter offenses, all committed after the child's 13th birthday and separately prosecuted).
Property	16	First degree burglary committed by a person with at least one prior felony or misdemeanor offense; second degree arson when committed (a) while carrying a firearm or (b) by a person with a specified criminal history (at least one prior serious violent offense, at least two prior violent offenses, or some combination of at least three prior class A felony, class B felony, vehicular assault, or second degree manslaughter offenses, all committed after the child's 13th birthday and separately prosecuted).

## Once an Adult, Always

RCW Sec. 13.40.020(14)

The definitions of "juvenile," "youth" and "child" exclude anyone previously transferred to adult court or otherwise under adult court jurisdiction.

# West Virginia

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

West Virginia Code 1966, Sec. 49-5-10

Upon the written motion of the prosecutor, and after a hearing, the juvenile court is authorized to transfer juvenile proceedings to criminal jurisdiction if it finds that there is probable cause to believe a child younger than 14 committed an offense that would have mandated a transfer if the child had been 14 or older at the time (see Mandatory Waiver). In addition, "upon consideration of the juvenile's mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors," the court may transfer a case if it finds that there is probable cause to believe that (1) a child under 14 committed an offense that, given the child's record of prior adjudications, would have mandated transfer if the child had been at least 14 at the time (see Mandatory Waiver); (2) a child of any age committed a specified drug felony; or (3) a child of at least 14 committed a felony (a) involving use or threat of force against a person, (b) after having previously been adjudicated for a felony, or (c) involving use of a deadly weapon. The prosecutor's motion for transfer must specify which of the above grounds for transfer will be relied on, and the prosecutor has the burden of establishing those grounds by "clear and convincing evidence." An order granting a transfer is immediately appealable to the supreme court of appeals, but the child may also opt to reserve appeal until after conviction.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	None Specified/14	None specified—Treason; any violent felony committed by a child previously adjudicated for a violent felony; any felony committed by a child with at least two previous felony adjudications.  14—Any violent felony; any felony committed by a child with a previous felony adjudication; any felony involving use of a deadly weapon.
Murder	None specified	Murder.
Person	None specified	Armed robbery; kidnapping; first degree sexual assault.
Property	None specified	First degree arson.
Drug	None specified	Feloniously manufacturing, delivering, or possessing a narcotic drug with intent to deliver.

## Mandatory Waiver

West Virginia Code 1966, Sec. 49-5-10

Upon the written motion of the prosecutor, and after a hearing, the juvenile court must transfer juvenile proceedings to criminal court if it finds that there is probable cause to believe a child of at least 14 committed any of various specified offenses or meets statutory offense/prior record criteria. The prosecutor's motion for transfer must specify the grounds for transfer being asserted, and the prosecutor has the burden of establishing those grounds by "clear and convincing evidence." There is no provision allowing immediate appeal of a mandatory transfer.

[Note—The court must also transfer a case in which a child of at least 14 demands a transfer on the record.]

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Certain Felonies	14	Treason; any violent felony committed by a child previously adjudicated for a violent felony; any felony committed by a child with at least two previous felony adjudications.
Murder	14	Murder.
Person	14	Armed robbery; kidnapping; first degree sexual assault.
Property	14	First degree arson.

# Wisconsin

Lower Age: 10

Upper Age: 16

## Discretionary Waiver

Wis. Statutes Sec. 938.18

On motion of any party, the juvenile court may, after a hearing, waive jurisdiction over a case meeting statutory age/offense criteria if it finds that (1) the case has prosecutive merit and (2) it has been "established by clear and convincing evidence that it would be contrary to the best interests of the juvenile or of the public to hear the case." (A judge may also initiate a waiver petition on his or her own, but may not then preside over the waiver hearing, or otherwise participate further in the case.) The law specifies a number of detailed "criteria" upon which a decision to waive jurisdiction must be based. Prior to the waiver hearing, the court may designate an agency "to submit a report analyzing the criteria," and may "rely on the facts stated in the report in making its findings" regarding those criteria. Parties are entitled to copies of the report at least 3 days before the hearing.

The child must be represented by counsel at the waiver hearing. However, if the child flees before the hearing, the hearing may proceed in the child's absence, and a waiver may be granted subject to the child's right to make a subsequent showing of good cause for failure to appear.

If a petition for waiver is uncontested, the court need not hear testimony at the waiver hearing, so long as it is satisfied that the child's decision not to contest was knowingly, intelligently, and voluntarily made; however, the court must still base its waiver decision on the criteria specified by statute.

Once a waiver has been granted, the court of criminal jurisdiction has exclusive jurisdiction over the case, with no restrictions on the court's authority to convict the child of any offense.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	15	Any violation of State criminal law.
Certain Felonies	14	Any felony committed at the request or for the benefit of a criminal gang.
Murder	14	Felony murder, second degree reckless homicide.
Person	14	First or second degree sexual assault, hostage taking, kidnapping, armed robbery.
Property	14	Burglary in which the burglar is armed, uses explosives, or commits battery while inside the enclosure.
Drug	14	Manufacture, distribution, or delivery of a controlled substance or controlled substance analog.

## Statutory Exclusion

Wis. Statutes Sec. 938.183

Courts of criminal jurisdiction have exclusive original jurisdiction over a number of specified age/offense categories.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Murder	10	First degree intentional homicide, attempted first degree intentional homicide, first degree reckless homicide, second degree intentional homicide.
Person	None specified	Assault or battery committed by an adjudicated delinquent against an employee, officer, inmate or visitor while confined in a secured facility; battery committed by an adjudicated delinquent against a probation, parole, or aftercare agent.

## Reverse Waiver

Wis. Statutes Sec. 970.03

Generally, if a preliminary examination is held in the case of a child accused of an offense subject to original adult court jurisdiction (with certain exceptions for homicide cases, as noted below), the court must initially determine whether there is probable cause to believe the child committed the offense under circumstances satisfying the jurisdictional statute. If not, it must discharge the child, but further proceedings may be brought under the Juvenile Justice Code. If so, it must decide whether to transfer the case to juvenile court or retain jurisdiction. The court must retain jurisdiction unless the child proves by a preponderance of the evidence that (1) if convicted, the child "could not receive adequate treatment in the criminal justice system"; (2) transferring jurisdiction to the juvenile court "would not depreciate the seriousness of the offense"; and (3) "retaining jurisdiction is not necessary to deter the child or other children" from committing the offense of which the child is accused. However, this reverse waiver procedure is not available in the case of a child of at least 15 accused of first degree intentional homicide, attempted first degree intentional homicide, first degree reckless homicide, or second degree intentional homicide.

## Once an Adult, Always

Wis. Statutes Sec. 938.183

Adult courts have original criminal jurisdiction over a child accused of any offense who (1) has already been waived to criminal court and convicted of a previous violation; (2) has been waived to criminal court and still has a case pending there; (3) has been convicted of an offense over which adult courts have original jurisdiction; or (4) has a case pending in adult court involving an offense over which adult courts have original jurisdiction.

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# Wyoming

Lower Age: None specified

Upper Age: 17

## Discretionary Waiver

Wyoming Statutes Sec. 14-6-237

The juvenile court has "concurrent jurisdiction" over all offenses (except status offenses) committed by a child of at least 13; however, except for certain cases meeting statutory age/offense criteria (see Direct File), a prosecutor wishing to prosecute a child as an adult must nevertheless file in juvenile court initially and seek a transfer. A juvenile court may hold a transfer hearing on its own motion or that of any party. The court may order the transfer of any case within its concurrent jurisdiction "if it finds that proper reason therefor exists" after considering various factors prescribed by statute.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	13	All criminal offenses.

## Direct File

Wyoming Statutes Sec. 14-6-203

Cases that meet statutory age/offense criteria may be filed either in juvenile court or in district court (or other inferior court having jurisdiction). However, where the law authorizes filing in district court solely because the child is 17, the prosecuting attorney is first obliged to give consideration to the same "determinative factors" that a court would weigh in ruling on a transfer request.

<u>Offense Category</u>	<u>Minimum Age</u>	<u>Offense Detail</u>
Any Criminal	17	All criminal offenses.
Certain Felonies	14	Violent felony, or felony committed by a child with at least two previous felony adjudications.

## Reverse Waiver

Wyoming Statutes Sec. 14-6-237

When a case within the concurrent jurisdiction of the juvenile court is filed in district court (see Direct File), the district court may, after a hearing held on its own motion or that of any party, order the case transferred to juvenile court if it finds that the case is "more properly suited to disposition" there.