



POLICYMAKER'S GOAL 2.7

JLM POLICY GOAL 4

State law should protect minors from being prosecuted as adults.



JUVENILE COURTS WERE CREATED TO PROVIDE A NON-ADVERSARIAL AND REHA-

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

Unfortunately, the protections of the juvenile justice system do not extend to all minors. Some barriers keep minors out of juvenile court from the outset. Almost half of states exclude certain crimes, usually violent felonies, from the jurisdiction of juvenile courts.⁵ Additionally, some states restrict access to the juvenile justice system by limiting its jurisdiction to those under 17.⁶ A few states limit access further by allowing prosecutors to choose, for certain offenses, whether to file charges in adult criminal court or juvenile court.⁷ Lastly, many states follow a “once an adult, always an adult” practice that requires juveniles to be prosecuted in adult criminal court if they have been convicted in criminal court in the past.⁸ The vast majority of states do not require the court to consider the impact of trauma, including sex trafficking victimization, in making a discretionary transfer determination. Troublingly, the majority of states do not have minimum age requirements, some allowing children as young as 6 years old to be arrested, detained, and prosecuted for offenses in juvenile court.⁹

Recognizing the risks associated with transferring a minor to adult court, some jurisdictions limit transfers to “judicially controlled transfers,” requiring all juveniles to start their cases in juvenile court, regardless of the crime charged. Importantly, this practice removes automatic statutory exclusion that would otherwise bar certain children from juvenile court jurisdiction and replaces unchecked prosecutorial discretion to try juveniles charged with certain crimes in adult court with a deliberative process.¹⁰

When juveniles are tried in adult criminal court, they lose many protections afforded in juvenile proceedings discussed above. For example, adult courts are open to the public and focused on punishment, while juvenile proceedings are closed to the public and rehabilitation-focused. Juvenile adjudications are typically sealed while adult conviction records are publicly accessible.¹¹ Additionally, convictions in adult court can lead to harsher sentences and imprisonment with adults. When children are detained or incarcerated with adults, they face a significantly increased risk of physical, psychological, and social-emotional harm, including a higher likelihood of experiencing physical and sexual abuse and assault.¹² Children who are victimized in adult facilities may, subsequently, be placed in solitary confinement for their own safety, which can lead to serious mental health problems, including depression and suicidal ideations. Juveniles placed in adult populations “face suicide rates 36 times higher than juveniles held in juvenile facilities.”¹³ Adult prisons also lack the educational and rehabilitative programming available in the

juvenile justice system, and children surrounded by incarcerated adults are more likely to recidivate and identify themselves as a “criminal.”¹⁴ Specific to sex trafficked and commercially sexually exploited children, adult prisons are not equipped to provide an age-appropriate and trauma-informed response to address their victimization.

To ensure the provision of a developmentally appropriate response, state law should ensure that all minors under 18 years of age, but only those at least 12 years of age, are afforded the protection and rehabilitative-focused services that are connected to the juvenile justice system and specific barriers related to type of crime committed and age should be removed from statute.

DRAFTING CONSIDERATIONS:

TO ACCOMPLISH THIS POLICY GOAL, STATE LAW SHOULD...

- ▶ Ensure state law establishes a minimum age of 12 years for juvenile court jurisdiction
- ▶ Extend juvenile court jurisdiction to all minors under 18.
- ▶ Ensure all cases involving minors originate in the juvenile court regardless of the offense.
- ▶ Establish a trauma-informed process for discretionary transfers to adult criminal court, including requiring the court to consider past trauma and/or trafficking victimization on the child's involvement in the alleged law offending conduct. Specifically, create a multi-person body of experts to review transfer cases for past trauma, victimization, and whether the transfer is in the best interest of both the child and the public, or any other circumstances in the interest of justice.
- ▶ Ensure state law prohibits automatic transfers or direct file for any minor under 18, regardless of the charged offense or previous criminal or juvenile court involvement.

1 Andrea L Dennis, *Decriminalizing Childhood*, 45 FORDHAM URB. L.J. 1, 11 (2017).

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

3 *Id.* at 390.

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

5 *Juvenile Waiver (Transfer to Adult Court)*, FINDLAW, <https://criminal.findlaw.com/juvenile-justice/juvenile-waiver-transfer-to-adult-court.html> (last updated Jan. 28, 2019).

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

7 *Juvenile Waiver*, *supra* note 5.

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

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

13 *Id.* at 15.

14 *Id.*