

## 10.8: Getting Tough - Initiatives for Punishment and Accountability

The 1980s saw a huge shift in the way states and federal laws were addressing juvenile law. Gangs, gun violence, and drugs drew attention to the identification, punishment, and prevention of violent and chronic youth offenders. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) focused research on youth violence and state and local programming. Attention focused on the identification and control of serious, violent, and chronic offenders. <sup>[1]</sup>

At the state level, lawmakers enacted policies to crack down on youth crime. In the mid-1990s the idea of the juvenile **superpredator**— youth so impulsively violent, remorseless, and have no respect for human life- led to widespread reform and more punitive approaches to juvenile crime and delinquency. This included more punitive sentences, lowering the age at which a juvenile could be tried as an adult, and loosening the provisions for trying juveniles in adult court. The motto “adult time for adult crime” drove accountability initiatives and get-tough campaigns. A youth was no longer seen as vulnerable minors in need of protection and treatment. Instead, the narrative changed and they were seen as violent monsters acting “with no conscience and no empathy”, a statement Hillary Clinton has publicly regretted saying.

### Rethinking zero tolerance



<https://www.youtube.com/watch?v=6ZDFs-EmP74>

### Waiver and Adult Time

All states have enacted laws that allow juveniles to be tried in adult criminal courts. There are several mechanisms by which a juvenile can be transferred to adult criminal court: **prosecutorial, legislative, and judicial waiver**. The **prosecutorial waiver** also is referred to as “Direct File” and “Concurrent Jurisdiction.” With this waiver mechanism, the legislature grants a prosecutor the discretion to determine in which court to file charges against the juvenile. <sup>[2]</sup> The prosecutor, or district attorney, can choose to file charges in juvenile court or adult criminal court. This procedure does not require a transfer hearing, so the defense is not accorded the opportunity to present evidence in an attempt to avoid the transfer <sup>[3]</sup>

**Legislative waiver**, or statutory waiver, identifies certain offenses which have been mandated by state law to be excluded from juvenile court jurisdiction. It is utilized as a method to decrease or eliminate the discretionary powers of judges and prosecutors. For example, the number of state statutes specifies that violent felony offenses such as homicide, rape, and robbery, when committed by older adolescents, are automatically sent to adult criminal court.

#### In the News: Raising the Age and Raising the Bar

As part of the “**Raise the Age**” legislation passed in 2017, all minors on Rikers Island awaiting trial or otherwise, have to be moved out of the notorious New York City jail in October 2018. Rikers Island is famed for abuse, corruption, and violence and has begun the 10 years shut down a plan to close the scandal-ridden jail complex. The jail houses some 9,000 inmates, more than 2,000 who are juveniles. The plan is to reduce the jail population while moving the inmates to other facilities throughout New York’s boroughs.

Part of the reduction in the number of inmates stems from the recent law which mandates that 16 and 17 year-olds in New York State will no longer automatically be charged as adults in criminal courts. And the age raises even more, to 18, on October 18, 2019.

Rikers Island has a sordid history of brutality and inhumane treatment of prisoners. Perhaps the most well-known case in recent history is the story of Kalief Browder, a 16-year-old kid from the Bronx, who was charged with stealing a backpack. Although he claimed he was innocent, he ended up spending three years at Rikers Island, and more than two years were spent in solitary confinement. The charges were eventually dismissed and Browder was released, but the time spent in solitary caused significant and detrimental mental health issues. Tragically, he committed suicide in 2015, just two years after his release. His case garnered national attention prompting New York to ban the use of solitary confinement for inmates under the age of 18.

Research shows that solitary confinement is linked to mental health problems like depression, anxiety, psychosis, and even suicidal ideation. For these reasons, all federal prisons ban solitary confinement for juveniles and most states don’t allow the use of solitary in juvenile facilities. However, solitary is still used in adult prisons. Each year around 200,000 youth are tried as adults and many are sentenced to time in regular, adult prisons. Many of these state jails and prisons still use solitary confinement for the “safety” and “protection” of juveniles housed with adults (Resitvo, 2019).

Raising the age legislation is a step in the right direction and will prevent more juveniles from beginning sent to adult facilities. New York and North Carolina were the last two states in the nation to charge 16 and 17 year-olds as adults up until last year when both amended their laws. The legislation will have a profound impact on New York’s criminal justice system and is seen as a massive win for reformers who have been pushing for better treatment of children at Rikers Island for years.

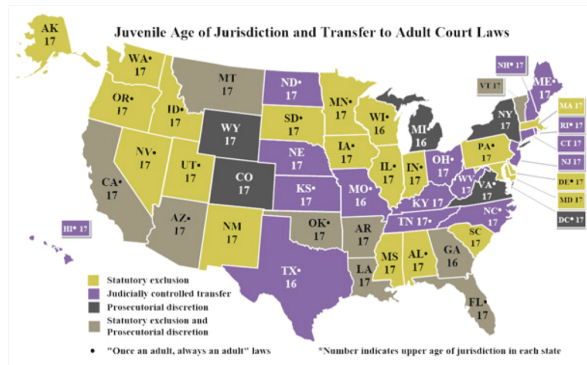
Listen to the story and read more at: [www.wnycstudios.org/story/raise-age-new-york-minors-rikers](http://www.wnycstudios.org/story/raise-age-new-york-minors-rikers) <sup>[4]</sup>

**Judicial waiver** affords the juvenile court judge the authority to transfer a case to adult criminal court. <sup>[5]</sup> There are three types of judicial waiver: **discretionary, presumptive, and mandatory**.

The **discretionary** (regular) transfer allows a judge to transfer a juvenile from juvenile court to adult criminal court. <sup>[6]</sup> With this type of transfer, the burden of proof rests with the state and the prosecutor must confirm that the juvenile is not amenable to treatment. As discussed previously, in *Kent v. United States* (383 U.S. 541, 566-67 [1966]), the Supreme Court outlined threshold criteria that must be met before a court can consider waiving a case. These waiver statutes typically include a minimum age, the specified type of offense, a sufficiently serious prior record, or a combination of the three.

**Presumptive waiver** shifts the burden of proof from the State to the defendant. It is presumptive because it is *presumed* that it will occur unless the youth can meet the burden of proof and provide a justifiable reason to remain in juvenile court. If the youth is unable to show just cause or sufficient reason why the case should be tried in juvenile court, the case will be transferred and tried in adult court.

The third type of judicial waiver is a **mandatory waiver**. Mandatory waiver means that a juvenile judge must automatically transfer to adult court juvenile offenders who meet certain criteria, such as age and current offense. In these cases, the role of the judge is simply to confirm that the waiver criteria are met and then to transfer the case to adult court. Mandatory waiver attempts to remove all discretionary powers from the juvenile court judge in transfer proceedings. <sup>[7]</sup>



State juvenile courts with delinquency jurisdiction handle cases in which juveniles are accused of acts that would be crimes if adults committed them.

In 45 states, the maximum age of juvenile court jurisdiction is age 17. Five states— Georgia, Michigan, Missouri, Texas, and Wisconsin—now draw the juvenile/adult line at age 16. However, all states have transfer laws that allow or require young offenders to be prosecuted as adults for more serious offenses, regardless of their age

In addition to increasing transfer mechanisms, at least 13 states lowered the age of majority to 15, 16, and 17, which allowed the youth of these ages to be automatically tried in adult criminal courts. These were supposed to provide procedures that curbed only the worst of the worst offenders, however, these provisions increased the prosecution of all juvenile offenders and youth of color in particular.

**Ted Talks:** Alice Goffman In the United States, two institutions guide teenagers on the journey to adulthood: college and prison. Sociologist Alice Goffman spent six years in a troubled Philadelphia neighborhood and saw first-hand how teenagers of African-American and Latino backgrounds are funneled down the path to prison — sometimes starting with relatively minor infractions. In an impassioned talk she asks, “Why are we offering only handcuffs and jail time?” [https://www.ted.com/talks/alice\\_goffman\\_college\\_or\\_prison\\_two\\_destinies\\_one\\_blatant\\_injustice?language=en](https://www.ted.com/talks/alice_goffman_college_or_prison_two_destinies_one_blatant_injustice?language=en)

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