

unable to retain private counsel, may be unable to escape more serious consequences for acts that may be less serious. The dilemma facing reformers of the juvenile court revolves around the obvious: Avoid labeling juveniles who do not deserve the label of delinquent and, at the same time, prevent the juvenile court from becoming so informal that those who are a threat to the community remain at large. This is a much bigger challenge than it might initially appear to be. Juvenile court systems throughout the nation have struggled with this issue historically and at present.

Maintaining the Family Unit

The concept that a child should remain in the family unit whenever possible is another basic element of the Uniform Juvenile Court Act. The child and family are not to be separated unless there is a serious threat to the welfare of the child or society. However, once there is an established necessity for removing the child, the juvenile court must have the power to move swiftly in that direction. Determining exactly when it is necessary to remove the child is not, of course, an easy task. Child protective service (CPS) employees and the juvenile court system are typically very careful not to label acts as child abuse and intervene in family dynamics unless all efforts to maintain the family unit have failed and/or the circumstances are clearly harmful to the child. Careful investigation of the total family environment and its effect on the juvenile is typically required in cases of suspected abuse, neglect, and delinquency. Removal may be permanent or may include an option to return the child if circumstances improve. Careful consideration is given to the family's attitudes toward the child and the past record of relationships among other family members.

Although most of us would agree that it is generally desirable to maintain the family unit, there are certainly circumstances when removal is in the best interests of both the minor and society (see [In Practice 6.2](#)). The welfare of the child is clearly jeopardized by keeping him or her in a family where gross neglect, abuse, or acts of criminality occur. The emphasis placed on maintaining the integrity of the family unit at times seems to be taken so seriously by juvenile court judges and other juvenile justice practitioners that they maintain family ties even when removal is clearly the better alternative.

Preserving Constitutional Rights in Juvenile Court Proceedings

The Uniform Juvenile Court Act provides judicial procedures so that all parties are assured of fairness and recognition of legal rights. The early philosophy of informal hearings void of legal procedures and evidentiary standards has a limited place in the modern juvenile justice system. The application of due process standards has not deterred the court from its rehabilitative pursuits. If the issue is delinquency and the act for which the child has been accused is theft, the procedural rules of evidence should support the allegation, and the result would be an adjudication of delinquency. If the evidence does not support the allegation, no adjudication of delinquency should occur. In an informal hearing where there is an absence of established guilt and where an adjudication of delinquency is based on the attitude of the child, the types of peers with whom that child associates, or his or her family's condition, the rights of the juvenile and perhaps other parties have been violated. The philosophy of a fair hearing, where constitutional rights are recognized and enforced and where a high standard of proof for establishing delinquency is strictly imposed, has been generally established in juvenile court acts since 1967, when the U.S. Supreme Court decided in the *Gault* case (*In re Gault*, 1967) that **due process** (observing constitutional guarantees and rules of exclusion) was generally required in juvenile court adjudicatory proceedings. Informality is generally accepted in postadjudicatory hearings on disposition of the juvenile and is often permitted in prehearing stages. The adjudicatory hearing for delinquency must, however, be based on establishing **beyond a reasonable doubt** (with as little doubt as possible) that the allegations are supported by the admissible evidence.

In Practice 6.2: Woman Arrested for Starving Her Children

A Dawsonville woman was arrested early last month for reportedly starving her children and allowing her toddler to wander away from

her residence.

The woman, Susan Diane Neeley, 34, was arrested Dec. 8 on three counts of cruelty to children and one count of reckless conduct.

According to Sheriff Jeff Johnson, Neeley is accused of willingly depriving her three children of necessary sustenance to the extent that the children's health and well-being were jeopardized. Johnson said the arrest stemmed from a missing juvenile call that occurred on Dec. 7.

The ages of the children were not released.

Neeley is also accused of allowing her toddler daughter to wander approximately 1 1/2 miles away from the residence, Johnson said.

"The child was out after dark on an evening with a temperature of 52 degrees," Johnson said. "The child's two siblings, who went to search for the toddler, were also missing. All were located at another residence."

When located, the toddler was found soaking wet, apparently from falling into a creek. Neeley was released on a \$30,000 bond on Dec. 12.

Source: Dean, A. (2017, January 4). Woman arrested for starving her children. *Dawson County News*.

Questions to Consider

1. True or False: The abuse would not have been discovered if the police had not received a missing child call.
2. Multiple Choice: In this situation, the toddler child would be classified by juvenile court as which of the following?
 - a. Delinquent
 - b. Abused/neglected
 - c. Status offender
 - d. Child in need of supervision
3. In your opinion is removal of the child appropriate? Would you remove all children in the home or only the toddler?

The general purpose of juvenile court acts, then, is to ensure the welfare of juveniles while protecting their constitutional rights in such a way that removal from the family unit is accomplished only for a reasonable cause and in the best interests of the juvenile and society. A review of your state's juvenile court act should reflect these basic goals.

Scope

In addition to the basic themes discussed previously, all juvenile court acts define the ages and subject matter (conduct) within the scope of the court.

Age

Section 2 of the Uniform Juvenile Court Act defines a child as a person who is under the age of 18 years, who is under the age of 21 years but who committed an act of delinquency before reaching the age of 18 years, or who is under the age of 21 years and committed an act of delinquency after becoming 18 years of age but who is transferred to the juvenile court by another court having jurisdiction over him or her (National Conference of Commissioners on Uniform State Laws, 1968, sec. 2).

As stated in [Chapter 2](#), both upper and lower age limits vary among the states (see your state's code). The Uniform Juvenile Court Act establishes the age of 18 as the legal age at which actions of an illegal nature will be considered criminal and the wrongdoer will be considered accountable and responsible as an adult. Prior to the 18th birthday, illegal activities will be considered acts of delinquency, with the wrongdoer processed by the juvenile court in a way that removes the taint of criminality and punishment and substitutes treatment, training, and rehabilitation in its place. The Uniform Juvenile Court Act allows two exceptions regarding the legal jurisdictional age of 18 years. Section 2(1)(iii) states that a person under the age of 21 years who commits an act of delinquency after becoming 18 years of age can be transferred to the juvenile court by another court having jurisdiction and, therefore, would be

accorded all of the protection and procedural guidelines of the juvenile court. Section 34 allows for a transfer to other courts of a child under 18 years of age if serious acts of delinquency are alleged and the child was 16 years of age or older at the time of the alleged conduct (National Conference of Commissioners on Uniform State Laws, 1968, sec. 34). There are stringent guidelines to follow before a waiver to adult court jurisdiction may be permitted. Waivers of juvenile jurisdiction are occurring more frequently and are discussed later in this chapter.

In establishing the age of 18 years as the legal break point between childhood and adulthood, almost all states are consistent with the Uniform Juvenile Court Act, as noted in [Table 6.3](#).

Table 6.3 Upper Age of Original Juvenile Court Jurisdiction, 2015

State	Age 15	Age 16	Age 17
Number of States	2	7	42
Alabama			X
Alaska			X
Arizona			X
Arkansas			X
California			X
Colorado			X
Connecticut			X
Delaware			X
District of Columbia			X
Florida			X
Georgia		X	
Hawaii			X
Idaho			X
Illinois			X
Indiana			X
Iowa			X
Kansas			X

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Kentucky			X
Louisiana		X	
Maine			X
Maryland			X
Massachusetts			X
Michigan		X	
Minnesota			X
Mississippi			X
Missouri		X	
Montana			X
Nebraska			X
Nevada			X
New Hampshire			X
New Jersey			X
New Mexico			X
New York	X		
North Carolina	X		
North Dakota			X
Ohio			X
Oklahoma			X
Oregon			X
Pennsylvania			X
Rhode Island			X

South Carolina		X	
South Dakota			X
Tennessee			X
Texas		X	
Utah			X
Vermont			X
Virginia			X
Washington			X
West Virginia			X
Wisconsin		X	

Note: Table information is as of the end of the 2015 legislative session.

- A juvenile is a youth at or below the upper age of original jurisdiction in a state.
- The upper age of jurisdiction is the oldest age at which a juvenile court has original jurisdiction over an individual for law-violating behavior.
- State statutes define which youth are under the original jurisdiction of the juvenile court. These definitions are based primarily on age criteria. In most states, the juvenile court has original jurisdiction over all youth charged with a criminal law violation who were below the age of 18 at the time of the offense, arrest, or referral to court. Many states have higher upper ages of juvenile court jurisdiction in status offense, abuse, neglect, or dependency matters—often through age 20.
- Many states have statutory exceptions to basic age criteria. The exceptions, related to the youth's age, alleged offense, and/or prior court history, place certain youth under the original jurisdiction of the criminal court. This is known as *statutory exclusion*.
- In some states, a combination of the youth's age, offense, and prior record places the youth under the original jurisdiction of both the juvenile and criminal courts. In these situations where the courts have concurrent jurisdiction, the prosecutor is given the authority to decide which court will initially handle the case. This is known as *concurrent jurisdiction, prosecutor discretion, or direct filing*.
- Since 1975 eight states have changed their age criteria. Alabama raised its upper age from 15 to 16 in 1976 and from 16 to 17 in 1977; Wyoming lowered its upper age from 18 to 17 in 1993; New Hampshire and Wisconsin lowered their upper age from 17 to 16 in 1996; Rhode Island lowered its upper age from 17 to 16 and then raised it back to 17 again 4 months later in 2007; Connecticut passed a law in 2007 to raise its upper age from 15 to 17 gradually from 2010 to 2012; Illinois raised its upper age for misdemeanors from 16 to 17 in 2010; Massachusetts raised its upper age from 16 to 17 in 2013; Illinois raised its upper age for most felonies from 16 to 17 in 2014; and New Hampshire raised its upper age from 16 back to 17 in 2015.

Source: Office of Juvenile Justice and Delinquency Prevention (2016).

States may also establish higher age limits in cases of status offenders and abuse, neglect, and dependency—typically through the age of 20 years. In addition, courts may retain jurisdiction after the age of adulthood if the child is serving a disposition in juvenile court. Some states also exclude married or emancipated youth from juvenile court jurisdiction. A total of 36 states allow juvenile court to maintain jurisdiction until the child's 21st birthday in cases where the child is under juvenile court supervision for delinquency at the time of the 18th birthday (OJJDP, 2003) (as noted in [Table 6.4](#)). As we have indicated elsewhere, there is no clearly established minimum age set by juvenile courts with respect to their jurisdiction, although 16 states have attempted to identify a limit. In [Table 6.5](#), we see that children as young as 6 years of age are allowed into the juvenile justice system in North Carolina.

Table 6.4 Extended Age of Juvenile Court Jurisdiction, 2015

State	Age 18	Age 19	Age 20	Age 21	Age 22	Age 24	Full Term of Disposition Order

Number of States	2	4	36	1	1	4	3
Alabama			X				
Alaska		X					
Arizona [*]			X				
Arkansas			X				
California						X	
Colorado							X
Connecticut		X					
Delaware			X				
District of Columbia			X				
Florida			X				
Georgia			X				
Hawaii							X
Idaho			X				
Illinois			X				
Indiana			X				
Iowa			X				
Kansas					X		
Kentucky			X				
Louisiana			X				
Maine			X				
Maryland			X				
Massachusetts			X				

Michigan			X				
Minnesota			X				
Mississippi		X					
Missouri			X				
Montana						X	
Nebraska			X				
Nevada**			X				
New Hampshire			X				
New Jersey							X
New Mexico			X				
New York			X				
North Carolina			X				
North Dakota		X					
Ohio			X				
Oklahoma	X						
Oregon						X	
Pennsylvania			X				
Rhode Island			X				
South Carolina			X				
South Dakota			X				
Tennessee			X				
Texas	X						
Utah			X				
Vermont				X			

Virginia			X				
Washington			X				
West Virginia			X				
Wisconsin						X	
Wyoming			X				

Notes: Extended jurisdiction may be restricted to certain offenses or juveniles.

* Arizona statute extends jurisdiction through age 20, but a 1979 state supreme court decision held that juvenile court jurisdiction terminates at age 18.

*** The Nevada statute extends jurisdiction until the full term of the disposition order for sex offenders. Table information is as of the end of the 2015 legislative session.

- Juvenile court authority over a youth for dispositional purposes in delinquency matters may extend beyond the upper age of original jurisdiction.
- Through extended jurisdiction mechanisms, legislatures enable the court to provide sanctions and services for a duration of time that is in the best interests of the juvenile and the public, even for older juveniles who have reached the age at which original juvenile court jurisdiction ends.
- An upper age of 18 means that the juvenile court loses jurisdiction over a child when they turn 19; an upper age of 19 means that a juvenile court loses jurisdiction when a child turns 20; and an upper age of 20 means that a juvenile court loses jurisdiction over a child when they turn 21.
- Extended jurisdiction may be restricted to certain offenses or juveniles (such as violent offenses, habitual offenders, and juveniles under correctional commitment).
- In some states, the juvenile court may actually impose adult correctional sanctions on certain adjudicated delinquents that extend the term of confinement well beyond the upper age of juvenile jurisdiction. Such sentencing options are included in the set of dispositional options known as *blended sentencing*.
- In Alaska, jurisdiction can extend for an additional one-year period if it is in the best interests of the person and the person consents.
- Mississippi law states that juveniles charged with robbery, arson, and drug offenses can remain in the juvenile justice system.

Source: Office of Juvenile Justice and Delinquency Prevention (2016).

Table 6.5 Upper and Lower Age of Juvenile Court Delinquency and Status Offense Jurisdiction, 2015

State	Delinquency Jurisdiction		Status Jurisdiction	
	Lower Age	Upper Age	Lower Age	Upper Age
Alabama	NS	17	NS	17
Alaska	NS	17	NS	17
Arizona	8	17	NS	17
Arkansas	10	17	Birth	17
California	NS	17	NS	17
Colorado	10	17	NS	17

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Connecticut	7	17	7	17
Delaware	NS	17	NS	17
District of Columbia	NS	17	NS	17
Florida	NS	17	NS	17
Georgia	NS	16	NS	17
Hawaii	NS	17	NS	17
Idaho	NS	17	NS	17
Illinois	NS	17	NS	17
Indiana	NS	17	NS	17
Iowa	NS	17	NS	17
Kansas	10	17	NS	17
Kentucky	NS	17	NS	17
Louisiana	10	16	NS	17
Maine	NS	17	NS	17
Maryland	7	17	NS	17
Massachusetts	7	17	6	17
Michigan	NS	16	NS	17
Minnesota	10	17	NS	17
Mississippi	10	17	7	17
Missouri	NS	16	NS	17
Montana	NS	17	NS	17
Nebraska	NS	17	NS	17
Nevada	NS	17	NS	17
New Hampshire	NS	17	NS	17

New Jersey	NS	17	NS	17	
New Mexico	NS	17	NS	17	
New York	7	15	NS	17	
North Carolina	6	15	6	17	
North Dakota	7	17	NS	17	
Ohio	NS	17	NS	17	
Oklahoma	NS	17	NS	17	
Oregon	NS	17	NS	17	
Pennsylvania	10	17	NS	17	
Rhode Island	NS	17	NS	17	
South Carolina	NS	16	NS	16	
South Dakota	10	17	NS	17	
Tennessee	NS	17	NS	17	
Texas	10	16	10	16	
Utah	NS	17	NS	17	
Vermont	10	17	NS	17	
Virginia	NS	17	NS	17	
Washington*	NS	17	NS	17	
West Virginia	NS	17	NS	17	
Wisconsin	10	16	NS	17	
Wyoming	NS	17	NS	17	

Notes: Table information is as of the end of the 2015 legislative session. **NS** = lower age not specified.

* In Washington the lower age of delinquency jurisdiction is applied through a state juvenile court rule, which references a criminal code provision establishing the age youth are presumed to be incapable of committing crime.

• The upper age of jurisdiction is the oldest age at which a juvenile court has original jurisdiction over an individual for law-violating behavior. An upper age of 15 means that the juvenile court loses jurisdiction over a child when they turn 16; an upper age of 16 means that a juvenile court loses jurisdiction when a child turns 17; and an upper age of 17 means that a juvenile court loses jurisdiction over a child

when they turn 18.

- State statutes define which youth are under the original jurisdiction of the juvenile court. These definitions are based primarily on age criteria. In most states, the juvenile court has original jurisdiction over all youth charged with a criminal law violation who were below the age of 18 at the time of the offense, arrest, or referral to court. Some states have higher upper ages of juvenile court jurisdiction in status offense, abuse, neglect, or dependency matters—often through age 20.
- Many states have statutory exceptions to basic age criteria. The exceptions, related to the youth's age, alleged offense, and/or prior court history, place certain youth under the original jurisdiction of the criminal court. This is known as *statutory exclusion*.
- In some states, a combination of the youth's age, offense, and prior record places the youth under the original jurisdiction of both the juvenile and criminal courts. In these situations where the courts have concurrent jurisdiction, the prosecutor is given the authority to decide which court will initially handle the case. This is known as *concurrent jurisdiction*, *prosecutor discretion*, or *direct filing*.
- Since 1975 eight states have changed their age criteria. Alabama raised its upper age from 15 to 16 in 1976 and from 16 to 17 in 1977; Wyoming lowered its upper age from 18 to 17 in 1993; New Hampshire and Wisconsin lowered their upper age from 17 to 16 in 1996; Rhode Island lowered its upper age from 17 to 16 and then raised it back to 17 again 4 months later in 2007; Connecticut passed a law in 2007 to raise its upper age from 15 to 17 gradually from 2010 to 2012; Illinois raised its upper age for misdemeanors from 16 to 17 in 2010; Massachusetts raised its upper age from 16 to 17 in 2013; Illinois raised its upper age for most felonies from 16 to 17 in 2014; and New Hampshire raised its upper age from 16 back to 17 in 2015.

Source: Office of Juvenile Justice and Delinquency Prevention (2016).

Other states rely on case law or common law in determining the lower age limit. They presume that children under a certain age cannot form *mens rea* and are exempt from prosecution and sentencing (OJJDP, 2003). Just as there have been few clear guidelines for processing youth in matters of delinquency, there have been vague guidelines for determining the age youth may be found to be abused or neglected.

Delinquent Acts

The Uniform Juvenile Court Act clearly limits the definition of delinquency by stating, in essence, that a delinquent act is an act designated as a crime by local ordinance, state law, or federal law. Excluded from acts constituting delinquency are vague activities, such as incorrigibility, ungovernability, habitual disobedience, and other **status offenses**, which are legal offenses applicable only to children and not to adults. At the time when the Uniform Juvenile Court Act was drafted in 1968, many states legally defined delinquency as encompassing a broad spectrum of behaviors. The proposal by the drafters of the Uniform Juvenile Court Act excluded the broader definition of activities labeled as delinquent and focused only on violations of laws that are applicable to both adults and children. This narrow interpretation was consistent with the legalistic trend occurring during the latter 1960s. By narrowing the legal definition of delinquency, the Uniform Juvenile Court Act did not ignore other types of activities that fall within the court's jurisdiction but placed these activities outside the realm of delinquent acts. A child who is "beyond the control of his parents," "habitually truant from school," or "habitually disobedient, uncontrolled, wayward, incorrigible, indecent, or departs himself or herself as to injure or endanger the morals or health of themselves [sic] or others" was at one time considered to be delinquent in some states (Indiana Code Annotated, 31-37-1-1 to 31-37-2-6, 1997). The number of states with such a broad definition of delinquency is decreasing. A major difficulty with including these vague activities within the delinquent behavior category concerns the issue of who defines what is incorrigible, indecent, or habitual misconduct and the nature of the standard used to determine this behavior. These statutory expressions and a number of others like them have invited challenge on the grounds that they are unconstitutionally vague. There are no standardized definitions for *habitual*, *wayward*, *incorrigible*, and so on. As a result, such charges in conjunction with delinquency are inevitably challenged in the courts.

It is interesting to note that prior to the development of the Uniform Juvenile Court Act in 1968, several states had already started restricting the definition of delinquency to include only those activities that would be punishable as crimes if committed by adults. For example, in New York under the pre-1962 Children's Court Act, the term *juvenile delinquency* included ungovernability and incorrigibility. However, in 1962, the Joint Legislative Committee on Court Reorganization, which drafted the Family Court Act (New York Sessions Laws, vol. 2, 3428, 3434, McKinney, 1962), developed the concept of a person **in need of supervision** to cover noncriminal status offenses, and the term *juvenile delinquent* was narrowed to include only persons over 7 and under 16 years of age who commit any act that, if committed by an adult, would constitute a crime. With a more specific definition of delinquency, it was inevitable that due process procedures, rules of evidence, and constitutional rights would emerge as important issues in Supreme Court decisions involving the rights of juveniles in delinquency proceedings. As the states moved toward a

more specific definition of delinquency, additional appellate decisions were rendered regarding “due process and fair treatment.” The effect of this narrow interpretation of delinquency has been the advent of an adjudicatory process that is more formalized and that ensures and protects the juvenile’s procedural and constitutional rights. This trend is clearly consistent with the spirit behind the creation of the Uniform Juvenile Court Act. Some states even list all forms of conduct subject to juvenile court jurisdiction in one general category (Louisiana Law, Children’s Code, 2012; Montana Code Annotated, Title 41, 2011; Wisconsin Code, ch. 938, 2011).

Section 2(3) of the Uniform Juvenile Court Act indicates that an adjudicated delinquent is in need of “treatment or rehabilitation.” The development of narrower definitions of delinquency and more formalized “due process models” is not intended to cause the juvenile court to abandon rehabilitation and treatment. This philosophy was stated as early as 1909, when it was pointed out that “the goal of the juvenile court is not so much to crush but to develop, not to make the juvenile a criminal but a worthy citizen” (Consolidated Laws of New York Annotated, bk. 29A, art. 7; McKinney, 1975). This initial concept of rehabilitation and treatment has been affirmed in many decisions and is summarized briefly by the Supreme Court case *In re Gault*, where the Court reaffirms the original juvenile court philosophy that “the child is to be ‘treated’ and ‘rehabilitated’ and the procedures, from apprehension through institutionalization, are to be ‘clinical’ rather than ‘punitive’” (Faust & Brantingham, 1974, pp. 369–370). It is important to remember that although the juvenile court operates under the “treatment and rehabilitation” concept, the court is also charged with protecting the community against unlawful and violent conduct. To fulfill this obligation, the court may resort to incarceration or imprisonment. This clash between the rehabilitative ideal and the clear, present necessity to protect the community in certain situations has been described as the “schizophrenic nature” of the juvenile court process (Consolidated Laws of New York Annotated, bk. 29A, art. 7; McKinney, 1975).

It is clear that a majority of the states have moved toward a narrower definition of delinquency. Inherent in this trend is the movement toward formalizing the legal procedures and processes afforded to the accused delinquent. The importance of this trend is twofold. First, legal definitions of delinquency have become more standardized and by law require a violation or attempted violation of the criminal code. Second, the process of proving the allegation of delinquency may include only the same types of evidentiary materials that would be admitted if the same charges were levied against an adult. This is a considerable change from past practices in many juvenile courts, where much of the evidentiary material that was introduced to prove an act of delinquency was basically irrelevant material concerning the juvenile’s family, peers, school behavior, and other information about his or her environment. The establishment of reasonable proof that the juvenile did violate the law was lost in the process. The case was often weighed and decided on factors other than establishing, beyond a reasonable doubt, that the juvenile committed the act of which he or she had been accused. The juvenile court is a court of law. The juvenile adjudicatory process and the juvenile court must be totally dedicated to working within a legal framework that is conducive to reaching the truth and serving the ends of justice. To do otherwise would result in what is best described in an often-quoted passage of the *Kent* decision where the U.S. Supreme Court Justice Abe Fortas stated, “There is evidence . . . that the child receives the worst of both worlds; that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children” (*Kent v. United States*, 383 U.S. 541, 546, 1966).

Without a doubt, there is a place in the juvenile justice system for consideration of the adjudicated delinquent’s family and his or her environment. However, such consideration should be given only *after* an adjudication of delinquency rather than used as the basis for adjudication. For instance, suppose that as an adult you have been accused of “breaking and entering” and that throughout the pretrial process and during the course of the trial nearly all of the evidence and information introduced focuses on your family, your associations, your attitude, and your overall environment. Furthermore, only a minimum amount of court time and effort is devoted to establishing beyond a reasonable doubt that you did in fact violate the law by breaking and entering, and even then most of this evidence is hearsay, not subjected to cross-examination, and based on belief rather than proof. Yet you are convicted. Such cases were fairly common in the juvenile justice system until the *Gault* decision in 1967. The focus on due process to protect the accused juvenile’s constitutional rights is as important as determining whether the act was committed by the accused. The legal issue of delinquency must be determined not on the basis of a social investigation describing the minor’s environment but rather on the basis of whether the evidence supports or denies the allegation of delinquent acts.

Unruly Children

Section 2(4) of the Uniform Juvenile Court Act defines an unruly child as a child who does the following:

1. While subject to compulsory school attendance is habitually and without justification truant from school
2. Is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable
3. Has committed an offense applicable only to a child
4. In any of the foregoing is in need of treatment or rehabilitation

At one time, a majority of states included these activities in the delinquent behavior category, which often resulted in the official label of delinquent and led to the possibility of being incarcerated in a juvenile correctional institution for treatment and rehabilitation. The Uniform Juvenile Court Act recognizes that such activities may require the aid and services provided by the juvenile court but also recognizes that these minors should not be included in the delinquent category. According to Section 32 of the Uniform Juvenile Court Act, **unruly children** cannot be placed in a correctional institution unless the court finds, after a further hearing, that they are not amenable to treatment or rehabilitation under a previous noncorrectional disposition.

The unruly child is generally characterized by activities that are noncriminal or minor violations of law. Types of offenses, such as curfew violations and running away from home, are referred to as status offenses (acts that are offenses only because of the age of the offender). If the same acts were committed by an adult, they would not be violations of law. A substantial number of states have separated the types of activities described as unruly by the Uniform Juvenile Court Act from delinquency and have placed them in the nondelinquent category of in need of supervision (New York Family Court Act, 712[a]; McKinney, 1999; North Carolina Code, 7b-1501, 2010; Ohio Revised Code § 2151.022, 2011; Texas Family Code, Title 3, Juvenile Justice Code, ch. 51[15], 2011). [Table 6.6](#) describes the various titles used to classify unruly children in U.S. states.

Table 6.6 Status Offender Classification, 2013

State	In Need of Supervision [*]	Status Offender	In Need of Services ^{**}	In Need of Aid, Assistance or Care ^{***}	Unruly	No Specific Classification	Other
Number of States	12	11	12	4	3	3	15
Alabama	X	X					
Alaska				X			
Arizona							X
Arkansas			X				
California							X
Colorado		X					X
Connecticut			X				

Delaware							X
DC	X						
Florida			X				
Georgia			X				
Hawaii		X					
Idaho		X					
Illinois	X		X				
Indiana							X
Iowa				X			X
Kansas				X			
Kentucky		X					
Louisiana			X				
Maine						X	
Maryland	X						
Massachusetts				X			
Michigan						X	
Minnesota			X				X
Mississippi	X						
Missouri		X					
Montana							X
Nebraska		X					
Nevada	X						
New Hampshire			X				
New Jersey							X

New Mexico			X				
New York	X						
North Carolina							X
North Dakota					X		
Ohio					X		
Oklahoma	X						
Oregon							X
Pennsylvania							X
Rhode Island							X
South Carolina		X					
South Dakota	X						
Tennessee					X		
Texas		X					X
Utah						X	
Vermont	X						
Virginia	X	X	X				
Washington			X				X
West Virginia		X					
Wisconsin			X				
Wyoming	X						

Notes: Table information is as of the end of the 2013 legislative session.

* **In need of supervision** includes variations such as child in need of supervision (CHINS) and person in need of supervision (PINS).

** **In need of services** includes variations such as children in need of protection or services, child in need of

services (CHINS), family in need of services (FINS), family in need of court-ordered services, family with service needs, and juvenile alleged to be in need of protection or services.

*** **In need of aid, assistance, or care** includes variations such as child in need of aid, child in need of care, child requiring assistance, and families in need of assistance.

- States use many different terms to classify status offenders. Some terms, such as *child in need of services* or *child in need of supervision*, relate to the needs of the juvenile. Other terms, such as *unruly child* or *chronic runaway*, describe the juvenile's behavior.
- While some states have multiple classifications for status offenders depending on the violating behavior or situational factors, such as Washington (at-risk youth, truant, and child in need of services), Virginia (child in need of services, child in need of supervision, and status offender), and Minnesota (juvenile petty offender and children in need of protection or services), most have a single label.
- Truant youth in Illinois are classified as truant minors in need of supervision. Youth who are runaways, ungovernable, or unruly are classified as minors in need of authoritative intervention and are eligible for community-based services.
- In Maine, there is no specific classification for youth who commit status offenses; however, legislation in the Maine Juvenile Code allows a law enforcement officer to take a juvenile runaway into interim care (temporary physical control).
- Youth who are truant or runaway, who violate curfew, or who violate the alcoholic beverage code in Texas are classified as status offenders. The behaviors are referred to as "conduct indicating a need for supervision."
- Some states classify status offenders in the same category as abused and neglected children. For example, in Pennsylvania, youth who commit a status offense are processed as dependent children.

Source: Office of Juvenile Justice and Delinquency Prevention (2014).

Regardless of the title, the importance of the development of this category lies in separating the delinquent from the nonserious violator and in realizing that the behavioral activities included in the unruly child and the child in need of supervision categories are often symptomatic of problems in the juvenile's home life and environment and might not indicate criminal tendencies. The unruly child category allows the juvenile court to be involved with the youth who needs supervision and allows the court flexibility and options short of the label of delinquent. Still, the labels of unruly child and in need of supervision may become terms of disrepute and produce a stigmatizing effect on the juvenile similar to the label of delinquent. As a result, one of the major benefits of the distinction is lost if, and when, an unruly child ends up in court.

To further distinguish the differences between the delinquent and the unruly child, most states have developed different procedural requirements. These requirements allow the civil **standard of preponderance of evidence** in the adjudicatory hearing for the latter, where the bulk of the evidence, but not necessarily all of it, must support the charges. They also provide for different dispositional options and for different upper ages for the unruly and in need of supervision categories. Again, reviewing your state's juvenile code will provide information on how these issues are addressed in your jurisdiction.

In distinguishing between juveniles whose misconduct is criminal and those whose misconduct is not criminal, it is assumed that the unruly child's behavior may be of a predelinquent nature and that early remedial treatment might prevent the incipient delinquency. However, it may be that the unruly child has more intense emotional and behavioral problems than do some delinquents who commit a single criminal act or a series of minor criminal acts.

The unruly child and in need of supervision categories are generally written without specificity because it is difficult to define and describe all of the noncriminal (delinquent) conduct that could ultimately fall within these categories. The term *habitually* is frequently used to distinguish between isolated incidents and a recurring pattern of incorrigibility, ungovernability, or disobedience. The flagrant repetitive nature of these behaviors often serves as the basis for filing a petition and the justification for pursuing treatment.

It was noted earlier that in some instances the behavior engaged in by the juvenile and alleged in a petition (often filed by the parents) may actually reflect neglect rather than an unruly child. A lack of parental supervision, whether due to unwillingness or inability of the parents, may have created a situation within the family that resulted in the juvenile's behavior. This behavior, although alleged to be unruly in the petition, may have been precipitated by a family crisis resulting in the minor rebelling against the family.

Deprived, Neglected, or Dependent Children

In Section 2(5) of the Uniform Juvenile Court Act, a “deprived” child is defined as a child under the age of 18 years who exemplifies the following:

1. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of his parents, guardian, or other custodian
2. Has been placed for care or adoption in violation of law
3. Has been abandoned by his parents, guardian, or other custodian
4. Is without a parent, guardian, or legal custodian

A number of jurisdictions use a single classification to describe a child who is without a parent, who has been abandoned or abused, or who is without adequate parental care or supervision. Such a child is variously referred to as a “dependent child” (California Code, Welfare and Institutions Code, art. 6, Dependent Children—jurisdiction, 2010; Georgia Code, Title 19—domestic relations ch. 10—abandonment of spouse or child § 19-10-1, 2010), a “deprived child” (Georgia Code Title 15—Courts, ch. 11—juvenile proceedings, art. 1—juvenile proceedings, part 6—deprivation § 15-11-55, 2010), or a “neglected child” (Illinois Code, ch. 720 criminal offenses, 720, Illinois Compiled Statutes [ILCS] 130/Neglected Children Offense Act, 2010; New Mexico Statutes—sec. 32A-4-2—Definitions, 2006).

Some states separate deprived children into several categories with specific labels. For example, in the state of Georgia, a deprived child means a child who is without proper parental care or control, subsistence, education as required by law, or other care necessary for the child’s physical, mental, or emotional health or morals; has been placed for care or adoption in violation of the law; has been abandoned by his or her parents, or other legal custodian; or is without a parent, guardian, or custodian. The Georgia Code excludes from the definition of a deprived child any child who is being treated through spiritual means and prayer in good faith and through recognized church or religious practices (Georgia Code, Title 15—Courts, ch. 11—Juvenile Proceedings, art. 1—Juvenile Proceedings, part 1—General Provisions, § 15-11-2—Definitions, 2010). Within the neglect language of some codes is a special section on abused children who are minors under a given age whose parent or immediate family member, custodian, or any person living in the same family or household, or a paramour of the minor’s parent (1) allows the child to be destitute, homeless, or abandoned or dependent on the public for support; (2) habitually begs or is found living in a home with vicious or disreputable persons; (3) is in a home with neglectful and/or cruel, parents, guardians, or caregivers who deprave the child; or (4) any child under the age of 10 years who is found begging, peddling, or selling articles or playing or singing a musical instrument for gain on the street or accompanying someone who is doing so (Illinois Code, ch. 720 Criminal Offenses, 720ILCS 130/Neglected Children Offense Act, 2010).

Frequently, juvenile court acts have a special “dependent child” provision for children under a specified age who have no living parent, have been abandoned, or lack adequate parental care or supervision. Georgia, for example, mentions dependent children as those who have been abandoned by its father or mother when the father or mother does not furnish sufficient food, clothing, or shelter for the needs of the child (O.C.G.A. 1910-1, 2010). Ohio claims a dependent child is one who (1) is homeless or destitute or without adequate parental care, through no fault of the child’s parents, guardian, or custodian; (2) lacks adequate parental care by reason of the mental or physical condition of the child’s parents, guardian, or custodian; (3) lives in a condition or environment to warrant the state, in the interests of the child, in assuming the child’s guardianship; and (4) because the child resides in a household where the parent, guardian, custodian, or other member committed an abusive, neglectful, or dependent act that was the basis for adjudication of a sibling of the child or any other child, and because circumstances surrounding the abuse, neglect, or dependency of the sibling or other child places the current child in danger of abuse, neglect, or dependency (Ohio Rev Code § 2151.04, 2011).

Even though the Uniform Juvenile Court Act specifically disallows “a lack of financial means” as a basis for alleging that a minor is a “deprived child,” some states, under circumstances where the deprivation is so extreme that it seriously endangers the well-being of the child, provide for handling these cases under the “neglected child” portion of their juvenile court acts. Deprivation may be considered “gross neglect” if the amount of parental income is sufficient but is misappropriated and jeopardizes the well-being of the children within the family. Appropriate

juvenile court remedies are generally available for this type of deprivation. According to Fox (1984), “Where a statutory distinction is made between a neglected child and one who is dependent, the difference generally is a matter of the presence of some parental fault in the former case and its absence in the latter” (p. 58). Regardless of the statutory definitions of the *deprived*, *neglected*, *abused*, and *dependent* child, it is quite clear that the situations described in these statutes exist basically through no fault of the child.

Jurisdiction

The jurisdiction of a court concerns persons, behavior, and relationships over which the court may exercise authority. The word *jurisdiction* also may be used to describe geographical areas or to describe the process through which the juvenile court acquires authority to make orders concerning particular individuals. As Regoli and Hewitt (1994) pointed out, the question of jurisdiction is of basic importance to the juvenile court judge; without jurisdiction over the subject matter and the subject, that judge’s court has no power to act. The term *jurisdiction* means “the legal power, right, or authority to hear and determine a cause or causes” (p. 390). Jurisdiction is created and defined in juvenile court acts.

There is a distinction between the juvenile court’s inherent jurisdictional powers and its discretion to exercise jurisdiction over a case. For example, the statutory law creating the juvenile court in a state may give that court **exclusive jurisdiction** in any proceeding involving cases of delinquency, unruly children, dependency, or neglect provided that the respondent is within the age range and geographical area specified by the court. However, unless a petition is duly filed and the respondent receives a copy or summary of the petition as well as adequate notification of when and where the allegations against him or her will be presented and heard, the court has not exercised proper jurisdiction over the case.

In some states, the juvenile court acts have been repealed and broader family court acts have been created, allowing for broader jurisdictional powers over virtually all problems directly involving families (Texas Family Code, 51.02, 2011). Adoptions, divorces, proceedings concerning mentally retarded or mentally ill children, custody and support of children, paternity suits, and certain criminal offenses committed by one family member against another all are within the jurisdiction of some family court acts. It is important to note, however, that for the most part, those adults who abuse or neglect their children are subject to prosecution not in juvenile courts but rather in criminal courts. The children who are abused or neglected may nonetheless be removed from their homes and placed in shelter care or other living arrangements by the juvenile court judge and/or the state department of children and family services.

Age is obviously an important factor in determining jurisdiction in all states. As stated previously, age limits for delinquency vary among the states. The majority of juvenile court acts are silent on the lower age limits at which a child falls within the court’s jurisdiction; however, in some states the common-law age of 7 years has been established by statute as the lower age limit for delinquency. Statutes in 16 states define the minimum age for delinquency. In the remaining states, it is technically possible that a child could be adjudicated delinquent from birth. Such adjudication is unlikely given that the juvenile court requires a reasonable degree of capacity such as the ability to understand the act and to know or appreciate its consequences (*In re Register*, 1987; *In re William A.*, 1988).

The unruly child or child in need of supervision has been generally subjected to the same upper age limit for jurisdictional purposes as the delinquent. Because common law does not deal directly with this category, the common-law age of 7 years has not traditionally been recognized as the minimum age for the unruly child.

Determining the upper and lower age limits in delinquency raises difficult questions about responsibility and accountability in the law. For example, a 6-year-old who is fully aware of the wrongfulness of a criminal act and its consequences and still commits the act will be immune from prosecution if the jurisdictional age of 7 years is part of the state’s juvenile court act. Another child who is less mature at 7 years may commit the same act while being unaware of its consequences and may need to face juvenile court. The question becomes whether either child is fully and completely responsible for his or her actions.

States differ about whether a juvenile who commits a delinquent act while within the age jurisdiction of the juvenile

court, but who is not apprehended until he or she has passed the maximum age of jurisdiction, can be handled as a juvenile. Some states have determined through court decisions or previous statutory enactments that it is the age at the time of the offense, rather than the age at the time of apprehension, that determines jurisdiction. In the Uniform Juvenile Court Act, Section 2(1)(iii) allows a person under 21 years of age who commits an act of delinquency before reaching the age of 18 years to be considered a child and within the juvenile court's jurisdiction for delinquency proceedings.

States differentiate between the upper ages for delinquency and other categories; they believe that a minor might still need the care and protection of the family even though he or she is beyond the age for an adjudication of delinquency. Similarly, the deprived, neglected, abused, or dependent child is generally not subject to a lower age limit because a younger child may have a greater need for the protection of the juvenile court than does an older counterpart. Currently, some states have set one age for all categories included in the juvenile court act, whereas others have different ages for each category. For example, Texas defines a child as a person 10 years of age or over but under 17 years of age and over 17 but under 18 years of age for those alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age. This child still qualifies for a wardship petition or delinquency petition, respectively, in a Texas Juvenile Court (Texas Family Code, Title 3—Juvenile Justice Code, ch. 51—General Provisions, 2011). Illinois continues to follow different ages for delinquency (up to the 17th birthday) and for a dependent and neglected child (up to the 18th birthday) (Illinois Code, ch. 720—Criminal Offenses, ILCS 130, 2012). Section 2 of the Uniform Juvenile Court Act recommends the establishment of an upper age of 18 for all categories.

Concurrent, Exclusive, and Blended Jurisdiction

The issue of concurrent or exclusive jurisdiction of the juvenile court is generally determined by the legislature and specifically stated in the state's juvenile court act. Section 3 of the Uniform Juvenile Court Act provides the juvenile court with exclusive jurisdiction of certain proceedings listed in that section. In effect, exclusive jurisdiction means that the juvenile court will be the only tribunal legally empowered to proceed and that all other courts are deprived of jurisdiction. In some juvenile court acts, **concurrent jurisdiction** may be present when certain specified situations exist. For example, certain criminal acts may be concurrently under the jurisdiction of the juvenile court and the criminal court (Tennessee Code Title 37—Juveniles, ch. 1—Juvenile Courts and Proceedings, Part 1—General Provisions, 37-1-104—Concurrent jurisdiction, 2010; Utah Code Title 78A Judiciary and Judicial Administration, ch. 6 Juvenile Court Act of 1996, sec. 104 Concurrent jurisdiction—District court and juvenile court, 2011). [Table 6.7](#) shows how states handle concurrent jurisdiction. The court that acts first may exercise jurisdiction over a case not because the court has exclusive jurisdiction but simply because it exercises its jurisdiction before the other court acts. In some states, juvenile court acts may allow exclusive jurisdiction over adults who play a role in encouraging a minor to violate a law. In other states, this jurisdiction may be concurrent with the adult criminal court. In still other states, the juvenile court may have no jurisdiction over such adults, so exclusive jurisdiction rests with the adult criminal courts. To determine whether the juvenile court has exclusive or concurrent jurisdiction over the subject matter and the subject, it is necessary to refer to the juvenile court act of the state in question. Concurrent jurisdiction is at times awkward, with every state having a statutory scheme for waiving jurisdiction in the best interests of the minor and/or in the best interests of the community.

Some juvenile courts are also using **blended sentencing** by sharing jurisdiction with adult courts. Blended sentencing allows juvenile and/or adult courts to impose adult sanctions and youth correctional sanctions on certain types of juveniles. In this case, both courts would share jurisdiction of the child. Blended sentencing typically occurs in one of two ways: (1) exclusive or (2) inclusive. In an exclusive model, the judge imposes either a juvenile or an adult sanction that is effective immediately. In an inclusive model, the judge may impose both a juvenile sanction and an adult sanction with the latter being suspended as long as the child has no additional criminal violations. States using blended sentencing laws usually limit their usage by age and offense (as noted in [Table 6.8](#)). Research on blended sentencing has shown that youthful offenders who tend to receive blended sentences mirror those youth who are most often transferred to adult court, although they are younger in age, are considered less of a risk to public safety, and are most amenable to the reform and rehabilitation efforts provided in the juvenile justice system.

(Cheesman, 2011). A blended sentence provides the youth an incentive to avoid adult court transfer while allowing for more choices in treatment and sentencing for the judge (Sickmund, 2003).

Table 6.7 Concurrent Jurisdiction Offense and Minimum Age Criteria, 2015

State	Minimum Age for Concurrent Jurisdiction	Concurrent Jurisdiction Offense and Minimum Age Criteria							
		Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Person Offenses	Certain Property Offenses	Certain Drug Offenses	Certain Weapon Offenses
Arizona	14		14						
Arkansas	14		14	14	14	14			
California	14		14	14	14	14	14	14	
Colorado	16		16			16			
District of Columbia	16		16		16	16	16		
Florida	NS	16	14	NS	14	14	14		14
Georgia	NS			NS					
Louisiana	15				15	15	15	15	
Michigan	14		14		14	14	14	14	
Montana	12				12	12	16	16	16
Nebraska	NS	NS	14						
Oklahoma	15		15		15	15	15	16	15
Vermont	16	16							
Virginia	14				14	14		14	
Wyoming	13	13	14		14	14	14		

Note: Ages in the minimum age column may not apply to all offense restrictions but represent the youngest possible age at which a juvenile may be judicially waived to criminal court. "NS" indicates that no minimum age is specified.

- Concurrent jurisdiction provisions vary considerably with respect to minimum age and offense criteria.
- All states have provisions for trying certain juveniles as adults in criminal court. This is known as *transfer to criminal court*. There are three basic transfer mechanisms: *judicial waiver*, *statutory exclusion*, and *concurrent jurisdiction*.
- As of the end of the 2014 legislative session, 14 states and the District of Columbia had concurrent jurisdiction provisions, which give both juvenile and criminal court original jurisdiction in certain cases. Under such provisions, prosecutors have discretion to file eligible cases in either court.
- Often, concurrent jurisdiction is limited to cases involving violent or repeat crimes or offenses involving firearms or other weapons.

(Juvenile and criminal courts often share jurisdiction over minor offenses such as traffic, watercraft, or local ordinance violations as well as serious offenses in states where they are not excluded from juvenile court jurisdiction by statute.)

- State appellate courts have taken the view that prosecutor discretion is equivalent to the routine charging decisions made in criminal cases. Thus, prosecutorial transfer is considered an “executive function,” which is not subject to judicial review and is not required to meet the due process standards established by the U.S. Supreme Court in *Kent v. United States* (383 U.S. 541, 86 S.Ct. 1045 [1966]).

Source: Office of Juvenile Justice and Delinquency Prevention (2017a).

Table 6.8 Juvenile Court Blended Sentencing Offense and Minimum Age Criteria, 2015

State	Minimum Age for Juvenile Court Blended Sentencing	Juvenile Court Blended Sentencing Offense and Minimum Age Criteria							
		Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Person Offenses	Certain Property Offenses	Certain Drug Offenses	Certain Weapon Offenses
Alaska	16					16			
Arkansas	NS		13	NS	NS	13			14
Colorado	NS		NS			NS			
Connecticut	NS		NS			NS			
Illinois	13		13						
Kansas	12	12							
Massachusetts	14		14			14			14
Michigan	NS	NS	NS		NS	NS	NS	NS	
Minnesota	14		14						
Montana	NS		12		NS	NS	NS	NS	NS
New Mexico	14		14		14	14	14		
Ohio	10		10		10				
Rhode Island	NS		NS						
Texas	NS		NS		NS	NS		NS	

Note: Ages in the minimum age column may not apply to all offense restrictions but represent the youngest possible age at which a juvenile may be judicially waived to criminal court. “NS” indicates that no minimum age is specified.

- As with transfer laws, states’ juvenile court blended sentencing provisions are limited by age and offense criteria.
- Blended sentencing laws address the correctional system (juvenile or adult) in which certain offenders of juvenile age will be sanctioned. Such statutes can be placed into two general categories: *juvenile court blended sentencing* and *criminal court blended sentencing*.
- With juvenile court blended sentencing, the juvenile court has the authority to impose adult criminal sanctions on certain juvenile offenders. The majority of such laws authorize the juvenile court to combine a juvenile disposition with a criminal sentence that is suspended. If the youth successfully completes the juvenile disposition, the criminal sanction is not imposed. If, however, the youth does not cooperate or fails in the juvenile sanctioning system, the adult criminal sanction is imposed.

- As of the end of the 2014 legislative session, 14 states had blended sentencing laws that enable juvenile courts to impose criminal sanctions on certain juvenile offenders.
- Although the impact of juvenile blended sentencing laws depends on the specific provisions—which vary by state—in general, juvenile court blended sentencing expands the sanctioning powers of the juvenile court such that juvenile offenders may face the same penalties as adult offenders.

Source: Office of Juvenile Justice and Delinquency Prevention (2017b).

Waiver

As stated previously, statutory provisions in juvenile court acts have given juvenile courts original and exclusive jurisdiction over certain cases if the subject is within the defined jurisdiction. However, juvenile court acts contain provisions for the waiver of the juvenile court’s jurisdiction over certain offenses committed by minors of certain ages. Policies regarding waiver of juveniles to the criminal justice system differ from state to state and include discretionary judicial waivers, presumptive waiver laws, and mandatory waivers. Forty-five states have **discretionary waiver** provisions that allow judges to determine whether the youth should be transferred to adult court jurisdiction. These waivers are not required but are used in instances where the crime is of a very serious nature and/or the youth is a habitual or serious offender. Several states use a process called presumptive waivers, which identify types of crimes in which transfers to adult court are most appropriate. In these cases, the juvenile will meet age limit, offense, and other statutory criteria identified as being appropriate for transfer to adult court. The judge can use the criteria to make a sufficient argument for or against the transfer to adult criminal court. Finally, other states provide for mandatory waivers in cases where the youth meets certain age, offense, and prior record criteria. Mandatory waiver proceedings are initiated in juvenile court where it is confirmed that the youth meets mandatory waiver requirements. The case is then immediately forwarded to the adult criminal court (Adams & Addie, 2011).

The waiver should not be confused with concurrent jurisdiction, where two courts have simultaneous jurisdiction over the subject matter and the subject. *Waiver*, in this case, refers to the process by which a juvenile over whom the juvenile court has original jurisdiction is transferred to adult criminal court. Terminology varies from state to state—some call the process a “certification,” “bind-over,” or “remand” for criminal prosecution, a “transfer” or “decline” rather than a waiver proceeding (Office of Juvenile Justice and Delinquency Prevention, 1998). Regardless, most authorities agree that the waiver represents a critical stage of the juvenile justice process. At this point, the juvenile may lose the *parens patriae* protection of the juvenile court, including its emphasis on treatment and rehabilitation as opposed to punishment. Once transferred (waived) to the adult criminal justice network, the juvenile is subjected to contact with adult offenders, may obtain a criminal record, and finds himself or herself in a generally vulnerable position. In some states, an **automatic waiver** of the exclusive jurisdiction of the juvenile court occurs when specific offenses are allegedly committed by a juvenile. For example, in Hawaii, the court may waive jurisdiction and order the following:

Minor or adult held for criminal proceedings after full investigation and hearing where the person during the person’s minority, but on or after the person’s sixteenth birthday, is alleged to have committed an act that would constitute a felony if committed by an adult, and the court finds that: (1) There is no evidence the person is committable to an institution for individuals with intellectual disabilities or the mentally ill; (2) The person is not treatable in any available institution or facility within the State designed for the care and treatment of children; or (3) The safety of the community requires that the person be subject to judicial restraint for a period extending beyond the person’s minority. (Hawaii Revised Statute § 571-22, 2011)

States have outlined the provisions setting forth the circumstances under which a waiver may be granted. These are quite varied. Most states require that a child be over a certain age and that he or she be charged with a particularly serious offense before jurisdiction may be waived (see [Table 6.9](#)). Other states allow the prosecutor to file directly with adult criminal court, whereas others (all but four states: Massachusetts, Nebraska, New Mexico, and New York) provide for juvenile court judge authorization before waiving a case to adult court (Puzzanchera, 2003, p. 1).

Table 6.9 Judicial Waiver Offense and Minimum Age Criteria, 2015

State	Minimum Age for Judicial Waiver	Judicial Waiver Offense and Minimum Age Criteria							
		Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Person Offenses	Certain Property Offenses	Certain Drug Offenses	Certain Weapon Offenses
Alabama	14	14							
Alaska	NS	NS	NS			NS			
Arizona	NS		NS						
Arkansas	14		14	14	14	14			14
California	14	16	14		14	14	14	14	14
Colorado	12		12		15	12	12		
Connecticut	15		15	15	15	15	15		
Delaware	NS	NS	15		NS	NS	16	16	
District of Columbia	NS	15	15		15	15	15		NS
Florida	14	14							
Georgia	13		15	13		13			
Hawaii	NS		14		NS				
Idaho	NS	14			NS	NS	NS	NS	
Illinois	13	13	15					15	
Indiana	NS		NS		12			16	
Iowa	10	14	10						
Kansas	12	12	12			14		14	
Kentucky	14		14	14					
Louisiana	14				14	14	NS		
Maine	NS		NS		NS	NS	NS		
Maryland	NS	15		NS					

[illegible]

California	14				14	14			
Delaware	15		15						
Florida	NS		NS		16	NS	16	16	
Georgia	13		13		13	13			
Idaho	14				14	14	14	14	
Illinois	13		15		13	15			15
Indiana	16				16	16			16
Iowa	NS	NS	16					16	16
Louisiana	15				15	15			
Maryland	14			14	16	16			16
Massachusetts	14				14				
Minnesota	16				16				
Mississippi	13		13	13					
Montana	17				17	17	17	17	17
Nevada	NS	16	NS		16	NS			
New Mexico	15				15	15			
New York	13				13	13	14		14
Oklahoma	13		13		13	13			
Oregon	15		15		15	15			
Pennsylvania	NS				NS	NS			
South Carolina	16		16						
South Dakota	16		16						
Utah	16		16		16	16	16		16
Vermont	14		14		14	14	14		

Washington	16				16	16	16			
Wisconsin	10				10	10				

Notes: Ages in the minimum age column may not apply to all offense restrictions but represent the youngest possible age at which a juvenile may be judicially waived to criminal court. "NS" indicates that no minimum age is specified.* In Nevada, the exclusion applies to any juvenile with a previous felony adjudication, regardless of the current offense charged, if the current offense involves the use or threatened use of a firearm.

- All states have provisions for trying certain juveniles as adults in criminal court. This is known as *transfer to criminal court*. There are three basic transfer mechanisms: *judicial waiver*, *statutory exclusion*, and *concurrent jurisdiction*.
- Legislatures "transfer" large numbers of young offenders to criminal court by enacting statutes that exclude certain cases from juvenile court jurisdiction. As of the end of the 2014 legislative session, 29 states had statutory exclusion provisions.
- Under statutory (or legislative) exclusion provisions, State statutes exclude certain serious, violent, or repeat juvenile offenders from juvenile court jurisdiction. In most states, statutory exclusion provisions are limited by age, offense, and/or prior court history criteria.
- The offenses most often excluded are murder, capital crimes in general (offenses punishable by death or life imprisonment), and other serious offenses against persons.
- Some states (14) hold a hearing in juvenile court to determine if there is probable cause to believe the juvenile is of the required age and committed an offense targeted by the provision. Such provisions are referred to as *mandatory waiver* and were previously considered statutory exclusion.
- Minor offenses, such as traffic, watercraft, fish or game, and local ordinance violations, are also often excluded from juvenile court jurisdiction in states where they are not covered by concurrent jurisdiction provisions.
- Although not typically thought of as transfers, large numbers of youth younger than 18 are tried in criminal court in the 10 states where the upper age of juvenile court jurisdiction is set at 15 or 16. More than 2.5 million 16- and 17-year-olds live in these 10 states. If these youth are referred to criminal court at the same rate that 16- and 17-year-olds elsewhere are referred to juvenile court, then a large number of youth younger than 18 face trial in criminal court because they are defined as adults under state laws.

Source: Office of Juvenile Justice and Delinquency Prevention (2017d).

Another type of waiver is the discretionary waiver. A number of states permit waivers of jurisdiction for children over a certain age without regard to the nature of the offense involved. Where the juvenile court finds that the minor is not a fit and proper subject to be dealt with under the juvenile court act and the seriousness of the offense demands that the best interests of society be considered, the juvenile court judge may order criminal proceedings to be instituted against the minor (Bilchik, 1999a, p. 16).

Discretionary determination of waivers may be left to juvenile court judges to decide after a petition for a waiver has been filed and a hearing has been conducted on the advisability of granting the waiver. In general, the criteria used by juvenile court judges to determine the granting or denial of waivers of juveniles to criminal courts are rather vague and, for the most part, quite subjective. As stated previously, if the minor is not a fit and proper subject to be dealt with under the juvenile court, an order instituting criminal proceedings may be rendered by the juvenile court. Factors typically cited by the courts as weighing heavily in the decision to waive jurisdiction include the seriousness of the offense, the age of the juvenile, and the past history of the juvenile. However, some jurisdictions confer on the prosecutor the authority to decide which court (juvenile or criminal) should hear the case. According to Redding (2010), 14 states and the District of Columbia allow prosecutors to file charges in either juvenile or adult court against youth who commit violent offenses. Twenty-five states also have reverse waiver laws where the adult criminal court judge has the discretion to send the youth back to the juvenile court for sentencing purposes (Snyder & Sickmund, 2006).

With respect to waivers, in the *Kent* case, the U.S. Supreme Court ruled that to protect the constitutional rights of the juvenile, the juvenile is entitled to the following:

1. A full hearing on the issue of a waiver
2. The assistance of legal counsel at the hearing
3. Full access to the social records used to determine whether such transfer should be made
4. Statement of the reasons why the juvenile judge decided to waive the juvenile to (adult) criminal court (*Kent v. United States*, 383 U.S. 541, 1966)

In *Kent*, the Court held that a waiver of jurisdiction is a critically important stage in the juvenile process that must be

considered in terms of due process and fair treatment as required by the Fourteenth Amendment. Although the *Kent* decision applied only to the District of Columbia, most states that allow waivers have incorporated the waiver procedures of *Kent* into their juvenile court acts. A clear majority of states statutorily guarantee a waiver hearing.

Some states have attempted to establish at least some criteria that would aid the juvenile court judge in making a determination on a motion to waive the juvenile court's jurisdiction. For example, in Illinois the court must consider the following:

1. The seriousness of the alleged offense
2. Whether there is evidence that the alleged offense was committed in an aggressive and premeditated manner
3. The age of the minor
4. The previous delinquency history of the minor
5. The culpability of the minor
6. Whether there are facilities particularly available to the juvenile court for the treatment and rehabilitation of the minor
7. Whether the best interests of the minor and the security of the public may require that the minor continue in custody or under supervision for a period extending beyond his minority
8. Whether the minor possessed a deadly weapon when committing the alleged offense (ILCS, ch. 705, art. V, sec. 405/5-805 [3][b], 2012)

The juvenile court judge, as well as the prosecuting officials, must weigh the consequences of a waiver for the future of the juvenile. The question concerning a waiver of a juvenile to the adult criminal court for prosecution of an offense that might result in a felony record is extremely important due to the lasting effects that a felony record might have. To justify a waiver for criminal prosecution, the juvenile court must agree to accept the more punitive, retributive, and punishment-oriented approach of the adult court. In such cases, the juvenile court judge must act not only in the best interests of the minor but also in the best interests of the community by protecting the community against further unlawful, and perhaps violent, conduct by the juvenile offender. Juvenile court judges, realizing the full effect of a felony record (e.g., in terms of future employment) generally permit a waiver for criminal prosecution only when the offense is so serious that relegating the offense to the realm of delinquency would be unconscionable and would result in a mockery of justice and when the offense is not an isolated act but rather a series of acts showing a trend toward becoming more serious.

Double Jeopardy

The Fifth Amendment states that no person shall be subject to being tried twice for the same offense. Courts in the United States at one time held that the **double jeopardy** clause did not prohibit a juvenile adjudicated delinquent from subsequently being tried for the same offense in criminal court. In *Breed v. Jones* (421 U.S. 519, 1975), the U.S. Supreme Court unanimously ruled that the Fifth Amendment's prohibition against double jeopardy precludes criminal prosecution of a juvenile subsequent to proceedings in juvenile court involving the same act.

After dealing with scope and purpose, most juvenile court acts go on to describe in detail the procedures to be employed by various components of the juvenile justice system in handling the juvenile. We discuss these procedural requirements in the following chapter.

Career Opportunity: Court Administrator

Job description: Carries out the nonjudicial functions of the court including the following: management of the jury; court finances; fines collection; case flow management of all civil, criminal, traffic, juvenile, family, and probate matters; and records management. In addition, a court administrator provides a wide range of services to the public, judges, attorneys, agencies, and other members of the judicial branch.

Employment requirements: Must have a 4-year degree. Prior administrative experience may be required.

Beginning salary: Between \$20,000 and \$40,000 depending on jurisdiction. Benefits vary widely but are typically included.

Summary

A thorough understanding of both the purpose and scope of juvenile court acts is crucial because the intent of the juvenile court acts cannot be carried out without this understanding.

The primary purpose of juvenile court acts is to ensure the welfare of the juvenile within a legal framework while maintaining the family unit and protecting the public. Most of us would agree that this is an admirable goal. At the same time, however, we should be aware of the inherent difficulties involved in achieving this goal. Consider, for example, the police officer who has apprehended a particular juvenile a number of times for increasingly serious offenses. Repeated attempts at enlisting the aid of the juvenile's family in correcting the undesirable behavior have failed. If the officer decides that protection of the public is now of primary importance, the officer may feel compelled to arrest the juvenile even though this action may result in the