



## Juveniles

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### Background

In the eyes of the law, a juvenile or a minor, is any person under the legal adult age. This age varies from state to state, but in most states, the District of Columbia, and in all Federal Districts, any person age 18 or younger is considered a juvenile. In several states, such as New York, Connecticut, and North Carolina, a juvenile is age 16 or less, and in Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas and Wisconsin, a juvenile is age 17 or less. Wyoming is the only state that has established the age of juveniles to be 19 or younger (Whitehead & Lab, 1999).

As well as having upper age limits, juvenile jurisdictions also have lower age limits. Most states specify that prior to age six or seven, juveniles lack *mens rea*, or criminal intent. At this young age, juveniles also are thought to lack the ability to tell right from wrong, or *dolci incapax*. Usually, the age of the offender refers to the age of the offender at the time the offense was committed, but in some states, age refers to the offender's age at the time of apprehension. This arrangement allows for the sometimes lengthy periods it takes to clear a case.

One's status as a juvenile or as an adult is pertinent for the court's determination of the [JURISDICTION](#) under which an offender falls—the adult or the juvenile court system. If it is decided that a juvenile will be tried in a juvenile court, most states allow the juvenile to remain under that jurisdiction until the defendant's 21st birthday.

Relying on age as a sole determinant for adulthood has been criticized by many criminologists and policy makers since individuals develop at different rates. Some youth are far more mature at 18 years of age than some adults are. Because of this discrepancy, juvenile court judges have been given broad discretion to waive juveniles to adult court for trial and sentencing (see later section). In rare situations, the courts also have the power to *emancipate* a juvenile so that he or she becomes an adult under the law and is granted certain adult privileges. For example, if a 17-year-old loses both parents and has no other living relatives, he or she could be emancipated in order to pursue [CUSTODY](#) of his or her younger siblings.

## Development of the Juvenile Justice System

The legal concept of juvenile status, like the concept of childhood itself, is relatively new. The juvenile court system was established in the United States about two hundred years ago, with the first court appearing in Illinois in 1899. Prior to that time, children and youth were seen as miniature adults and were tried and punished as adults.

During the progressive era, which occurred between 1880 and 1920, social conditions in the United States were characterized by large waves of [IMMIGRATION](#) and a dramatic increase in urbanization. As a direct result, hundreds of indigent children wandered the streets, and many became involved in criminal activity. Initially, children who were convicted of crimes were housed with adult criminals. Social activists, law makers, and other officials soon realized that children institutionalized with adults were learning adult criminal behaviors and were exiting those institutions ready for life careers in criminality. Because of this negative influence, separate juvenile court systems and accompanying correctional institutions were developed.

Early juvenile institutions in the United States were based on the English Bridewell institution which emphasized the teaching of life and trade skills. The idea behind teaching skills was that criminality was a result of the social environment and often was a survival mechanism. If youth were taught other skills, they were more likely to make meaningful contributions to society upon their release.

Three other types of juvenile institutions began to appear in the United States during the progressive era: houses of refuge, new reformatories, and separate institutions for juvenile females. Houses of refuge focused on the reeducation of youth and used indeterminate sentencing, religious training, and apprenticeships in various trades. The houses were organized using a military model to promote order and discipline, but the houses were often overcrowded and youth were overworked.

New reformatories, established in the mid to late 1800s, were cottages and foster homes that were often situated on farms. Family-type organization was prevalent, and hard physical labor was stressed. New reformatories suffered from the same types of problems that houses of refuge did. Separate juvenile institutions for girls appeared in the mid 1880s, and these focused on teaching domestic and child-rearing skills to girls.

The first juvenile courts operated under the philosophy of *parens patriae* first articulated in *Prince v. Massachusetts* (1944). This philosophy meant the state could act "as a parent," and gave juvenile courts the power to intervene whenever court officials felt intervention was in the best interests of the child. Any offense committed was secondary to the offender. While *parens patriae* was designed to handle youth committing criminal acts, the discretion of this philosophy became increasingly more broad and was constantly debated in court. A number of pivotal cases ensued which helped the juvenile justice system evolve.

## Juvenile Case History

In 1838, a man by the name of Crouse took the state to court over the [INCARCERATION](#) of his daughter, Mary Ann. Mary Ann Crouse was being held at a house of refuge against her father's wishes but at the [BEQUEST](#) of her mother, who felt Mary Ann had become unruly and unmanageable. Mary Ann had not committed any crime. The courts held in *Ex parte Crouse* that the house of refuge was a reformatory rather than a jail, and Mary Ann's behavior could be reformed as long as she remained there. In essence, the court ruled that the judicial system had the right to assist families with troubled youth.

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Some thirty years later in *People v. Turner* (1870), Turner protested being held in a house of refuge against the wishes of both his parents. He was incarcerated because the state felt he was in danger of becoming a criminal. His parents actually won this case, and it was decided that the state should only intervene in troubled families given extreme circumstances. However, the verdict was largely ignored by the courts.

In 1905, a juvenile was given a seven-year sentence for a minor crime that would have received a far lesser sentence in an adult court. This dilemma was argued in *Commonwealth v. Fisher*. In this case, the court decided that the long sentence was necessary and in the best interests of the child, thus broadening juvenile court discretion under the *parens patriae* philosophy. It was not until *Kent v. the United States* in 1966, that the courts recognized the discretionary powers of *parens patriae* had gone too far and were perhaps encroaching on the constitutional rights of juveniles. In this case, 16-year-old Morris Kent had been waived to adult court without a [HEARING](#). Kent's attorney challenged the decision, citing a sixth Amendment violation. This case scrutinized the entire juvenile justice process, and as a result, a more formal set of procedures was established.

In 1967, another juvenile case was argued in the Supreme Court that also addressed the constitutional rights of juveniles. *In re Gault* addressed the separation of adult and juvenile courts, and Fifth and Sixth Amendment privileges for juveniles. Gerald Gault, a 15-year-old juvenile, had been sentenced to a maximum of six years in a state training school for making obscene phone calls to a woman. The case was originally heard in a very informal juvenile court proceeding. The [ACCUSED](#) was not represented by an attorney, and there was no transcript of the hearing. The Supreme Court ruled that the juvenile courts must protect the constitutional rights of juveniles, and rules and regulations must be imposed in the juvenile justice system:

*Under our Constitution, the condition of being a boy does not constitute a kangaroo court. The traditional ideas of the juvenile court procedure, indeed, contemplated that time would be available and care would be used to establish precisely what the juvenile did and why he did it.* IN RE Gault, 387 U.S. 1 (1967).

The protection of juveniles' rights upheld by *In re Gault* were further reinforced by *In re Winship* (1970), in which the Supreme Court extended the reasonable standard of doubt for guilt to juveniles. However, the following year, the right to trial by a jury of peers for juveniles was denied by the Supreme Court in *McKeiver v. Pennsylvania*. Several reasons were presented for the denial, including the notion that the juvenile system was not meant to be an adversarial one and was instead designed to be less formal and, therefore, more protective of juveniles' privacy. The Supreme Court justices also felt that allowing juvenile trials by jury would be an indication that the juvenile courts had lost their usefulness.

## Juveniles and Status Offenses

With the division of courts into adult and juvenile jurisdictions, there were a number of activities that were deemed offenses for juveniles. As a group, these are called status offenses and are such simply because of the age of the offender. Truancy, possession and consumption of alcohol, incorrigibility, curfew violations, and purchase of cigarettes are examples of status offenses. The theory behind status offenses stems from *parens patriae* in that status offenses are harmful to minors, and the courts need to protect minors from such activities.

During the late 1960s and 1970s, there was a move toward deinstitutionalizing status offenses. The movement was formalized by the 1974 Federal Juvenile Delinquency Act. Deinstitutionalization meant that juveniles who committed status offenses were diverted from the juvenile justice system to agencies outside the juvenile court's jurisdiction. The county or district attorney was given the authority to divert an offender, and this decision was made before a petition was filed (see below section on court procedure). Diversion was

implemented because many legislators felt that status offenses were minor in terms of criminal nature, and juveniles were better off having their families or some other agency deal with the matter than being formally processed by the justice system. Formal processing of status offenses was thought to lead to labeling and further delinquent acts, thus negating the whole purpose of rehabilitation. Diversion is still practiced today.

One [STATUS OFFENSE](#), incorrigibility, received a lot of attention during the 1970s. Juveniles who habitually do not obey their parents are incorrigible. With *parens patriae* still operating, many incarcerated juveniles were serving time for incorrigibility. Critics argued that almost all juveniles disobey their parents at some point, and such behavior may not always [WARRANT](#) court action. It seemed that incarceration exposed juveniles to much more severe criminality and sometimes even sexual and physical abuse. In short, juveniles came out of the system less socialized than when they entered it.

After diversion, juveniles who were adjudicated for status offenses were often classified as children in need of supervision (CHINS), persons in need of supervision (PINS), and minors in need of supervision (MINS). Today, status offenses are still illegal in all states, and many juveniles are still confined for such offenses. The Department of Justice estimated that in 1996, juvenile courts around the United States formally disposed of some 162,000 status offenses, 44,800 of which were liquor law violations (OJJDP, 2000).

## Examples of Status Offenses

### *Curfew*

Many cities, such as New Orleans, Atlanta, and Washington, D.C., require individuals under the age of 17 to be off the streets by 11 p.m. Teenagers found violating this curfew are held at a police-designated truancy center until a parent or [GUARDIAN](#) claims them. Parents who are determined to be aiding and abetting curfew violators are subject to fines and community service. Curfew laws have been challenged on the grounds that they violate the First Amendment by prohibiting a juvenile's right to free association. In *Quib v. Strauss* (1993), the U. S. Court of Appeals held that curfew laws were constitutional because they are designed to protect the community.

### *Truancy*

Most local laws prohibit school-age children from taking unexcused school absences. If caught being truant, juveniles may be processed in juvenile court or processed informally. In some states, such as Virginia and Arizona, parents can also be held accountable for their children's truancy and may be fined or jailed.

## Juvenile Court Procedure

The procedure and organization of the juvenile court system is different from the adult system. After committing an offense, juveniles are detained rather than arrested. Next, a petition is drawn up which outlines the jurisdiction authority of the juvenile court over the offense and detained individuals, gives notice for the reason for the court appearance, serves as notice to the minor's family, and also is the official charging document. Once in court, the juvenile case is adjudicated, and a [DISPOSITION](#) is handed down. Records from juvenile courts are sealed documents, unlike adult records which are accessible by anyone under the **FREEDOM OF INFORMATION ACT**. Like diversion, this measure is designed to protect the juvenile so that one mistake does not follow the juvenile for life. Juvenile records may also be expunged upon the juvenile's eighteenth birthday provided the juvenile has met certain conditions, such as good behavior. Juvenile court procedure is also far less formal than adult court procedure.

The disposition of a juvenile case is based on the least detrimental alternative, so the legacy of *parens patriae* is still evident. However, one major controversy in juvenile dispositions is the use of indeterminate sentencing, which allows a judge to set a maximum sentence. In such cases, juveniles are monitored during their sentences and are released only when the judge is satisfied that they have been rehabilitated or when the maximum time has been served. Critics argue that this arrangement allows the judge too much discretion and is, therefore, not the least detrimental punishment.

Juvenile courts are typically organized in one of three ways: 1) as a separate entity; 2) as part of a lower court, such as a city court or district court; or 3) as part of a higher court, such as a circuit court or a superior court. The organization model varies state by state, and some states, for example, Alabama, allow each county and city jurisdiction to decide which is the best method of organization. Where the juvenile court sits has profound implications for the juvenile process.

### Juvenile Waiver

One of the more hotly debated subjects with regard to juveniles has to do with the option to [WAIVER](#) to adult court. Currently, there are three mechanisms by which a juvenile's case may be waived to an adult court.

#### **Judicial Waiver Offenses**

A judicial waiver occurs when a juvenile court judge transfers a case from juvenile to adult court in order to deny the juvenile the protections that juvenile jurisdictions provide. All states except Nebraska, New York, and New Mexico, currently provide for judicial waiver and have set a variety of lower age limits (Snyder, Sickmund & Poe-Yamagata, 2000). In most states, the youngest offender who can be waived to adult court is a 17 or 18-year-old, although in some states, this age is as low as 13 or 14. Usually, the offense allegedly committed must be particularly egregious in order for the case to be waived judicially, or there must be a long history of offenses.

#### **Statutory Exclusion**

By 1997, 28 states had [STATUTORY](#) exclusions, which are provisions in the law to exclude some offenses, such as first-degree murder, from juvenile court jurisdiction. This number is expected to increase.

#### **Concurrent Jurisdiction**

Some states also have a legal provision which allows the [PROSECUTOR](#) to file a juvenile case in both juvenile and adult court because the offense and the age of the accused meet certain criteria. Prosecutorial transfer does not have to meet the due process requirement stipulated by *Kent v. The United States*. Approximately 15 states currently have this provision, although this number is expected to increase in the next few years.

The most important case guiding juvenile waiver is *Breed v. Jones* (1975). This case designates that a juvenile cannot be adjudicated in a juvenile court then be waived and tried in an adult court. To do so is to try the youth twice for the same crime ([DOUBLE JEOPARDY](#)), which violates the Fifth Amendment. However, in reality, this case did not have much impact on the juvenile system since juveniles are now subject to a waiver hearing which appears to be similar to a trial except in outcome.

## Juveniles and the Death Penalty

In the case of first-degree murder, juveniles who are waived to adult court may also face the death penalty. There are two key court cases that have laid the foundation for juveniles to receive the death penalty.

In *Thompson v. Oklahoma* (1988), the Supreme Court overturned a death sentence for a juvenile who was 15 years old at the time he was involved in a murder. The opinion cited the failure of the state of Oklahoma to stipulate a minimum age for [EXECUTION](#). This case has also set the minimum age of 16 at which a juvenile can be executed.

In *Stanford v. Kentucky* (1989), the Supreme Court ruled that it was constitutional for a state to execute a juvenile who was between the ages of 16 and 18 at the time of the offense but unconstitutional if the juvenile was under 16.

Although there have been a number of challenges to the minimum age of 16 for juvenile execution set by *Thompson v. Oklahoma*, such as *State v. Stone* (LA, 1988), *Flowers v. State*, (AL, 1991) and *Allen v. State* (FL, 1994), these challenges have only gone as far as the court of appeals.

Some 38 states now have laws allowing the execution of juveniles regardless of age, and at the time of this publication, 361 juveniles have been executed, beginning with Thomas Graunger, who was executed in 1642 in Massachusetts. After 1990, the only known countries that execute juveniles are Iran, Pakistan, Yemen, Saudi Arabia, and the United States ([www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)). Minimum ages for the death penalty are as follows:

- AGE 16: Alabama, Arizona, Arkansas, Delaware, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Wyoming.
- AGE 17: Florida, Georgia, New Hampshire, North Carolina, Texas.
- AGE 18: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Montana, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee, Washington, federal districts.

## Additional Resources

*Child Delinquents: Developments, Intervention, and Service Needs*. Ralph Loeber and David P. Farrington, Sage Publications, 2000.

*Juvenile Delinquency: Causes and Controls*. Robert Agnew, Roxbury Publishing, 2001.

*Juvenile Justice: An Introduction (Third Edition)*. John T. Whitehead and Steven P. Lab, Anderson Publishing, 1999.

*Juvenile Transfers to Criminal Court in the 1990s: Lessons Learned from Four States*. Howard N. Snyder, Melissa Sickmund, Eileen Poe-Yamagata, Office of Juvenile Justice and Delinquency Prevention, 2000.

## Organizations

*American Bar Association Juvenile Justice Center*  
740 15th Street NW

Washington, DC 20005 USA  
Phone: (202) 662-1506  
Fax: (202) 662-1506  
URL: <http://www.abanet.org/crimjust/juvjust/home.htm>

***Death Penalty Information Center***

1320 18th Street NW  
Washington, DC 20036 USA  
Phone: (202) 293-6970  
Fax: (202) 822-4787  
URL: <http://www.deathpenaltyinfo.org>

***Juvenile Justice Clearinghouse***

P.O. Box 6000  
Rockville, MD 20849-6000 USA  
Phone: (800) 638-8769  
Fax: (301) 519-5600  
E-Mail: [tellncjrs@ncjrs.org](mailto:tellncjrs@ncjrs.org)

***National Center for Juvenile Justice***

710 Fifth Avenue, Suite 3000  
Pittsburgh, PA 15219 USA  
Phone: (412) 227-6950  
Fax: (412) 227-6955  
URL: <http://brendan.ncjfcj.unr.edu/homepage/ncjj/ncjj2/index.html>

***Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice***

Washington, DC USA  
URL: <http://www.ojjdp.ncjrs.org>

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