

WHO IS A JUVENILE?

OUTCOMES

As a result of this lesson, students will be able to:

- Define the term “juvenile”
- Define the term “delinquent”
- Discuss waivers and transfers to criminal court
- Explain differences between the juvenile and adult justice systems
- Discuss the rationale behind treating juvenile and adult offenders differently

MATERIALS NEEDED

Blackboard/flip chart

Chalk/markers

Overhead projector

Signs that say “No Waivers for Juveniles, Ever” and “Waivers For All Violent Crimes Committed by Juveniles.”

Name tags: Judge, Prosecutor, Defense

HANDOUTS

1. Juvenile Delinquent/Adult Criminal
2. Juvenile or Adult?
3. Waiver Hearings

TRANSPARENCIES

Groups for Waiver Hearings

Rules for Take a Stand

COMMUNITY RESOURCE PEOPLE

Invite a lawyer or juvenile court staff person to assist with this lesson. Send a copy of the lesson and a copy of “Suggestions for Community Resource People” from the introduction when you confirm.



Have the resource person help you where you see this icon.

LOCAL LAWS AND PROCEDURES

Find out the name the juvenile court uses (family court, juvenile court, district court, or others) and the age limit for juveniles in your jurisdiction. Check to see whether waivers or transfers are used in your state. What is the age for juveniles and what procedures are used?

PREPARING TO TEACH

- Copy **Handouts** and prepare **Transparencies**.
- Write up and post the session outcomes.
- Prepare nametags that say Judge, Prosecutor and Defense.
- Prepare signs.
- Copy **Handout 3** and cut into strips. Select a scenario to use first.

REVIEW TEACHING STRATEGIES

- Jigsaw
- Mini-Hearing
- Take a Stand

Check local juvenile court procedures to find out whether proceedings are kept open or closed and if they are confidential.

"JUVENILE"

1

Review lesson outcomes with the students.



Introduce the community resource person and have them **briefly** (in a few sentences) describe their job. Tell the class they will be assisting with the day's lesson.

2

Write the term "juvenile" on the board. Ask students what the word means. Write their thoughts on the board or on a flip chart as they create a definition.

A **juvenile** is any person who is not yet an adult. In most states and the District of Columbia, individuals under 18 years of age are considered juveniles. (If the age in your state is different, tell students the correct age).

3

Write the term "delinquent" on the board. Follow the same procedure as for the term "juvenile."

All states set an age limit that determines whether a person accused of a crime is a **juvenile** or an **adult**. A **delinquent** is a juvenile who has committed an illegal act.

4

What is juvenile delinquency court?

There is a judicial (court) system especially for juveniles. In most states and the District of Columbia, youth under the age of 18 who commit an illegal act have their cases heard in juvenile court or family court. Other states set the age limits at 15, 16, 17, or 19.



NOTE: Call your local family court or the district attorney's office to find out what the age is for your juvenile court.

5

Ask students to brainstorm reasons for having separate justice systems for juveniles and adults. Keep a list for later in the lesson.

Some reasons include (these reasons are all opinions, and while student opinions may differ, all are valid):

- Children in trouble with the law should be helped rather than punished

- Youth have special needs
- The adult system would hurt more than help a child
- Youth have the right to education (not available in adult prisons)
- Many youth are in trouble due to family problems, not to crime
- Youth don't commit crimes as violent as those committed by adults
- Youth are too young to be held responsible
- The family can't provide adequate supervision

A history of the juvenile court can help you explain how the court has evolved. The information presented below should be used to supplement the discussion and is not intended to be read to the students. [The Juvenile Delinquency Guidelines – Improving Court Practice in Juvenile Delinquency Cases](#)¹ gives this history of the Juvenile Delinquency Court:

“Prior to the establishment of its first juvenile delinquency court America followed legal traditions inherited from England. These traditions categorized people as ‘infants’ or ‘adults’ and allowed three options for children and youth who broke the law:

1. Any child below age seven was presumed to be incapable of criminal intent and conclusively exempt from prosecutions and punishment.
2. Children ages seven through 14 could invoke the “infancy defense” and try to convince the court of their incapacity for criminal intent. The prosecutor would counter such defense to show criminal capacity and if successful the child would face criminal penalties, including imprisonment or death.
3. Children over the age of 14 were always prosecuted and punished as if they were adult criminals.

“The first juvenile court in the USA, authorized by the Illinois legislature, began operation in 1899 in Cook County (Chicago), Illinois. The legislation that created this court included a comprehensive set of definitions and rules ‘to regulate the treatment and control of dependent, neglected, and delinquent children.’ The court was charged with promoting the welfare of children in trouble, to avoid the stigma of crime and criminality, and ‘as far as practical, treat children not as criminals but as children in need of aid, encouragement and guidance.’

“By 1925, following Illinois’ lead, all but two states had established juvenile courts based on the British doctrine of *parens patriae* (the state as parent). This doctrine gave government the right to intervene in the lives of children, with or without the consent of parents. The focus was on the offender and not the offense, on rehabilitation instead of punishment. The court was responsible for balancing the needs of children, their families, and their communities.

¹ *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*. The National Council of Juvenile and Family Court Judges, 2005. Reno, Nevada.

“Thus the original design of the juvenile delinquency court optimized its chances of providing community safety by imposing consequences that have the best chance of producing change in each youth.

“Three US Supreme Court decisions caused the pendulum to shift in the 1960s and 1970s away from part of the *parens patriae* doctrine. These decisions responded to concerns that the rights of youth were being trampled, and that *parens patriae* and unbridled judicial discretion, however benevolently motivated, and were arbitrary and unfair. These decisions were:

1. *Kent v United States* (1960) – youth must have an attorney who must have access to the youth’s records.
2. *In re Gault* (1967) – established the constitutional rights of juveniles (Lesson 10)
3. *In re Winship* (1970) - changed the burden of proof from preponderance of evidence to proof beyond a reasonable doubt.

“In contrast to this shift, however, *McKeiver v. Pennsylvania* (1971) moved in the opposite direction when the US Supreme Court determined that in juvenile proceedings there was no right to trial by jury.

“During this period, juvenile delinquency court purpose clauses began to use words such as ‘punishment’ and ‘accountability,’ and juvenile delinquency court process focused more on the criminal nature of the delinquent acts. The Juvenile Justice and Delinquency Prevention Act of 1974 was passed and limited the placement of status offenders in secure detention or correctional facilities. It also required that juvenile offenders be removed from adult jails and separated from adults in institutional settings.

“The next pendulum swing began in the mid-80s in response to a rapid escalation in the volume and seriousness of youth crime. These areas of change included: 1) transferring youth to criminal court; 2) relaxing the confidentiality protections; 3) the emergence of the increased role for the prosecutor in juvenile delinquency court and 4) toughening juvenile court sanctions.”



Note: The juvenile court uses terms and procedures that are different from adult or criminal court and these will be examined in this lesson. For the full history and procedures of the juvenile delinquency court see www.ncjfcj.org for the Juvenile Delinquency Guidelines – Improving Court Practice in Juvenile Delinquency Cases.

DIFFERENCES IN ADULT AND JUVENILE COURT

1



Tell the students that adults are tried in criminal court. Discuss differences between juvenile and criminal treatment by the courts. Use **Handout 1, Juvenile Delinquent/Adult Criminal** to compare procedures.

Handout 1: **Juvenile Delinquent/Adult Criminal****Juvenile Delinquent**

Is less than 18 years of age

Commits an illegal act called an *offense*.

Can be referred for "Status Offenses":

- a) truancy from school,
- b) failure to obey parents,
- c) running away from home, and
- d) smoking and drinking

Has a *hearing* which is private and confidential (with exceptions in some states). Does not have the right to a jury trial.

Appears before a judge who considers a juvenile's behavior at school and home before sentencing (disposition).

No matter what the offense, youth can be committed only until 21 years old.

May be able to have record sealed or destroyed at a certain age and/or if conditions including good behavior are met (varies by state).

Adult Criminal

Is usually 18 or older.

Commits an illegal act called a *crime*.

Truancy, failure to obey, running away, and smoking and drinking are not crimes if committed by adults.

Has a *trial* which must be public. Has the *right* to a jury trial.

May report to the judge any information that will prove she/he is a responsible citizen to request lighter sentencing.

Can be sentenced to life in prison or death depending on the type of crime committed.

In many cases, will always have a criminal record if convicted of a crime (may be expunged in some states).

2

Review the differences in the meaning of the following terms:

1. "Offense" and "crime"

An **offense** is an illegal act committed by a juvenile.

A **crime** is an illegal act committed by an adult.

2. "Juvenile hearing," "trial," "adjudicatory hearing," and "dispositional hearing"

A **juvenile hearing** is usually a private proceeding with a judge.

A **trial** is a public proceeding with a judge and possibly a jury.

An **adjudicatory hearing** takes place in juvenile court and is like a "trial," when the judge hears the facts of the case from the defense attorney and the prosecution. The judge makes a decision if the juvenile is delinquent or non delinquent.

A **dispositional hearing** is when the juvenile judge gives a “sentence” to the youth. If a youth is found non delinquent there is no dispositional hearing. Often the hearings are held on different days.

JUVENILE OR ADULT?

1

Pair students and distribute **Handout 2, Juvenile or Adult?**

2

Tell them to use **Handout 1, Juvenile Delinquent, Adult Criminal**, to decide if the following cases are juvenile or adult. Instruct students to write “juvenile” or “adult” next to each case [answers here only].

Handout 2: JUVENILE OR ADULT?


1. Carmen is picked up by the police for vandalism. At her first hearing, the judge decides to let her go home until the adjudicatory hearing. (juvenile)
2. Ray has been convicted of murder and is sentenced to life in prison. (adult, but could also be a minor who was transferred and tried as an adult in criminal court.)
3. Susan is picked up for not attending school. (juvenile)
4. Murray has no criminal record, even though he was in court and admitted to shoplifting charges five years ago. He has not been arrested since then. (juvenile)
5. Chantal’s lawyer asked the jury to find her “not guilty.” (adult)
6. The social worker told the judge that Mabel obeys her parents and her curfew and attends school regularly. (juvenile)
7. Boris was arrested and charged with robbery. He later had a trial. (adult, but could also be a minor who was transferred and tried as an adult in criminal court.)
8. Billy was picked up by the police as a runaway. (juvenile)
9. Pedro will always have a criminal record, even though he has only been convicted of a crime once. (adult)
10. Phyllis looked around the courtroom and saw a lot of people watching her trial. (adult, but could be “juvenile” if your state holds juvenile trials and/or admits spectators.)

3

Have the students report their decisions and the reasons for their decisions. At the end of each case discussion confirm or give students the correct answer and discuss reasons that they may have omitted.


4

Ask students why some of the answers above would be correct as a juvenile or an adult.

5

All states have laws that allow youth to be tried as adults in criminal court under certain circumstances. The juvenile would be waived or transferred to criminal court by the juvenile court judge or by state law. More and more states are lowering the age at which a juvenile can be tried in criminal court. States are also expanding the categories of crime under which a juvenile can be tried in criminal court. Discuss your state laws and procedures with the resource person.

WAIVERS

1

Tell the students you will now be discussing waivers. A *wavier* is the process for youth to be moved into the adult criminal justice system. In the case of a waiver, the juvenile court gives up its authority over a juvenile and transfers the case to the adult or criminal court.

2

State laws provide for multiple ways for a juvenile charged with a serious offense to come under the jurisdiction of the criminal court: In 1996, approximately 10,000 juvenile cases (about 1.6%) were judicially waived into criminal court. The effectiveness of waivers is under review. Waivers are defined in the [The Juvenile Delinquency Guidelines – Improving Court Practice in Juvenile Delinquency Cases:](#)

- Discretionary Judicial Waiver - The judge decides that the case should be heard in criminal court. In many states and the District of Columbia judges can, after a request by the prosecutor, decide to “waive” jurisdiction and transfer the juvenile to criminal court for trial in the “adult” system. The discretionary judicial waiver process consists of two decisions – the first is the determination of probable cause and the second is the determination of whether the youth should remain under the jurisdiction of the juvenile court or not. The prosecutor is charged with the burden of proving the youth is not amenable to a juvenile delinquency court response.
- Mandatory Judicial Waiver - The juvenile delinquency court is required to transfer a case to criminal court if the judge finds probable cause and the alleged offense is specified by state law as a mandatory waiver. (Check your state law about crimes that trigger mandatory waivers).
- Prosecutorial Waiver – The prosecutor has the authority to decide whether to file the charge in the juvenile delinquency court or the criminal court if the alleged offense falls within offense and age parameters established by state law.
- Statutory Exclusion – Another term used for statutory exclusion is direct file. State law requires that certain offenses be directly filed in the criminal court if allegedly

committed by a juvenile of a certain age, removing discretion from both the prosecutor and the juvenile delinquency court judge.

- Blended Sentencing – In some states, the juvenile delinquency court has the power to impose both juvenile and adult sentences concurrently under certain circumstances.



NOTE: The age at which a juvenile can be waived to criminal (adult) court, varies from state to state, with some states setting the age as low as 10. However, the minimum age in your state may not be applicable to every offense in that jurisdiction. Please check your state laws for specific criteria used.

3



If you are not using a resource person, check with your local court to see which procedure(s) are used in your state. Have the resource person comment on the local state law regarding waivers.

WHAT TO CONSIDER

1



Ask students what factors they think a judge considers when deciding whether to try a youth as a juvenile or as an adult. Allow the students to brainstorm freely about what they think a judge considers and list the students' answers on the board.

2

Discuss the reasons the students listed, telling them that when a judge has the discretion to waiver a youth, he most likely considers all the items they listed. Which ones do they think are the most important? Lead the student to include the information below in your discussion.



Some considerations were set out by the Supreme Court decision *Kent v. United States* (1966). They are:

- age of the juvenile when the offense was committed
- past juvenile record
- failure of previous rehabilitative efforts in the juvenile system
- seriousness of the offense, protection of the community
- whether the offense was aggressive, violent, or premeditated and whether it was against a person (which is treated more gravely than against property)
- repeated patterns of illegal behavior
- whether the judge thinks the juvenile can be rehabilitated in the juvenile system

3

Indicate that the list of considerations will be the basis for the judge's decisions in the next activity.

WAIVER HEARING**1**

Explain to the students that they will now have to decide who to waive to criminal court. Some of them will be judges and some will be lawyers. Display the **Transparency, Groups for Waiver Hearing** on the overhead projector and discuss it with the students. Tell them that the lawyers will make arguments for or against a waiver and the judge will make a decision based on the argument heard. Review the tasks for each group.

Transparency: GROUPS FOR WAIVER HEARING

Group 1—Lawyers for the youth (defense)

- prepare the arguments against a waiver
- prepare for questions from the judge

Group 2—Lawyers for the state (the prosecutor)

- prepare the arguments for a waiver
- prepare for questions from the judge

Group 3—the Judges—hear the case and make a decision whether to waive the juvenile to adult criminal court or keep in juvenile court.

- prepare questions to ask each side
- review the considerations listed on the board



NOTE: Use the list of reasons for having a juvenile court as support for this section of the lesson.

2

Count off students by three. Tell the number groups to get together and assign each group one of the roles. (See **Jigsaw** in the “Teaching Strategies” section of this manual.) Distribute nametags displaying their group role to each student.

Have the resource person meet with the judge group to explain the court room procedure and tell them they should limit each lawyer to three minutes of arguments (or more, if you have enough time and think they need more time). The steps are as follows:

1. The prosecutor presents arguments.
2. The defense (lawyer for youth) presents arguments.
3. The judge may question either lawyer at any time.

3

Distribute the scenario you have chosen to use first from **Handout 3, Waiver Hearings**.

Handout 3: WAIVER HEARINGS

Malcolm is 12 years old and is accused of murder. He is a troubled child, possibly suffering from abuse. He is a constant problem at school. He has no previous arrests. Should he be tried as a juvenile or an adult? Why?

Arguments for waiver: It could be argued that murder at any age should be tried in adult court.

Arguments against waiver: Because of his tender age and lack of previous arrests, Malcolm should be charged as a juvenile. Malcolm is still young enough to benefit from treatment in the juvenile justice system and is too young to understand the adult system.

Todd is 15 years old and is accused of shoplifting. He has 15 previous arrests for shoplifting. Should he be tried as a juvenile or adult? Why?

Arguments for waiver: It could be argued that 15 arrests for shoplifting indicate that Todd is beyond help from the juvenile justice system and as a 15 year old, should be tried as an adult.

Arguments against waiver: It could be argued that Todd is still young enough to benefit from some kind of treatment and that none of his previous charges involves crimes of a serious nature (injuring or killing another person).

Juana, 16, is arrested with a handgun at school. She has one previous conviction for robbery. Should she be tried as a juvenile or an adult? Why?

Arguments for waiver: With the serious problem of violence among students, it could be argued that she is very dangerous to the community and especially to the school. She also has been to court for a serious crime before and does not seem to have benefited from treatment.

Arguments against waiver: It would be argued not to waive Juana because she is only 16 and has not hurt anyone. The problem is better dealt with at the school and in the juvenile court.

4

Circulate around the room to make sure the students in each group understand the assignment and the time limits for their presentations. Give the groups time to prepare their case/questions. Some possible reasons to and *not* to waive in each case are given above if students need prompting.

5

Remind all the students of the list of considerations, which should be posted for easy review.

6

Reassign them to new groups of three. In each group there should be one person from each of the numbered groups: a judge, a lawyer for the youth, and a lawyer for the state. (This rearrangement is easier if you have prepared name tags for the “players”). Give the judges instructions to start their “hearing” when they have all the “players.” (See **mini-hearing** in “Teaching Strategies”)

7

Circulate around the room to be sure the students understand the task and are performing it appropriately. Answer any questions that arise. Students may elaborate upon, but not change, the known facts.

When the small groups are finished, ask the judges to think about their decision but not to announce it. Remind the judges that the decision should be based on the arguments heard and criteria listed in the list of considerations on the board.

8

Bring all students back to the large group. Ask the judges to give their decisions and the reasons behind them. Discuss rationale for different decisions.

9

Ask the judges the following questions: What are the strongest arguments for each side? Explain which things (age of juvenile, offense, etc.) helped you make the decision.



Have the resource person comment on the discussion and rationales. The resource person can also discuss the similarity of the students’ decisions to that of a real judge and whether different judges will make different decisions.

10

If you have additional time, you can follow the same process for the other scenarios. Each student could have an opportunity to be the judge and to argue for and against a waiver. Make sure there is enough time for the summary and debrief below.

11

Ask the students the following questions about the mini-hearings:

Ask judges:

- Did you like being a judge? Why or why not?
- What was difficult about making the decision?
- Which argument helped you make your decision?
- What was your main consideration in deciding on the waiver?

Ask attorneys:

- Did you like being an attorney? Why or why not?
- Was it difficult thinking of arguments for your side?
- What was difficult?

12

Ask the students about the lesson:

- What do you think the main purpose of a waiver hearing is?
- Do you think a family court judge would make the same decision as you did? Why or why not?

SUMMARY/DEBRIEF

1

Tell students that now that they have learned about waivers and applied them in cases, they should think about whether they are a good idea in general. They will be asked to take a stand and give their opinion, with rationale.

2

Post signs on opposite sides of the room for **Take A Stand** activity (see “Teaching Strategies”): “No Waivers for Juveniles, Ever” and “Waivers For All Violent Crimes Committed by Juveniles.”

3

Post/display **Transparency, Rules for Take a Stand**, and discuss rules for the activity:

Transparency: **RULES FOR TAKE A STAND**

- Do not interrupt, wait for your turn.
- Do not argue, state your opinion. Give new reasons or ideas.
- Listen while others give their reasons and ideas
- You may move at any time. Be prepared to give your reasons for moving.

4

Tell students to take a stand by the sign that most closely represents their opinion. They can stand in the middle if they cannot make up their mind.

5

Once students are standing, randomly call on them to hear their reasons. Encourage students to move if they change their minds.

Reasons **for** waivers might include:

- Waivers send a message to everyone that youth who commit grown-up crimes will face adult trials, adult sentences, and adult prisons.
- Violent youth are treated too softly by juvenile justice systems and need to go to adult prisons.
- Many of the youth who commit the worst crimes have long records of delinquency and have not been punished previously.
- The juvenile justice system was never meant to deal with the kind of violent behavior that is now increasing the death rate among young people.
- The juvenile justice system was developed with an emphasis on rehabilitation and treatment, and it has failed these violent youth.
- If dangerous youth are locked up, they will not be out causing more trouble.
- With the most violent kids in adult prisons, the less violent offenders are no longer exposed to them and can be treated better by the juvenile justice system.

Reasons **against** waivers may include:

- Kids who are 13 or 14 don't belong in prison.
- It is cruel punishment to send youth to adult prisons.
- Our society cannot afford to lose these youth to the harsh education they receive in adult prisons. They need to receive treatment to become productive members of the community.
- Putting young offenders in adult prisons will make them more likely to continue committing crimes.
- Placing kids in adult prisons will breed more hostility and anger.
- Juveniles who are waived to adult court will not necessarily receive harsher sentences. They are eligible for bail, plea bargaining, and other options, which may not be available in the juvenile system. (Find out what your state allows in the juvenile process.)
- If the juvenile justice system is inadequate to deal with the needs of the youth and the community, then the system should be improved, rather than transferring youth out of the system to the adult courts.

6

When all or most of the students have spoken, bring students back together and ask:

- Which arguments made you think harder about your position?
- Did anyone change their original opinion? Why?

- Under what age do you think kids should **never** be waived?
- Would you change the legal ages for a juvenile? What would it be and why?
- Should there be two court systems (adult and juvenile)? What might work better?

OPTIONAL ACTIVITY: If state statistics on recidivism (returning to court) are available, this is an excellent opportunity to review them with the students and, if possible, the parents. In most states youth that enter the juvenile justice system have a greater chance of remaining in the system and eventually being part of the adult system than do youth who are diverted early. Use this opportunity to discuss the alternatives to keep youth out of the system. Some alternatives are alternative schools, counseling, group homes, special skill development program, job training, tutoring, etc. Check with your recourse person on alternative or diversion programs used in your area.

WEB RESOURCES

For more information about juveniles and the juvenile justice system, visit:

www.ncjrs.org/html/ojjdp/9912_2/contents.html (an article entitled *Juvenile Justice: A Century of Change*)

www.usdoj.gov/kidspage (Department of Justice Juvenile page)

For updated juvenile justice statistics and trends, visit:

www.ojp.usdoj.gov/bjs/abstract/jdfcjs.htm (statistics); and

www.ncjrs.org/pdffiles1/ojjdp/fs200015.pdf (Juvenile Court placement of Adjudicated Youth)

The Juvenile Justice and Delinquency Prevention Act can be found at:

<http://ojjdp.ncjrs.org/about/ojjjact.txt>