

# TRANSFER OF JUVENILES TO ADULT COURT: RECENTS TRENDS AND IMPLICATIONS

NATIONAL ASSOCIATION OF SENTENCING COMMISSIONS  
ANNUAL MEETING

AUGUST 5, 2013

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# Presentation Roadmap

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- Brief history of juvenile transfer laws in the U.S.
- Recent trends in juvenile transfer laws (2005-2011)
- What the research tells us about juvenile transfer:  
Carol Schubert and Edward Mulvey
- The Minnesota Experience: 20 years of EJJ

# History of Juvenile Transfer Laws

- **Early 20<sup>th</sup> century:** judicial transfer laws found in earliest codes, but reserved for worst crimes
- **By 1970s:** most states had some form judicial waiver laws
- **1980s-1990s: “Get tough” Era**
  - Every state enacted laws to ease juvenile transfer by:
    - Increasing the number and variety of eligible offenses
    - Lowering or eliminating age restrictions on transfer
    - Shifting discretion away from judges to prosecutors and legislatures
  - Transfers increased in a large number of locales (*Fagan, 2008; Penney and Moretti, 2005*), but lack of data prevents accurate accounting

# Three Primary Methods of Transfer

## □ **Judicial Waiver**

- case filed in juvenile court
- evidentiary hearing with articulated standards
- 45 states have some form of judicial waiver

## □ **Statutory Exclusion (aka “legislative waiver”)**

- criminal courts have jurisdiction over certain classes of cases
- case filed in criminal ct
- 29 states have some form of statutory exclusion

## □ **Prosecutorial Discretion (aka “direct file”)**

- case filed in either juvenile or criminal ct
- no hearing and often no formal standards
- 15 states have some form of prosecutorial discretion



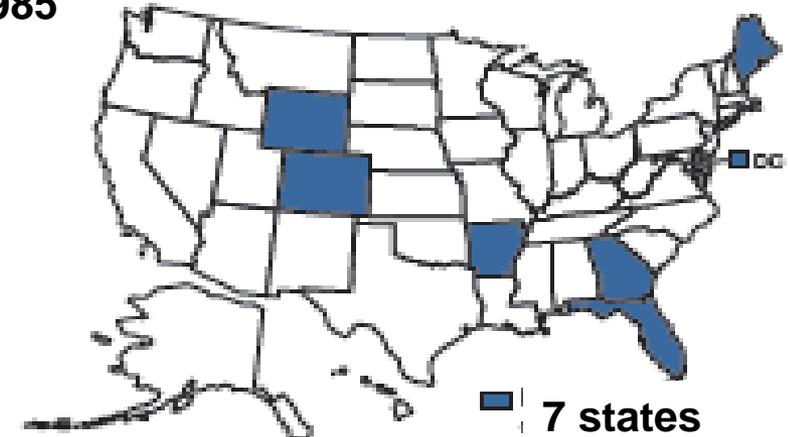
# Expansion of Prosecutorial Discretion

Between 1970 and 2000, the number of states with prosecutorial direct file provisions rose from 2 to 15.

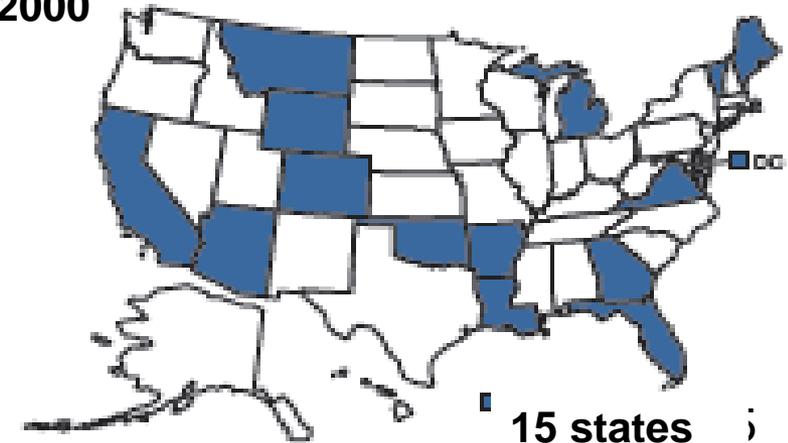
Pre-1970



1985



2000



*OJJDP Nat'l Report Series, Bulletin Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting (Sept. 2011)*

# What do we know about state transfer rates?

## **Not enough.**

According to OJJDP, only 13 states publicly report transfer data, and only Florida, Arizona and California provide a detailed picture.

## **Average Annual Transfer Rate 2003-2008**

Florida	164.7
Oregon	95.6
Arizona	83.7
Tennessee	42.6
Montana	41.6
Kansas	25.3
Washington	21.2
Missouri	20.9
California	20.6
Ohio	20.4
Michigan	12.4
Texas	8.6
North Carolina	7.1

\*Cases per 100,000 juveniles ages 10 to upper age of juvenile court jurisdiction.

Notes: Table is intended for rough comparison only. Unit of count varies from state to state. Some states report by fiscal year, some by calendar year. Transfer volume was unavailable for Montana in 2005, 2006, and 2008 and for Washington in 2008.

# Recent Trends in Juvenile Transfer to Adult Court (2005-2011)

- **Laws limiting ability to house youth in adult jails/prisons**  
(Colorado, Maine, Virginia and Pennsylvania)
- **Laws expanding juvenile court jurisdiction**  
(Connecticut, Illinois, and Mississippi)
- **Laws restricting use of transfer**  
(Arizona, Colorado, Connecticut, Delaware, Illinois, Indiana, Nevada, Utah, Virginia and Washington)
- **Laws changing mandatory minimum sentences to account for developmental differences** (Colorado, Georgia, Texas, and Washington)

# What accounts for these trends?

- **Falling violent crime rates** among juveniles
- **Neuroscience:** adolescent brain research
- **Supreme Court Doctrine:**
  - *Roper v. Simmons* (2005)
  - *Graham v. Florida* (2011)
  - *Miller v. Alabama/Jackson v. Hobbs* (2012)
- **State-Level Expertise:** increased reliance by legislators on state commissions
- **Social Science:** research on the fairness and utility of transfer; “Pathways to Desistance” studies

# The Minnesota Experience: 20 years of EJJ

- **1995 Reforms to Minnesota Juvenile Code:**
  - Revised judicial waiver laws to emphasize "public safety" criteria
  - applied "presumptive commitment" offenses in the adult sentencing guidelines to waiver
  - mandated adult prosecution of older juveniles charged with first degree murder
  - expanded authority of juvenile court judges to impose longer juvenile dispositions and more extensive treatment
  - established Extended Jurisdiction Juvenile (EJJ)

# Adult Certification and EJJ in Minnesota

- **Adult Certification:** children 14 years and older who commit felony-level delinquent acts which are serious, violent, and/or involve firearms may be certified as adults by the juvenile court for trial and sentencing in criminal court. (*Minn. Stat. 260B.125*) *Approximately 1% of juvenile cases in Minnesota.*
- **Extended Jurisdiction Juvenile (EJJ):** prosecutors may move to have children 14 years and older who commit felony-level delinquent acts designated “EJJ.” (*Minn. Stat. 260B.130*) *Approximately 3% of juvenile cases in Minnesota.*

# Impetus and Rationale for EJJ

- EJJ characterized as a “political compromise between those who wanted to emphasize public safety, punishment, and accountability of juvenile offenders, and those who wanted to maintain or strengthen the traditional juvenile justice system.” Cheesman et al (2002).
- EJJ Task Force: “It will give the juvenile *one last chance* at success in the juvenile justice system, with the threat of adult sanctions as an incentive not to re-offend.”
- If adult certification was to target the “worst of the worst,” EJJ was to target the “less worse of the worst” Podkopacz & Feld (2001)

# Blended Sentencing

- **Allows courts to impose juvenile sanctions, adult sanctions or both; types include:**
  - *Juvenile Exclusive blended-sentencing model:* juvenile court judge may impose either juvenile or adult sanction and makes sanction effective immediately
  - *Juvenile Inclusive blended-sentencing model:* juvenile court judge may impose both juvenile and adult sanction, with adult sanction usually suspended and effective upon subsequent violation
  - *Juvenile Contiguous blended-sentencing model:* juvenile court judge may impose sanction that begins in juvenile system and moves to adult system at maximum age of juvenile jurisdiction
  - *Criminal Exclusive blended-sentencing model:* criminal court judge may impose either juvenile or adult sanction and makes sanction effective immediately
  - *Criminal Inclusive blended-sentencing model:* criminal court judge may impose both juvenile and adult sanction, with adult sanction usually suspended and effective upon subsequent violation
- **Approximately 25 states have some form**

# Important Facets of EJJ Designation

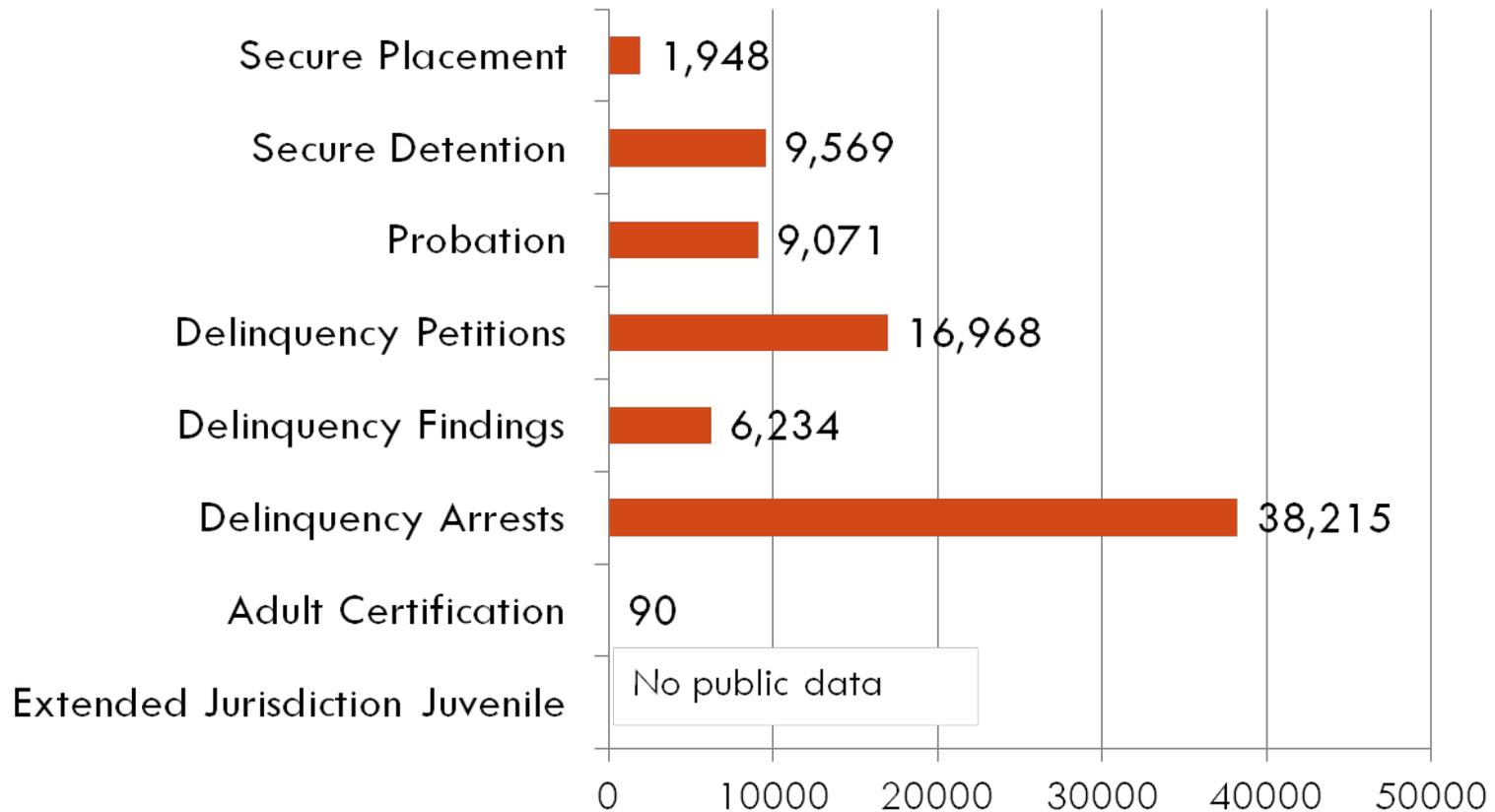
- ❑ “Juvenile Inclusive” Blended-Sentencing Model
- ❑ Criminal due process rights attach (e.g., right to jury trial)
- ❑ Juvenile court jurisdiction extended to 21
- ❑ Juvenile court sentence and “stayed” adult court sentence imposed
- ❑ Conditions of probation issued
- ❑ Supervision by probation officer and community specialist with individualized “case plan”
- ❑ If probation is violated, EJJ revocation hearing is held and adult sentence may be imposed

# The Mechanics: 4 Ways to EJJ

- **Prosecutor designation:** juvenile aged 16 or 17 is charged with a “presumptive commit offense” and prosecutors designates “EJJ”
- **EJJ motion by prosecution:** juvenile aged 14 through 17 is charged with a felony and the prosecution provides “clear and convincing evidence” that an EJJ disposition would serve the public safety
- **Failed certification motion (mandatory):** juvenile is charged with an offense for which certification and transfer to criminal court is presumed and the court declines to certify, the case automatically becomes an EJJ prosecution.
- **Failed certification motion (discretionary):** juvenile is charged with an offense for which certification is not presumed and the court declines to certify, the case may proceed either as a regular delinquency case or by EJJ if the prosecution proves that EJJ would serve public safety.

# Minnesota Juvenile Justice by Case Volume

## 2010 Juvenile Delinquency Case Volume



# Efficacy of Minnesota Certification and EJJ: Findings from three early studies

- **Targeting of unintended juveniles, “net-widening,” and a “back door to prison”**
  - **Torbet, et al, OJJDP (2000):** qualitative study of stakeholders found inconsistent application by offense type across counties and targeting of unintended populations
  - **Podkopacz & Feld (2001):** finding:
    - substantial increase in number of certification motions filed and number of juveniles with stayed sentenced during the first three years of the new law;
    - 35.3% of all EJJ youth were revoked within two years, and 73.2% of these revocations were for non-criminal technical violations;
    - 48% of the EJJ youths revoked to prison were part of the subgroup of youths judges deemed inappropriate for transfer at the outset of their case
  - **Cheesman, et al (2002):** a two-stage probit analysis of 1997 and 1998 data found that EJJs had more serious charges than transfers, suggesting that intended population was not being targeted

# Fairness of Minnesota Certification and EJJ: Findings from three studies

- **Racial disproportionality and justice by geography**
  - **Cheesman, et al (2002):** finding that race and geography significantly influenced the probability certification and EJJ and the type of dispositional alternative selected
  - **Juvenile Justice Advisory Committee (2012):** finding that African American youth are certified at a rate of more than six times that of white youth and all youth of color are certified at a rate of more than four times than of white youth
- **BUT**
  - **Council on Crime and Justice (2005):** study of motions and dispositions for Hennepin County juveniles found that race was not a statistically significant factor in either EJJ or certification motioning decisions or in EJJ or certification disposition decisions

# Research in Other States

- **Ohio (Cheesman et al 2005):** two-stage probit analysis of blended-sentencing and transfer data from five counties in Ohio, which adopted a juvenile-inclusive model based on the Minnesota model, found that geography and race influenced outcomes (minorities were significantly more likely than whites to be processed as transfers rather than as [blending sentencing alternative offenders]).
- **Vermont (Cheesman et al 2008):** analysis of blended-sentencing and transfer data in Vermont, which has a both a criminal- and juvenile-inclusive model, found that geography and age significantly influenced the probability of receiving particular types of sentences

# 2013-14 Study

- Podkopacz et al:
  - Utilizing data from all cases eligible but not motioned, and motioned for presumptive and non-presumptive certification and EJJ from 2005 to 2012, the study asks:
    - How many juvenile cases from 2005 to 2012 meet EJJ/certification presumptive criteria using offense characteristics and age?
    - How many juvenile cases from 2005 to 2012 meet EJJ/certification non-presumptive criteria?
    - How do cases that meet either presumptive or non-presumptive criteria but do *not* have motions filed differ from the cases with motions filed?
    - What criteria are significantly related to a prosecutor's decision to file an EJJ or certification motion? (paying close attention to race, ethnicity, gender, geography, priors, and offenses - also known as "REGGO").

# Conclusions

- **Blending sentencing remains promising**, (*Cheesman et al (2011)*; *National Criminal Justice Association (1997)*), **but**
  - **Targeting of unintended populations:** Research suggests that it must be “reserved for small number of the oldest, most serious juvenile offenders that present the greatest risk to public safety and who are least amenable to treatment in the juvenile justice system, identified by objective assessments.” (*Cheesman et al (2011)*);
  - **Racial disproportionality:** Research generally shows that racial minorities are overrepresented among transfers and underrepresented among blended sentences. (*Cheesman et al (2002)* (Minnesota); *Cheesman et al (2005)* (Ohio); *JJAC (2012)* (Minnesota));
  - **Revocation of juvenile sentences for technical violations:** some research suggests that juveniles serving blended sentences may have juvenile sentences revoked and adult sentences imposed unnecessarily for technical violations of conditions of sentence. *Podkopacz & Feld (2001)*.

# Primary Recommendations

- Employ “**objective risk and needs**” **assessment** at motioning stage to identify both transfer and blended sentencing candidates (Cheeseman et al (2011); Warren (2007); Silver and Chow-Martin (2006)).
- Provide **enhanced services and supervision** to juvenile offenders with blended sentences to avoid unnecessary revocation and imposition of adult sentences. Cheesman et al (2011); Vincent, Terry, and Maney (2009).