We "Kent" Keep Transferring Kids Without a Hearing: Using Recent Supreme Court Jurisprudence to Revive Kent v. United States and End Mandatory Transfer for Juveniles

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WE “KENT” KEEP TRANSFERRING KIDS WITHOUT A HEARING: USING RECENT SUPREME COURT JURISPRUDENCE TO REVIVE KENT V. UNITED STATES AND END MANDATORY TRANSFER FOR JUVENILES

Summer Woods

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INTRODUCTION

When it comes to voting, drinking, marrying, serving on a jury, or even watching movies, society recognizes that kids are different. We restrict their privileges, we withhold certain rights, and we require their parents to consent for certain activities. When kids on the playground bully each other we say it’s just “kids being kids,” or when an adult is stressed and needs to lighten up, we tell them to “embrace their inner child” to do something crazy or reckless. Despite all these societal differences, however, nearly 200,000 children encounter the adult criminal justice system each year.1 Somehow, we forget about all of these important distinctions when a child commits a crime—as if they went through every stage of puberty and grew up instantly in the five seconds it takes to snap handcuffs on their wrists.

The Supreme Court, through a series of recent cases, has recognized that children are constitutionally and fundamentally different than adults and therefore are more adept to rehabilitation than adults accused of the same crimes. Starting in 2005, with Roper v. Simmons,2 the Court ruled that the death penalty for juveniles was unconstitutional. In 2010, Graham v. Florida3 established that a sentence of life without the possibility of parole for juveniles accused of non-homicide crimes was unconstitutional and later expanded its ruling to all crimes including homicide in 2012 with Miller v. Alabama.4 Despite these landmark rulings, however, children are still treated as adults in the criminal system under transfer statutes that either force their cases to be originally filed in adult criminal court or quickly move them out of the juvenile system, often without a hearing. While they can no longer be sentenced to death or sentenced to life in prison, children transferred to adult court are still exposed to harsh punishments, considered adults for sentencing purposes, and not afforded the individualized considerations laid out by the Supreme Court in its recent cases.

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A transfer statute is a “provision that allows or mandates the trial of a juvenile as an adult in criminal court for a criminal act.”\(^5\) All states currently have transfer laws that allow or mandate certain youth to be transferred to adult court, even though their age places them in the category of juvenile jurisdiction.\(^6\) Even worse, many states still have mandatory transfer provisions—a type of automatic transfer requiring juveniles to be tried in adult criminal court for certain offenses. These provisions are codified and require a child of a certain age or who has committed a certain offense to be tried in adult court through either mandatory waiver to adult court or through statutory exclusion.\(^7\) Such transfer laws are largely a result of a myth propagated in the 1990s of the juvenile “super predator” which resulted in the adultification of youth and an increased criminalization of youthful behavior.\(^8\)

The Supreme Court has not ruled on the constitutionality of the transfer of juveniles to adult court since it first did in 1966. In Kent v. United States,\(^9\) a sixteen-year-old was transferred to adult court without a hearing or any indication of the reasons for his transfer. The Supreme Court ruled that the waiver was invalid, that juveniles have a right to a formal hearing that “must measure up to the essentials of due process and fair treatment.”\(^10\) Since Kent, legislatures and state courts have continued to transfer children, often without a hearing.\(^11\)

This Comment will highlight the 50\(^{th}\) anniversary of the Kent decision and argue that this decision, along with the Court’s decision in Roper, Graham, and Miller, illustrate that mandatory transfer mechanisms that do not require a court to hold a hearing prior to transferring youth are in violation of the Eighth Amendment to the United States Constitution.\(^12\) The Supreme Court has recognized that children are categorically less culpable than adults for their conduct, and this difference is not based on the crime they are charged with, or the punishment they face. This Comment will also argue that all states should repeal mandatory transfer statutes and, regardless of the crime the youth is accused of, should only be able to transfer youth through judicial waiver after a hearing in which the court considers a standardized set of factors. This Comment will propose the factors that courts should be required to consider, based on the original factors outlined in the Kent decision but revised to reflect recent jurisprudence, legislative trends, and understanding of adolescent development, and biology.

\(^6\) See infra Appendix A.
\(^7\) There are several different methods of mandatory transfer: mandatory waiver, statutory exclusion, direct file, and once an adult, always an adult provision. For the purpose of this comment, “mandatory transfer” includes all of these methods.
\(^8\) Clyde Haberman, When Youth Violence Spurred ‘Superpredator’ Fear, N.Y. Times (Apr. 16, 2015).
\(^10\) Id. at 556.
\(^11\) See infra Appendix B.
\(^12\) U.S. Const. amend. VIII.
I. BACKGROUND

A. Purpose and Evolution of the Juvenile System

During the nineteenth century, the treatment of juveniles in the United States started to change as social reformers began to create special facilities for “troubled juveniles.” The first juvenile court was established in Illinois in 1899, seeking to further create a separate system for juvenile offenders that insulated children from the adult criminal system and focused on age-appropriate treatment. One of the first judges on this court, Judge Julian Mack, believed that “the child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude.” This idea of special treatment for children caught on and within twenty-five years most states had their own separate juvenile systems. These early courts were focused on rehabilitation, not punishment, and emphasized informal and nonadversarial approaches to cases which were civil actions, based on the doctrine parens patriae, which gave the state the power to serve as the guardian of juveniles. However, during the twentieth century, these proceedings became increasingly punitive as judges steadily began to impose harsher sentences on children.

The Supreme Court, recognizing this shift, began to move juvenile courts toward a more paternalistic structure through a series of cases that gave juveniles many of the procedural safeguards associated with the adult criminal justice system. The peak of this “due process era” of juvenile justice was the Supreme Court’s decision In re Gault, where it held that juveniles had the right to counsel during delinquency proceedings in order to protect against misuse of judicial authority. The Court expressed concerns that the juvenile courts were not living up to their promise of a focus on treatment and rehabilitation, either because of misplaced judicial discretion or lack of resources.

17 Id. During this time period, cases were treated as civil actions and courts could even order juveniles to be removed from their homes in order to learn how to be a responsible, law-abiding young adult.
18 See The History of Juvenile Justice, supra note 16.
19 Ralph A. Weisheit, Philosophy and the Demise of Parns Patriae, 52 Fed. Probation 56 (1988) (“Paternalism implies no firm commitment to rehabilitation but suggests a general attitude of protectiveness from which either gentle or harsh treatment might be justified.”)
20 387 U.S. 1 (1967).
21 Id. at 18 (noting “that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure”). However, some academics have suggested that juvenile defendants have fared worse in the post-Gault era. See Franklin E. Zimring & David S. Tanenhaus, On Strategy and Tactics for Contemporary Reforms, in Choosing the Future for American Juvenile Justice, at 216, 231-32 (describing the contrast between an early juvenile court where the judge had tremendous power and discretion and the post-Gault expansion of prosecutorial power at the expense of judicial and probation authority).
22 In re Gault, 387 U.S. at 13 (finding that a judge abused his discretion and had too much unfettered power when he sentenced a fifteen-year-old boy to a reform school until he was twenty-one for a prank phone call); See also Kent v. United States, 383 U.S. 541, 556 (1966) (noting that because some courts lack the re-
venile’s loss of liberty during confinement in a juvenile training school would be comparable to the punishment of imprisonment faced by adults, the Court felt that they were entitled to at least some due process protections in juvenile hearings to ensure fairness. While recognizing that the state has a responsibility to help children in jeopardy, the Court noted “good intentions [of judges] do not themselves obviate the need for criminal due process safeguards in juvenile courts.”

The juvenile justice system underwent a rapid shift, however, in the 1990s with the rise of the myth of the juvenile “superpredator.” Even though these sensationalized claims of criminologists turned out to be false, politicians seized on this idea and campaigned for harsher treatment of juvenile offenders. As a result of this trend, laws shifted to expose children to even harsher procedures and punishments. By the beginning of the twenty-first century, the United States was an international outlier in its harsh treatment of juvenile defendants—until 2005, the United States was the only developed country that subjected children to the death penalty.

However, even before the rise of the “superpredator” myth, general tough-on-crime approaches had begun to make it easier for children to be removed from the protections of the juvenile system and transferred to adult criminal court. Prior to the 1970s, juvenile

27 See John Kelly, Juvenile Transfers to Adult Court: A Lingering Outcome of the Super-Predator Craze, The Chronicle of Social Change (Sept. 28, 2016), https://chronicleofsocialchange.org/juveniles-justice-2/juvenile-transfers-adult-court-lingering-outcome-super-predator-craze. (highlighting then-First Lady Hillary Clinton’s statements about kids called “super-predators, saying that “[these kids have no] conscience, no empathy, we can talk about why they ended up that way, but first we have to bring them to heel.”

28 As reported in the New York Times, politicians believed that crime would continue to increase and continued to foster an environment that demonized youth. Some experts claimed that we would soon see “radically impulsive, brutally remorseless” kids, many “who pack guns instead of lunches” and “have absolutely no respect for human life.” See Haberman, supra note 8. For more information, see generally Franklin E. Zimring, American Youth Violence: A Cautionary Tale, in Choosing the Future for American Juvenile Justice (2014).

29 Roper v. Simmons, 543 U.S. 551, 575 (2005) (“Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty.”). See also Brief for the Juvenile Law Center et al. as Amici Curiae, Roper v. Simmons, 543 U.S. 551 (2005).

30 See Cara H. Drum, The Miller Revolution, 101 Iowa L. Rev. 1787, 1790-95 (2016) (discussing how a parallel trend of transfer statutes and the trend toward determinate sentencing schemes were the “perfect storm” to create extreme and mandatory sentences for youth).
transfer to adult court was not common—it was the exception. However, in the 1970s, even before the “superpredator” phenomenon, states changed their laws in a number of significant ways that make it easier for children to be tried as adults.31 These changes ranged from lowering the age at which a judge was authorized to allow a transfer to the imposition of statutory exclusion laws that automatically excluded children from adult court, to laws that gave prosecutors more control over where they decided to initially file the charges.32 This get-tough on crime legislation that continued into the 1990s may have been an attempt “to push the allocation of power in juvenile courts closer to the model of prosecutorial domination that has been characteristic of criminal courts in the United States for a generation.”33

B. Kent v. United States

While the current state of juvenile transfer laws are slowly and methodically moving away from an approach that over-criminalizes juvenile offenders and towards treating juveniles as children instead of sentencing them as adults, that discussion actually began fifty years ago with a child named Morris A. Kent, Jr. in 1961.34 This case, Kent v. United States, remains the only case that the Supreme Court has heard on the issue of juvenile transfer.35 The defendant was sixteen years old, already on probation, and was arrested for housebreaking, rape, and robbery.36 Anticipating that he would be transferred to adult court by the District of Columbia, Kent’s attorney filed a motion requesting a hearing on the issue of jurisdiction.37 He also ordered a psychological evaluation to be conducted, which indicated that Kent suffered from a mental illness.38 The juvenile judge did not rule on this motion, but instead filed an order waiving jurisdiction after a “full investigation.”39 However, the judge failed to describe the investigation or the grounds for the waiver.40 Kent’s lawyer moved to dismiss the criminal indictment, arguing that the juvenile court’s waiver had been invalid.41 His motion was overruled and Kent was found guilty on six counts of housebreaking and robbery. He was sentenced to thirty to ninety years in prison.42 His conviction was appealed up to the Supreme Court, which ruled the juvenile waiver of jurisdiction was invalid.43

Writing for the majority, Justice Fortas stated 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.”44 Under the statute that granted original jurisdiction to the juvenile court, Kent was entitled to a presumption of treatment as a juvenile. To overcome that, a child is entitled to a hearing, which must “satisfy the basic requirements of due process and fairness.”45 The court listed several specific factors that must be considered to satisfy this requirement.

32 Id.
33 See Zimring, supra note 27.
35 Id.
36 Id.
37 Id.
39 Kent, 383 U.S. at 541.
40 Id.
41 Id.
42 Id. at 553.
43 Id.
44 Id.
45 Kent, 383 U.S. at 553.
The determinative factors are the following:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver;

2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted;

4. The prosecute merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the [prosecuting attorney]);

5. The desirability of trial and disposition of the entire offense in one court when the juvenile’s associates in the alleged offense are adults who will be charged with a crime in [criminal court];

6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living;

7. The record and previous history of the juvenile, including previous contacts with [social service agencies], other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to [the court], or prior commitments to juvenile institutions;

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.46

These principles still resonate fifty years later with even greater weight considering psychological developments and subsequent juvenile justice jurisprudence. While Kent did not make any judgments about whether or not waiver is constitutional, the case “forcefully establishes that children facing trial as adults need procedural protections—effective counsel, access to and the ability to challenge court documents, and findings as to why waiver is proper.”47

In subsequent cases, courts declined to follow Kent by finding that the protections were limited to judicial waiver laws and did not apply to statutory exclusion or direct file statutes.48 Transfer laws remain largely out of the reach of courts and most courts have been deferential to the decisions of legislatures.49 Additionally, because the Court in Kent detailed that an offense falling within the statutory limitations will be waived if “it is heinous or of an aggravated character or if it represents a pattern of repeated offenses which indicate that

46 Id.
47 Laurie Sansbury, supra note 38.
48 See e.g. State v. Angel C., 715 A.2d 652, 656 (Conn. 1998) (holding that absence of a pre-waiver hearing did not violate any of the defendants’ constitutional rights when defendant was transferred under a statutory exclusion provision). In Angel C., the court further noted that there was no inherent or constitutional right to the special treatment of a juvenile, and that any special treatment afforded juveniles by the legislature could be reasonably withdrawn or limited. Id. at 660.
the juvenile may be beyond rehabilitation,” all jurisdictions read this to mean that waiver laws for violent offenses did not have to adhere to the standards in Kent.50

C. Supreme Court Juvenile Justice Jurisprudence

Prior to the landmark Roper v. Simmons51 decision in 2005, the Supreme Court had noted the important pertinence of youth in several cases. In Johnson v. Texas,52 the Court insisted that sentences consider the “mitigating qualities of youth.”53 The Court also observed that “youth is more than a chronological fact”54 and is instead a time of immaturity, irresponsibly, impetuousness, and recklessness.55 In Eddings v. Oklahoma,56 a sixteen-year-old shot and killed a police officer.57 The Supreme Court invalidated his death sentence because the judge did not consider evidence of his background of neglect and family violence.58 The Court found that this evidence was “particularly relevant” — more so than it would have been in the case of an adult offender.59 The Court specifically noted that youth is a moment and “condition of life when a person may be most susceptible to influence and to psychological damage,”60 and “just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered” in assessing his culpability.61

These cases, however, did not establish any significant reform, but they did build up to a landmark shift in juvenile justice that occurred with the Supreme Court’s decisions in Roper v. Simmons, Graham v. Florida, and Miller v. Alabama.62 The Supreme Court, through this series of cases, has recognized that children are constitutionally and fundamentally different than adults and are more capable of change than adults accused of the same crimes.

I. Roper v. Simmons

The Supreme Court’s shift in perception of juvenile offenders was most significantly marked by its decision in Roper v. Simmons, where it held that sentencing individuals to death for crimes committed before the age of eighteen was unconstitutional.63 In Roper, a seventeen-year-old was convicted of burglary, kidnapping, and first-degree murder while he was still a junior in high school.64 Based on his age at the time, Simmons was outside of the

50 Kent, 383 U.S. at 553.
51 Roper, 543 U.S. at 551.
53 Id.
55 Johnson, 509 U.S. at 350.
56 Eddings, 455 U.S. at 115.
57 Id.
58 Id.
59 Id.
60 Id.
61 Id. at 116.
62 This groundbreaking reform also included J.D.B. v. North Carolina, which expanded the concept of special protection for kids beyond the Eighth Amendment when the Court held that a juvenile’s age is a proper consideration in the Miranda custody analysis, 564 U.S. 261 (2011).
63 For a discussion of whether the Supreme Court can actually generate social change or whether it merely responds to social change that has already occurred, see generally Gerald N. Rosenberg, “The Hollow Hope: Can Courts Bring about Social Change?” 2d ed. 2008 (questioning whether the Supreme Court can bring about meaningful social change); Brian K. Landsberg, “Enforcing Desegregation: A Case Study of Federal District Court Power and Social Change in Macon County Alabama”, 48 Law & Soc’y Rev. 867 (2014) (stating that despite judicial constraints, it is possible for courts to generate social reform); Mark Tushnet, “Some Legacies of Brown v. Board of Education”, 90 Va. L. Rev. 1693 (2004) (suggesting that the Court can articulate powerful principles of social reform despite constraints imposed on the judicial branch).
64 543 U.S. 551 (2005).
65 Id. at 555. In this case Simmons, along with a friend, entered the home of the victim, kidnapped her, and then drowned her in a river.
juvenile jurisdiction of Missouri and charged initially in adult court. During closing arguments, both the prosecutor and defense counsel addressed Simmons’ age – the defense described it as a mitigating factor, to which the state responded “Age he says. Think about age. Seventeen years old. Isn’t that scary? Doesn’t that scare you? Mitigating?” Quite the contrary I submit. Quite the contrary.” The defense also put on experts and evidence of Simmons’s troubled background, but he was still sentenced to the death penalty by the jury.

The Supreme Court reversed and its holding was based on a longstanding question applied to capital crimes: if juveniles are examined as a group, is the use of the death penalty proportionate under Eighth Amendment given their diminished capacity? To answer this question of proportionality, the Court looked at the “objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question” and then exercised its own “independent judgment” as to “whether the death penalty is a disproportionate punishment for juveniles.” The Court held that under this criteria, the Eighth Amendment forbade the death penalty for juveniles based on the following findings: (1) evolving standards of decency and moral conceptions of juveniles disallowed for capital punishment in the majority of states; (2) it was rarely executed in states that permitted it; (3) and that national trends were moving away from the use of the practice for juveniles.

The Court did not end its analysis with the Eighth Amendment violation, however, and rendered its own judgement about states executing children. Justice Kennedy, writing for the majority, noted that based on recent social and neuroscience research, there were three general reasons why juveniles were categorically different than adults in terms of capital punishment. These characteristics were: (1) juveniles lack maturity and have an underdeveloped sense of responsibility, resulting in impulsive decision-making; (2) juveniles are more susceptible to negative influences and outside pressures; and (3) a juvenile’s character is not as well formed as an adults and therefore juveniles have more of a possibility of rehabilitation.

2. Graham v. Florida

Five years after Roper, the Court took up the question of proportionate juvenile punishment again in Graham v. Florida. In Graham, a sixteen-year-old was arrested for an attempted robbery. Under Florida statute, a prosecutor may elect to charge sixteen-year-olds and seventeen-year-olds as adults for most felony crimes. Graham was charged as an adult and, under a plea deal, sentenced to probation and withheld adjudication of guilt. However, when he subsequently violated the terms of his parole and was accused of another armed robbery, the trial court found him guilty of the

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66 Roper, 543 U.S. at 559.
67 Id. The defense put on evidence that Simmons was “very immature,” “very impulsive,” and “very susceptible to being manipulated or influenced.” Testimony included information about a difficult home environment, dramatic changes in behavior, drug abuse, and poor performance in school.
68 Id. at 564.
69 Id.
70 Id. at 567. 68.
71 Id. at 563.
72 Id.
73 Id.
75 Id. at 53.
76 See FLA. STAT. § 985.557(1)(b).
77 Graham, 560 U.S. at 48.

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earlier armed burglary and other charges and sentenced him to life without parole.78

Building on Roper, the Court found that Graham’s sentence was unconstitutional as it was in violation of the Eighth Amendment and held that a life without parole sentence was constitutional for a juvenile offender accused of a crime other than homicide.79 Once again, the Court found that categorically this punishment was unconstitutional for juvenile offenders.80 Like Roper, the Court found the punishment here was not proportional to the crime, given a juvenile’s diminished moral culpability and greater capacity for reform.81 Justice Kennedy, for the majority, began his analysis by stating that the Eighth Amendment bars both “barbaric” punishments and punishments that are disproportionate to the crime committed.82 Within the latter category, the Court explained that its cases fell into one of two classifications: (1) cases challenging the length of term-of-years sentences given all the circumstances in a particular case and (2) cases where the Court has considered categorical restrictions on the death penalty.83 Because Graham’s case challenged “a particular type of sentence” and its application “to an entire class of offenders who have committed a range of crimes,” the Court found the categorical approach appropriate and relied upon its recent death penalty case law for guidance.84

The Court also focused on the non-homicide aspect of the case, and that historically, homicide is treated significantly different than other crimes, even though the Court would reject this argument in Miller.85 After Graham, a child could only receive a sentence of life-without-parole for murder. However, based on mandatory waiver statutes, this sentence could be imposed on a child without weighing his or her maturity, culpability, or potential for rehabilitation.86

3. Miller v. Alabama

The Court did not take long to take up the question of homicide offenses—two years later, the Court took up the question in Miller v. Alabama.87 The Miller case involved two juveniles who were transferred to adult court through state transfer laws in Arkansas and Alabama. Kuntrell Jackson, then fourteen years old, was charged with capital felony murder and aggravated robbery.88 As discussed below, Arkansas law gives prosecutors the discretion to charge fourteen-year-olds as adults through direct file when they are alleged to have committed certain offenses, including capital felony murder.89 Jackson moved to transfer the case to juvenile court, but the court denied the motion based on the alleged facts of the time, a psychiatrist’s examination, and his juvenile arrest history.90

85 Id. at 82. See Jackson v. State, 194 S.W. 3d 757 (Ark. 2004); Ark. Code Ann. §§ 9-27-318(d), (e).
86 Id. at 79. See Ark. Code Ann. § 9-27-318(c)(2).
89 See Arkansas Code Ann. § 9-27-318(c)(2).
90 Id. at 67. Because Florida had abolished its parole system, a life sentence meant that Graham and other defendants had no possibility of release unless granted executive clemency. See Fla. Stat. § 921.002(1)(e).
91 Id. at 560 U.S. at 52-53.
92 Id. at 59. See Jackson v. State, 194 S.W. 3d 757 (Ark. 2004).
93 Id. at 68-69.
94 Id. at 59-61.
95 Id. at 61-62.
jury convicted Jackson on both counts, and the judge was only able to impose one verdict due to mandatory minimums: life without parole.91 Similarly, fourteen-year-old Evan Miller was also tried and convicted as an adult for murder in the court of arson—a crime that, like capital felony murder in Arkansas, carries a mandatory minimum punishment of life without parole.92 In Miller’s case, Alabama law required that he initially be charged as a juvenile, but allowed for transfer through judicial waiver on the motion of the prosecutor.93 The juvenile court agreed to the transfer after a hearing, citing the nature of the crime, Miller’s “mental maturity,” and his prior juvenile offenses of truancy and “criminal mischief.”94

In a 5-4 decision, the Court found sentencing schemes that prescribe mandatory life without parole for juveniles to be unconstitutional, regardless of the crime they are accused of.95 Citing its decisions in Roper and Graham, it held that imposing mandatory life-without-parole sentences on children “contravenes Graham’s [and also Roper’s] foundational principle: that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.”96 This decision was based on the Court’s belief that children “are constitutionally different from adults for sentencing purposes. Their lack of maturity and underdeveloped sense of responsibility lead to recklessness, impulsivity, and heedless risk-taking,” therefore acknowledging that regardless of the crime committed, being a child matters.97

The Court specifically noted how both juveniles in the companion cases illustrated the precise problem behind mandatory sentencing schemes.98 In the first case, Jackson was charged through felony murder after he went along with some of his friends who he knew intended to rob a video store.99 He did not fire the bullet that killed the victim, nor did the State even argue that he meant to kill her, only that he was an accomplice.100 He was convicted solely because he was aware that his accomplice had a gun and because when he entered the store, he told the victim “[w]e ain’t playin’.”101 The Court noted that Jackson’s age was important for his culpability for the offense—including the calculation of the risk imposed by his friend having a gun and his willingness to walk away.102 Additionally, Jackson’s violent family background and history of neglect was also relevant to the sentencing decision, yet his background was not even considered before the lower court sentenced him to a life in prison.103 In Miller’s case, he and a friend killed the adult victim after he had provided them with drugs and alcohol.104 The Court noted that “if

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92 See Miller v. State, 63 So. 3d 676 (Ala. 2010). In Miller’s case, then fourteen-year-old Miller and his sixteen-year-old friend robbed and beat a neighbor to death. The victim was an adult and Miller’s mother’s drug dealer. He brought the boys back to his trailer, where all three drank and did drugs. The boys tried to rob the victim, who then became violent and grabbed Miller by the throat. A physical altercation ensued, and the boys struck the victim with a bat several times. After, the boys set fire to the trailer to cover up the evidence and the victim died of smoke inhalation.
95 Miller, 564 U.S. at 465.
96 Id. at 466.
97 Id.
98 Id. at 467.
100 Miller, 564 U.S. at 465.
101 Id.
102 Id.; see also Graham v. United States, 560 U.S. 48, 52 (2010) (“When compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability.”).
103 Miller, 564 U.S. 470. Both Jackson’s mother and his grandmother had previously shot other individuals.
104 Id.
ever a pathological background might have contributed to a 14-year-old’s commission of a crime, it is here,” referring to a lifetime of physical abuse and suicidal tendencies.\textsuperscript{105} Despite the severe crime with which both juveniles were charged, the Court once again stated that youth mattered at sentencing.\textsuperscript{106}

The Supreme Court also noted that transfer statutes like those at issue in Miller were not outliers\textsuperscript{107} and that many left no room for judicial discretion: “Of the 29 relevant jurisdictions, about half place at least some juvenile homicide offenders in adult court automatically, with no apparent opportunity to seek transfer to juvenile court.”\textsuperscript{108}

D. Psychological Frameworks

One of the most significant components of the Court’s reasoning in these three cases was its acceptance and recognition of the role of science and adolescent development in sentencing decisions. This is significantly based on the increase of research and findings that allow scientists to understand the human brain better and how it functions.\textsuperscript{109} Kent was decided during a time when it was assumed that adolescent development was completed by age eighteen, but emerging research shows that the brain—especially the prefrontal cortex, which controls decision-making, risk management, and impulse control—does not finish developing until one’s mid-twenties.\textsuperscript{110} Furthermore, after a certain age, the likelihood of committing another violent offense dramatically lessens.\textsuperscript{111}

New discoveries have provided scientific confirmation that adolescent years are a significant time of transition and that adolescents have significant neurological deficiencies that result in stark limitations of judgement.\textsuperscript{112} For example, the frontal lobe, which is responsible for impulse control, judgement, and decision making, develops slowly until the early twenties.\textsuperscript{113} This makes adolescents especially prone to risk-taking.\textsuperscript{114} They are also more susceptible to stress, which further distorts already poor cost-benefit analysis, and trauma often makes youth hyper-vigilant in response to threats.\textsuperscript{115} Normal adolescents cannot be expected to operate with maturity, judgment, risk aversion, or impulse control of an adult – especially teens who have suffered brain trauma, dysfunctional family, abuse, or violence.\textsuperscript{116} Additionally, most adolescent delinquent behavior occurs on a social stage where immediate pressure of peers is the main motivation.\textsuperscript{117} When a child is transferred to adult

\textsuperscript{105} Miller had been in and out of foster care his entire life because his mother suffered from alcoholism and drug-addiction, his stepfather abused him, and he had tried to kill himself four times – the first time when he was only six. See E.J.M. v. State, 928 So. 2d 1077, 1081 (Ala. Crim. App. 2004) (Cobb, J., concurring in result). The Court also noted that, despite such a difficult background, Miller did not have a significant criminal history; there were only two instances of truancy and one instance of second-degree criminal mischief.

\textsuperscript{106} Miller, 564 U.S. at 468.

\textsuperscript{107} At the time Miller was decided, twenty-eight states and the Federal Government imposed mandatory life without parole on some juveniles convicted of murder in adult court. Id.

\textsuperscript{108} Id.

\textsuperscript{109} For an overview of new technology and discoveries, see Elkhonon Goldberg, The Executive Brain: Frontal Lobes and the Civilized Mind (2001).

\textsuperscript{110} Young Adult Development Project, Brain Changes, http://hrweb.mit.edu/worklife/youngadult/brain.html.

\textsuperscript{111} Nat’l Institute of Justice, “From Juvenile Delinquency to Young Adult Offending”, https://www.nij.gov/topics/crime/Pages/delinquency-to-adult-offending.aspx.

\textsuperscript{112} Id.

\textsuperscript{113} Id.

\textsuperscript{114} Francine Sherman, Juvenile Justice: Advancing Research, Policy, and Practice (2011).

\textsuperscript{115} Id.

\textsuperscript{116} Chris Mallet, Socio-Historical Analysis of Juvenile Offenders on Death Row, 3 JUV. CORR. MENTAL HEALTH REPORT 65 (2003).

\textsuperscript{117} Marty Beyer, Recognizing the Child in the Delinquent, Ky. CHILDREN’S RIGHTS J., 1999. Dr. Beyer, a child welfare and juvenile justice consultant, has created a framework
court, none of these important scientific factors are taken in to consideration, as a child is being evaluated as if they were an adult.

E. Impact and Consequences of Juveniles Tried in Adult Court

There are various detrimental immediate and long term effects on juveniles who are transferred to adult court. Transferred children are exposed to longer and harsher sentences than if they remained in the juvenile system, and these punishments are often mandatory sentences. Most states permit or require that youth charged as adults be placed in adult institutions as they are pending trial. On any given day, nearly 7,500 young people are locked up in adult jails.

The number in adult prison is even higher – on any given day, approximately 2,700 young people are locked up in adult prisons. There is a higher risk of harm for youth in adult facilities than in juvenile institutions; youth sentenced to adult facilities are thirty-six times more likely to commit suicide. They are also at the highest risk for rape and other forms of sexual abuse. According to a survey by the Department of Justice, “1.8 percent of 16- and 17-year-olds imprisoned with adults report being sexually abused by other inmates,” and of these cases, 75 percent of children report being repeatedly victimized by staff. But, because of the imbalance of power of children and the adult staff, most juveniles fail to report their abuse. In addition to the immediate physical and psychological consequences of incarceration in adult facilities, transferred children are also at risk to harmful disruptions to their development.

Transfer also has a long-term effect on youth. When they leave jail or prison, they still carry the stigma of an adult criminal conviction. A felony conviction can make it harder to find a job, find housing, get a college degree, or any other means to turn their lives around. Additionally, transfer policies actually increase the likelihood that the youth will reoffend and youth prosecuted as adults are also have a high-

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119 See supra note 120; See also Ford, supra note 86.
121 See supra note 120; See supra note 86.
122 Id.
er recidivism rate than youth who remain in juvenile court. A Center for Disease Control and Prevention Task Force report found that transferring youth to the adult criminal system increases violence, causes harm to juveniles, and threatens public safety.

F. Current Methods of Transfer by State

A transfer statute is a “provision that allows or mandates the trial of a juvenile as an adult in criminal court for a criminal act.” All states currently still have transfer laws that allow or mandate some youth to be transferred to adult court, even though their age places them in the category of juvenile jurisdiction. Current transfer laws vary considerably in specificity of statutory language, application, as well as flexibility and breadth of coverage, but all states have at least one of the three broad categories of transfer law: judicial waiver, statutory exclusion, and direct file. Many states also have “once an adult, always an adult” provisions, which mean that a child who has been transferred will permanently be charged as an adult for all future offenses.

Thirty-one states specify a minimum age a child must reach before the child can be considered for transfer to adult court by any method of transfer, including judicial waiver, statutory exclusion, and direct file. Twelve states do not set an age limitation for certain enumerated offenses, typically violent felonies. Eight states have no statutory minimum age requirement for a child to be tried in adult court as its effect is the same as statutory exclusion. It can be distinguished from statutory exclusion, however, as under mandatory waiver, proceedings against a child initiate in juvenile court. However, unlike judicial waiver, the court has no other role than to determine that there is probable cause to believe a juvenile of the requisite age committed an offense falling within the mandatory waiver law. Once the court has done so, the juvenile is automatically transferred to adult court.

For more information, see Trying Juveniles As Adults: An Analysis of State Transfer Laws and Reporting, Office of Juvenile Justice and Delinquency Prevention, U.S. Dep’t of Justice (2011). Several states also have reverse waiver statutes, which are also not discussed in the scope of this comment. Reverse waiver statutes allow a juvenile who is charged as an adult to petition to have the case transferred back to juvenile court. For more information, see Jason Zeidenburg, You’re An Adult Now: Youth in Adult Criminal Justice Systems, U.S. Dep’t of Justice Nat’l Institute of Corrections (2011), http://cfyj.org/documents/FR_NIC_YAAN_2012.pdf.

The following states have specified minimum age limits: fifteen years old in Connecticut, New Jersey, and New Mexico; fourteen years old in Alabama, Alaska, Arizona, Arkansas, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, North Dakota, Ohio, Texas, and Utah; thirteen years old in Georgia, Illinois, Mississippi, New York, and Wyoming; twelve years old in Colorado, Indiana, Missouri, Montana, and Vermont; eleven years old in New Hampshire; and ten years old in Iowa and Wisconsin.

States that do not set an age limit for certain enumerated offenses; These states are Delaware, the District of Columbia, Florida, Hawaii, Idaho, Maryland, Nevada, Oregon, Pennsylvania, Rhode Island, South Carolina, and Tennessee.

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128 Youth prosecuted as adults are 34% more likely to recidivate with more violent offenses. See Jailing Juveniles, supra note 120.
131 For the purposes of this comment, the District of Columbia is counted as a state.
132 See infra Appendix A (summarizing the authors’ findings of each state’s codified transfer provisions). This data was compiled by the author while working as a law clerk at the National Juvenile Defender Center. Unless otherwise indicated, all information in this section comes from the statutes listed in Appendix A. For the purpose of this Comment, which seeks to give a sense of juvenile transfer nationwide, the information has been placed into generalized categories. Each state has a different system for transfer with state-specific nuances; consult each state’s statutes for further information.
133 See id. Several states also have mandatory waiver provisions, which are not discussed in the scope of this
court, meaning that under the state statute a child of any age can be tried in adult court.\textsuperscript{137}

1. Judicial waiver

Judicial waiver is the most common transfer mechanism—forty-six states allow some form of judicial waiver.\textsuperscript{138} If the youth meets statutory age and offense requirements and the proper motion for transfer is filed, if required, a court will hold a transfer hearing to determine if the child should be transferred to adult court.\textsuperscript{139} Prior to the hearing, sixteen states require that the youth be evaluated to make findings on the factors the court must consider as delineated in the statute, if necessary, to be considered on whether or not the court should retain jurisdiction over the youth.\textsuperscript{140} This includes evaluations by professionals and by the youth’s probation officer, if applicable. These findings range from evaluating whether or not the child has developmental or mental disabilities to school records and evaluations of the child’s living situation and family support.

i. Transfer hearing

States vary as to the party that can motion for transfer, but the majority of states with judicial waiver, thirty-two states, allow the prosecutor to motion for transfer of a youth.\textsuperscript{141} Of these thirty-two states, the prosecutor is the only party who can motion for transfer in twenty-three states, two states allow either the prosecutor or the defense to motion for transfer, four states hold a hearing on either the motion of the court or the prosecutor, and three states hold a hearing on the motion of either party or the court.\textsuperscript{142} The other fourteen states with judicial waiver only hold a transfer hearing upon the motion of the court.\textsuperscript{143} In nine states, a transfer hearing is automatically required regardless of whether a motion from any party was filed for any minor accused of certain offenses.\textsuperscript{144} In five states, a hearing is not required for minors of a certain age accused of certain offenses, and the minor will be automatically transferred to adult court if a motion is filed by the state.\textsuperscript{145}

Twenty-five states require a finding that there is probable cause that the child committed the alleged act before the child can be considered for transfer.\textsuperscript{146} Typically, the burden of proof that the juvenile is not amenable to treatment and that the protection of the community requires transfer of the juvenile to adult court is on the state. However, fourteen states have presumptive waiver provisions where the burden of proof au-

\textsuperscript{137} States with no statutory minimum age requirement: Maine, Nebraska, Oklahoma, Rhode Island, South Dakota, Washington, and West Virginia.

\textsuperscript{138} See infra Appendix A (listing judicial waiver statutes by state).

\textsuperscript{139} See infra Appendix B (outlining the authors’ findings of transfer hearing requirements by state). For the purpose of this Comment, these findings were generalized into categories; for specific requirements by state, consult the state statute.

\textsuperscript{140} See infra Appendix B.

\textsuperscript{141} Id.

\textsuperscript{142} Id.

\textsuperscript{143} Id.

\textsuperscript{144} The following states have such requirements: Delaware, Connecticut, Mississippi, Ohio, Florida, Georgia, Iowa, Kentucky, Louisiana.

\textsuperscript{145} The following states do not require a hearing for transfer if a minor is a certain age and accused of an enumerated offense: Connecticut (15), Delaware (15), Indiana (16), North Dakota (14), and South Carolina (16).

\textsuperscript{146} See infra Appendix B (listing requirements for judicial waiver hearings by state).
Automatically shifts from the state to the defendant if the youth is of a certain age, accused of certain offenses, or has a prior record.\(^\text{147}\)

**ii. Factors considered**

Every state besides Indiana, South Carolina, and Washington has enumerated factors that a judge is required to consider at the transfer hearing.\(^\text{148}\) These factors are specified in Appendix C but are outlined here. Twenty-one states require judges to consider all of the enumerated factors, twelve states only require the court to consider some of the factors, and ten states allow the court to consider other factors not listed in the statute.\(^\text{149}\) With the exception of Ohio, state statutes do not give an indication on how these factors should weigh for or against transfer.\(^\text{150}\) While seven states only consider the seriousness of the offense and the juvenile’s prior record when determining waiver of jurisdiction, the other states require a more individualized assessment of the youth based on the following factors.\(^\text{151}\)

Forty-one states consider the offense itself.\(^\text{152}\) This factor refers to additional consideration of the offense outside of minimum offense requirements for the child to be eligible for judicial waiver. These considerations are composed of the following: (1) seriousness of the alleged offense; (2) whether the alleged felony offense was committed in an aggressive, violent, premeditated, or willful manner; and (3) whether the offense was against persons or property with greater weight to offenses against persons. Forty states consider the juvenile’s prior record; this includes the extent and nature of the child’s prior delinquency record and response to any prior treatment.\(^\text{153}\) Thirty-five states consider the juvenile’s mental condition, which includes the psychological development and emotional state of the minor, including any documented mental illness or developmental issues, and whether or not they receive any special education services.\(^\text{154}\) Thirty-four states consider the protection of the community, or whether the protection of the community requires isolation of the minor beyond the capacity of juvenile facilities.\(^\text{155}\) Thirty-two states consider whether or not the juvenile can be rehabilitated within the time frame of the juvenile court jurisdiction, utilizing all resources currently available to the jurisdiction.\(^\text{156}\) Twenty-three states consider the child’s maturity as related to the child’s age, outside of statutorily imposed limitations.\(^\text{157}\) Eighteen states consider the juvenile’s pattern of living or family environment, including the effect that familial, adult, or peer pressure may have had on the child’s alleged actions in question.\(^\text{158}\) Fourteen states consider the culpability of the juvenile, which includes the level of planning and participation involved and the circumstances in which the offense was allegedly committed.\(^\text{159}\) Eleven states consider the impact on the victim, which may include victim testimony at

\(^{147}\) *Id.* For specific offenses and ages that require the burden to shift, consult each state’s judicial waiver statute, listed in Appendix A.

\(^{148}\) See infra Appendix C.

\(^{149}\) *Id.*

\(^{150}\) Ohio lists what factors the court should consider in favor of transfer, such as the victim suffered serious physical harm, connection to gang activity, or the child was awaiting adjudication at the time of the act. The statute separately lists what factors the court should consider against transfer, such as the victim induced the act, the child was provoked, or the child did not have reasonable cause to believe harm would occur.

\(^{151}\) See infra Appendix C.

\(^{152}\) *Id.*

\(^{153}\) *Id.*

\(^{154}\) See infra Appendix C.

\(^{155}\) *Id.*

\(^{156}\) *Id.*

\(^{157}\) *Id.*

\(^{158}\) *Id.*

\(^{159}\) See infra Appendix C.
the hearing.\textsuperscript{160} Nine states consider whether or not there are co-defendants charged in adult court, which would make it more convenient for the juvenile’s case to also be charged in adult court.\textsuperscript{161} Six states consider whether or not the offense was committed in connection with gang activity.\textsuperscript{162} Finally, six states consider whether or not the offense specifically involved a weapon.\textsuperscript{163}

2. Statutory exclusion

Thirty-six states have statutory exclusion provisions.\textsuperscript{164} Almost every state that has statutory exclusion also has judicial waiver, with the exception of Massachusetts, Montana, New Mexico, and New York. Generally, these states simply exclude any minor fitting into the specified age and offense categories as being defined as a “child” for juvenile court jurisdictional purposes. A minor who meets the requirements is proceeded against as an adult from the beginning of the proceedings, and therefore no transfer hearing is held. In the majority of states, statutory exclusion only applies to youth sixteen or older. The youngest age that qualifies for statutory exclusion is thirteen,\textsuperscript{165} with the exception of states that do not have a specified youngest age for murder, as outlined above. Murder is the most common offense to qualify for statutory exclusion. Other common offenses include drug trafficking, arson, sexual assault, armed robbery, aggravated assault, use of a fire arm, theft of a motor vehicle, and conviction of prior felonies.

3. Direct file

Eleven states have direct file provisions.\textsuperscript{166} Typically, these direct file provisions give both juvenile and criminal courts the jurisdiction to hear cases involving certain offenses or minors falling into certain age categories, and it is left up to the prosecutor to decide where to file the charges.\textsuperscript{167} As with other transfer mechanisms, there is a wide variation among states regarding the criteria for direct file. Generally, the minimum level of offense necessary to qualify appears to be lower than statutory exclusion. For example, in Arkansas, a minor can be considered for direct file for a large number of offenses that do not qualify for statutory exclusion, such as soliciting a minor to join a street gang. Or, in Florida, misdemeanors can be filed by the prosecutor in criminal court if the minor involved is at least sixteen and has a sufficiently serious prior record. Nebraska is the only state with direct file as the only method of transferring youth to criminal court and the prosecutor must consider a series of factors similar to those considered in judicial waiver before filing charges against a minor in adult court.\textsuperscript{168} However, there is no system of accountability for the prosecutor that

\textsuperscript{160} See infra Appendix C.

\textsuperscript{161} See infra Appendix C.

\textsuperscript{162} See infra Appendix C.

\textsuperscript{163} See infra Appendix A (listing direct file provisions by state).

\textsuperscript{164} See infra Appendix A (listing statutory exclusion statutes by state).

\textsuperscript{165} New York allows youth aged thirteen or older to be transferred through statutory exclusion.

\textsuperscript{166} See infra Appendix A (listing direct file provisions by state).


\textsuperscript{168} These factors are the type of treatment the minor would be amenable to, if the offense was violent, motivation for offense, age of juvenile and age of others involved in the offense, best interests of the juvenile, public safety, if the juvenile has the ability to appreciate the nature and seriousness of the offense, if the victim agrees to participate in the proceedings, and if the minor was involved in a gang.
requires them to make a showing that all the factors have been considered. Of all of the transfer methods, direct file has come under the most scrutiny in recent years.169

4. Once an adult, always an adult

Twenty-nine states have “once an adult, always an adult” provisions, which require any minor who has been previously charged as an adult to continue to be charged as an adult for all future offenses, regardless of whether the youth would have been eligible for transfer for the present offense.170 Most states with this provision simply require criminal prosecution of all subsequent offenses, either by a blanket exclusion or an automatic waiver, without consideration of any mitigating factors pertaining to the child’s development.171 Although support for transfers is largely predicated on sending violent career offenders to adult court, in reality more than half of transfers affect juveniles who have committed nonviolent property, drug, or public order offenses through this mechanism.172

G. National Trends Regarding Juvenile Transfer

While every state has a transfer mechanism, there is a significant trend throughout the country towards a preference to keep children in juvenile court. Several states have eliminated mandatory transfer provisions. Missouri recently changed its “once an adult, always an adult” provisions to allow a young person to return to the juvenile system if he or she was found “not guilty” in adult court.173 Utah has also passed significant reforms, limiting the number of felonies that can be transferred to adult court from sixteen to ten and allowing the judge, not the prosecutor, to exercise judgment on transfer based on the interests of the minor.174 Texas legislators also recently passed laws that give youth the right to an immediate appeal if they are transferred to adult court.175 Previously, youth could not appeal their transfer to adult court after they had been convicted or deferred.176 This new legislation restores the right to an immediate appeal and mandates that the Supreme Court take up standards to accelerate the disposition of these appeals.177 In 2014, the Iowa Supreme Court struck down mandatory minimum sentences for juveniles as unconstitutional, stating that “‘[t]here is no other area of the law in which our laws write off children based only on a category of conduct without considering all background facts and circumstances.”178

Several states have also enacted laws that increase the minimum age that youth can be transferred. In 2015, Illinois eliminated the automatic transfer of youth under the age of sixteen.179 In 2015, New Jersey passed legislation that increased the minimum age at which a youth can be tried as an adult from fourteen

170 See infra Appendix A [listing transfer provisions by state].
172 See generally G. Larry Mays & Rick Ruddell, Do the Crime Do the Time: Juvenile Criminals and Adult Justice in the American Court System (2012).
176 Id.
177 Id.
178 State v. Lyle, 854 N.W. 2d 378, 401 (Iowa 2014). The Iowa Supreme Court noted that the for the Supreme Court in Miller, the “heart of the constitutional infirmity” was that the punishment was mandatory, not the length of the sentence.
to fifteen.180 It also makes it more difficult to initiate transfer of youth, as prosecutors must submit a written analysis on the reasons for transfer, which is then only granted at the discretion of the judge.181 Additionally, the New Jersey Supreme Court recently held in State in the Interest of N.H., that youth threatened with adult prosecution have the right to full discovery at the waiver stage of juvenile proceedings, which helps defense counsel make a more complete argument at a transfer hearing.182 In its decision, the court noted that waiver of a juvenile to adult court is the “single most serious act that the court can perform.”183

There is also a slow shift nationally towards enacting judicial waiver laws that take into account the arguments made in Roper, Graham, and Miller. In Texas, the Criminal Court of Appeals ruled that a court must make an individualized assessment of youth before transferring him to adult court, regardless of the offense.184 In 2014, California and Maryland enacted laws that require juvenile court judges to take into account factors such as age, physical and mental health, and the possibility of rehabilitation, when considering transfer.185 Additionally, California legislation updated their criteria to consider the factors required by the U.S. Supreme Court in Miller v. Alabama.186 In Illinois, new legislation requires juvenile judges to review transfers to determine the proper court for the child, taking into account the child’s age, background, and individual circumstances.187

Oregon is one of the first states to have a decision reflecting the importance of evaluating children for transfer in the context of adolescent development.188 In Oregon, statutory law gives the juvenile court the discretion to waive jurisdiction and transfer a youth to adult court if it finds the youth to be of “sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved.”189 In the case of In the Matter of J.C.N.-V, the Supreme Court of Oregon reversed a decision to transfer a youth under this criteria, holding that the legislature did not intend for a child’s “sophistication and maturity” to be evaluated by the same standards as adults.190 Instead, the court must “take measure of a youth and reach an overall determination as to whether the youth’s capacities are, on the whole, sufficiently adult-like to justify a conclusion that the youth was capable of appreciating, on an intellectual and emotional level, the significance and consequences of his conduct.”191

Finally, and most significantly, the Ohio Supreme Court recently ruled that the mandatory transfer of juveniles violates juveniles’ right to due process as guaranteed by the Ohio Constitution.192 In this case, the prosecutor filed a motion to transfer a sixteen-year-old to be tried as an adult based on Ohio statute.193 After conducting a hearing, the juvenile court found probable cause and the case was consequently transferred. In ruling that the transfer was unconstitutional, the court stated that that:

188 In the Matter of J.C.N.-V, 359 Or. 559 (2016).
189 Or. Rev. Stat. §§ 419e.340, 419e.349, 419e.352, 419e.355.
190 In the Matter of J.C.N.-V, 359 Or. at 559.
191 Id.
193 Id.
The legislative decision to create a juvenile court system, along with our cases addressing due-process protections for juveniles, have made clear that Ohio juveniles have been given a special status. This special status accords with recent United States Supreme Court decisions indicating that even when they are tried as adults, juveniles receive special consideration.194

The court maintained however, that the “discretionary-transfer process satisfies fundamental fairness under the Ohio Constitution.”195

II. ANALYSIS

A. The Rationale Behind the Roper, Graham, and Miller Decisions, in Combination with the Kent Decision, Should be Applied to Juvenile Transfer

Mandatory transfer statutes do not allow judicial discretion and prohibit individual consideration of the youth or the circumstances surrounding the offense. This mandatory consequence is what was at the core of the Supreme Court’s recent decisions, and in light of further recognition about the importance of youth in criminal matters, the Kent decision should be revaluated based on the holdings in Roper, Graham, and Miller.196 Fifty years ago, the Kent Court concluded that a transfer to adult court could be considered invalid because for some kids accused of certain crimes, having a meaningful chance for their youth mattered in the transfer consideration.197 However, this holding had its limitations—the Court in Kent specifically noted that a juvenile was not entitled to a hearing if accused of committing an offense that was of “heinous or aggravated character.”198 Furthermore, most states currently allow juveniles to be transferred for non-violent offenses, often without a hearing.199 Yet, the recent Supreme Court decisions together represent several important propositions that should be applicable to mandatory transfer laws, if taken in combination with Kent: (1) given all that is known in terms of adolescent development, biology, and scientific evidence, children are “categorically less culpable” than adults for their conduct; (2) youth is a relevant feature in procedure and sentencing decisions; (3) mandatory sentences fail to appropriately account for factors such as age, maturity, environment, susceptibility, and rehabilitative potential; (4) life without parole and other extreme sentences function like a death sentence when it comes to their application to children because children cannot view the future in the same way as adults do; and (5) children should be given “meaningful” opportunities to earn their release based on demonstrated maturity and rehabilitation.200

The juveniles whose cases were brought before the Supreme Court in Roper, Graham, and Miller, all ended up in adult court through

195 Id.
196 See Laurie Sansbury, supra note 38.
198 Id. at 556.
200 Miller, 567 U.S. at 461; Graham v. United States, 560 U.S. 48, 72 (2010) (noting that the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuousness—make them less likely to consider potential punishment); Roper, 543 U.S. at 571 (“the case for retribution is not as strong with a minor as with an adult”); Kent, 383 U.S. at 556 (holding that “it is clear beyond dispute that the waiver of jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile”).
the transfer system. The various state laws in each case made it easy for a child to be tried in adult court, where the juveniles were then exposed to mandatory minimum sentences of the death penalty and life without parole.

1. Death is not different.

The Kent decision indicated that while children have a right to a hearing, the most heinous offenses such as murder excluded children from juvenile jurisdiction. In Miller, however, the Supreme Court accepted the idea that, as proven by neuroscience and behavioral research, that “children who commit even heinous crimes are capable of change” and further noted that the Court’s previous holding in Roper and Graham were not crime specific. Additionally, the Miller Court looked to the context in which a child is accused of murder, and found that the state must give the juvenile a meaningful opportunity to explain the context around the crime, noting that “just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered in assessing his culpability.” Looking at the context of the crime was a significant shift from the Kent Court, which waived a hearing for offenses of “heinous” character. Instead, the Court in Miller believed that there are still levels of culpability when a child is accused of the gravest offense:

Such mandatory penalties, by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile (including these two 14-year-olds) will receive the same sentence as the vast majority of adults committing similar homicide offenses.

Therefore, under Miller, a kid who commits murder is still a kid and even children charged with serious offenses deserve a fair hearing and opportunity to grow as an adult outside of the walls of incarceration. A fair hearing would allow the Court to consider the circumstances of the juvenile, outside of the offense that he or she committed, in terms of his or her immaturity, impetuosity, and inability to appreciate risk based on chronological age. Furthermore, at a hearing, the juvenile’s act will be considered in the context of the juvenile’s history and family environment. Finally, if a juvenile is convicted of murder but remains in juvenile court, it is still possible that the court could charge and convict him or her of a lesser offense based on the limitations or disabilities associated with youth.

201 See supra Part II.a.
202 Kent, 383 U.S. at 564.
203 Miller, 567 U.S. at 463 (“none of what [Graham] said about children about their distinctive and transitory traits and environmental vulnerabilities is crime-specific”)
204 Id. at 2466.
205 Kent, 383 U.S. at 564.
206 Id. at 2467 86.
208 See Miller, 567 U.S. at 471.
209 Id. (mandatory sentencing schemes prevent courts from taking into account “the family and home environment that surrounds him and from which he cannot usually extricate himself no matter how brutal or dysfunctional”).
210 Id.
2. Transfer to adult court exposes youth to mandatory minimums that do not take into account their chronological age.

The age of the defendant in all criminal proceedings is relevant because kids are categorically less capable and more susceptible to change based on modern scientific studies. Mandatory transfer mechanisms ultimately place children, if convicted, in the realm of mandatory transfer schemes that prevent judges from taking account of the central considerations of youth. Even though the Supreme Court has ruled that juveniles cannot be sentenced to death or life without parole, there are still a large amount of mandatory sentences that still involve significant amounts of incarceration that children would not be exposed to in juvenile court. Mandatory minimums, by definition, do not allow judges to take individualized factors into account even if they wanted to, and juveniles tried in adult criminal court are subject to the same mandatory minimum sentences as their adult counterparts for nearly all offenses, without consideration of their inherent diminished culpability.

The Court’s discussion of the unique attributes of children was anchored in social science work, documenting the inchoate nature of the adolescent brain. Current structures that allow for children to be transferred this way do not take age into consideration, which is therefore in direct opposition to the Court’s holding in Roper, Graham, and Miller. By removing youth from the balance—by subjecting a juvenile to the mandatory minimum sentence applicable to an adult—these laws still prohibit a sentencing authority from assessing whether the law’s minimum term of imprisonment proportionately punishes a juvenile offender. Adolescents develop gradually and unevenly, and chronological age and physical maturity are not reliable indicators of development. Although their offenses can be serious, much of the behavior surrounding delinquency is not ab normal during adolescence as under stress, adolescents typically cannot use their most advanced judgment and decision-making skills. A judge’s ability to consider these key factors should not be constrained by any mandatorily imposed sentences, no matter how short.

3. The Supreme Court intended Miller to be read broadly.

The Miller opinion states that a child’s developmental environment matters at sentencing and thus, context matters when sentencing juveniles outside of life without parole.
to any kind of mandatory minimum sentence. The Miller Court even suggested in dicta, that it was concerned with juvenile justice practices on a broader scope than the life sentences that were at issue in the case. The Court spent a significant amount of its opinion responding to the State’s assertion that youth was already taken into consideration at the transfer hearing and therefore did not need to be considered at a sentencing hearing. The Court rejected this notion entirely because even though the youth in Miller was given a transfer hearing, many states use mandatory transfer systems or direct file statutes, which place any discretion solely in the hands of the prosecutor and do not provide a mechanism for a judicial revaluation. Additionally, the Court criticized judicial waiver statutes as being too general and ambiguous. Furthermore, the purpose of a transfer hearing is dramatically different than that of a sentencing hearing and judges are faced with an extreme choice: giving a lenient sentence in juvenile court or an extreme one in adult court. Therefore, any statute that does not even give youth a meaningful opportunity to be heard at a transfer hearing does not comply with the standard outlined in Miller, and it is possible that even youth transferred through judicial waiver may not have a significant opportunity to be evaluated as a child. By discussing the limitations of this system, the majority indicated that its decision was not limited to this particular sentence, but that it was an indictment of broader juvenile justice practices and criticizing the kind of general hearing provisions outlined in Kent.

4. Mandatory Transfer Violates a Juvenile’s Eighth Amendment Rights

The sentences in Roper, Graham, and Miller were ultimately deemed to violate the principle of proportionality, and therefore the Eighth Amendment’s ban on cruel and unusual punishment. Miller and Graham represented an enormous break from Eighth Amendment precedent dealing with non-death sentences because children were at issue. The Supreme Court previously set the bar for a challenge to sentencing very high: “Although ‘no penalty is per se constitutional,’ the relative lack of objective standards concerning terms of imprisonment has meant that ‘[o]utside the context of capital punishment, successful challenges to the proportionality of particular sentences are exceedingly rare.”

Therefore, based on this shift in understanding of an Eighth Amendment violation, mandatory waiver provisions violate the individualized requirements of the Eighth Amendment as they deny juveniles any opportunity to

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218 Id. ("the mandatory penalty schemes at issue here prevent the sentence from taking account of these central considerations.")
219 Id.
220 Id. at 468.
221 Id.
222 Id. at 469 (noting that such laws are “usually silent regarding standards, protocols, or appropriate considerations for decisionmaking” and when states give power to the judges, it “has limited utility,” as judges have limited information and juveniles have limited protections).
223 Id.
224 Additionally, the four dissenting judges in Miller were even concerned that the majority’s opinion would be read too broadly. See id. 471 (Roberts, C.J., dissenting) (“the principle behind today’s decision seems to be only that because juveniles are different from adults, they must be sentenced differently,” and that such a principle and the process the majority employed in applying it “has no discernible end point.”); See also id. at 478 (Thomas, J., dissenting) (“[Miller] lays the groundwork for future incursions on the States’ authority to sentence criminals.”).
225 Miller, 567 U.S. at 460.
226 Id.
have their age and diminished capacity considered by any decision-maker at any stage of the proceedings against them.

5. Like the death penalty in Roper and life without parole in Graham and Miller, there is indicia of national consensus moving against transferring juveniles without a hearing.

Finally, when finding mandatory practices to be unconstitutional, the Court in Roper and Graham looked to the current national consensus on the death penalty and life without parole, respectively. While the Court heavily focused on an analysis of legislative trends moving towards outlawing the death penalty in Roper, it also noted that the United States is the only country in the world that gives “official sanction” to the juvenile death penalty. In Graham, the Court noted that while thirty-seven states, the District of Columbia, and the federal government permitted life without parole sentences for non-homicide juvenile offenders, the actual sentencing practices of those jurisdictions indicated that most states were hesitant to sentence a juvenile to such a sentence. At the time of the decision, there were only 123 non-homicide juvenile offenders serving life without parole sentences throughout the entire country—and seventy-seven of them were in Florida prisons. Given the “exceedingly rare” incidence of the punishment in question, the Court held that there was a national consensus against life without parole sentences for non-homicide juvenile offenders.

As discussed in Part I, like life without parole, there are similar trends throughout the country that show there is a national consensus that children should not be transferred to adult court without a hearing.

B. All States Should be Required to Make an Individualized Assessment of Each Youth Based on Certain Specific Factors Before Transferring the Youth

Based on the holdings in Kent, Roper, Miller, and Graham, this precedent, states should only be allowed to transfer youth following a transfer hearing in which a court individually assesses a juvenile defendant and encompasses the diminished culpability of juveniles and their capacity for change. States, therefore, should only transfer juveniles through the process of judicial waiver as statutory exclusion and direct file are unconstitutional under Miller. Only fifteen states now rely solely on traditional hearing-based, judicially controlled forms of transfer as contemplated in Kent. In these states, all cases against juvenile-age offenders begin in juvenile court and must be literally transferred, by individual court order, to courts with crimi-

228 Roper, 543 U.S. at 575.
229 Graham, 560 U.S. at 61-63.
230 Id. at 64.
231 Id. at 67.
233 Juvenile transfer in the United States is also disproportionate to the rest of the world—the American criminal justice system leads the world in incarcerating children and no other country routinely processes youth in adult criminal court compared to an estimated 250,000 in the U.S. annually. See id. Furthermore, the United States is violating provisions of international human rights conventions. For example, Article 37 of the United Nations Convention on the Rights of the Child (CRC) states that children who are detained should be separated from adults and that they should not be subject to torture or other inhumane forms of punishment. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. The United States is one of the few countries that has not adopted the CRC. However, laws across the United States allow for children charged as adults to be placed in adult jails without any separation from adults, and less than half of these states provide any measure of safety for children.
234 Kent, 383 U.S. at 541.
nal jurisdiction, unless the state has a provision keeping children who have already been prosecuted once out of the juvenile jurisdiction permanent. While, based on the purpose of the juvenile justice system, it is preferable for all children to stay in juvenile court, courts at the very least should be required to give children a meaningful hearing where they are considered under factors that are consistent with Supreme Court jurisprudence that recognize their status as a child before exposing them to adult sentencing laws and prisons.

First, cases involving children should originate in juvenile court, regardless of the alleged offense on their prior record. If they are then eligible for hearing based on a state’s judicial waiver statutes, only the court should be able to motion for a transfer hearing in order to remove any discretionary power from the prosecutor. The juvenile should be represented by counsel at the waiver hearing, and the juvenile should have at least five days notice in order to provide an adequate representation of the child’s emotional, physical, and educational history. Furthermore, the juvenile should have access to an expert if necessary, and should have access to all evidence available to the court to either support or contest the motion. Any evidence presented should be under oath and subject to cross-examination. At the hearing, the prosecuting attorney should always bear the burden of proving that probable cause exists to believe not only that the juvenile has committed the offense, but that the juvenile cannot be rehabilitated within the juvenile court. The juvenile may remain silent at the waiver hearing, and additionally no admission by the juvenile during the waiver hearing should be admissible in subsequent proceedings.

Second, at this hearing, courts must individually assess each juvenile as contemplated in *Kent*, but based on factors that incorporate modern scientific studies of adolescence as well as recent Supreme Court jurisprudence that recognizes that kids are different. Courts should be required to consider all the same specific set of factors, as outlined here, and should be unable to transfer a child unless they have made a finding on the record that the conditions have been met.

Most states already consider the nature of the offense when evaluating a child for transfer. In *Kent*, the Court stated that the following should be considered: “the seriousness of the alleged offense to the community and whether the protection of the community requires waiver,” “whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner,” and “whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.” Forty-one states currently consider the offense committed in a juvenile waiver hearing. However, the Supreme Court has indicated that the focus should not be on the offense itself, but that children are categorically different. Furthermore, as the juvenile system is supposedly rehabilitative instead of punitive, the offense itself should not carry much weight. The offense itself should not matter in terms of what it looks like on paper, but should only be analyzed in context, not as an isolated act. Courts should not determine “premeditation, willful, or other similar words,” but should

236 *Id.*
237 See infra Appendix C.
238 *Kent*, 383 U.S. at 567.
239 See infra Appendix C.
analyze the offense with more adolescent appropriate standards in light of what personal facts led up to the commission of the offense. Based on this, courts should also not be able to consider the prior record of the child without context and without also considering why the child was not fully rehabilitated by the system, especially if it was based on a lack of rehabilitative resources or a mental condition that remained untreated since the previous offense was committed.

The Kent Court instructed that whether or not the juvenile had associates in adult court should be a consideration in the transfer decision, and nine courts currently consider this factor.\textsuperscript{240} However, convenience should not be a consideration in juvenile transfer. Juveniles should not be held to the same level of culpability as their adult co-defendants, as often those co-defendants are the very individuals suspecting the juveniles to the peer pressure that Roper indicated contributed to a juvenile’s responsibility.\textsuperscript{241}

In terms of maturity, both the Kent Court and thirty-five states consider the sophistication and maturity of the juvenile.\textsuperscript{242} Some states have expanded on this, and consider the psychological development and emotional state of the minor, including any documented mental illness or developmental issues.\textsuperscript{243} However, none of these transfer statutes state at what maturity level a child becomes eligible for transfer. A child, therefore, should only be eligible for transfer if they are deemed to have the emotionally maturity and decision-making capability of an adult. Otherwise, their mental status as children should keep them in juvenile court. As far as physical maturity, there should be a minimum age imposed on when a child can be eligible for transfer based for all offenses. A child should then be evaluated to see if they developmentally meet the standards of other youth their age, or if there are any mental disabilities or lingering traumatic experiences that would preclude them for developing at the appropriate rate.

Next, Kent instructed courts to consider “[t]he sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.”\textsuperscript{244} Twenty-three states currently consider the juvenile’s home or family environment, including the effect that familial, adult, or peer pressure may have had on the child’s alleged actions in question.\textsuperscript{245} This should be a required factor in all jurisdictions and should be expanded to include new research based on trauma and the susceptibilities of children to peer pressure.

Kent, as well as thirty-four states, considered the prospects for adequate protection of the community.\textsuperscript{246} If this factor is even to be considered, there should be set criteria and reasons that would allow a court to find that the community cannot be protected by isolating the minor in a juvenile setting; this should not be an arbitrary statement. However, the decision on whether or not to hold a juvenile should only be considered when evaluating their release pre-trial and should not be a factor in a transfer hearing. Additionally, while Kent and thirty-two states consider whether

\textsuperscript{240} Kent, 383 U.S. at 567; see infra Appendix C.
\textsuperscript{241} Roper, 543 U.S. at 569 juveniles “are more vulnerable ... to negative influences and outside pressures,” including from their family and peers; they have limited “control[ ] over their own environment” and lack the ability to extricate themselves from horrific, crime-producing settings.
\textsuperscript{242} Kent, 383 U.S. at 567; see infra Appendix C.
\textsuperscript{243} See infra Appendix C.
\textsuperscript{244} Kent, 383 U.S. at 567.
\textsuperscript{245} See infra Appendix C.
\textsuperscript{246} Kent, 383 U.S. at 567; see infra Appendix C.
the juvenile can be rehabilitated within the
time frame of juvenile court jurisdiction, and
if the juvenile court has facilities available that
would address the child’s individual needs, the
Court should not be able to forego rehabilita-
tion solely based on the likelihood that it is
unlikely to occur. There should be a presump-
tive burden that the child can be rehabilitated,
and it should be a large burden on the govern-
ment to prove otherwise.

Only fourteen states currently consider
the culpability of juvenile when assessing them
for transfer, and this factor was not even con-
sidered in "Kent". Given that the lessened culp-
ability of children is at the heart of the Roper,
Graham, and Miller cases, this should be a man-
datory consideration when attempting to trans-
fer a child. "Kent" and eleven states consider the
impact on the victim when deciding whether to
transfer a child. Such a consideration should
only be considered at sentencing, as the injury
suffered by a person does not have any impact
on the finding that an individual committed an
offense. As the child has not yet been found
guilty of the offense he or she is being trans-
ferred for, the victim impact should only be
considered at sentencing if the child is event-
tually adjudicated or found guilty. Finally, six
states consider whether the offense was com-
mitted as part of gang activity, even though this
factor was not originally proposed in "Kent".
Contrary to current statutory requirements,
gang involvement should actually make it less
likely that the juvenile is transferred, instead
of an aggravating factor. In Miller, the Court
explained that juvenile offenders are less cul-
pable than adults because they are less able to
assess risk; they are more susceptible to outside
influences; and they do not have a fully devel-
oped character. The gang setting magnifies
all of these concerns.

CONCLUSION

Based on the Supreme Court’s decision
in "Kent" as well as its recent jurisprudence, states
should repeal all mandatory transfer statutes.
Mandatory transfer directly contradicts the Su-
preme Court’s recognition that individualized
review of a youth’s history, the circumstances
of the offense, and a youth’s ability to charge
are critical to determining a youth’s sentence.
Mandatory transfer statutes take away a court’s
ability to make this individualized, appropriate
assessment of youth as juvenile courts, not adult
courts, were specifically created to address the
individualized needs of youth. Finally, manda-
tory transfer statutes are not necessary to
ensure youth who commit serious offense are
held accountable – repealing mandatory trans-
er does not limit a state’s ability to try a youth
as an adult, it merely means that the child will
first have an appropriate hearing.

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247 "Kent", 383 U.S. at 567; see infra Appendix C.
248 See infra Appendix C.
249 Id.

250 Miller, 567 U.S. at 465.
## APPENDIX A

### Methods of Transfer by State

<table>
<thead>
<tr>
<th>State</th>
<th>Judicial Waiver</th>
<th>Statutory Exclusion</th>
<th>Direct File</th>
<th>Once an Adult, Always an Adult</th>
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<td>Alaska Stat. § 47.12.030</td>
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<td>705 Ill. Comp. Stat. 405/5-130</td>
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<td>Ind. Code Ann. § 31-30-1-4</td>
<td>Ind. Code Ann. §§ 31-30-3-6</td>
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<td>Iowa Code § 232.45</td>
<td>Iowa Code § 232.8(c)</td>
<td>Iowa Code § 232.45(a)</td>
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<td>Judicial Waiver</td>
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<td>State</td>
<td>Judicial Waiver</td>
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## APPENDIX B

### Judicial Waiver – Statutory Requirements for Hearings

<table>
<thead>
<tr>
<th>State</th>
<th>Evaluation Required</th>
<th>Probable Cause Required</th>
<th>Party that Can Motion for Transfer</th>
<th>Burden Shift to Defendant</th>
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<sup>251</sup> See supra Appendix A (listing all judicial waiver statutes by state).

<sup>252</sup> In Alaska, probable cause is a factor to be considered, but is not required before a juvenile is transferred.

<sup>253</sup> In D.C., for the purpose of the transfer hearing it is assumed that the child committed the delinquent act.

<sup>254</sup> In Florida, probable cause is a factor to be considered, but is not required.

<sup>255</sup> In Indiana, probable cause is required unless the minor is accused of a felony and has previously been charged with a felony.

<sup>256</sup> In Maryland, for the purpose of the transfer hearing, it is assumed that the child committed the delinquent act.
<table>
<thead>
<tr>
<th>State</th>
<th>Evaluation Required</th>
<th>Probable Cause Required</th>
<th>Party that Can Motion for Transfer</th>
<th>Burden Shift to Defendant</th>
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<sup>257</sup> In New Hampshire, courts only must consider the prospective merit of the complaint as a factor in the transfer decision.

<sup>258</sup> In Oregon, courts only must consider the prospective merit of the complaint as a factor in the transfer decision.

<sup>259</sup> In South Carolina, a minor can only be transferred after a “full investigation” has been made, but a probable cause requirement is not specified.
APPENDIX C

Judicial Waiver – Factors Considered at Transfer Hearing\textsuperscript{260}

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\textsuperscript{260} See supra Appendix A (listing all judicial waiver statutes by state).

\textsuperscript{261} Arkansas requires courts to specifically consider the juvenile’s social and educational history.

\textsuperscript{262} D.C. considers if whether or not family counseling would increase the potential rehabilitation of the juvenile.

\textsuperscript{263} Mississippi requires courts to consider if the offense occurred on school property or put any other students in danger.

\textsuperscript{264} Missouri requires courts to be mindful of racial disparities in certification of juveniles as adults.
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265 Ohio gives more guidance on what makes a juvenile “culpable,” and requires a court to consider if defendant was provoked and if the defendant knew actions would cause the harm that occurred.

266 Oklahoma additionally requires courts to consider if the offense was committed while escaping or attempting to escape from an institution for delinquent children.

267 South Carolina does not specify any specific factors for courts to consider.

268 Virginia is the only state that allows the judge to consider the potential sentence if the juvenile is convicted as an adult; specifically, if the maximum sentence for the crime if committed by an adult would exceed 20 years.

269 Washington does not list any specific factors for courts to consider.
Summer Woods is a Public Interest/Public Service Scholar at American University Washington College of Law. Summer is an aspiring career public defender who worked as a student-attorney in AUWCL’s Criminal Justice Clinic in the fall of 2017. Summer also worked at the National Juvenile Defender Center researching and writing on juvenile transfer laws in 2016. Throughout law school, Summer worked at the Public Defender Service for the District of Columbia and the Charleston County Public Defender’s Office on criminal defense trial practice, where she wrote motions, researched discrete Fourth and Fifth Amendment legal issues, and met with clients. In 2014, Ms. Woods served with AmeriCorps working with middle school students in an under-resourced neighborhood in Queens, New York. Summer obtained her B.A. from Furman University with a degree in History and English, and she will receive her J.D. in May 2018. Summer will be a Public Defender in Colorado after graduation.