



# OJJDP FACT SHEET

Jeff Slowikowski, Acting Administrator

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## Delinquency Cases Waived to Criminal Court, 2008

by Benjamin Adams and Sean Addie

### All states have mechanisms to handle juveniles in criminal court

All states have established an upper age of original jurisdiction for juvenile courts (age 15, 16, or 17, depending on the state). However, states also have various laws that allow juveniles younger than the upper age of juvenile court jurisdiction to be tried as adults. There are three basic types of transfer laws. *Concurrent jurisdiction laws* allow prosecutors to use their discretion and decide whether to file a case in juvenile or criminal court. *Statutory exclusion laws* grant criminal courts original jurisdiction over certain classes of cases involving juveniles. *Judicial waiver laws* authorize or require juvenile court judges to remove certain youth from juvenile court jurisdiction to be tried as adults in criminal court.

There are three broad categories for judicial waiver: discretionary, presumptive, and mandatory. Nearly all states (45) have *discretionary* judicial waiver provisions, in which juvenile court judges have discretion to waive jurisdiction over individual juveniles to clear the way for criminal court prosecutions. These laws authorize, but do not require, transfer in cases meeting threshold requirements for waiver. Some states (15) have *presumptive* waiver laws, which designate a category of cases in which waiver to criminal court is presumed to be appropriate. In such cases, if a juvenile who meets the age, offense, or other statutory criteria that trigger the presumption fails to make an adequate argument against transfer, the juvenile court must send the case to criminal court. Other states (15) provide for *mandatory* waiver in cases that meet certain age, offense, or prior record criteria. Proceedings against juveniles subject to mandatory waiver are initiated in juvenile court, but the court's only role is to confirm that the statutory requirements for mandatory waiver are met. Once it has done so, it must send the case to criminal court.

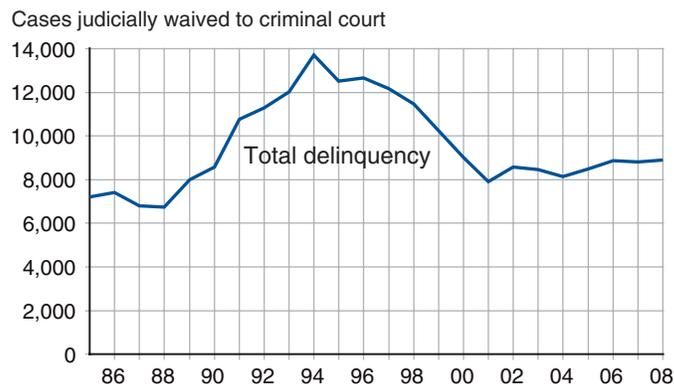
The National Juvenile Court Data Archive, maintained by the National Center for Juvenile Justice, generates national estimates of the number of cases judicially waived to criminal court. This fact sheet presents estimates for 1985 through 2008.

### For every 1,000 petitioned delinquency cases, 10 were judicially waived to criminal court

In 2008, U.S. courts with juvenile jurisdiction handled nearly 1.7 million delinquency cases. More than half (56%) of these cases were handled formally (i.e., a petition was filed requesting an adjudication or waiver hearing). Of the petitioned delinquency caseload, about 1% resulted in judicial waiver. The number of delinquency cases judicially waived peaked in 1994 at 13,700 cases. This represents a 90% increase over the number of cases waived in 1985 (7,200). In 2008, juvenile courts waived an estimated 8,900 delinquency cases, 35% fewer cases than in 1994 but 13% more than in 2001.

Much of this decline throughout the 1990s was driven by the decline in violent crime by juveniles. However, part of the decline in judicial waivers can be attributed to the simultaneous and widespread expansion of nonjudicial transfer laws. As a result of these new and expanded laws, many cases that might have been subject to waiver proceedings in previous years were undoubtedly filed directly in criminal court, bypassing the juvenile court altogether.

**The number of cases judicially waived to criminal court in 2008 was 35% less than in 1994, the peak year**



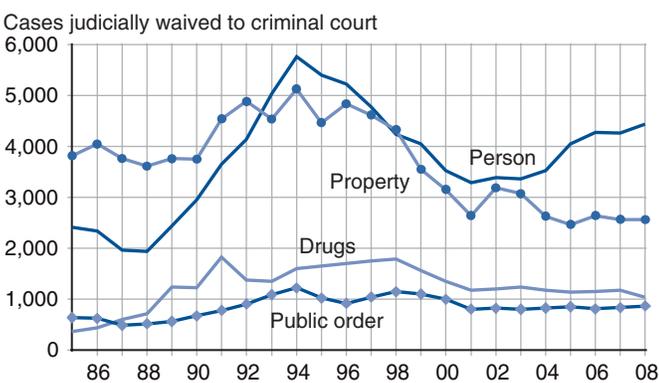
### Transfer mechanisms have changed and expanded over time

Transfer laws in general—including both judicial waiver laws and other kinds of transfer laws that allow or require cases against juveniles to be filed directly in criminal court, bypassing juvenile court altogether—proliferated and expanded dramatically during the 1980s and 1990s. Legislatures in nearly every state revised or rewrote their laws to broaden the scope of transfer—lower age and/or offense thresholds, moving away from individual and toward categorical handling, and shifting authority from judges to prosecutors. Between 1992 and 1999, 27 states extended the reach of judicial waiver laws, lowered age requirements, or otherwise broadened eligibility. During the same period, 13 states enacted new presumptive waiver laws and at least 9 states expanded or enacted new mandatory waiver laws. Nonwaiver transfer mechanisms, which had been relatively rare before this period, became more common and also more far-reaching: at least 22 states created or expanded statutory exclusion laws requiring that cases against some categories of juveniles be excluded from juvenile court and filed in criminal court, and 11 states enacted or expanded concurrent jurisdiction laws allowing prosecutors to make that choice themselves in certain cases.

### Since 1993, waived person offense cases have outnumbered waived cases for other offense categories

The number of waived person offense cases increased 139% between 1985 and 1994 and then declined 43% through 2001. Between 2001 and 2008, the number of waived cases increased 35%. By comparison, waived drug offense cases peaked in 1991, 416% greater than the 1985 number. Between the peak year and 2008, waived drug offense cases declined 43%. The number of waived property and public order offense cases also have declined substantially since 1994 (50% and 29%, respectively). From 1993 to 2008, with one exception (1998), person offenses outnumbered property offenses among waived cases. Before 1993, property offense cases outnumbered person offense cases among waivers—at times by a ratio of nearly 2-to-1.

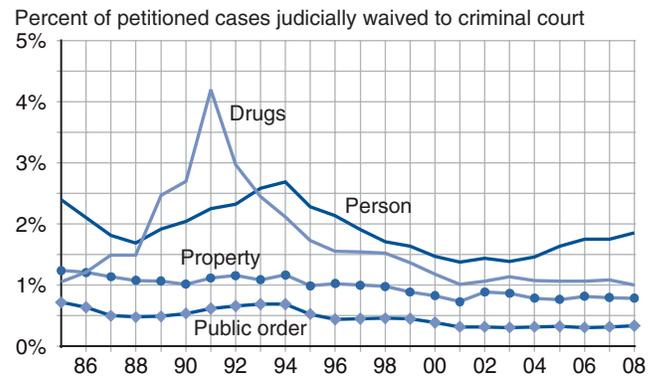
### Although the number of waived cases declined greatly since the mid-1990s, the number was greater in 2008 than in 1985 for person, drug, and public order offense cases



### Trends in the use of waiver vary by the most serious offense charged

From 1989 through 1992, petitioned drug offense cases were more likely to be waived to criminal court than any other offense category. The proportion of drug offense cases that were judicially waived peaked in 1991 at 4.2% (1,800 cases) and declined to 1.0% (1,000 cases) in 2008. Between 1993 and 2008, petitioned person offense cases were more likely to be judicially waived than cases involving other offenses. In 2008, 1.9% of

### The likelihood of judicial waiver declined after the early 1990s



formally handled (or petitioned) person offense cases were waived, compared with 1.0% of drug offense cases, 0.8% of property offense cases, and 0.3% of public order offense cases.

### Half of waived cases involved person offenses

The offense profile and characteristics of cases judicially waived to criminal court have changed considerably. From 1985 to 1992, property offense cases made up the largest share of the waived caseload. Beginning in 1993, person offense cases accounted for a greater proportion of the waived caseload than property offense cases. Compared with 1985, the waived caseload in 2008 included a greater proportion of person offense cases (50% vs. 33%) and drug offense cases (12% vs. 5%) and a smaller proportion of property offense cases (29% vs. 53%).

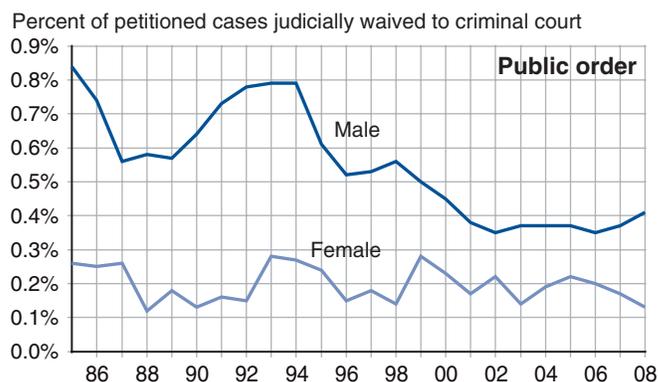
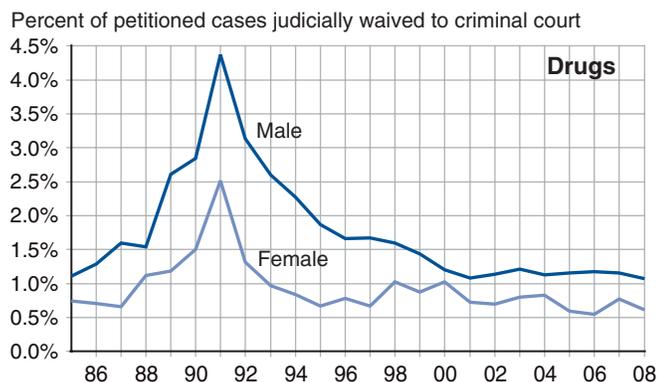
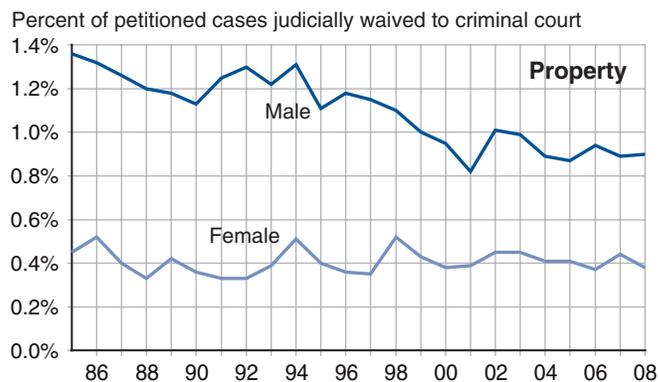
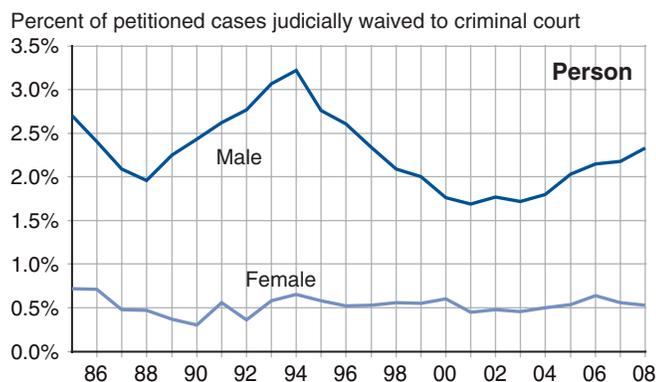
Although the proportions of waived cases involving females and younger juveniles increased between 1985 and 2008, the vast majority of waived cases involved males age 16 or older. Between 1985 and 2008, the proportion of waived cases involving males decreased (from 95% to 91%), as did the proportion of waived cases involving juveniles age 16 or older (from 93% to 87%). Judicially waived cases included an equal proportion of black youth in 1994 (the peak year) as in 2008.

### The offense profile and characteristics of cases judicially waived to criminal court have changed considerably

Offense/demographic	1985	1994	2008
<b>Total cases waived</b>	7,200	13,700	8,900
<b>Most serious offense</b>			
Person	33%	42%	50%
Property	53	37	29
Drugs	5	12	12
Public order	9	9	10
<b>Gender</b>			
Male	95%	94%	91%
Female	5	6	9
<b>Age at referral</b>			
15 or younger	7%	15%	13%
16 or older	93	85	87
<b>Race/ethnicity</b>			
White	59%	54%	55%
Black	40	42	42
Other	2	3	4

**Note:** Data for 1994 are presented because it is the peak year for the number of cases judicially waived to criminal court. Detail may not add to 100% because of rounding.

## Cases involving males were much more likely to be judicially waived to criminal court than those involving females



■ Each year between 1985 and 2008, petitioned delinquency cases involving males were more likely to be judicially waived than cases involving females. This was true for each of the four general offense categories.

■ In 2008, for males, person offense cases were far more likely to be judicially waived to criminal court than cases in any other offense category. For females, drug and person offense cases were more likely to be waived.

■ In 2008, person offense cases involving males were more than four times as likely to be judicially waived as those involving females.

■ For both males and females in all general offense categories, the proportion of cases judicially waived was lower in 2008 than in 1985.

■ Patterns in the likelihood of judicial waiver for males were similar to those of females across general offense categories. For example, the likelihood of judicial waiver for drug offense cases involving males increased substantially between 1985 and 1991 (from 1.1% to 4.4%) and then declined considerably through 2008 to 1.1%. Judicially waived drug offense cases involving females followed the same pattern, increasing from 0.7% in 1985 to 2.5% in 1991 and then declining to 0.6% in 2008.

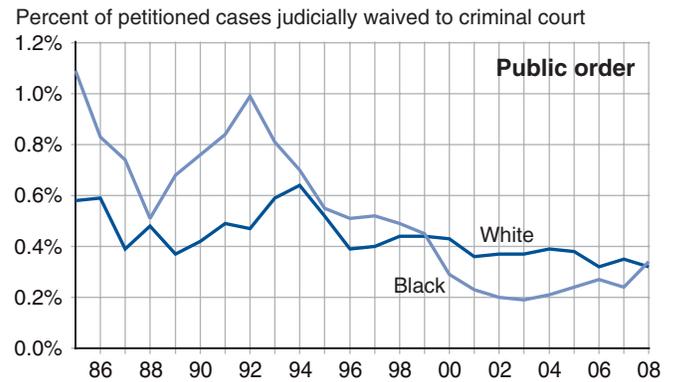
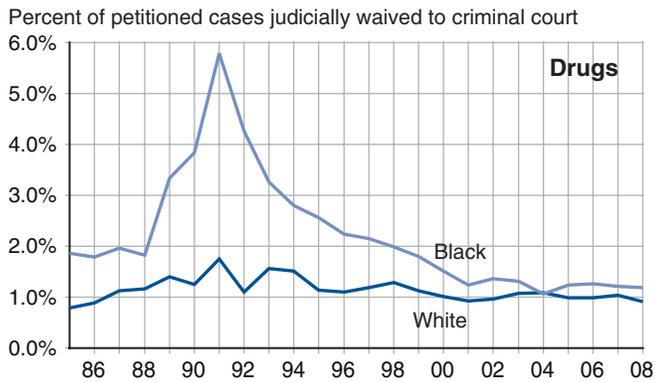
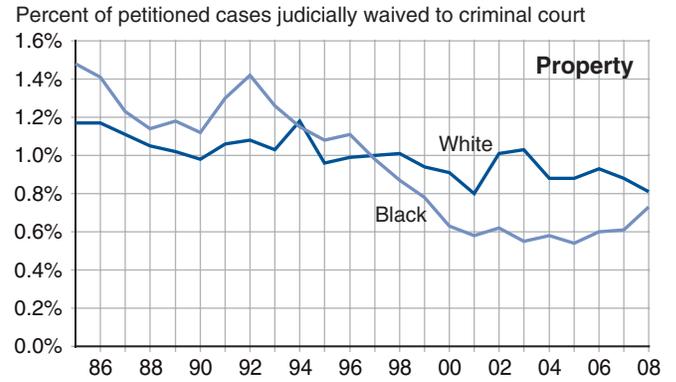
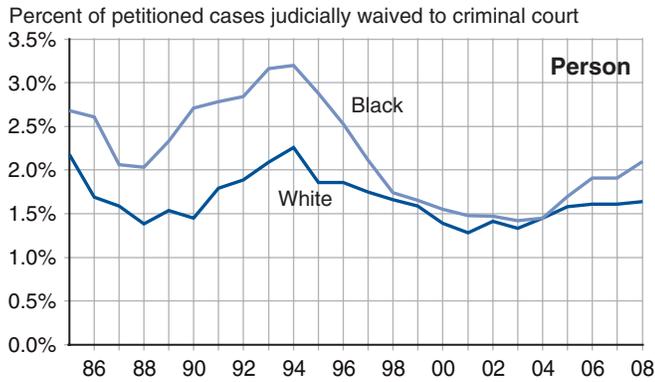
Note: These comparisons do not control for gender differences in the seriousness of offenses within general offense categories nor in the juveniles' offense history.

## National studies explore juveniles transferred to criminal court

■ The National Center for Juvenile Justice (NCJJ) recently produced a bulletin titled *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting* (September 2011). This bulletin is the result of an OJJDP-funded study, as part of its National Juvenile Justice Data Analysis Project, to examine the quality and quantity of transfer information across the country. It focuses on the nonwaiver aspect of transfer to adult court and expands on previous transfer publications by NCJJ. The bulletin incorporates new findings about transfer practice and data collection and dissemination across the United States. The study found an absence of national data sets that track transferred cases, a small number of states that track transfers, and varying levels of detail in these reporting states. The bulletin includes a historical examination of transfer laws and practice, an analysis of national data sources for transfer, and a look at individual state transfer data and numbers.

■ The Bureau of Justice Statistics (BJS) has initiated the Survey of Juveniles Charged as Adults in Criminal Courts, a data collection to examine young offenders processed in criminal courts. BJS has retained Westat and NCJJ to produce accurate and reliable national case-processing statistics for juveniles charged as adults. The sample will be drawn from all such felony and misdemeanor cases arraigned in criminal courts. Unlike prior efforts to understand the population of interest, the approach will account for state variation in the handling of youth younger than age 18 in criminal court (i.e., jurisdictional age laws and transfer laws). The sample will take advantage of data from states with statewide electronic data systems while using a probability sample of counties, or groups of counties, in other states to provide nationally representative estimates.

## Racial differences in case waivers stem primarily from differences in person and drug offense cases



- For much of the period from 1985 through 2008, the likelihood of judicial waiver for petitioned delinquency cases was greater for black youth than for white youth, regardless of the offense category.
- Although the likelihood of judicial waiver declined for white youth and black youth between the early 1990s and 2008, the relative decline was greater for black youth. As a result, in 2008, delinquency cases involving black youth had about the same likelihood of being judicially waived as cases involving white youth (1.1% and 0.9%, respectively).
- Among black youth, the likelihood of judicial waiver for person offense cases peaked in 1994 at 3.2%, or nearly 1.5 times the likelihood for white youth. Similarly, at its peak in 1991, the likelihood of

judicial waiver for drug offense cases involving black youth (nearly 6%) was more than 3 times the likelihood for white youth.

- Among white juveniles, person offense cases were most likely to be judicially waived from 1985 through 2008. Among black juveniles, drug offense cases were most likely to be judicially waived from 1989 through 1993, and person offense cases were most likely to be waived in most other years between 1985 and 2008.
- In 2008, person and drug offense cases involving black youth remained slightly more likely to be judicially waived than those involving white youth. However, the opposite was true for property offense cases, and the likelihood of waiver for public order offense cases was similar for white and black juveniles.

Note: These comparisons do not control for gender differences in the seriousness of offenses within general offense categories nor in the juveniles' offense history

## For further information

This fact sheet is based on the report, *Juvenile Court Statistics 2008*, which is available through OJJDP's Web site ([ojjdp.gov](http://ojjdp.gov)). To learn more about juvenile court cases, visit OJJDP's online Statistical Briefing Book ([ojjdp.gov/ojstatbb/](http://ojjdp.gov/ojstatbb/)) and click on "Juveniles in Court." OJJDP also supports Easy Access to Juvenile Court Statistics, a Web-based application that analyzes the data files used for the *Juvenile Court Statistics* report. This application is available from the "Data Analysis Tools" section of the Statistical Briefing Book.

Benjamin Adams, M.S., Research Associate, and Sean Addie, J.D., Policy Analyst, with the National Center for Juvenile Justice, prepared this document as a product of the National Juvenile Court Data Archive, which is supported by OJJDP grant 2010-JR-FX-0031.

*The Office of Juvenile Justice and Delinquency Prevention is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance; the Bureau of Justice Statistics; the National Institute of Justice; the Office for Victims of Crime; and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking.*