



Juvenile Offenders and Victims



National Report Series

Fact Sheet

Robert L. Listenbee, Administrator

December 2014

Delinquency Cases Waived to Criminal Court, 2011

Sarah Hockenberry and Charles Puzzanchera

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 discretion on whether they 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 and refer their cases to criminal court. 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 2011.

For every 1,000 petitioned delinquency cases, 4 were waived to criminal court

In 2011, U.S. courts with juvenile jurisdiction handled more than 1.2 million delinquency cases. More than half (54%) 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 13,600 cases, more than double the number of cases waived in 1985. In 2011, juvenile courts waived an estimated 5,400 delinquency cases, 61% fewer cases than in 1994.

The decline in juvenile violent crime drove much of the decrease in judicial waivers throughout the 1990s. However, part of the decline in judicial waivers can be attributed to the simultaneous and widespread

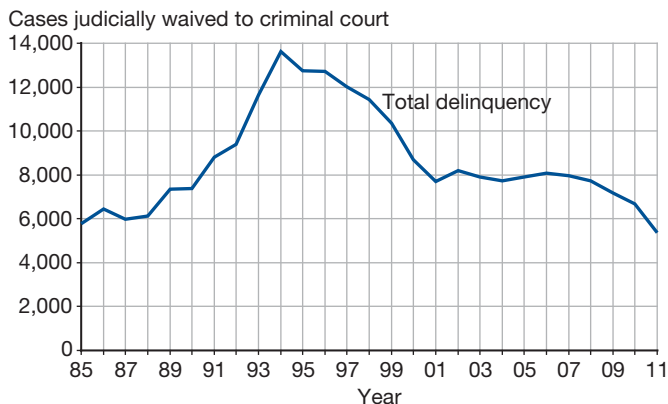


Office of Juvenile Justice and Delinquency Prevention

ojjdp.gov

Working for Youth Justice and Safety

The number of cases judicially waived to criminal court in 2011 was 61% less than in 1994, the peak year

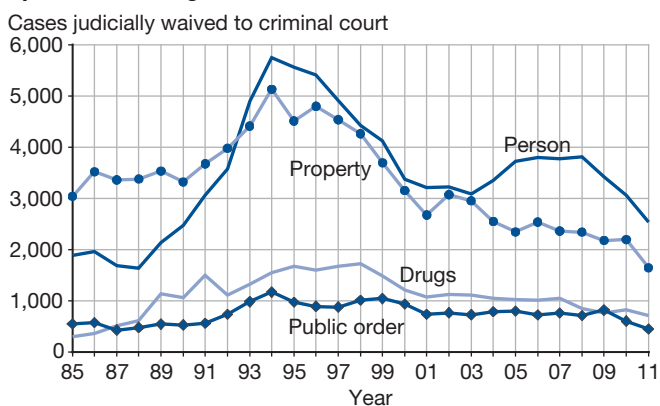


expansion of nonjudicial transfer laws. As a result of these new and expanded laws, many cases that might have been subject to waiver proceedings in previous years were undoubtedly filed directly in criminal court, bypassing the juvenile court altogether.

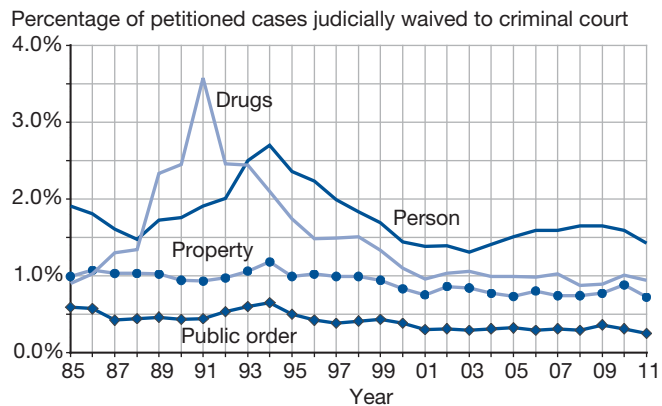
Since 1993, waived person offense cases have outnumbered waived cases for other offense categories

The number of judicially waived person offense cases increased 204% between 1985 and 1994 and then fell substantially through 2001, down 44% from its 1994 peak. Between 2001 and 2008, the number of cases waived increased 19% and then declined 33% between 2008 and 2011. By comparison, waived drug offense cases peaked in 1998, 481% greater than the 1985 number. Between the peak year and 2011, waived drug offense cases declined 59%. There have also been substantial declines since 1994 in the number of waived property and public order offense cases (68% and 61%, respectively). From 1993 to 2011, person offenses outnumbered property offenses among

Although the number of waived cases declined greatly since the mid-1990s, the number was greater in 2011 than in 1985 for person and drug offense cases



The likelihood of judicial waiver declined after the early 1990s for all four general offense categories



waived cases. Before 1993, property offense cases outnumbered person offense cases among waivers—at times by a ratio of 2:1.

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

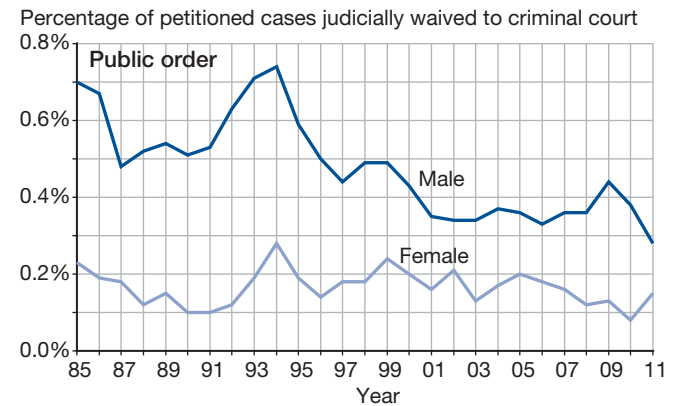
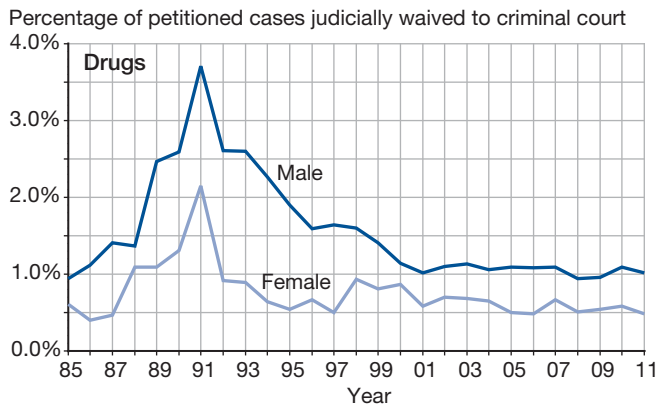
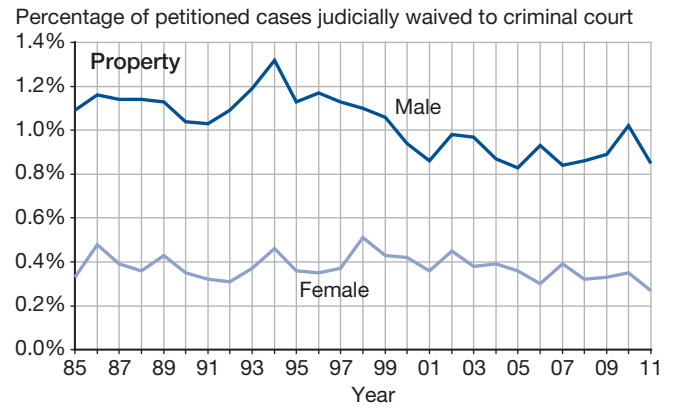
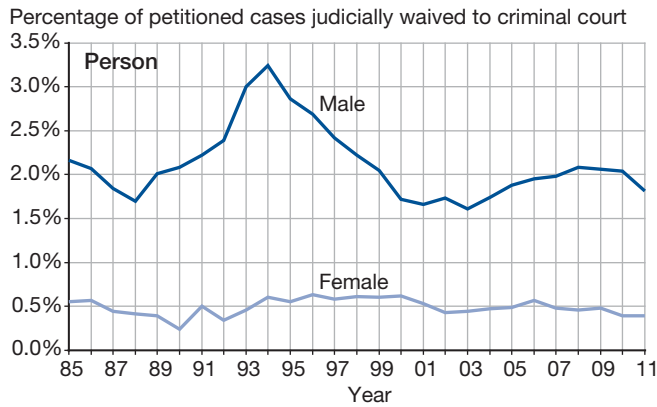
From 1989 through 1992, petitioned drug offense cases were more likely to be waived to criminal court than any other offense category. The proportion of drug offense cases that were judicially waived peaked in 1991 at 3.6% (1,500 cases) and declined to 0.9% (700 cases) in 2011. Between 1993 and 2011, petitioned person offense cases were more likely to be judicially waived than cases involving other offenses. In 2011, 1.4% of formally handled (or petitioned) person offense cases were waived compared with 0.9% of drug offense cases, 0.7% 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 2011 included greater proportions of person and drug offense cases and smaller proportions of property and public order offense cases.

Although the proportions of waived cases involving females and younger juveniles increased slightly between 1985 and 2011, the vast majority of waived cases involved males age 16 or older. Between 1985 and 2011, the proportion of waived cases involving males decreased (from 95% to 92%) as did the proportion of waived cases involving juveniles age 16 or older (from 94% to 92%). The proportion of waived cases involving white youth decreased from 62% in 1985 to 55% in 2011.

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



- In 2011, for males, person offense cases were far more likely to be judicially waived than cases in any other offense category. For females, drug offense cases were most likely to be waived.
- In 2011, person offense cases involving males were more than four times as likely to be judicially waived as those involving females.
- For females, the likelihood of waiver in 2011 was at or below the level of 1985 for all offenses; for males, the same was true for all offenses except drug offenses.
- 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 0.9% to 3.7%) and then declined considerably through 2011 to 1.0%. Judicially waived drug offense cases involving females followed the same pattern, increasing from 0.6% in 1985 to 2.2% in 1991 and then declining to 0.5% in 2011.

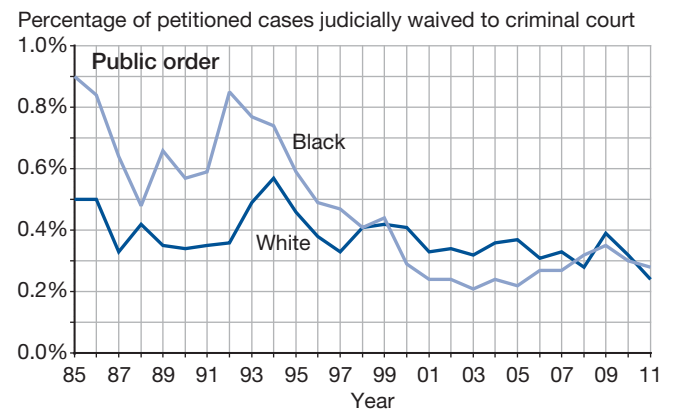
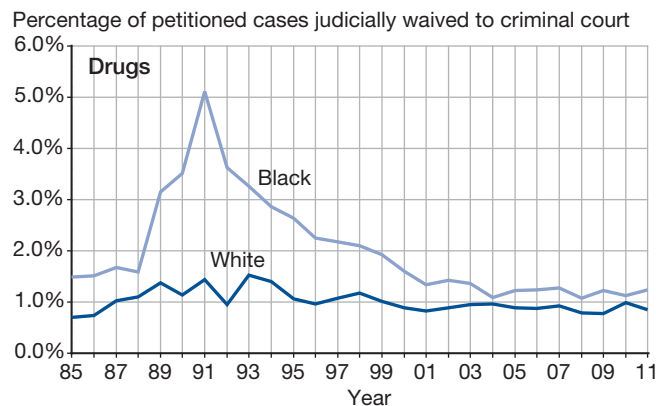
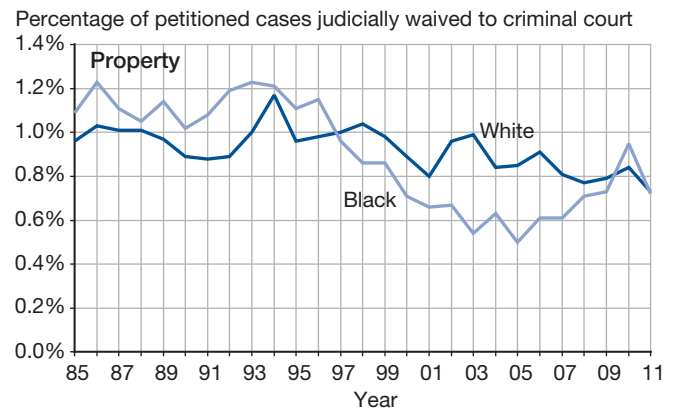
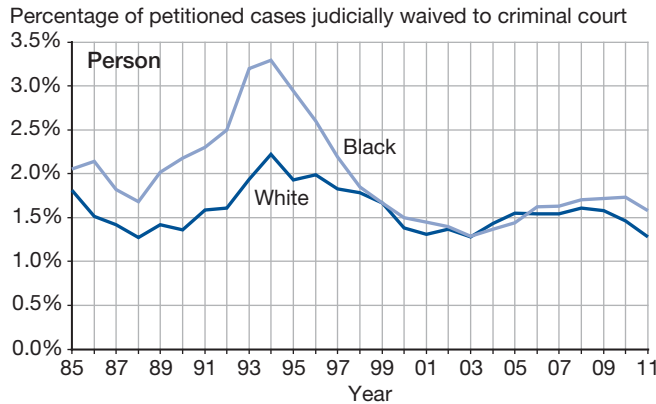
The offense profile and characteristics of cases judicially waived to criminal court have changed considerably

Offense/demographic	1985	1994	2011
Total cases waived	5,800	13,600	5,400
Most serious offense			
Person	33%	42%	47%
Property	53	38	31
Drugs	5	11	13
Public order	10	9	8
Gender			
Male	95%	94%	92%
Female	5	6	8
Age at referral			
15 or younger	6%	15%	8%
16 or older	94	85	92
Race/ethnicity			
White	62%	53%	55%
Black	36	43	42
Other	2	3	3

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. Thirteen states enacted new presumptive waiver laws during the same period, and at least nine 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.

Racial differences in judicial waiver cases stem primarily from differences in person and drug offense cases



- For much of the period from 1985 through 2011, the likelihood of judicial waiver for petitioned delinquency cases was greater for black youth than white youth for person and drug offense cases.
- Although the likelihood of judicial waiver declined for white youth and black youth between the early 1990s and 2011, the relative decline was greater for black youth. However, in 2011, delinquency cases involving black youth were only slightly more likely to be judicially waived than cases involving white youth (0.9% and 0.7%, respectively).

- Among black youth, the likelihood of judicial waiver for person offense cases peaked in 1994 at 3.3%, 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 (5.1%) was more than 3 times the likelihood for white youth.
- In 2011, person, drug, and public order offense cases involving black youth were slightly more likely to be judicially waived than those involving white youth.

For more information

This fact sheet is based on the report *Juvenile Court Statistics 2011*, which is available through OJJDP's Web site (ojjdp.gov). To learn more about juvenile court cases, visit OJJDP's online Statistical Briefing Book (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.

Sarah Hockenberry, M.S., Research Associate, and Charles Puzanchera, M.A., Senior Research Associate, 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 2012-JR-FX-0002.

Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of OJJDP or the U.S. Department of Justice.

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.