

Youth younger than 18 prosecuted in criminal court: National estimate, 2015 cases

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Each state sets age boundaries for when law-violating behavior that would be a "crime" if committed by an adult is considered "delinquent" for a youth. In most states, the upper age of juvenile court jurisdiction over an offense committed by a minor has traditionally been through age 17 (up to the 18th birthday). In a few states, though, that boundary is set below the 18th birthday. States also have statutes that make exceptions to the age boundaries of delinquency by specifying when the offense of a juvenile may or must be considered the crime of an adult.

How many youth younger than age 18 are prosecuted in criminal court? Because there is no one data collection that gives the answer to that question, the answer to this seemingly simple question requires several pieces of information. We can combine these pieces to develop an estimate of the number of transfers to criminal court involving youth younger than 18 during a year.

The first piece to the puzzle is the youth prosecuted as adults following waiver from juvenile court to criminal court. In 2015, an estimated 3,200 delinquency cases were handled in criminal court as a result of judicial waiver. It is unlikely that a single youth has more than one case waived to criminal court during the year, so this is essentially an estimate of youth transferred to criminal court by judicial waiver.

The second piece of the puzzle is youth who face adult court sanctions as a result of statutory provisions that allow their cases to be directly filed in criminal court and thus aren't included in the juvenile court waiver estimate

(e.g., statutory exclusion and prosecutor discretion/concurrent jurisdiction provisions). However, few states publish counts of youth transferred by these mechanisms. Based on 2015 data reported by Arizona, California, Florida, Michigan, and Washington, we know that 2,200 youth were prosecuted in these states in criminal court as a result of these transfer laws. We don't know how many cases involving juveniles were filed directly in criminal court in the 31 other states with one or more of these transfer provisions, so 2,200 is a minimum number.

We can, though, develop a very rough estimate of the number of cases involving juveniles filed directly in criminal court in these 31 states by calculating the rate of such cases in those five states listed above relative to their youth population ages 10 through the state upper age of jurisdiction and applying it to the youth population in the 31 states. This rough estimate works out to an additional 3,800 transfers.

However, most criminal prosecutions involving youth younger than 18 occur in states that limit the delinquency jurisdiction of their juvenile courts to exclude all 17-year-olds or all 16- and 17-year-olds accused of crimes. States have always been free to define the respective jurisdictions of their juvenile and criminal courts. Nothing compels them to draw the line between "juvenile" and "adult" at the 18th birthday. In fact, in 2015, there were 9 states that held youth criminally responsible beginning with the 16th (New York and North Carolina) or 17th birthday (Georgia, Louisiana, Michigan, Missouri, South Carolina, Texas, and Wisconsin) accounting for nearly 1.7 million

16- and 17-year-olds considered criminally responsible “adults” under the jurisdictional age laws of these states. Since 2015, all but Georgia, Michigan, Texas and Wisconsin have passed laws to “raise the age” of juvenile jurisdiction to the 18th birthday that take effect over the next few years. In fact, Vermont recently raised its age to the 20th birthday by 2022.

The third piece of the puzzle is to develop an estimate of the number of criminal court cases involving 17-year-olds or 16- and 17-year-olds in those 9 states because states do not report statistics on such cases. How do we estimate the number of youth younger than 18 prosecuted in criminal court in these states? NCJJ uses delinquency petition rates—that is, the rates at which youth are formally processed in juvenile court. The resulting estimate is based on an assumption that criminal court decision-making/processing is similar to juvenile court decision-making/processing.

Specifically, we develop national age/sex/race petition rates for delinquency cases based on estimates developed by the National Juvenile Court Data Archive. These rates are applied to corresponding age/sex/race population estimates for each of the 9 states that set the upper age of juvenile court jurisdiction at either 15 or 16 (at either the 16th or 17th birthday). The resulting counts for each state are summed to produce an estimate of the number of cases involving 16- and 17-year-olds subject to criminal court processing in these 9 states. Using population and delinquency case estimates, we estimate that 66,700 cases involving youth younger than 18 were subject to criminal court processing in 2015 in states with an upper age threshold younger than the 18th birthday.

It should be noted again, however, that this estimate is based on an assumption that is at least questionable: that juvenile and criminal courts would respond in the same way to similar offending behavior. For example, it is possible that some conduct that would be considered serious enough to merit referral to and formal processing in juvenile court—such as vandalism, trespassing, minor thefts, and low-level public order offenses—would not receive similar handling in criminal court.

When we consider the estimated number of youth judicially waived to criminal court (3,200), along with the estimated number of youth transferred to criminal court via other statutory provisions (2,200+3,800), and the estimated number of youth handled in criminal court based on lower juvenile jurisdiction age laws in 9 states (66,700), we estimate roughly 75,900 cases involving youth younger than age 18 were handled in criminal court in 2015.

| Estimated number of cases involving youth younger than age 18 prosecuted in criminal court, 2015 | |
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| Type of transfer | Count |
| Estimated number of cases judicially waived to criminal court | 3,200 |
| Reported number of cases involving youth younger than age 18 prosecuted in criminal court under statutory exclusion or prosecutor discretion statutes in AZ, CA, FL, MI, WA | 2,200 |
| Estimated number of cases involving youth younger than age 18 prosecuted in criminal court in 31 other states with statutory exclusion or prosecutor discretion statutes | 3,800 |
| Estimated number of cases involving 16- or 17-year-olds handled in criminal court in states with upper age of 15 or 16 | 66,700 |
| Combined estimate | 75,900 |