



CHILDREN BEING TRIED AS ADULTS:
Pre-Trial Detention Laws In The U.S.

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CHILDREN BEING TRIED AS ADULTS: PRE-TRIAL DETENTION LAWS IN THE U.S.

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INTRODUCTION

To gain a better understanding of the prevalent practices throughout the country, in this policy brief we have summarized the statutory law in each state regarding the pre-trial detention of children being tried as adults and whether protections are provided for those detained in adult jails. The matter of where a child is detained is significant, because youth held in adult facilities are at greater risk of harm and even death than are those held in juvenile facilities.¹ They are more likely to be beaten by staff, to be attacked with a weapon, and to commit suicide than are those in juvenile facilities.² The potential harm to children placed in adult facilities was recognized by the federal government in 1974 when Congress passed the Juvenile Justice and Delinquency Prevention Act, which provided, in part, that children under 18 cannot be held in adult facilities unless they are being tried for or have been convicted of a felony, or if the state defines adulthood as under the age of 18.³

Our analysis of the state laws on the pre-trial detention of transferred children found that the laws reflect the struggle that many states have engaged in to determine the appropriate placement for children accused of crimes. While most states permit the pre-trial detention of children being tried as adults in adult facilities, we found only 10 states

that mandate it. Of those 10 states, only two mandate it for particular groups of transferred children. Of the 39 states that permit detention in adult jails, more than half (20) require some type of protections for children detained in adult jails, often requiring that they be separated by sight and sound from adult prisoners.⁴ While only two states, West Virginia and Kentucky, never detain transferred children in adult facilities, Massachusetts and North Carolina only permit very limited pre-trial placement of transferred children in facilities where there are adult prisoners. One state, Michigan, requires the approval of the sheriff to detain a transferred child in an adult jail. Six states—Colorado, Delaware, Illinois, Massachusetts, Oregon, and South Carolina—have age restrictions on the pre-trial detention of transferred children in adult jails.

Several states have a process in place to assist courts in determining whether a child should be detained in an adult jail. In California, children transferred to adult court may only be detained in an adult jail if the court makes a finding that the child's detention in a juvenile facility would present a danger or be detrimental to other youth in the facility. Georgia also prohibits children transferred for criminal prosecution from being detained in adult jail unless the court finds that public safety and protection require it. Iowa allows detention in an adult jail if there is a serious risk that the child may "inflict serious bodily harm on another person." In Maine, before a child can be detained in an adult jail, the court must review a list of statutory factors and then find by clear and convincing evidence that the child's behavior presents an imminent danger of harm to him/herself or others and that there is no less-

restrictive alternative. New Jersey also requires that a court determine the place of a child's pre-trial detention based on the best interests of the child and the protection of the public, and requires that the court take into account specific factors in making its determination.

Below is a brief description of the statutory law in each state regarding the pre-trial detention of children being tried as adults. When possible, we also have included case law on the topic or known practices; however, our research in this area is not complete.

ALABAMA

Children who are transferred for criminal prosecution and detained must be held in an adult jail. The statute does not specify any protections for such children.

Ala. Code § 12-15-6 (d) (West 2005)

ALASKA

Children being tried as adults may be detained in an adult jail and do not need to be held separately from adult prisoners.

Alaska Stat. § 47.12.240(c) (Lexis 2006)

ARIZONA

Children who are accused of a criminal offense or who have been transferred may be detained in an adult jail. Such children must be held physically separate from any adults charged or convicted of a crime.

Ariz. Rev. Stat. Ann. § 8-305(c) (West 2006 Supp.)

ARKANSAS

Children formally transferred or who could be tried as adults may be detained in an adult jail. The statute does not specify any protections for such children.

Ark. Code. Ann. § 9-27-336(b)(1) (West 2005 Supp.)

CALIFORNIA

Children who have been transferred to adult court may be detained in an adult jail but only if the juvenile or adult court makes a finding that the child's detention in a juvenile facility would present a danger to the public or would be detrimental to other youth in the juvenile facility. Children also must have restricted contact with adult prisoners, such that their living arrangements are segregated, they can only be in contact for specific supervised group activities, and they must be "adequately supervised."

Cal Welf. & Inst. Code § 207.1 and § 208 (West 2006)

COLORADO

Children being held for criminal proceedings as an adult pursuant to a direct filing or transfer may be detained in an adult jail if they are 14 years of age or older and the court has ordered it. In such cases, the child must be physically segregated from the adult prisoners.

Colo. Rev. Stat. Ann. § 19-2-508(4)(a) and (b) (West 2006)

CONNECTICUT

Children who are transferred to adult court and "detained shall be in the custody of the Commissioner of Correction upon the finalization of such transfer," indicating that they must be detained in an adult jail. The statute does not specify any protections for such children.⁵

Conn. Gen. Stat. Ann. § 46b-127 (West 2006)

DELAWARE

Children 16 years of age or older who are being tried as adults in Superior Court must be remanded to the Department of Correction if they are detained. They are held in adult jails and the statute does not specify any protections for such children.⁶

By implication, children under 16 years old who are being tried as adults can be held in juvenile detention facilities.⁷

Del. Code Ann. tit. 11, § 2103A (Lexis 2006)

DISTRICT OF COLUMBIA

Children who are transferred may be detained in an adult jail. The statute does not specify any protections for such children.
D.C. Code Ann. § 16-2313(e) (Lexis 2006)

FLORIDA

Children who have been transferred or indicted for criminal prosecution as an adult, except for children alleged to have committed misdemeanors, must be held in an adult jail if detained pre-trial. Such children must be housed separately from adult prisoners to prohibit "sight and sound" contact with adults. The statute further specifies that the jail must have a separate section for children and adequate staff to supervise and monitor the children's activities at all times.

Fla. Stat. Ann. § 985.265 (West 2006)

GEORGIA

Children who have been indicted for criminal offenses or transferred for criminal prosecution can only be detained in an adult jail if the court finds "that public safety and protection reasonably require detention in the jail and the court so orders." Additionally, such children must be held separately from adults in such a way that they will have no physical contact with adult prisoners.

Ga. Code Ann. § 15-11-48 (West 2006)

HAWAII

Children who are transferred for criminal prosecution and detained must be held in an adult jail. The statute does not specify any protections for such children.

Haw. Rev. Stat. Ann. § 571-32 (Lexis 2006)

IDAHO

Children who have been formally charged or indicted or transferred for criminal prosecution are subject to detention in an adult jail unless the court, after finding good cause, orders otherwise. All such children must be housed separately from adults within the jail.

Idaho Code Ann. § 20-509(2) and 20-602(2) (Lexis 2006)

ILLINOIS

If a child is being tried as an adult and is at least 15 years old, then the court may order the child to be detained in an adult jail. Such children must be separated from adult prisoners by sight and sound.

705 Ill. Comp. Stat. 405/5-410(2)(e) (Lexis 2006)

INDIANA

No statutory provision on the pre-trial detention of children being tried as adults. However, case law provides that the Indiana constitution does not require the placement of all youth held pre-trial in a separate juvenile facility.

Ratliff v. Cohn, 693 N.E.2d 530, 540 (1998)

IOWA

Children being tried as adults may be detained in an adult jail if there is a serious risk that they may commit an act which would inflict serious bodily harm on another person. Wherever possible, the child is to be held separated from adult prisoners by sight and sound.

Iowa Code Ann. § 232.22 (West 2006)

KANSAS

Children being tried as adults may be detained in an adult jail. The statute does not specify any protections for such children.

Kan. Stat. Ann. § 38-1691(c) (2006)

KENTUCKY

Children being tried as adults are only detained in juvenile detention facilities. While Kentucky law permits them to also be detained in juvenile holding facilities, which are separate portions of adult jails providing sight and sound separation between juvenile and adult offenders, there are no more holding facilities currently in operation in Kentucky.⁸

Ky. Rev. Stat. Ann. § 640.020(1) and § 610.015(1) and 610.265(2)(b)(1) (Lexis 2006)

LOUISIANA

Children being tried as adults who are detained must be held in an adult jail. The statute does not specify any protections for such children.

La. Child Code Ann. art. 305 (B)(4) (2004)

MAINE

Children being tried as adults may be detained in an adult jail if the court finds by clear and convincing evidence that the child's behavior presents an imminent danger of harm to the child or others and that there is no less-restrictive alternative that would serve the purposes of detention. In determining whether the child's behavior is dangerous, the statute provides a number of factors that the Juvenile Court must consider.⁹ The statute does not specify any protections for such children when housed in adult jails.

15 Me. Rev. Stat. Ann. § 3101(4)(E-1) (2006 Supp.)

MARYLAND

Children waived to adult court to be tried as adults must be held in an adult jail if detained pre-trial.¹⁰ They must be placed in accommodations that are separate from adult prisoners 18 years of age and older.

Md. CJP Code Ann. § § 3-8A-16 and 3-8A-22(c) (Lexis 2006).

MASSACHUSETTS

Children are to be detained in juvenile detention facilities unless they are between the ages of 14 and 17 and charged with murder in the first or second degree. In such cases, they are committed to the custody of the sheriff of the county and can be detained in adult jails, so long as sight and sound separation is maintained.¹¹

Mass. Gen. Laws Ann. ch.119, § 68 (West 2006)

MICHIGAN

Children under 17 who are being tried as adults may be detained in an adult jail. However, there must be prior approval from the county sheriff in order to do so. Such children must be held "physically separate from adult prisoners."

Mich. Comp. Laws Ann. § 764.27a(3) (West 2006)

MINNESOTA

Children who have been referred by motion for adult prosecution may be detained in an adult jail. The statute does not specify any protections for such children.

Minn. Stat. Ann. § 260B.176 (West 2005)

MISSISSIPPI

Children who have been waived to adult criminal court may be detained in an adult jail. The statute does not specify any protections for such children.

Miss. Code Ann. § 43-21-301(6) and § 43-21-315(2)
(Lexis 2006)

MISSOURI

Children being tried as adults may be detained in an adult jail. The statute does not specify any protections for such children.

Mo. Rev. Stat. Ann. § 221.044 (Lexis 2006)

MONTANA

A child being tried as an adult may be detained in an adult jail but must be kept in an area that provides physical separation from adult prisoners.

Mont. Code Ann. § 41-5-206 (2005)

NEBRASKA

Children tried as adults can be detained in an adult jail. If such children are under age 16 then there must be no verbal, visual, or physical contact between the child and any incarcerated adult, and there must be adequate staff to supervise and monitor the child's activities at all times.

Neb. Rev. Stat. § 43-250 (3)(c) and (e) (Lexis 2006)

NEVADA

A child certified for criminal proceedings as an adult may be placed in an adult jail and does not have to be separated from adult prisoners. AGO 98-17 (5-27-98). However, such children can petition the juvenile court for temporary placement in a juvenile detention facility.

Nev. Rev. Stat. Ann. § 62C.030(4) (Lexis 2006)

NEW HAMPSHIRE

Once a child is transferred to adult court, he or she must be detained in an adult jail if held pre-trial. The statute does not specify any protections for such children.

N.H. Rev. Stat. Ann. § 169-B:24(II) (Lexis 2006)

NEW JERSEY

Children who are transferred may be detained in an adult jail but the juvenile court must make this determination after a hearing on the matter. The court must make a determination based on the best interests of the child and protection of the public. The court must take the following factors into account: "the juvenile's age and maturity, the nature and circumstances of the offense charged, the juvenile's prior offense history, the programs at each of the detention facilities, and any other relevant factors." The statute does not specify any protections for such children when housed in adult jails.

N.J. Stat. Ann. § 2A:4A-36(a) (West 2006)

NEW MEXICO

Children being tried as adults may be detained in an adult jail. If the child was previously incarcerated as an adult, then he or she must be detained in an adult jail if held pre-trial. The jail must take measures to provide protection to the child.

N.M. Stat. Ann. § 32-A-2-12(c)-(E) (West 2006)

NEW YORK

Children being tried as adults who are detained pre-trial are to be detained in juvenile detention facilities unless the state division of youth approves confinement in an adult jail.

N.Y. Crim. Proc. Law § 510.15(1) (McKinney2006).

They are not to be kept in the same room as prisoners 21 years of age or older.

N.Y. Correct. Law § 500-c (effective Sept. 1, 2007 (McKinney 2006)).

NORTH CAROLINA

Children who have been transferred to adult court may only be detained in a juvenile detention facility, except when their presence is required in court for pre-trial hearings or trial. At those times, they may be held in a holdover facility. This is a place in an adult jail in which the child is closely supervised and cannot speak with or see or be seen by adult prisoners.

N.C. Gen. Stat. Ann. § 7B-2204 and § 7B-1501(9) and (11)
(West 2006)

NORTH DAKOTA

Children transferred for criminal prosecution may be detained in an adult jail. The statute does not specify any protections for such children.¹²

N.D. Cent. Code § 27-20-16(3) (2006)

OHIO

Children transferred for criminal prosecution may be detained in an adult jail. Such children shall be held “beyond the range of touch of all adult detainees” and shall be supervised at all times while in the jail.

Ohio Rev. Code Ann. § 2152.26(f)(1) (Lexis 2006)

OKLAHOMA

Children being tried as adults who are detained pre-trial must be held in an adult jail but in “a jail cell or ward entirely separate from prisoners who are 18 years of age or over.”

Okla. Stat. Ann. tit. 10, § 7306-1.1(c) (West 2006)

OREGON

Children being tried as adults may be detained in an adult jail only if they are 16 years of age or older. The statute does not specify any protections for such children.

Or. Rev. Stat. Ann. § 419C.130(b) (West 2006)

PENNSYLVANIA

A child transferred for criminal prosecution may be detained in an adult jail. The statute does not specify any protections for such children.

42 Pa. Consol. Stat. Ann. § 6327(d) (West 2006)

RHODE ISLAND

No statutory provision on the pre-trial detention of children being tried as adults. However, case law provides that children who have been waived to adult court can be detained pre-trial in adult facilities.

In re Joseph T., 575 A.2d 985 (R.I. 1990)

SOUTH CAROLINA

Children who have been waived to adult court to stand trial as an adult may be detained in an adult jail if they are age 13 or older. Children aged 11 and 12 can only be detained in an adult jail by order of the family court. Children aged 10 and younger cannot be detained in an adult jail. The statute does not specify any protections for children when housed in adult jails.

S.C. Code Ann. § 20-7-7210(C) and (F) (2005)

SOUTH DAKOTA

Children being tried as adults may be detained in an adult jail. They are only required to be sight and sound separated from adult prisoners if accused of misdemeanors only.

S.D. Codified Laws § 26-7A-26 and § 26-11-1 (2006)

TENNESSEE

Children who have been transferred to adult court must be detained in an adult jail unless the juvenile court orders confinement in a juvenile detention facility and the adult court does not order otherwise. When detained in an adult jail, transferred children must be separate and removed from adult prisoners.

Tenn. Code Ann. § 37-1-134(i) (Lexis 2006)

TEXAS

Children being tried as adults may be detained in an adult jail. The statute does not specify any protections for such children.

Tex. Fam. Code Ann. § 54.02(p) (Vernon 2006)

UTAH

Children certified to stand trial as an adult may be detained in an adult jail. Such children may only be held in “certified juvenile detention accommodations” where they are sight and sound separated from adult prisoners.

Utah Code Ann. § 62A-7-201(2)(a) and (b) (Lexis 2006)

VERMONT

Children being tried as adults may be held in an adult jail. The statute does not specify any protections for such children.¹³

Vt. Stat. Ann. tit. 33, § 5530 (2006)

VIRGINIA

Children may be detained in an adult jail if a felony charge has been or is about to be filed in adult court. The statute does not specify any protections for such children.

Va. Code Ann. § 16.1-249 (Lexis 2006)

WASHINGTON

Children may be detained for brief periods in adult jails if sight and sound separated from adult prisoners. However, children who have been previously transferred as adults are not subject to such restrictions.

Wash. Rev. Code Ann. § 13.04.116(1) and (2) (Lexis 2006)

WEST VIRGINIA

No child, including those transferred to adult court, may be detained in an adult jail.

W. Va. Code Ann. § 49-5-16(a) (Lexis 2006)

WISCONSIN

Children who have been waived to adult court pursuant to Wis. Stat. Ann. § 938.18 (2006) must be detained in an adult jail when held pre-trial and do not have to be held separately from adult prisoners. Children who are being tried as adults because the adult court has exclusive original jurisdiction over them pursuant to Wis. Stat. Ann. § 938.183 may be detained in the “juvenile portion” of an adult jail if they are under 15.

Wis. Stat. Ann. § § 938.209(3), 938.18(8), 938.183(1m)(a) (West 2006)

WYOMING

No specific statutory provisions or case law on the pre-trial detention of children being tried as adults.¹⁴

**CHILDREN BEING TRIED AS ADULTS:
PRE-TRIAL DETENTION LAWS IN THE U.S.**

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	Specifies factors to be considered before can detain child in adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
Alabama	Yes	N/A	No	No	No	Ala. Code §12-15-6 (d) (2005)
Alaska	No	Yes	No	No	No	Alaska Stat §47.12.240(c) (2006)
Arizona	No	Yes	Yes -physical separation from adult prisoners	No	No	Ariz. Rev. Stat. Ann. § 8-305(c) (2006 Supp.)
Arkansas	No	Yes	No	No	No	Ark. Code. Ann. § 9-27-336(b)(1) (2005 Supp.)
California	No	Yes	Yes - restricted contact with adult prisoners	Yes - requires finding that child's detention in juvenile facility would present danger to the public or would be detrimental to others in juvenile facility	No	Cal Welf. & Inst. Code § 207.1 and § 208 (2006)
Colorado	No	Yes	Yes -physical separation from adult prisoners	No	Yes – can only detain children aged fourteen and up	Colo. Rev. Stat. Ann. § 19-2-508(4)(a) and (b) (2006)
Connecticut	Yes	N/A	No	No	No	Conn. Gen. Stat. Ann. § 46b-127 (2006)
Delaware	Yes – if over 16	N/A	No	No	Yes – must be 16 or older	Del. Code Ann. tit. 11, § 2103A (Lexis 2006)

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	Specifies factors to be considered before can detain child in adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
District of Columbia	No	Yes	No	No	No	D.C. Code Ann. § 16-2313(e) (2006)
Florida	Yes – unless child is alleged to have only committed a misdemeanor	N/A	Yes - sight and sound separation and constant supervision	No	No	Fla. Stat. Ann. § 985.265 (2006)
Georgia	No	Yes	Yes - no physical contact with adult prisoners	Yes – court must find that public safety and protection reasonably require detention in adult jail	No	Ga. Code Ann. § 15-11-48 (2006)
Hawaii	Yes	N/A	No	No	No	Haw. Rev. Stat. § 571-32 (2006)
Idaho	No	Yes – it is presumed that children will be detained in adult jails but the court may order otherwise if it finds “good cause”	Yes - must be housed separately	No	No	Idaho Code Ann. § 20-509(2) and 20-602(2) (2006)
Illinois	No	Yes	Yes -sight and sound separation	No	Yes -must be fifteen years old to be detained in adult jail	705 Ill. Comp. Stat. 405/5-410(2)(e) (2006)
Indiana	No	Yes	No	No	No	Ratliff v. Cohn, 693 N.E.2d 530 (1998)
Iowa	No	Yes	Yes - sight and sound separation wherever possible	Yes –can only detain in adult jail if there is serious risk child may inflict serious bodily harm on another person	No	Iowa Code Ann. § 232.22 (2006)
Kansas	No	Yes	No	No	No	Kan. Stat. Ann. § 38-1691(c) (2006)

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	Specifies factors to be considered before can detain child in adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
Kentucky	No	No – while the statute does permit detention in juvenile holding facilities within adult jails, there are not longer any such holding facilities so children are only placed in juvenile detention	N/A	N/A	N/A	Ky. Rev. Stat. Ann. § 640.020(1), §610.015(1), 610.265(2)(b) (1) (Lexis 2006)
Louisiana	Yes	N/A	No	No	No	La. Ch.C. Art. 305 (B)(4) (2004)
Maine	No	Yes	No	Yes - court must find by clear and convincing evidence that child's behavior presents imminent danger of harm to child or others and there is no less restrictive alternative	No	15 Me. Rev. Stat. Ann. § 3101(4)(E-1) (2006 Supp.)
Maryland	Yes	N/A	Yes	No	No	Md. CJ Code Ann. § § 3-8A-16 and 3-8A-22(c) (Lexis 2006)
Massachusetts	No	Yes -if between 14 and 17 years old and charged with 1st or 2nd degree murder	Yes - in practice, sight and sound separation is maintained	No	Yes -must be between the ages of 14 and 17 to be detained in adult jail	Mass. Gen. Laws Ann. ch.119, § 68 (West 2006)
Michigan	No	Yes - must have prior approval from the sheriff if under 17	Yes - physical	No	No	Mich. Comp. Laws Ann. § 764.27a(3) (West 2006)
Minnesota	No	Yes	No	No	No	Minn. Stat. Ann. § 260B.176 (West 2005)
Mississippi	No	Yes	No	No	No	Miss. Code Ann. § 43-21-301(6) and § 43-21-315(2) (Lexis 2006)
Missouri	No	Yes	No	No	No	Mo. Rev. Stat. Ann. § 221.044 (Lexis 2006)

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	Specifies factors to be considered before can detain child in adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
Montana	No	Yes	Yes - physical separation from adult prisoners	No	No	Mont. Code Ann. § 41-5-206 (2005)
Nebraska	No	Yes	Yes - if child is under 16 must be no verbal, visual, or physical contact between child and incarcerated adults and staff must supervise monitor child's activities at all times	No	No	Neb. Rev. Stat. § 43-250 (3)(c) and (e) (Lexis 2006)
Nevada	No	Yes	No	No	No	Nev. Rev. Stat. Ann. § 62C.030(4) (Lexis 2006)
New Hampshire	Yes	N/A	No	No	No	N.H. Rev. Stat. Ann. § 169-B:24(II) (Lexis 2006)
New Jersey	No	Yes	No	Yes - court must make determination based on best interests of child and protection of public	No	N.J. Stat. Ann. § 2A:4A-36(a) (West 2006)
New Mexico	Only for children previously incarcerated as adults	Yes	Yes - measures must be taken to provide protection to the child	No	No	N.M. Stat. Ann. § 32-A-2-12(c)-(E) (West 2006)
New York	No	Yes - held in juvenile detention facility unless state division of youth approves adult jail	Yes - cannot be kept in same room as prisoners age 21 or over	No	No	N.Y. Crim. Proc. Law § 510.15(1) (2006 McKinney); N.Y. Correct. Law § 500-c (effective Sept. 1 2007 (McKinney 2006))

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	Specifies factors to be considered before can detain child in adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
North Carolina	No	Yes - but only in a holdover facility when needed in court for hearings or trial	Yes - child must be closely supervised and cannot speak with or see or be seen by adult prisoners	No	No	N.C. Gen. Stat. Ann. § 7B-2204, § 7B-1501(9) and (11) (West 2006)
North Dakota	No	Yes	Yes - in certain grades of correctional facilities children must be housed separately from adults	No	No	N.D. Cent. Code § 27-20-16(3) (2006)
Ohio	No	Yes	Yes - child must be "beyond the range of touch of all adult detainees" and supervised at all times	No	No	Ohio Rev. Code Ann. § 21 52.26(f)(1) (Lexis 2006)
Oklahoma	Yes	No	Yes - must be separate from prisoners age eighteen or over	No	No	Okla. Stat. Ann. tit. 10 § 7306-1.1(c) (West 2006)
Oregon	No	Yes	No	No	Yes - must be 16 years of age	Or. Rev. Stat. Ann. § 419C.130(b) (West 2006)
Pennsylvania	No	Yes	No	No	No	42 Pa. Ann. Consol. Stat. § 6327(d) (2006)
Rhode Island	No	Yes	No	No	No	In re Joseph T, 575 A.2d 985 (RI 1990)

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	Specifies factors to be considered before can detain child in adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
South Carolina	No	Yes	No	No	Yes – must be 13 years of age or older; 11 & 12 year olds can only be detained in adult jails by order of family court. 10 year olds and younger cannot be in adult jails.	S.C. Code Ann. § 20-7-7210(C) and (F)(2005)
South Dakota	No	Yes	Yes - sight and sound separation from adults for children only accused of misdemeanors	No	No	S.D. Codified Laws § 26-7A-26 and § 26-11-1 (2006)
Tennessee	No	Yes - presumed that children will be detained in adult jails unless juvenile court orders otherwise and adult court does not contradict	Yes – must separate and removed from adult prisoners	No – but can be done through such mechanism	No	Tenn. Code Ann. § 37-1-134(i) (Lexis 2006)
Texas	No	Yes	No	No	No	Tex. Fam. Code Ann. § 54.02(p) (Vernon 2006)

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	Specifies factors to be considered before can detain child in adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
Utah	No	Yes	Yes - sight and sound separation from adult prisoners	No	No	Utah Code Ann. § 62A-7-201(2)(a) and (b) (Lexis 2006)
Vermont	No	Yes	No	No	No	Vt. Stat. Ann. tit. 33, § 5530 (2006)
Virginia	No	Yes	No	No	No	Va. Code Ann. § 16.1-249 (Lexis 2006)
Washington	No	Yes	Yes – sight and sound separation required unless have been previously transferred as an adult	No	No	Wash. Rev. Code Ann. § 13.04.116(1) and (2) (Lexis 2006)
West Virginia	No	No	N/A	N/A	N/A	W. Va. Code Ann. § 49-5-16(a) (Lexis 2006)
Wisconsin	Yes if child has been waived to adult court pursuant to Wis. Stat Ann. § 938.18	Yes if adult court has original jurisdiction over child pursuant to Wis. Stat. Ann. § 938.183	Yes if child is in adult court pursuant to Wis. Stat. Ann. § 938.183. Such children must be detained in “juvenile portion” of adult jail if they are under 15.	No	No though can only be held in “juvenile portion” of adult jail if under 15 and are in adult court pursuant to Wis. Stat. Ann. § 938.183	Wis. Stat. § 938.209(3), 938.18(8), 938.183(1m)(a) (West 2006)
Wyoming						none

¹ HARTNEY, C. (2006, MAY). *NATIONAL COUNCIL ON CRIME AND DELINQUENCY FACT SHEET: YOUTH UNDER AGE 18 IN THE ADULT CRIMINAL JUSTICE SYSTEM*. [HTTP://WWW.NCCDCRC.ORG/NCCD/PUBS/2006-MAY_FACT-SHEET_YOUTHADULT.PDF](http://www.nccdcrc.org/nccd/pubs/2006-may_fact-sheet_youthadult.pdf)

² BUILDING BLOCKS FOR YOUTH. *CHILDREN IN ADULT JAILS: FACTSHEET*. RETRIEVED DECEMBER 28, 2006, FROM [HTTP://WWW.BUILDINGBLOCKS-FOR-YOUTH.ORG/ISSUES/-ADULTJAILS/FACTSHEET.HTML](http://www.buildingblocks-for-youth.org/issues/-adultjails/factsheet.html)

³ HARTNEY, C., 1.

⁴ NOTE, HOWEVER, THAT TWO OF THESE STATES ONLY REQUIRE SUCH PROTECTIONS FOR PARTICULAR GROUPS OF TRANSFERRED CHILDREN.

⁵ IN PRACTICE, MALES ARE DETAINED AT THE MANSON YOUTH INSTITUTION, A DEPARTMENT OF CORRECTIONS FACILITY THAT HOUSES 14- TO 21-YEAR-OLDS. THERE IS ONLY ONE PRISON FOR WOMEN, THE YORK CORRECTIONAL INSTITUTION. RETRIEVED ON JANUARY 6, 2007, FROM [HTTP://WWW.CT.GOV/DOC/CWP/VIEW.ASP?A=1502&Q=265422&DOCNAV](http://www.ct.gov/doc/cwp/view.asp?a=1502&q=265422&docNav)

⁶ NOTE THAT LOCAL PRACTICE IN AT LEAST ONE COUNTY REQUIRES HEARINGS TO BE HELD TO DETERMINE IF A CHILD WHO IS BEING TRIED IN ADULT COURT SHOULD BE REMANDED TO THE DEPARTMENT OF CORRECTION (E-MAIL FROM ALISON M. MCGONIGAL, DSCYF, TO MELISSA CORETZ GOEMANN, JANUARY 30, 2007).

⁷ YOUTH ARE ELIGIBLE TO BE TRANSFERRED TO THE DEPARTMENT OF CORRECTION YCOP AT AGE 16. YOUTH UNDER THE AGE OF 16 BEING CHARGED IN SUPERIOR COURT ARE HELD IN JUVENILE DETENTION PENDING RESOLUTION OF THEIR CHARGES. IF SENTENCED AS AN ADULT, THE YOUTH IS TRANSFERRED TO FERRIS SCHOOL (SECURE TREATMENT PROGRAM) UNTIL HE OR SHE REACHES THE AGE OF 16 (E-MAIL FROM ALISON M. MCGONIGAL, DSCYF, TO MELISSA CORETZ GOEMANN, JANUARY 30, 2007).

⁸ E-MAIL FROM JOHN H. HODGKIN, EXECUTIVE STAFF ADVISOR, KENTUCKY DEPARTMENT OF JUVENILE JUSTICE, TO MELISSA CORETZ GOEMANN, JANUARY 8, 2007.

⁹ THESE FACTORS ARE AS FOLLOWS:

A) THE NATURE OF AND THE CIRCUMSTANCES SURROUNDING THE OFFENSE WITH WHICH THE JUVENILE IS CHARGED, INCLUDING WHETHER THE OFFENSE WAS COMMITTED IN AN AGGRESSIVE, VIOLENT, PREMEDITATED, OR INTENTIONAL MANNER;

B) THE RECORD AND PREVIOUS HISTORY OF THE JUVENILE, INCLUDING THE JUVENILE'S EMOTIONAL ATTITUDE AND PATTERN OF LIVING; AND

C) IF APPLICABLE, THE JUVENILE'S BEHAVIOR AND MENTAL CONDITION DURING ANY PREVIOUS AND CURRENT PERIOD OF DETENTION OR COMMITMENT.

15 ME. REV. STAT. ANN. § 3203-E-1 (2) (2006).

¹⁰ NOTE THAT IF A CHILD'S CASE ORIGINATES IN ADULT COURT AND THERE IS A POSSIBILITY THAT THE CHILD WILL BE TRANSFERRED TO JUVENILE COURT, THEN THE ADULT COURT HAS THE OPTION TO DETAIN THE CHILD IN A SECURE JUVENILE FACILITY.
MD. CP CODE ANN. § 4-202(h)(1) (2006).

¹¹ AS A MATTER OF PRACTICE, 14- TO 17-YEAR-OLDS WHO ARE CHARGED WITH FIRST-OR SECOND-DEGREE MURDER ARE VIRTUALLY ALWAYS HELD IN A "YOUTHFUL OFFENDER" FACILITY OPERATED BY THE DEPARTMENT OF YOUTH SERVICES AND LOCATED WITHIN THE PLYMOUTH COUNTY HOUSE OF CORRECTION. DYS HAS BEEN KNOWN TO HOLD SUCH YOUTH PAST AGE 17 (UP TO 21), WHEN THE PARTIES AGREED (E-MAIL FROM JOSHUA DOHAN, YOUTH ADVOCACY PROJECT, COMMITTEE FOR PUBLIC COUNSEL SERVICES, TO MELISSA CORETZ GOEMANN, JANUARY 17, 2007).

¹² HOWEVER, NOTE THAT ANOTHER STATUTE DOES PROVIDE THAT, IN CERTAIN GRADES OF CORRECTIONAL FACILITIES, JUVENILES ARE TO BE HOUSED SEPARATELY FROM ADULTS.
N.D. CENT. CODE § 12-44.1-09 (2006).

¹³ NOTE THAT, IN PRACTICE, THERE IS A MEMO OF UNDERSTANDING BETWEEN THE DEPARTMENT FOR CHILDREN AND FAMILIES AND THE DEPARTMENT OF CORRECTIONS ESTABLISHING A POLICY THAT IF A MINOR UNDER THE AGE OF 16 IS CHARGED IN ADULT COURT AND IS TO BE DETAINED, HE OR SHE, ALTHOUGH IN THE CUSTODY OF THE COMMISSIONER OF CORRECTIONS, WILL NOT BE PLACED IN AN ADULT FACILITY AND WILL BE PLACED AT THE JUVENILE DETENTION CENTER (E-MAIL FROM BOB SHEIL, SUPERVISING ATTORNEY, VERMONT OFFICE OF THE JUVENILE DEFENDER, TO MELISSA CORETZ GOEMANN, JANUARY 4, 2007).

¹⁴ THE INTERIM STATE PUBLIC DEFENDER FOR WYOMING, HOWEVER, STATES THAT WHILE THERE IS NO SPECIFIC STATUTE ON THIS ISSUE, BASED ON HIS 37 YEARS OF EXPERIENCE AS A PROSECUTOR, JUDGE, AND DEFENSE ATTORNEY, HE "DO[ES] NOT BELIEVE THAT ANY JAIL IN WYOMING WOULD HOUSE ANY JUVENILES WITHIN SIGHT AND SOUND OF ADULT PRISONERS" (E-MAIL FROM D. TERRY ROGERS, INTERIM STATE PUBLIC DEFENDER, WYOMING PUBLIC DEFENDER'S OFFICE, TO MELISSA CORETZ GOEMANN, JANUARY 18, 2007). JOE D. BUSTOS, ATTORNEY IN CHEYENNE, WY, ALSO ADDS THAT THE SIGHT AND SOUND PROTECTIONS PROVIDED TO JUVENILE DELINQUENTS PURSUANT TO THE JUVENILE DETENTION STANDARDS ISSUED BY THEIR STATE ADVISORY COUNCIL ON JUVENILE JUSTICE, ARE ALSO GENERALLY APPLIED TO JUVENILES BEING TRIED AS ADULTS. E-MAIL FROM JOE D. BUSTOS, ATTORNEY, CHEYENNE, WY, TO D. TERRY ROGERS (FEBRUARY 6, 2007, 11:03 P.M.).

[HTTP://WWW.WYJUVENILEJUSTICE.COM/JUVENILE_DETENTION_STANDARDS.HTML](http://www.wyjuvenilejustice.com/juvenile_detention_standards.html)

Melissa Coretz Goemann has been the director of the Mid-Atlantic Juvenile Defender Center (MAJDC) since 2004. The MAJDC is a multifaceted juvenile defense resource center serving the District of Columbia, Maryland, Puerto Rico, Virginia, and West Virginia. As director, Ms. Goemann works to ensure excellence in juvenile defense by coordinating training conferences for juvenile defenders, maintaining a listserv of juvenile defenders, conducting state-based assessments of juvenile indigent defense delivery systems, assisting with legislative initiatives, and encouraging the development of oversight and accountability in the justice system. Ms. Goemann is also the founder and director of the Juvenile Law and Policy Clinic at the University of Richmond School of Law. This is a new clinical program in which students work on legislative advocacy and research projects designed to effect systemic changes in the juvenile justice systems in the Mid-Atlantic region. Ms. Goemann recently began work as a legal and policy consultant for the Campaign for Youth Justice. Ms. Goemann received her J.D. from the New York University School of Law in 1986.
