

**RECOMMENDATIONS FOR THE
REFORM OF NEW JERSEY'S
JUVENILE WAIVER LAWS**

**PUBLIC CATALYST GROUP
WITH THE
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Finally, we would note that the analysis contained in this report and the views expressed are those of the authors and not attributable to the Yale Club in general, to the courts, or to any of those who so kindly made themselves available to aid in this project.

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I. Executive Summary

This year marks the ten-year anniversary of the passage of the 1999 New Jersey juvenile waiver law, which made it much easier to try youth for criminal offenses in adult court. At that time, the hope was that trying these cases in adult court would improve public safety, and the belief was that these youth were acting as adults and so it was just to treat them as such. Little did legislators at that time know that the peak in juvenile violent crime in New Jersey had already passed, and it would only continue to decline. They also did not have the benefit of recent adolescent brain research or newly available juvenile crime and waiver data, both of which raise significant questions about the assumptions underlying the law. In all, these ten years have shed important light on how this law has worked in practice and the need for it to be changed if it is to achieve its original purpose.

Over the past decade, the research and data show that:

- **There is little correlation between violent crime and waiver rates.** While juvenile crime is at historic lows throughout the state, waiver requests have gone up significantly – but then are being withdrawn at a high and increasing rate. It appears that the focus of the original statute on a very small number of youth charged with the most serious of offenses has grown diluted over time.
- **Even as the numbers of youth arrested for serious crime decline, those who are arrested for the same class of crimes are treated significantly differently from county to county,** resulting in enormous geographic disparities in treatment when it comes to waiver. In comparing waiver requests against juvenile violent crime arrests by county, the rate of waiver requests varies from under 3 percent up to 68 percent. There is little correlation in waiver rates between communities with the same levels of crime, and some of the highest use of waiver is in communities with very low crime rates.
- **There are deeply troubling racial disparities in the implementation of the law.** For example, 89% of the youth waived *down* to municipal court and white while 77% of the youth waived *up* to adult court are black.
- **There is no evidence that waiver reduces serious juvenile crime.** By contrast, over the last decade, there is some evidence that youth who are waived to adult court are more likely to recidivate. In short, there is now more evidence that waiver has the potential to increase crime than to suppress it.

This is the first time most of this information has become available. Data on New Jersey's own waiver statute is available only this year courtesy of improvements in data collection by the New Jersey Office of Court Administration (AOC) with the support of local prosecutors' offices. This new data sheds important light on the application of the law and allows trend analysis and comparative data analysis never previously available to decision-makers. And as that data has begun to be shared with decision-makers, they have raised questions about how to improve the law and practice. Interviews with a range of stakeholders – prosecutors, judges, defense counsel, and advocates – suggest that despite its drafters' best intentions they find the law confusing and challenging to follow and are troubled about what the newly available data and research are telling them about the

application of the law across the state. They need help from the Legislature to streamline the statute to achieve the intended purpose of supporting improved community safety while avoiding geographic and racial inequities.

Moreover, recent scientific developments in adolescent brain development suggest that the original assumption that youth committing adult-type crimes were operating with adult judgment is flawed. As recognized by the United States Supreme Court, the adolescent brain develops much more slowly than was understood a decade ago. Magnetic resonance imaging vividly shows the absence of electrical activity reflecting that lack of development in the frontal lobe which controls such critical capacities as judgment and assessment of risk. Recognizing that adolescents generally do not have the same capacity as adults to assess behavior and have an inherent opportunity to grow and develop (even as their brain grows and develops) and so to be rehabilitated suggests it is appropriate to keep more of these youth in juvenile court. Further, limiting waiver to youth age 16 and older focuses on those youth most likely to have the requisite level of brain development required for adult responsibility. Moving away from mandatory waiver and restoring discretion to the judiciary to assess the capacity of individual youth charged with serious crimes would recognize this new knowledge about the brain and limit waiver to youth for whom it is appropriate. And if the statute were modified to improve its focus, any increased need for court hearings would be offset by a decline in waiver motions that are filed, only to be withdrawn, and hearings would be confined only to those crimes which meet the original intent of the statute.

If the law were to be modified to reflect the series of recommendations below, the result would be a juvenile waiver law that hones in on addressing violent crime, improves equity and fairness, reduces unnecessary filings, and improves decision-making without increasing the burden on the courts.

In 2009, the Annie E. Casey Foundation recognized New Jersey as a “national model” for its work on juvenile detention reform. New Jersey won this recognition for its skill in utilizing data and research on best practices to improve decision-making at the front end of the juvenile justice system – increasing safety, justice and equity while reducing the unnecessary use of expensive detention. Now is a good time to apply this commitment to improving safety, justice and equity through the use of data and research to another critical decision-making point in the juvenile justice system – the grave decision whether or not to try a minor as an adult.

II. Methodology

At the request of the New Jersey Institute for Social Justice, a group of Yale alumnae committed to supporting the improvement of New Jersey's communities partnered with the New Jersey-based Public Catalyst Group to convene a research team that included attorneys, medical professionals, and others with statistical and other applicable professional skills to explore the impact of the juvenile waiver statutes. The team gathered and reviewed the recent research on adolescent brain development; analyzed juvenile crime and waiver data; garnered information from other states about the application of waiver statutes; interviewed New Jersey stakeholders; and completed an in-depth review of the New Jersey waiver legislation in conception and practice.

The New Jersey juvenile waiver laws have grown increasingly complex since their initial passage in 1982. In order to understand this history, the team completed a review of hearings convened by the Legislature and comments submitted by Legislators and Governors regarding the initial passage of the juvenile waiver laws and all modifications to the law since 1982. A review of relevant newspaper articles preceding the passage of the law and subsequent modifications provided important insights in understanding the public context for the laws. The team also reviewed the waiver statutes from various states in an effort to compare the ages, types of crimes, and guidance provided to the courts when adjudicating waiver requests.

In an effort to understand the application of the waiver law in New Jersey, the team submitted a data request to the Administrative Office of the Courts (AOC) and received valuable available data, broken out by county, on waiver cases from 2002-2009. Relevant data criteria included: waivers granted, denied, and withdrawn; waiver requests made by prosecutors and juveniles; waivers granted to municipal court; and race and ethnicity data only for 2008-2009 (the AOC implemented a new database in 2008 which incorporated new data collection capacity). The AOC collects most waiver information via a data sharing agreement with the local prosecutors' offices. Unfortunately, the AOC does not currently have available data on waiver requests by age, type of crime, or waiver provision (i.e., the applicable part of the law). The team's research also included a review of the New Jersey State Police Uniform Crime Report for 2008, which tracks trends in juvenile crime, including violent juvenile crime, statewide and by county.

Upon completion of the data review, members of the team met with a series of stakeholders to learn more about the application of the law in New Jersey. The stakeholders interviewed represented the following fields: the judiciary, prosecutor and defense attorneys, academia, and advocates, and each was presented with available data to help guide the discussions about the application of the law over the past decade.

Lastly, the team completed a literature review that focused on the following areas: the effects of waiver laws on recidivism; a review of the New Jersey Juvenile Detention Alternatives Initiative (JDAI); developments in adolescent brain research over the past decade; and recent United States Supreme Court cases that reference and apply the recent

adolescent brain research. This research combined with the data review and interviews with stakeholders form the basis for the recommendations included in this report.

III. Legislative History and Description of the Current Statute

A. Legislative History of the NJ Juvenile Waiver Law

In response to a rapid increase in juvenile crime, including violent juvenile crime, the Legislature passed the juvenile waiver laws in 1982 to “provide harsher penalties for juveniles who commit serious acts or who are repeat offenders while broadening family responsibility and the use of alternative dispositions for juveniles committing less serious offenses.”ⁱ These laws were meant to “deal swiftly and sternly with violent young criminals” while employing “counseling and rehabilitation” in those cases where counseling and rehabilitation are “an adequate and appropriate response.”ⁱⁱ The original legislation was designed to “balance the need for law-abiding society to be protected from the violent acts of young persons and the need for that society to rehabilitate juveniles and turn them away from a career of crime.”ⁱⁱⁱ Further, the original law contained a requirement that the court state the reasons for deciding a waiver motion for the record. This requirement highlights the Legislature’s intent that the waiver provisions not be applied in a “capricious” or “pro forma” manner but instead “in each individual case” be considered in a “thoughtful and extensive manner.”^{iv}

As passed in 1982, the waiver statute contained both discretionary waiver provisions and presumptive waiver provisions, in each case applicable to juveniles age 14 and over. The discretionary waiver provisions required that the prosecutor establish not only probable cause that the juvenile committed the crime but also demonstrate that the “nature and circumstances of the charge or the prior record of the juvenile are sufficiently serious that the interests of the public require waiver.”^v Notwithstanding the foregoing, the juvenile could override a discretionary waiver request by demonstrating that “the probability of his rehabilitation using the procedures, services and facilities available to the court prior to reaching the age of 19 substantially outweighs the reason for waiver.”^{vi}

Alternatively, the presumptive waiver provisions required only that the prosecutor show probable cause. As written, the statute created a presumption for cases subject to the presumptive waiver provisions that transfer was in the public interest as the crimes that triggered this provision were more serious than those that triggered the discretionary waiver provisions. Further, the juvenile could override a presumptive waiver request by demonstrating that “the probability of his rehabilitation using the procedures, services and facilities available to the court prior to reaching the age of 19 substantially outweighs the reason for waiver.”^{vii}

The most sweeping amendments to the juvenile waiver statute were made in 1999, at which time the Legislature revised the waiver law for 16 and 17 year-olds by creating a mandatory waiver provision. For these waiver requests, the juvenile no longer had the right to rebut the prosecutor’s request for waiver nor does the court have the authority to review whether the waiver is in the public interest or whether the juvenile is amenable to rehabilitation.

These amendments were passed shortly after highly publicized incidents of juvenile violence in Monmouth and Sussex Counties in New Jersey;^{viii} New York;^{ix} Jonesboro, Arkansas;^x and Jefferson County, Colorado (Columbine), and were intended “to enhance public safety by shortening the process by which the cases of juvenile offenders charged with the most serious offenses may be waived from the jurisdiction of the Family Court.”^{xi} During this same time a number of bills were considered in the United States Congress that would tie federal funding to trying youth as adults,^{xii} further echoing the tenor in New Jersey that violent juvenile crime was on the rise and that juvenile courts did not have the resources to handle these cases appropriately.

Thus, by the end of 1999 there were three different types of waivers in the New Jersey statute: discretionary waiver, presumptive waiver, and mandatory waiver. All of these waivers must first be triggered by prosecutorial request, but once requested the burden of proof and the degree of judicial discretion varies with the highest burden and most discretion for discretionary waiver and the lowest burden and no judicial discretion for mandatory waiver.

Since 1999, a number of crimes have been added to the State’s juvenile waiver laws, resulting in additional juveniles being subject to requests by prosecutors to have their cases transferred to the adult criminal court. Although the statute was intended to address violent juvenile crime, some of the crimes added over the past decade fall outside the scope of what is considered a violent crime, and were often passed into law with little debate in the Legislature. The most notable of these are first and second degree computer crimes, which were added to the mandatory waiver provision in 2003.^{xiii} A list of all significant amendments to the waiver statute since its initial adoption is included as Appendix D.

B. Summary of the Current Provisions of the NJ Juvenile Waiver Statute

The current provisions of the New Jersey transfer statute divide the transfer provisions into three separate categories – discretionary waiver, presumptive waiver and mandatory waiver. Depending on the juvenile’s age at the time of arrest and the offense with which he/she is charged, within 30 days of the filing of the complaint the prosecutor may file a request for one of these waivers. In addition, depending on the waiver category, the prosecutor has the burden to demonstrate probable cause that the youth committed the crime (in practice, a very low burden) and, in some cases, that the public interest will be served by waiving the juvenile to the adult criminal court. Both factors must be demonstrated by a preponderance of the evidence. Lastly, depending on the waiver category, the juvenile may have the right to rebut the request by demonstrating his/her amenability to rehabilitation by the time he/she reaches age 19. Below is a summary of each waiver category:

Discretionary Waiver - The discretionary waiver provisions provide that if a juvenile age 14 or over is accused of the crimes listed in Appendix A, such juvenile is subject to the discretionary waiver provisions and as such may be transferred to adult criminal court if there is probable cause to believe the juvenile committed the alleged offense and the state has proven that “the nature and the circumstances of the charge or the prior record of the juvenile are sufficiently serious that the interests of the public require waiver.”^{xiv}

Notwithstanding the foregoing, the juvenile can rebut the discretionary waiver request by demonstrating that “the probability of his rehabilitation using the procedures, services and facilities available to the court prior to reaching the age of 19 substantially outweighs the reason for waiver.”^{xv}

Presumptive Waiver - The presumptive waiver provisions, also applicable to juveniles age 14 and over, apply to the offenses listed in Appendix B. For these offenses, which are meant to be more serious offenses than those subject to the discretionary waiver provisions, the prosecutor is not required to show that transfer is in the public interest. Upon a showing of probable cause, the juvenile will be transferred to the adult criminal court unless the juvenile can demonstrate that “the probability of his/her rehabilitation using the procedures, services and facilities available to the court by the age of 19 substantially outweighs the reason for waiver.”

Mandatory Waiver – A juveniles who commits an offense listed in Appendix C and who is age 16 or over is subject to the mandatory waiver provisions. In these circumstances, the prosecutor is only required to show probable cause when filing the waiver request. There is no requirement to demonstrate that the transfer is in the public interest, nor does the juvenile have the right to rebut the waiver request with a showing of amenability to rehabilitation.

Current Waiver Provisions

Note: For the offenses included in each category, please refer to Schedules A, B, and C in Appendices A, B and C.

Waiver Provision	Minimum Age	Probable Cause (Burden on Prosecution)	Nature and Circumstances of Charge or Prior Record of the Juvenile are Sufficiently Serious That the Interests of the Public Require Waiver (Burden on Prosecution)	Juvenile Ability to Rebut Based on Amenability to Rehabilitation (Burden on Defense)
Discretionary Waiver	14	√	√	√
Presumptive Waiver	14	√		√
Mandatory Waiver	16	√		

IV. Setting the Context – New Data and Research

Since passage of the 1999 amendments to New Jersey’s juvenile waiver laws, which created the mandatory waiver provisions for 16 and 17 year olds, scientific developments in the field of adolescent brain research have emerged that shed significant light on whether a juvenile can possess the same mental culpability as an adult. This research was drawn upon by the United States Supreme Court in its 2005 ruling in Roper v. Simmons that banned the

death penalty for crimes committed before age 18,^{xvi} and is central to the arguments in two pending Supreme Court cases addressing whether juveniles may be sentenced to life without parole.^{xvii}

A. New Developments in Adolescent Brain Research

Important new brain research demonstrates that adolescent brains are still developing. Historically, it was assumed that the brain was fully developed by the teenage years and that adolescents had the “hard wiring” to be able to think like adults. However, during the last decade a new understanding about the adolescent brain has evolved out of advanced neuroimaging technologies to assess brain development. It is now accepted that the brain is in fact still developing during adolescence and, as a result, that teenagers lack maturity in critical brain centers, particularly those affecting judgment and critical thinking. This new research reverses earlier thinking that the commission of a serious, “adult-type” crime can be equated to the *mens rea* or capacity to think like an adult – and so to justify holding a juvenile accountable as if they were an adult. Paired with improvements in treatment, this recent research reverses the presumption that these youth cannot be rehabilitated strongly in favor of evidence that suggests exactly the opposite.

Magnetic Resonance Imaging (MRI), invented in the 1970s and used clinically beginning in the 1980s, has allowed scientists to map structural changes in the brain.^{xviii} In the early 1990s, scientists began using a technology called Functional Magnetic Resonance Imaging (fMRI), which provides insight into the function (as opposed to simply the structure) of different parts of the brain and allows observation of cognitive activities.^{xix} It is now known that the brain undergoes tremendous developmental changes, both in structure and function, during the pre-teen and teenage years.^{xx}

By 1999, numerous scientific studies had looked at the intersection of adolescent brain development and behavior, revealing that adolescents can be more prone to impulsive and risk-taking behavior. By 2005, a developing trend in brain research showed significant functional differences in adolescent and adult brains that clearly suggest brain immaturity and vulnerability.^{xxi} It has also become increasingly clear that regardless of intellectual maturity, when compared to adults, adolescents demonstrate an over-reliance on emotional brain centers with an increased tendency towards risk-taking behavior. fMRI research reveals a rapid structural maturation process. It follows, then, that the adolescent brain can be vulnerable to outside influences. In some cases, these influences can be negative, such as exposure to violence, trauma, abuse, drug use, poverty, poor education, and negatively influencing peers. In other cases, the teen brain can be open to positive influences such as good role models, education, supportive parents, obliging teachers, and constructive peers.

Imaging the Adolescent Brain

Brain research has focused on three particular processes related to the neuroscience of adolescent brain development that may help to explain some of the behaviors typically described as adolescent risk-taking behaviors. These include (a) structural changes in the brain, (b) the processes of pruning and myelination, and (c) the role of neurotransmitters chemicals in the brain, particularly dopamine.

- Structural Changes in the Brain During Adolescence

In order to understand the neuroscience behind adolescent brain development, it is important to review the function of the four parts of the brain that are the most active during adolescence: the cerebellum, the corpus callosum, the amygdala, and the frontal cortex. The cerebellum is the part of the brain that has been thought to be involved with muscles and physical movement. Through fMRI studies, researchers have learned that it is also involved in the coordination of thinking processes, and that it grows and changes during the teenage years. The corpus callosum is a group of nerves that connect the right and left sides of the brain. It is thought to be involved in creativity, problem solving, and self-awareness. It also appears to change and grow through adolescence. The amygdala is the area of the brain that is responsible for emotional and gut responses. Adolescent-focused brain research using fMRI technology shows that when asked to explain an emotion expressed in a face, teenagers often do so incorrectly and use this part of the brain to process the information.^{xxii} Adults, on the other hand, use the “thinking” region of the brain, or the frontal cortex. This may explain why teenagers have difficulty controlling their emotions and often act on impulse. Finally, the frontal cortex is the part of the brain responsible for planning, organizing thoughts, and using judgment. The frontal cortex contains the prefrontal cortex, which is a part of the brain that is still developing in adolescence and undergoes the greatest change between puberty and young adulthood.^{xxiii} fMRI studies reveal that the prefrontal cortex is one of the last regions in the brain to mature, which explains why adolescents lack full executive function.^{xxiv}

- Pruning

During adolescence, the brain is maturing to adult-level processing and cognitive control. It does this through a process of pruning and myelination. The brain undergoes a period of pruning, during which gray matter (referred to as the tissue in the brain responsible for “thinking” processes) is shed. The development and pruning of gray matter is thought to affect the brain’s ability to reason. One of the first fMRI studies at the National Institutes of Mental Health revealed rapid reduction (pruning) in grey matter volume, particularly in the frontal lobe, beginning around age 12.^{xxv} Grey matter is the cellular foundation of the brain, and during this rapid pruning process cellular connections in the brain that are not used are eliminated. Additionally, the brain undergoes myelination, a process by which the brain’s increasing white matter (referred to as the brain’s “insulation”) refines the brain’s operation and improves efficiency. This process is consistently shown in fMRI studies to occur from the back of the brain towards the front. The front part of the brain is the prefrontal cortex, or the brain’s command center, and this is the last part of the brain to mature. The prefrontal cortex controls rational thinking, impulse control and judgment, and helps coordinate the response to multiple stimuli in the brain. While the brain goes through this process of maturation, the adolescent may be at risk for risk-taking behaviors due to the immature prefrontal cortex.^{xxvi}

- Hormones and Chemical Shifts in the Brain

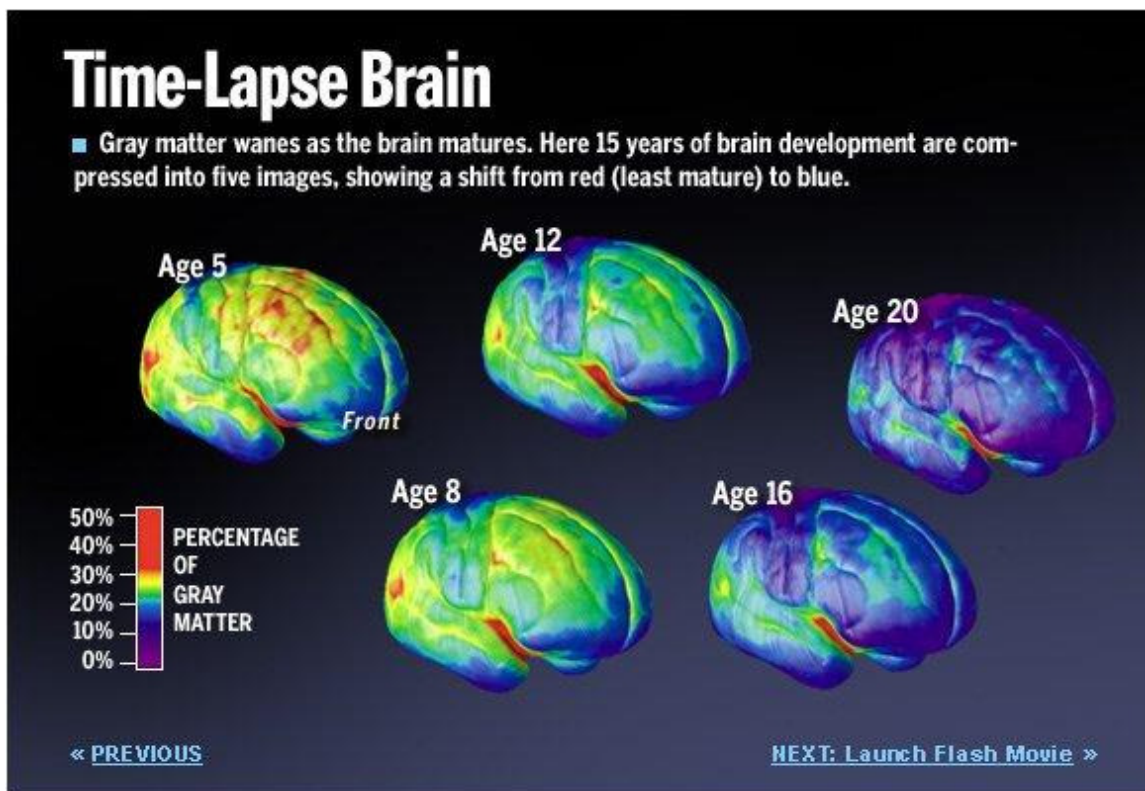
Dopamine is a neurotransmitter that, among other functions, affects cognition, movement, mood, and motivation and reward. Of significant importance to adolescents, dopamine is the pleasure system of the brain and is related to the brain's reward system. Changing levels of dopamine in the brain during adolescence can increase the threshold for pleasure and therefore result in risk-taking behaviors to attain the satisfaction that was once met by simpler behaviors.^{xxvii} fMRI studies of participants ranging in age from 12 to 28 assessed this reward system in the teenage brain. The younger participants showed comparatively weak activity in the reward centers of the brain in response to small monetary rewards.^{xxviii} This supports the theory that teens may need riskier stimuli to satisfy the pleasure system. And in conjunction with brain maturation, adolescents are undergoing puberty, which causes dramatic shifts in hormone levels well understood to affect mood and behavior.

Adolescent Brain Development in the Context of Juvenile Justice

In summary, this new science tells us that the frontal cortex of the brain that carries out executive function, or the ability to differentiate between good and bad and to discern future consequences of activities, is immature during adolescence. It follows that a brain with an immature frontal cortex can result in immature behavior, and this can help explain adolescent impairments in impulse control, judgment, and planning. However, these structural differences are only part of the complex network of influences on adolescent behavior. Negative environmental influences such as violence exposure, abuse, peer pressure, social supports, education and internal influences such as hormones and neurotransmitters all play a role in shaping adolescent behavior. Adolescents often misinterpret situations, particularly those of an emotional nature.^{xxix} They tend to respond to situations emotionally and do not necessarily have the ability to deliberate before acting.^{xxx} Additionally, they may have more difficulty making responsible decisions and understanding the consequences of their actions.^{xxxi} Further, they may have a difficult time resisting impulses, and this can be particularly difficult with increasing peer pressure in teenage years.^{xxxii}

Coupled with what we know about adolescent brain development, information about mental health co-morbidities is important to any discussion about juveniles. An estimated 60-70% of incarcerated juveniles have one or more psychiatric illnesses.^{xxxiii} Post traumatic stress disorder (PTSD) is one of the most common disorders among this population, affecting one in ten youths in detention facilities.^{xxxiv} The American Academy of Pediatrics has cited several risk factors for violence in adolescents such as witnessing domestic violence, substance abuse, being a victim of physical or sexual assault, or a witness to a violent crime.^{xxxv} Psychological trauma particularly affects the prefrontal cortex, the area of the brain responsible for executive function.^{xxxvi} This area of the brain, as evidenced by fMRI studies, is relatively underdeveloped in adolescents. Adolescent risky and violent behaviors may be a consequence of compounding psychosocial factors, traumatic influences and poor resiliency tools related to an immature brain rather than deliberate criminal intent.

Functional MRI studies that reveal the physiological underdevelopment of the brain during the teenage years provide medical background for examining what legal responses are most appropriate, both to ensure public safety and maximize rehabilitation, when responding to juvenile crime. An adolescent who does not have the maturity of an adult brain lacks the ability to reason as an adult. Although neuroscientists caution about using structural changes in the brain to excuse adolescents as a general matter from culpability, knowledge about adolescent brain development should guide lawmakers to revise the New Jersey juvenile waiver law to be consistent with these new findings and to allow the juvenile justice system to account for the fact that the adolescent brain is not fully developed. When adolescents are prosecuted as adults, it ignores what we know about adolescent development. The juvenile justice system should account for the differences between adolescents and adults, and allow judges to assess on a case-by-case basis the maturity level and culpability of individual juveniles under consideration for waiver to the adult criminal justice system.



May 10, 2003 issue of TIME Magazine "The Secrets of The Teen Brain"^{xxxvii}

B. New Data on Juvenile Crime Rates in NJ

At the time the Legislature passed the 1999 waiver laws, the 1995-96 peak of juvenile violent crime was still vivid in the public's mind. Several spectacularly tragic cases within New Jersey and elsewhere, including Columbine, had created the perception that juvenile crime represented a growing threat to public safety. That perception was further fueled by the mistaken notion, propagated by a New Jersey-based academic, that there was a coming

wave of violent juvenile “super-predators.”^{xxxviii} A mandatory waiver law eliminated the need for individualized court hearings and – given the concern about the potential volume of juvenile crime to come, cited prominently in the legislative history – a streamlining the process seemed imperative.

What the Legislature could not have known at that time was that juvenile crime was already in a steep decline. Between 1998 and 1999, juvenile arrests for violent crime declined an astounding thirteen percent.^{xxxix} While all crime was declining, declines in juvenile arrests outpaced declines in adult arrests (adult arrests fell 8%, juveniles’ 13%). These declines occurred before the 1999 changes to the waiver law even went into effect, suggesting there were important independent factors at work driving down juvenile crime.

The decreases in juvenile crime have continued. During the decade from 1998 to 2008, juvenile violent crime decreased by 26 percent in New Jersey. The academic who raised the specter of juvenile “super-predators” has since recanted and even apologized, but the damage had already been done – laws like the revised New Jersey waiver law had been passed to address a wave of violent juvenile crime that never came. In practice, had the statute been left intact, the number of court waiver hearings almost certainly would have gone down.

While there is something about juvenile crime that is particularly upsetting – it seems a betrayal of all that is seen as the innocence of youth – juveniles are not responsible for most violent crime, adults are. In 2008, adults accounted for 79 percent of the violent crime arrests compared to 21 percent by juveniles. Adults are responsible for 95 percent of homicides, 89 percent of rapes, 73 percent of robberies, and 85 percent of aggravated assaults. Juveniles charged with violent crime constitute a mere 1 percent of arrests in New Jersey.^{xl}

Paradoxically, waiver requests have increased even as juvenile crime has decreased. Such requests increased 22 percent between 2000 and 2007 (data from 2008 and 2009 is not comparable because of the change in the AOC database). Counties with some of the lowest rates of violent crime have some of the highest rates of waiver requests (see below). This new data suggests that the assumption of a connection between waiver and community safety is mistaken; that independent forces have reduced juvenile violent crime significantly; and that the waiver statute needs revision in order to focus it narrowly on its intended purpose. The concern that drove the 1999 amendments to the statute never came to fruition. And ironically, while court system efficiency was cited as a prominent reason for the change in the statute, that efficiency has proved elusive given the increased rate of waiver filings. The data suggests that rather than making the process more efficient, the amendment has had the unintended effect of making it less efficient.

C. New Data on Waiver Filings

Increased data capacity through a partnership between the prosecutors and courts has shed important new light on how the waiver law is working in practice. Beginning in July 2008, the AOC began reporting on race, ethnicity, and gender with respect to juvenile waiver,

based on data provided to the AOC by local prosecutors' offices. The AOC had previously been reporting on the filing and outcomes of waiver requests and made that data available back to 2000. Unfortunately, the change in reporting in 2008, while on balance an improvement, makes it difficult to conduct a unified analysis of waiver trends over the entire period between 2000 and 2009. Consequently, most of the analysis below will focus on the most recent data available.

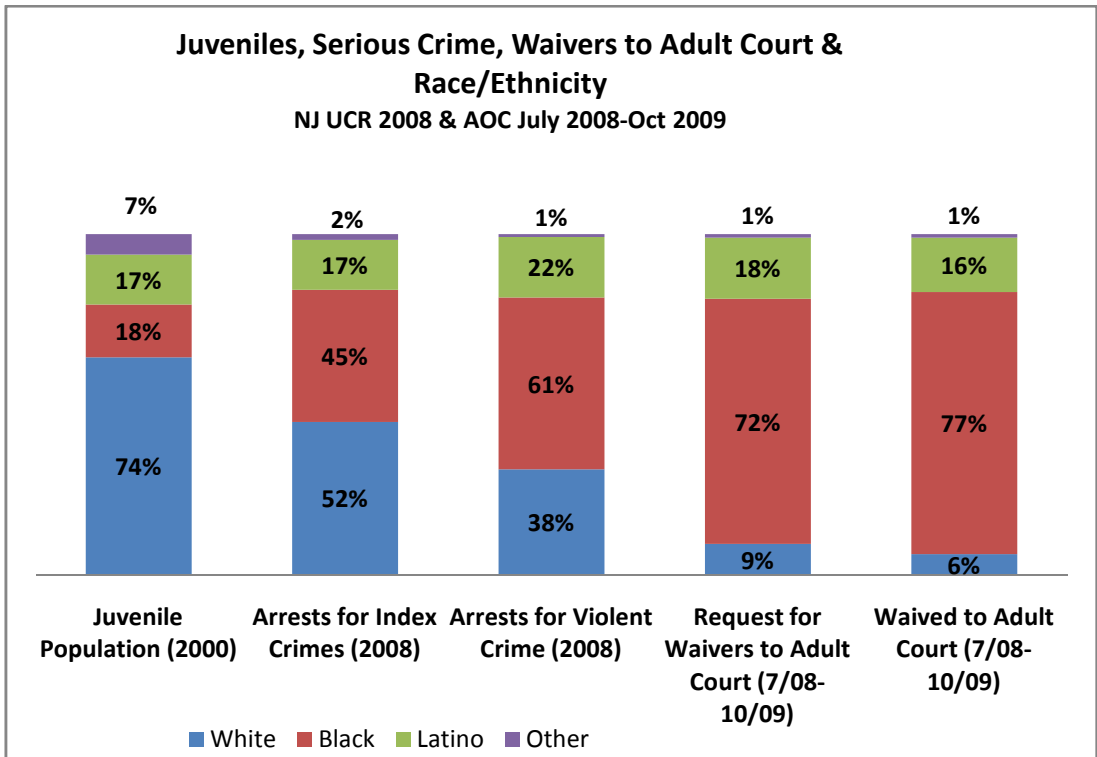
The waiver law is having a disparate impact on black male youth.

While the law appears to have been intended to provide access to adult court, a creative application of the law has resulted in an interpretation in some counties that youth can be waived to municipal court – thus decreasing, not increasing, the juvenile's potential sentence. Between July 2008 and October 2009, there were 35 waivers to municipal court, 89% of which were for white youth and 31% for girls.

**Cases Waived to Municipal Court
Between July 2008 – October 2009**

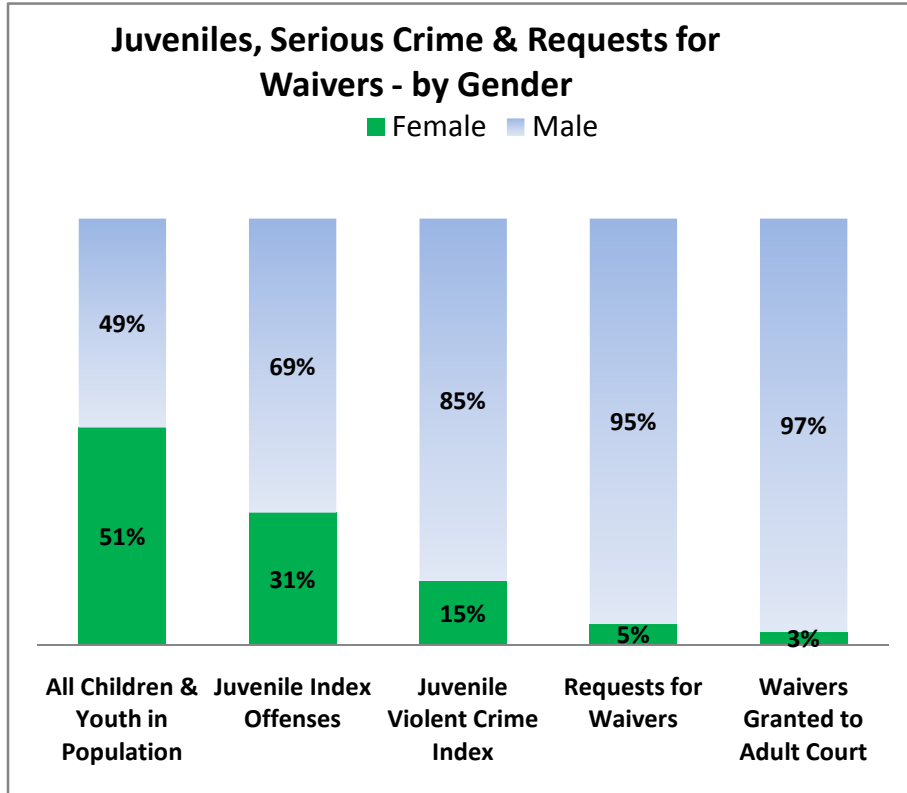
White	Black	Other	Total	Female	Male
31	2	2	35	11	24
89%	6%	6%		31%	69%

Waivers to adult court constitute the majority of waivers requested and executed. Between July 2008 and October 2009, waivers to adult court constituted 93% of the 502 total waivers. But the youth waived to adult court are markedly different from those waived to municipal court. Requests for waivers to adult court – with its increased likelihood of a lengthier sentence – are disproportionately high for black male youth. While black youth constitute 18% of New Jersey's overall youth population, they constitute 36% of juveniles arrested, 61% of those arrested for violent crime, while fully 72% of waiver requests and 77% of waivers granted are for black youth.



Note: the Uniform Crime Report (UCR) follows census protocols and so counts Hispanic ethnicity separately from race (which is why those columns add up to more than 100 percent) while the AOC converges race and ethnicity in its data.

Similarly, boys are much more likely to be tried as adults than are girls.



Note: the data included in the chart above is for the same period as the data in the preceding chart.

As noted above, unfortunately the AOC does not currently have data on waiver by offense. But the waiver statutes themselves address designated offenses – and only youth charged with those designated offenses qualify. Thus, the youth being waived to municipal court as well as the youth being waived to adult court are being charged, at least initially, with the same class of offenses. A comparison of arrests for violent crimes suggests there would be some disparity – but the significant racial disparity at the waiver stage suggests a disparity that goes significantly beyond the underlying alleged crime.

This data demonstrating disparate impact does not mean there is intentional discrimination at the local level resulting in preferential outcomes for white youth and girls and worse outcomes for black male youth for the same class of offenses. But it does illustrate that one of the unintended consequences of the law as it is currently drafted is that there is inequitable treatment. Prosecutors and judges charged with the grave responsibility of making these decisions previously lacked the data now available to help them contextualize local decision-making. The good news is that this data is now available and it can help improve local decision-making if it is incorporated into the process. But the disparities are so startling as to suggest it will take more than publicizing the data to improve equity and fairness in the application of the waiver statute. The statute itself needs to be revised to provide sufficient guidance to guard against the continuation of such disparities.

There is significant geographic disparity in the application of the waiver law. While the law was originally designed to address violent serious crime, in practice there is little correlation between violent crime rates and waiver requests. Counties with the same crime rates have wildly varying rates of exposure to waiver, and counties with relatively low rates of violent crime have very high rates of waiver requests.

Comparison of Waiver Requests versus Juvenile Violent Crime Arrests

County	Waiver Requests to Adult Court (AOC data; adj to annual rate)	Juvenile Arrests for Violent Crime (UCR 2008)	Rate¹
Atlantic	6	140	4%
Bergen	5	138	3%
Burlington	4	118	3%
Camden	94	277	34%
Cape May	29	43	68%
Cumberland	36	134	27%
Essex	17	518	3%
Gloucester	2	79	3%
Hudson	57	394	14%
Hunterdon	1	5	15%
Mercer	32	140	23%
Middlesex	32	158	20%
Monmouth	7	188	4%
Morris	0	42	NA
Ocean	5	70	8%
Passaic	4	273	1%
Salem	14	20	68%
Somerset	5	31	15%
Sussex	0	11	NA
Union	1	215	0.3%
Warren	2	8	28%
Statewide	353	3002	12%

¹ AOC data for waiver requests were reported for a 16-month period, so were multiplied by .75 to calculate annual data, which were used in conjunction with the 12-month UCR data to determine these rates. The annualized AOC numbers were not always whole numbers. The precise annualized numbers were used to calculate the rates, but the annualized AOC numbers in the second column of this chart were rounded to the nearest whole number to avoid confusion, as it is not possible to request a waiver for a fraction of a child. This rounding makes it appear that some of the rates were calculate inaccurately, but this is not so.

When geography is cross-referenced with race, the differences between counties are similarly stark.

All Waiver Requests by County

(includes data from July 2008-October 2009;
waiver requests made to both municipal and adult criminal court)

County	All	African-American Youth	
Atlantic	10	7	70%
Bergen	6	2	33%
Burlington	5	2	40%
Camden	125	85	68%
Cape May	39	17	44%
Cumberland	48	40	83%
Essex	22	21	95%
Gloucester	3	3	100%
Hudson	76	58	76%
Hunterdon*	15	1	7%
Mercer	43	35	81%
Middlesex	43	23	53%
Monmouth	10	9	90%
Morris	0	0	NA
Ocean	7	4	57%
Passaic	5	4	80%
Salem	18	16	89%
Somerset	6	6	100%
Sussex	0	0	NA
Union	1	1	100%
Warren*	20	4	20%
Statewide	502	338	67%

**Note: the starred counties have significant rates of municipal waivers, mitigating the racial disparities.*

Interviews with stakeholders suggest that there is a very different understanding of the purpose and application of the waiver law from place to place in New Jersey. This data makes apparent what could only previously be discerned anecdotally: as an adolescent, where you are arrested in New Jersey makes all the difference. If arrested in one county, you could wind up in municipal court, while if arrested in another, for the same type of offense, you could wind up in adult court. Again, the recent availability of this data suggests the opportunity for decision-makers to reflect anew on their local waiver practice. But only a significant change to the waiver statute, incorporating the types of guidance

available to decision-makers in other jurisdictions, is likely to bridge the gap and remedy the existing geographic and racial inequities.

D. New Research on Effect of Waiver Laws

Recidivism data that has become available over the last decade suggests that contrary to the expectation that charging and convicting juveniles in adult court would reduce crime, juveniles charged in adult court are *more* likely to recidivate. Specifically, between 2001-2005, four studies were completed that compared recidivism rates of juveniles who were waived to the adult system in Florida (2005),^{xli} Pennsylvania (2001 and 2003),^{xlii} and New York City/New Jersey (2003),^{xliii} each with findings that juveniles who are waived to the adult criminal court recidivate more often than their juvenile counterparts who are adjudicated in the juvenile court.

This research, combined with three studies completed in the 1990's,^{xliv} was profiled in a seminal report on the effects of waiver laws on juvenile crime issued in 2008 by Jeffrey Fagan of Columbia University, one of the nation's leading researchers in juvenile justice.^{xlv} Examining all these studies, Professor Fagan concluded that prosecuting juveniles as adults leads to *more* crime and that rates of juvenile offending are *higher* in states where it is more common to try adolescents as adults. Further, Fagan concluded that youth prosecuted as adults are not only rearrested more often than their counterparts who remain in the juvenile court system, but recidivate more quickly than youth retained in juvenile courts. The studies on which these findings are based typically matched youth in criminal and juvenile courts on several factors, including the number and severity of prior offenses. It is important to note that Fagan states that in some of the studies differences in the samples of waived and retained youth may reflect more about pre-existing indices for criminal propensity than about the effects of adjudication in either adult or juvenile court. However, Fagan recommends returning discretion to juvenile court judges to select juveniles for transfer based on more carefully delineated criteria than simply age and alleged offense.

Findings from the research on the effect of waiver laws were also reviewed by the Task Force on Community Preventive Services, which is an independent body of public health and prevention experts whose members are appointed by the Director of the Centers for Disease Control (CDC), the leading public health agency in the United States.^{xlvi} The Task Force conducted a review of six pertinent scientific studies that address the affects of policies and laws on transferring juveniles to the adult criminal court.^{xlvii} The same studies reviewed by Fagan were reviewed in the Task Force report. The Task Force concluded that of the studies, four “found a harmful effect, in which transferred [into the adult system] juveniles committed more subsequent violent and total crime than retained juveniles.” Specifically, “transferred juveniles were approximately 33.7% more likely to be re-arrested for a violent or other crime than were juveniles retained in the juvenile justice system.” Of the remaining two studies, only one study showed any evidence that transfer of juveniles to the adult justice system deterred either violent crime or other reoffending. The Task Force concluded that the remaining study found no effect on recidivism rates. Consequently, the Task Force “recommend[ed] against policies facilitating the transfer of juveniles from juvenile to adult criminal justice systems for the purpose of reducing violence.”^{xlviii}

Moreover, the last decade has brought new approaches and treatments that have had very positive results in lowering recidivism even for the most serious juvenile offenders, providing tools not available at the time the original statute was passed.^{xlix} In particular, note Harvard University's Innovation in Government Award made to the Missouri juvenile justice system in 2008. As demonstrated with its success with juvenile detention reform through JDAI, New Jersey has the capacity to implement cutting edge interventions that improve safety for the community and outcomes for youth – and could do the same with improved results in this context.

E. Applying the Lessons of the Success of JDAI to Changing New Jersey's Approach to Juvenile Waiver

New Jersey is recognized as a national model for its efforts to implement the Juvenile Detention Alternatives Initiative (JDAI) and successfully reduce the number of young people who are placed in detention while maintaining public safety. To date, annual admissions to detention in New Jersey's JDAI counties have dropped by 41% and the average daily detention population declined by 44%, resulting in 2,616 fewer youth who were detained in 2008 than in 2003.¹ The success of this statewide initiative was wholly dependent on the partnerships among the Judiciary, the Juvenile Justice Commission (JJC), the Department of Probation, prosecutors and defense attorneys, and the Legislature, who continue to work together to increase safety, justice and equity while reducing the use of expensive, often counterproductive, detention. That process was driven by data – data that demonstrated where there was a correlation between detention and safety and where there was not – enabling policy-makers to focus scarce resources more efficiently and effectively.

Similarly, the new availability of juvenile waiver data suggests it is a time for a smart and knowledge-based reconsideration of the use of waiver. New Jersey did it well in a detention context, maintaining public safety while reducing costs. One of the important lessons from JDAI is that decision-makers can make better decisions when they make those decisions based on data. Revisions to the statute based on the newly available data can help institutionalize changes to the waiver statute that will have the same effect as JDAI – improving the focus on community safety and eliminating unnecessary application of waiver.

V. Recommendations

Based on these findings, we recommend the following improvements to New Jersey's juvenile waiver law:

1. New Jersey should restore judicial discretion for all presumptive and mandatory waiver requests while limiting the scope of such requests.

- a) Returning to pre-1999 judicial review has the potential to improve the justice and equity with which the juvenile waiver statute is applied and focus decision-making on the critical question of public safety.

As originally drafted the waiver statute required the Family Court to review each case individually and make a statement on the record of its reasons granting or denying the waiver request. The statute also provided specific guidance to the Family Court on the factors to be considered in dispositional hearings – including the nature and circumstances of the offense, age of the juvenile, record of the juvenile, and degree of injury to persons or damage to property resulting from the offense. In so doing, it was evident that judges were intended to have substantial input in the waiver process and to evaluate waiver on a case-by-case basis.

The 1999 amendments, by eliminating the ability of judges to have such input and evaluate juveniles on a case-by-case basis in the mandatory waiver context, has diverged greatly from the original intent of the statute. At the time of the passage of the 1999 amendments, the hope was this lowered threshold to access adult court would improve public safety – but as illustrated above, it has not had the intended impact on public safety and it has had the unintended effect of an increase in filings unrelated to juvenile crime and troubling disparate impact. In short, the cost of lowering the threshold appears to be outweighing the benefit and a return to a heightened initial threshold of consideration followed by individualized consideration holds the promise of improving the application of the statute in practice.

- b) New research in adolescent brain development demonstrates that juveniles lack certain brain functions that contribute to decision-making capacity.

As documented above, recent science suggests that young people lack the same capacity as adults to distinguish right from wrong and understand future consequences. Individual brain development varies, but focusing the statute only on youth 16 and older holds the promise of honing in on those youth most likely to have the requisite level of brain development.

But even among 16 and 17 year-olds, the startling new findings in brain development suggest it takes much longer than previously thought for the brain to mature. Therefore, it is imperative that judges consider whether a juvenile has the requisite mental culpability before holding the youth accountable as an adult and granting a waiver request. Such consideration, when paired with the other recommendations in this section designed to increase equity and diminish disparities, requires a return to judicial discretion and individualized hearings.

- c) Waiving a juvenile to the adult criminal court has serious and longstanding consequences that warrant judicial consideration.

There are serious and longstanding consequences for juveniles if waived to adult criminal court. If found guilty, waived juveniles are placed in adult prisons, where they are more likely to become victims of abuse and/or commit suicide, and lack access to many of the services (i.e. educational, mental health) available to those in the juvenile justice system. In addition, these juveniles will be saddled with a criminal conviction that will severely limit their employment opportunities and their access to certain public benefits, and subject them to numerous other collateral consequences of criminal conviction, for the rest of their lives.

- d) Family Court judges possess unique skills in determining a juvenile’s level of maturity and assessing the presumption of amenability to rehabilitation.

Because of the experience of Family Court judges in presiding over a wide range of juvenile justice cases, the Governor and Legislature should utilize this expertise to determine which young people are sufficiently mature to be held culpable as adults and to assess whether the public interest overcomes a presumption that all youth are amenable to rehabilitation. Judges in the adult criminal court generally do not have the experience of presiding over juvenile cases on a regular basis, which limits their ability to understand the range of juvenile behavior and decision-making. In returning the original draft of the 1999 bill amending the waiver statute for reconsideration, the Governor emphasized the importance of having Family Court judges, which are “particularly skilled in dealing with juveniles,” hear evidence regarding “juveniles’ potential for rehabilitation” and to have input in the decision to transfer a case to adult court, particularly in regard to “younger juveniles” or “less serious offenses.”^{li} Some stakeholders expressed reservations about whether Family Court judges would sufficiently consider the seriousness of the offense in making their determinations. But the data suggests that Family Court judges have considerable experience presiding over cases involving serious crimes.

2. To ensure equity in administration of the waiver law across the State, the law should include guidance on the factors to be considered when determining whether a juvenile is amenable to rehabilitation.

As discussed above, interviews with stakeholders revealed widely varying interpretations of how to apply the waiver statute, an observation more than borne out by the troubling disparities in application of the statute from county to county. The New Jersey waiver statute offers little guidance for a prosecutor in deciding whether or not to pursue a waiver a request and little guidance for what the court should consider when presented with discretionary and presumptive waiver requests. (Under the mandatory waiver provision, the Family Court’s only discretion in determining whether probable cause exists to support the request.)

Other jurisdictions, such as Pennsylvania and Missouri, include in their waiver statutes specific criteria for consideration during rehabilitation/waiver hearings, allowing for more

informed decisions as to which cases are most appropriate for waiver. For a complete list of the guidance provided to the courts in each state, see Appendices E and F.

Applying specified criteria to each case, rather than basing decisions on the general principle of “likelihood of rehabilitation” without further guidance, would further the legislative intent in the original New Jersey statute to focus on the impact on public safety and avoid the current documented disparities in application. Specifically, we recommend that all waiver requests be based on an analysis of whether the waiver to adult court furthers public safety and whether the presumption that a juvenile is amenable to treatment, supervision and rehabilitation in the juvenile justice system has been rebutted pursuant to the following criteria:

1. **Nature and circumstances of the offense allegedly committed by the juvenile.** The court shall consider the type of crime, whether violent or non-violent, whether against persons or property, whether committed in a vicious manner, and how the crime was carried out.
2. **Whether the alleged offense was against persons or property, with more weight being given to crimes against persons.** In keeping with the intent of the statute, the court shall consider whether the alleged crime was a violent crime against a person, as was intended to be addressed by the waiver provision, the core justification for the passage of the statute.
3. **Degree of the juvenile’s individual culpability.** The court shall consider the degree of the juvenile's individual blameworthiness and whether the juvenile was the primary actor or ancillary to or intimidated into committing the alleged crime.
4. **Mental culpability.** The court shall consider the degree to which the juvenile had the requisite *mens rea* to commit the offense, was aware his or her actions were wrong, and had the capacity to understand the import of his/her actions.
5. **Age.** Given that the adolescent brain is still developing, the court shall take the juvenile’s age into account in determining whether to waive a juvenile to criminal court.
6. **Mental capacity.** The court shall consider whether the juvenile has any mental health issues or developmental disabilities that impact on his/her ability to knowingly act and understand the import of his/her actions.
7. **Maturity.** The court shall consider the emotional development of the juvenile as compared to that of adults.
8. **Degree of criminal sophistication exhibited by the juvenile.** The court shall consider the complexity of the crime.
9. **Nature and extent of any prior delinquent history.** The court shall consider the juvenile’s delinquency history, including the type(s) of crime(s) she/he has been adjudicated as having committed, the juvenile’s role in each, and the juvenile’s age and maturity at the time(s).

10. **Amenability to rehabilitation (whether the juvenile may be rehabilitated prior to the expiration of a potential sentence pursuant to an adjudication of delinquency).** Given recent developments in adolescent brain development and the success of innovative juvenile justice programming in reducing recidivism, the court shall presume amenability to rehabilitation unless the prosecutor establishes otherwise by a preponderance of the evidence.
11. **Cognitive Development.** The court shall consider contemporary research from neuroscience and other related fields regarding adolescent brain development and the ramification of such information on the possibility of the juvenile's rehabilitation.
12. **Moral Development.** The court shall consider anything in the juvenile's background that may have severely impaired his/her capacity for sound moral decision-making.
13. **Racial and geographic disparity in certification.** To assure the evenhanded application of justice, prosecutors shall submit with each waiver motion, and the court shall consider, both statewide and in the vicinage where the case is pending, during the past three years or such lesser time as shall have passed from the effective date of this statute, both the number of juveniles and the percentage of such juveniles who were racial or ethnic minorities, who were (a) charged with the most serious alleged offense in the pending petition, (b) subjects of waiver motions, and (c) waived to criminal court. The court shall also consider the rate of waiver by county as measured relative to the violent crime rate (data easily accessible via both the AOC and annual State Police UCR public reporting).

In addition to including this specific guidance for determining whether a juvenile is amenable to rehabilitation, judges and lawyers would benefit from additional training regarding the new provisions.

3. **To remain consistent with the original intent of the waiver law, the statutes should be revised to include only those crimes included in the Federal Bureau of Investigation's Violent Juvenile Crime Index and other similarly serious violent crimes.**

In New Jersey, as documented above, there is little correlation between the level of crime in a county and the request for waivers.

The juvenile transfer provisions were originally designed to differentiate those committing violent crimes and repeat offenders from those committing less serious offenses. However, since the original passage of the law in 1982, the types of offenses included under the statute have expanded far beyond what are considered violent offenses according to the FBI's Violent Crime Index (murder, non-negligent manslaughter, forcible rape, robbery and aggravated assault) and the limited number of other similarly serious violent crimes such as kidnapping (which the FBI does consider a violent offense but does not count as part of the UCR or Violent Crime Index because of its infrequency) and carjacking (which is included in the UCR within the category of robbery).

Below is a comparison of the offenses included in the FBI Violent Crime Index and those included in the New Jersey waiver statute:

**Comparison of Offenses Included in the
FBI Violent Crime Index as Compared to the New Jersey Waiver Statutes**

Offense	FBI Violent Crime Index	New Jersey Waiver Statute
Murder	X	X
Non-Negligent Manslaughter	X	X
Forcible Rape	X	X
Robbery	X	X
Aggravated Assault	X	X
Any crime that is part of a continuing criminal activity in concert with at least two others where circumstances indicate that the offender "knowingly devoted himself to criminal activity as a source of livelihood"		X
Death by auto if child is driving under the influence		X
Any offense against a person committed in an aggressive, violent and willful manner	Not included unless one of specified crimes listed above	X
Arson, any attempt or conspiracy to commit arson		X
Auto theft		X
Manufacturing or distribution of a controlled substance		X
Unlawful possession of a firearm, destructive device or other prohibited weapon or possession of a firearm with intent to use it unlawfully		X
Escape if committed with a firearm		X
Gang criminality		X
Kidnapping*		X
Carjacking* *	X	X
Burglary if committed with a firearm		X
Computer crime		X
Strict liability for a drug-induced death		X

*The FBI notes that it does not include kidnapping in the UCR because it occurs too infrequently to warrant national data collection through the UCR.

**As noted in the UCR, State Summary & Offense Analysis (p. 30), carjacking is a form of robbery and is counted as such in the FBI Violent Crime Index.

In addition to waiver being triggered by a particular offense, the statute recognizes prior commission of a violent offense, whether that offense triggered a finding in juvenile or adult court, as sufficient to trigger a waiver request. This additional qualification fits with the original intent to focus the statute on the most serious of offenses.

In addition to the violent crimes identified above, there are three other categories of offenses that can trigger waiver under New Jersey's statute: offenses that have the potential for violence (escape with a firearm, gang criminality, burglary with a firearm); serious but not violent offenses (the drug-related offenses and arson); and property offenses. On a continuum, each of these categories moves the waiver statute increasingly away from its original purpose – the morphing of which might explain trends in the data as varied as the significant geographic disparities and the use by some counties of waiver to municipal court as a response to what was intended to be the most serious of crimes. In the absence of offense level data, it is not possible currently to assess whether some of that disparity is correlated to differences in offenses. But the disparities are troubling, as is the increase in waiver requests in the face of the overall decline in serious juvenile crime.

Most concerning are the several non-violent crimes added to the waiver law after 1999 in connection with the passage of other statutes, with little debate as to whether they are appropriate for inclusion in the transfer provisions. These include first and second degree computer crimes (2003), death by auto if the juvenile was driving under the influence (1991), strict liability for drug-induced death (1987), and auto theft (1991). Adding this range of non-violent crimes has diluted the intent to use waiver as a tool to reduce violent crime and led to filings with respect to offenses that can appropriately be handled in the Family Court. By limiting the list of crimes included in the waiver law and focusing on those in which public safety is most implicated, the State would return the waiver law to its original purpose – a tool to reduce violent crime.

4. To allow prosecutors adequate time to gather the information necessary to decide whether or not to file a waiver request, the window for filing such requests should be extended from 30 to 60 days.

Under the current waiver statute, prosecutors have only 30 days from the receipt of the complaint to file a waiver request.^{lii} This shortened time frame appears to have the unintended consequence of triggering a serious process before there is opportunity for the prosecutors to conduct complete investigations and reflect with full information on whether waiver to the adult criminal court is warranted. During this compressed time period, prosecutors not only have to gather evidence about the alleged offense but uncover the individual circumstances of the juvenile that contribute to his/her mental culpability. This information is crucial to meeting the statutory requirement that the waiver requests be applied neutrally in regard to race and gender.

Allowing for a longer period to gather information about the case and the juvenile may also lead to a reduction in the number of waiver requests made by prosecutors that are later withdrawn. According to AOC data, in 2008 prosecutors requested waivers in 438 cases but subsequently withdrew the request in 225 cases. This practice is most common in

Camden, Cape May, Cumberland and Somerset Counties. Moreover, the new information about the disparities in waiver requests by county, gender, and race suggests the need for a little more time to consider whether a filing is in the interests of justice. And if the burden did return to the prosecution and hearings became routine in these cases, as they will need to in order to ensure all of the information necessary to make equitable decisions in this arena, it makes sense to give the prosecution time to complete the investigation before making a decision triggering such level of appropriate review.

5. In addition to demonstrating probable cause for all waiver requests, the law should be revised to shift the burden to the prosecution to overcome the presumption of rehabilitation and to demonstrate by clear and convincing evidence that the public interest is best served by waiving the juvenile to adult court.

Because of the seriousness of the decision whether to waive a juvenile to adult criminal court, we recommend that the prosecution bear the burden in every waiver request for presenting the reasons why waiver is being sought, including the burden to demonstrate in every instance why waiver is in the public interest (which will include consideration of equitable geographic, racial and gender impact as detailed in the guidelines set forth above). This burden properly belongs with the prosecution precisely because there is so little support for the proposition that waiver promotes public safety. Furthermore, the recent developments in brain research also support a presumption that most youth have the capacity for rehabilitation, a presumption that the prosecution should have to overcome in order to demonstrate that the benefits of pursuing waiver outweigh the costs. Finally, we now know that transferring juveniles to adult criminal courts actually increases rather than decreases recidivism and thus jeopardizes rather than enhances public safety,^{liii} even among those offenders “who only received a sentence of probation from the criminal court.”^{liv} Now that we know that waiving a juvenile to adult criminal court will increase the likelihood of the young person recidivating, prosecutors should be required to demonstrate on a case-by-case basis that the interests of the public will be best served by transferring a juvenile to adult criminal court.

Please see Appendix G for charts that describe the current provisions as compared to the recommended changes in the statute described in this section.

6. The waiver law should be limited to 16 and 17 year -olds to increase the likelihood the law targets the most developmentally appropriate group at the highest risk of committing violent crimes.

Unfortunately, New Jersey does not currently collect data on the age of youth for whom waivers have been filed or granted. However, interviews with stakeholders suggest there is some consensus in practice that waiver requests are largely limited to the oldest adolescents, namely 16 and 17 year-olds, because of the judgment by prosecutors that older youth have a higher level of maturity and so can be held more culpable for the commission of serious offenses. And although the adolescent brain research does not suggest a bright-line between the ages of 15 and 16, we know that the adolescent brain continues to undergo significant structural changes during the teenage years – leading to the earlier

recommendation that the statute require the Family Court to preside over individualized hearings for each waiver request. Limiting the age of eligible juveniles would help the Family Court focus its resources on those who are most likely to have a record and most likely to have the level of maturity necessary to a finding of adult culpability. In addition, we recommend eliminating voluntary waiver requests for juveniles below age 16.

As currently written, the Legislature has assigned juveniles the same level of culpability as adults, giving the courts authority for waiving juveniles as young as 14 to the adult criminal court for certain crimes. However, the Legislature has recognized that juveniles under 18 do not possess the same maturity as adults when participating in a range of other legal activities, including serving on a jury, voting, enlisting in the armed forces, obtaining a driver's license, and getting married, among others. See Appendix H.

Limiting the application of the State's waiver law to 16 and 17 year-olds does not forfeit the opportunity to impose significant sentences in secure institutions. Under current law, the Family Court retains the ability to impose serious sentences of up to 20 years.^{lv} Further, upon a juvenile's 18th birthday the New Jersey Administrative Code allows for the transfer of a juvenile from a facility run by the Juvenile Justice Commission (JJC) to a Department of Corrections (DOC) prison for the remainder of their sentence should the juvenile's behavior be too disruptive to the general population and interfere with the safety of other juveniles and staff.^{lvi}

7. The State should continue to improve the collection and publication of data about juvenile waiver cases.

In the original statute, prosecutors were required to state their reasoning for making a request for waiver, and judges were required to state on the record their reason for granting or denying the waiver request. These original reporting requirements were an effort to make the waiver process more transparent. However, with fewer such reporting requirements included in the current waiver statute it has become increasingly difficult to track and study the application of the law.

Presently, each county prosecutor's office is responsible for regularly submitting waiver data to the Administrative Office of the Courts (AOC). Recognizing that the amount and type of data requested has been limited, in 2008 the AOC expanded their request for information from the prosecutors – specifically requesting race and gender data – in an effort to better track the experience of minority youth involved in waiver cases. However, other specific information about waiver cases remains unavailable, including information about the type of offense for which a waiver is being sought, the age of the juvenile who is the subject of the waiver request, and the waiver provision under which the waiver is being sought.

We recommend that in addition to new reporting requirements on race, ethnicity and gender, the State collect and publicly report information about waiver requests and the outcome of each request (whether denied, withdrawn or granted) by county broken out by age, offense and waiver provision. In addition, we recommend that the State collect and

publicly report all subsequent delinquency adjudications and/or criminal convictions (unless reversed on appeal) for the three-year period following the end of the adult criminal court's involvement with the person, including parole, broken down by number and type of subsequent offense(s). This data – when compared with similar recidivism data regarding juveniles maintained in the juvenile justice system, which also should be tracked and reported – would provide legislators and the public with more complete information about the application of the waiver law and allow for more informed determinations of whether the law is having the intended effect of reducing crime and enhancing public safety.

VI. Conclusion

Community safety is better served by maintaining most youth in juvenile court, not transferring them to adult court. And justice is not served if youth of one gender and one ethnicity living in one community are subject to much more severe punishment than youth of another gender and ethnicity living in a different community. The bedrock of the American ideal is founded on the notion of “liberty and justice for *all*.” All includes all youth in New Jersey, no matter where they may live, no matter their race, gender or ethnicity. What might be understandable in the context of the state of knowledge available in 1999 no longer applies in light of the robust additional research and information available in 2009. We now know that youth, even those charged with the most serious of offenses, have tremendous potential – a presumptive potential for rehabilitation. The New Jersey waiver statute requires re-engineering in order to re-establish the connection between its original purpose – improving public safety – while eliminating inequity and unfairness in its application.

APPENDICES

APPENDIX A

Offenses subject to the discretionary waiver provisions of the New Jersey juvenile waiver law^{lvii}

- Any crime committed by a person previously adjudicated delinquent for/convicted of any of a number of listed offenses (criminal homicide other than death by auto, strict liability for a drug-induced death, first degree robbery, aggravated sexual assault, sexual assault, second degree aggravated assault, kidnapping, or aggravated arson); any crime committed by a person previously confined in an adult penal institution; any crime that is part of a continuing criminal activity in concert with at least two others where circumstances indicate that the offender "knowingly devoted himself to criminal activity as a source of livelihood."
- Death by auto if the child was driving under the influence, or any attempt or conspiracy to commit this crime.
- Any offense against the person committed in an aggressive, violent, and willful manner, or any attempt or conspiracy to commit any such offense
- Arson; any attempt or conspiracy to commit arson; auto theft
- Manufacturing or distributing controlled substances, and various related offenses, or any attempt or conspiracy to commit these crimes
- Unlawful possession of a firearm, destructive device, or other prohibited weapon, or any attempt or conspiracy to possess such a weapon

APPENDIX B

Offenses subject to the presumptive waiver provisions of New Jersey's juvenile waiver law^{lviii}

- The crime of escape if committed with a firearm, and any attempt or conspiracy to commit this crime
- Criminal homicide other than death by auto, strict liability for a drug-induced death, or any attempt or conspiracy to commit these crimes
- First degree robbery; carjacking; kidnapping; sexual assault; aggravated sexual assault; second degree aggravated assault; aggravated assault committed with a firearm; aggravated criminal sexual contact committed with a firearm; gang criminality in which the underlying crime is any of these acts; promotion of organized street crime in which the underlying crime would constitute a first- or second-degree grade of any of these acts; or any attempt or conspiracy to commit these crimes
- Aggravated arson, burglary committed with a firearm, first or second degree computer crime, or any attempt or conspiracy to commit those crimes
- Distribution of controlled substances for pecuniary gain while, or manufacturing, distributing or dispensing a controlled substance in violation of N.J.S.A. 2C:35-3, 2C:35-4 or 2C:35-5 on or near school property or on a school bus, or any attempt or conspiracy to commit this offense
- Possession of a firearm with a purpose to use it unlawfully against the person of another, or any attempt or conspiracy to do so

APPENDIX C

Offenses subject to the mandatory waiver provisions of the New Jersey juvenile waiver law^{lix}

- The crime of escape if committed with a firearm
- Criminal homicide other than death by auto or strict liability for a drug-induced death
- First degree robbery; carjacking; kidnapping; sexual assault; aggravated sexual assault; second degree aggravated assault; aggravated assault committed with a firearm; aggravated criminal sexual contact committed with a firearm; gang criminality in which the underlying crime is any of these acts; promotion of organized street crime in which the underlying crime would constitute a first- or second-degree grade of any of these acts
- Aggravated arson, burglary committed with a firearm, first or second degree computer crime
- Distribution of controlled substances for pecuniary gain in violation of N.J.S.A. 2C:35-3 or 2C:35-4
- Possession of a firearm with a purpose to use it unlawfully against the person of another

APPENDIX D

Below please find a summary of the significant amendments made to the New Jersey waiver laws since their original passage in 1982:

- **In 1987:**
 - Strict liability for drug induced deaths was added to the list of crimes in Section a. (2) (a), subject to the mandatory waiver provisions for juveniles 16 years and over and presumptive waiver for juveniles under 16. As with the other crimes subject to the mandatory waiver provisions, the prosecutor does not have the burden of proving that because of the nature and the circumstances of the charge or the prior record of the juvenile public interest requires such waiver (the “Prosecutorial Burden”)^{lx} and a juvenile age 16 or over cannot override waiver by showing that the probability of rehabilitation of such juvenile by the time he or she reaches the age of 19 using the procedures, facilities and services available to the court substantially outweighs the reasons for the waiver (the “Juvenile Right to Rebut”).
 - Distribution of controlled substances on or near a school zone was exempted from the Prosecutorial Burden requirement.^{lxi}
- **In 1991:**
 - Added to the discretionary waiver provisions death by auto if the juvenile was under the influence of alcohol or drugs and auto theft.
- **In 1999:**
 - Added carjacking, illegal possession of a firearm with a purpose to use it unlawfully against a person, aggravated assault, aggravated criminal sexual conduct, burglary and escape while in possession of a firearm to the list of crimes subject to mandatory waiver provisions for juveniles 16 years and over, and presumptive waiver for juveniles under 16.
 - Added distribution of controlled substances for pecuniary gain in violation of N.J.S.A. 2C:35-3 or 2C:35-4 to the list of crimes subject to mandatory waiver provisions for juveniles 16 years and older ; and
 - The elimination of the juvenile’s right to rebut a mandatory waiver request with regard to juveniles age 16 or over charged with criminal homicide other than death by auto, strict liability for drug induced death, first degree robbery, carjacking, aggravated sexual assault, sexual assault, second degree aggravated assault, kidnapping, gang criminality, or aggravated arson, illegal possession of a firearm with a purpose to use it unlawfully, and aggravated assault, aggravated criminal sexual conduct, burglary or escape while in possession of a firearm.^{lxii}

Of paramount importance was the amendment that eliminated the juvenile’s right to rebut waiver requests by demonstrating their amenability to rehabilitation. This amendment in essence eliminated the discretion of the courts to override waiver requests in cases involving juveniles age 16 or over who are accused of one or more of the offenses listed in Appendix C.

- In **2003**, the Legislature, in Chapter 39 of the Laws of 2003, added the provision regarding computer criminal activity of the first or second degree, which is subject to the mandatory waiver provisions for juveniles 16 or over and presumptive waiver for juveniles under 16, when it modified the underlying statute relating to computer crime.
- In **2008**, with Chapter 341 of the Laws of 2007, the Legislature added the provision regarding “gang criminality” to the mandatory waiver provisions for juveniles age 16 and older, when it modified the underlying statute regarding gang criminality. Specifically, the new offenses subject to the mandatory waiver provisions include those where the underlying crime involved either involved criminal homicide other than death by auto, strict liability for drug induced death, first degree robbery, carjacking, aggravated sexual assault, sexual assault, second degree aggravated assault, kidnapping or aggravated arson or promotion of organized street crime of the first or second degree.

APPENDIX E

Excerpt from the Pennsylvania Transfer Provisions^{lxiii}

The transfer provisions of the Pennsylvania Consolidated Statutes are as follows:

The court may transfer a juvenile case to criminal court if all of the following conditions are met:

- (1) The child was at least 14 years old at the time of the alleged delinquency;
- (2) A hearing is held;
- (3) Notice of the hearing is given to the child and his parents/guardian at least three days in advance;
- (4) The court finds:
 - a. There is a prima facie case that the child committed the delinquency;
 - b. The delinquency would be a felony if committed by an adult;
 - c. The public interest is served by the transfer of the case for criminal prosecution, and in making that determination the court shall consider the following factors:
 - i. the impact of the offense on the victim or victims;
 - ii. the impact of the offense on the community;
 - iii. the threat to the safety of the public or any individual posed by the child;
 - iv. the nature and circumstances of the offense allegedly committed by the child;
 - v. the degree of the child's culpability;
 - vi. the adequacy and duration of dispositional alternatives available in the juvenile and adult criminal justice systems; and
 - vii. whether the child is amenable to treatment, supervision or rehabilitation as a juvenile by considering the following factors:
 1. age;
 2. mental capacity;
 3. maturity;
 4. the degree of criminal sophistication exhibited by the child;
 5. previous records, if any;
 6. the nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the juvenile court to rehabilitate the child;
 7. whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction;
 8. probation or institutional reports, if any;
 9. any other relevant factors; and
 - d. That there are reasonable grounds to believe that the child is not committable to an institution for the mentally retarded or mentally ill.

APPENDIX F

Excerpt from the Missouri Transfer Provisions^{lxiv}

The transfer provisions of the Missouri Code are as follows:

- (i) If a petition alleges that a child between the ages of 12 and 17 is charged with a felony, the court may, and in the case of either
 - (a) a petition alleging a child is charged with:
 - (i) First degree murder,
 - (ii) Second degree murder,
 - (iii) First degree assault,
 - (iv) Forcible rape,
 - (v) Forcible sodomy,
 - (vi) First degree robbery,
 - (vii) Distribution of drugs, or
 - (b) if the child has committed two or more prior unrelated felonies;the court must order a hearing to consider whether the child should be transferred to a court of general jurisdiction.
- (ii) At the hearing, the court shall determine (a) whether the child is a proper subject to be dealt with in the juvenile justice system and (b) whether there are reasonable prospects for rehabilitation within the juvenile justice system based on, among other things, the following criteria:
 - (i) Seriousness of the alleged offense and whether the protection of the community requires transfer to a court of general jurisdiction,
 - (ii) Whether the alleged offense involved viciousness, force and violence,
 - (iii) Whether the alleged offense was against persons or property,
 - (iv) Whether the alleged offense is part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation,
 - (v) The record and the history of the child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions and other placements,
 - (vi) The sophistication and maturity of the child as determined by consideration of his home and environmental situation, emotional condition and pattern of living,
 - (vii) The age of the child,
 - (viii) The program and facilities available to the juvenile court in considering disposition,

- (ix) Whether or not the child can benefit from the treatment or rehabilitative programs available to the juvenile court, and
- (x) Racial disparity in certification.

The court must include in its decision to transfer the reasons underlying its decision to do so.

APPENDIX G

Waiver to adult court is an extremely grave decision and it assumes a requisite level of adult responsibility, one we are reluctant to assign to youth in a variety of other less serious contexts. Across the country, states have limited young people's rights and responsibilities for various activities, including.^{lxv}

- **Jury Duty:** In all 50 states and the District of Columbia no one under the age of 18 can serve on a jury. Two jurisdictions require jurors to be 19; two others require jurors to be 21.
- **Military service:** Federal law does not allow youth under the age of 18 to enlist in the Regular Army, Regular Marine Corps, or Regular Coast Guard without written parental consent. Youth under eighteen may not be drafted.
- **Voting:** The twenty-sixth amendment to the Constitution sets eighteen as the age at which citizens may vote; all state legislatures have followed suit for state and local elections.
- **Abortion/reproductive rights:** In 39 states, an unemancipated minor under age 18 needs either parental consent or judicial permission to obtain an abortion.
- **Marriage:** In 36 states and the District of Columbia, youth under age 18 may not marry without parental consent.
- **Access to pornography:** 47 states either absolutely prohibit the sale or delivery of material that is obscene or harmful to minors to youth under the age of 18, or only allow sale or delivery if a youth's parent consents. Alabama prohibits the delivery of material harmful to minors to youth under the age of 19.
- **Curfew:** Four out of five U.S. cities with a population of more than 30,000 were found in 1995 to have a nighttime youth curfew. The most common upper age limit is 18.
- **Foreign travel:** Juveniles under the age of eighteen cannot obtain a passport for foreign travel if the custodial parent objects.
- **Wills:** In all 50 states and the District of Columbia, youth under the age of 18 cannot make a valid will.
- **Contracts:** In all 50 states and the District of Columbia, the contract rights of youth under age 18 are restricted and/or infancy is a defense to the enforcement of a simple contract.
- **Gambling:** 47 states and the District of Columbia prohibit youth under the age of 18 from participating in lotteries, bingo games and/or pari-mutuel betting. Seven

states (Arizona, Iowa, and Louisiana, Mississippi, Nevada, Texas and Washington) prohibit youth under the age of 21 from some forms of gambling.¹³ Three states (Alabama, Alaska, and Nebraska) prohibit youth under the age of 19 from some forms of gambling.

- **Driving:** In 42 states and the District of Columbia, a youth must be 18 years of age or older to be issued a driver's license free of restrictions or prerequisites. Virginia issues unrestricted driver's licenses only to persons 19 or older and the District of Columbia issues unrestricted driver's licenses only to persons 21 or older.
- **Alcohol:** All 50 states and the District of Columbia set 21 as the legal age for purchasing alcohol.
- **Tobacco:** All 50 states and the District of Columbia prohibit either the possession or purchase of cigarettes by youth under the age of 18. Alabama, Alaska, and Utah prohibit either the possession or purchase of cigarettes by youth under the age of 19.
- **Tattoos:** 42 states either absolutely prohibit youth under the age of 18 from obtaining a tattoo, or only allow a youth to obtain a tattoo if a parent consents. Illinois prohibits tattooing of youth under the age of 21. Illinois prohibits tattooing of youth under the age of 21.
- **Body piercing:** In 33 states, minors under the age of 18 are either absolutely prohibited from getting body piercings or are only allowed to obtain such if a parent consents.
- **Pawn shops:** In 37 states, youth under the age of 18 are prohibited from engaging in transactions with pawnbrokers. Alabama prohibits youth under the age of 19 from engaging in transactions with pawnbrokers.
- **Firearms:** Under Federal law, youth under the age of 18 cannot possess a handgun or handgun ammunition. Neither can any federally licensed importer, manufacturer, dealer, or collector sell or deliver any firearm to a juvenile under the age of 18 or any firearm, other than a shotgun or rifle, to any person under the age of 21. 46 states and the District of Columbia restrict the sale or delivery of certain firearms to youth under the age of 18 and/or prohibit the possession of certain firearms by youth under the age of 18.
- **Tanning salons:** 16 states prohibit youth under the age of 18 from using artificial sun tanning facilities without written parental consent.

APPENDIX H

Current Waiver Provisions

Note: There does not currently exist in the law a presumption in favor of rehabilitation for any category of waiver requests. Also, the standard of proof for demonstrating that the waiver request is in the interest of the public is a preponderance of the evidence. Similarly, the standard of proof for rebutting the waiver request based on a juvenile’s amenability to rehabilitation is a preponderance of the evidence.

Waiver Provision	Minimum Age	Probable Cause (Burden on Prosecutor)	Nature and Circumstances of Charge Or Prior Record of the Juvenile are Sufficiently Serious That The Interests of the Public Require Waiver (Burden on Prosecutor)	Juvenile Ability to Rebut Based on Amenability to Rehabilitation (Burden on Defense)
Discretionary Waiver	14	X	X	X
Presumptive Waiver	14	X		X
Mandatory Waiver	16	X		

Proposed Waiver Provisions

Note: The proposed waiver provisions would include a presumption in favor of rehabilitation for all categories of waiver requests. In addition, the proposed waiver provisions would revise the standard of proof required from a preponderance of the evidence to clear and convincing evidence for both demonstrating the public interest is served by granting the waiver request, and that the juvenile is not amenable to rehabilitation.

Waiver Provision	Minimum Age	Probable Cause (Burden on Prosecutor)	Nature and Circumstances of Charge Or Prior Record of the Juvenile are Sufficiently Serious That The Interests of the Public Require Waiver (Burden on Prosecutor)	Overcome presumption of rehabilitation (Burden on Prosecutor)
Discretionary Waiver	16	X	X	X
Presumptive Waiver	16	X	X	X
Mandatory Waiver	NA (eliminated)	NA	NA	NA

¹ Press Release, Office of the Governor of New Jersey, July 23, 1982.

² Ibid.

³ Ibid.

⁴ Sponsor's Statement, p. 28.

⁵ N.J.S.A. 2A:4A-26a.(3).

⁶ N.J.S.A. 2A:4A-26e.

⁷ N.J.S.A. 2A:4A-26f.

⁸ May, Jeff and Boronda, Kinga, "Decision on Manzie Trial Due Today. Teen Could be Tried As An Adult in Werner Slaying", New Jersey Star-Ledger (October 7, 1997) and Rudolph, Robert, "Oldest Defendant in Gross Trial Denied Bail", New Jersey Star-Ledger (October 3, 1997).

⁹ Breed, Allan, "It Scares You Real Bad' Flowers and Counselors Greet pupils' Return", New Jersey Star Ledger (March 27, 1998).

¹⁰ Senate Committee Statement, 208th Legislature, S.B. 286 (February 23, 1998).

¹¹ Hall, Lawrence, "Federal Meddling Makes the War on Crime Worrisome", New Jersey Star -Ledger (March 10, 1999), Hall, Lawrence, "'Get Tough' Congress is Guilty of Fraud in Crime Fight", New Jersey Star-Ledger (May 23, 1997), Barrett Carter, Kathy "Juvenile Justice Officials Concerned Over Possible Shift to Stricter Terms", New Jersey Star Ledger (June 27, 1996).

¹² Assembly Committee Statement, 210th Legislature, Senate Bill No.1355 (1R) (January 9, 2003). Note the same is also true of the 2007 amendments relating to gang violence (See Assembly Committee Statement, 212th Legislature, Assembly Bill No. 4582 (December 10, 2007)).

^{xiv} N.J.S.A. 2A:4A-26a.(3).

^{xv} N.J.S.A. 2A:4A-26e.

^{xvi} Roper, Superintendent, Potosi Correctional Center v. Simmons, 543 U.S. 551 (2005).

^{xvii} Graham v. Florida, Docket No. 08-7412 and Sullivan v. Florida, Docket No. 08-7621.

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^{xxvi} Ibid

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^{xxxii} Ibid.

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^{xxxv} American Academy of Pediatrics Task Force on Violence Policy Statement (Revised) January 1999. Retrieved October 6, 2009 from <http://aappolicy.aappublications.org>

^{xxxvi} Adolescent Brain Development: A Critical Factor in Juvenile Justice Reform. Retrieved October 5 from www.physiciansforhumanrights.org

^{xxxvii} www.time.com/time/covers/1101040510/neurons/2.html

^{xxxviii} “The Coming of the Super-Predators,” *The Weekly Standard*, Vol. I, No. 11, pg. 23.

^{xxxix} NJ UCR 1999.

^{xl} NJ UCR 2008.

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^{xlv} “Juvenile Crime and Criminal Justice: Resolving Border Disputes”, *The Future of Children*, Volume 18, Number 2, Fall 2008, Jeffrey Fagan.

^{xlvi} See the Task Force on Community Preventive Services
(<http://www.thecommunityguide.org/about/task-force-members.html#fielding>)

^{xlvii} See Centers for Disease Control and Prevention Task Force on Community Preventative Services (2007). *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult System* at S5.

^{xlviii} See Centers for Disease Control and Prevention Task Force on Community Preventative Services (2007). *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult System* at S5.

^{xlix} “Blueprints for Violence Prevention”, Center for the Study of Violence at the University of Colorado-Boulder, NCJ 204274, July 2004.

^l The Anne Casey Foundation (2009), *Two Decades of JDAI: From Demonstration Project to National Standard*.

^{li} Governor’s Conditional Veto Message, Senate Bill No. 286 –L. 1999, c.373, p.2.

^{lii} N.J.S.A. 2A-4A-26(d).

^{liii} Redding, Richard E., “Juvenile Transfer Laws: An Effective Deterrent to Delinquency,” U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention – Juvenile Justice Bulletin (August 2008), p.6.

^{liv} Ibid.

^{lv} N.J.S.A., 2A:4A-44. Effective August 1, 2002.

^{lvi} New Jersey Administrative Code, Title 13, Chapter 91, Subchapter 2.

^{lvii} N.J.S.A. 2A:4A-26.

^{lviii} N.J.S.A. 2A:4A-26.

^{lix} N.J.S.A. 2A:4A-26.

^{lx} For purposes of clarity, this term does not relate to the showing of probable cause which must be made in connection with all discretionary, presumptive and mandatory waivers.

^{lxi} N.B. In 1991 these provisions were revised to clarify that school property for this purpose included property within 1,000 feet of school property as well as property leased to any school or school board.

^{lxii} See also discussion of 2003 amendments where computer crimes were added to this litany and 2007 amendments where gang criminality was added to this litany.

^{lxiii} 42 Pa.C.S. § 6355 (2009).

^{lxiv} V.A.M.S. 211.071. Vernon's Annotated Missouri Statutes, Title XII Public Health and Welfare, Chapter 211 Juvenile Courts, Section 211.071 Certification of Juvenile For Trial As an Adult.

^{lxv} Amicus Brief written by the Juvenile Law Center, Roper v. Christopher Simmons, Docket No. 03-633. For a full listing of states included in each, refer to Appendix B in the brief.