

Youth younger than 18 prosecuted in criminal court: National estimate, 2019 cases

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

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

The first piece to the puzzle is the youth prosecuted as adults following waiver from juvenile court to criminal court. In 2019, an estimated 3,300 delinquency cases were handled in criminal court as a result of judicial waiver. It is unlikely that a single youth has more than one case waived to criminal court during the year, so this is essentially an estimate of youth transferred to criminal court by judicial waiver.

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

exclusion, prosecutor discretion/concurrent jurisdiction). However, few states publish counts of youth transferred by these mechanisms. Based on data reported by 11 states (Arizona, Florida, Illinois, Indiana, Iowa, Maryland, Michigan, New York, Pennsylvania, Oregon, and Washington), we know that 4,900 youth were prosecuted in these states in criminal court as a result of these transfer laws. We don't know how many transfers resulted in the 24 other states with one or more of these transfer provisions, so 4,900 is a minimum number.

We can, though, develop a very rough estimate of the number of cases involving juveniles filed directly in criminal court in these 24 states by calculating the rate of such cases in those 11 states listed above relative to their youth population ages 10 through the state upper age of jurisdiction and applying it to the youth population in the 24 states. This rough estimate works out to an additional 4,000 transfers

However, most criminal prosecutions involving youth younger than 18 occur in states that limit the delinquency jurisdiction of their juvenile courts to exclude all 17-year-olds—or all 16-year-olds—accused of crimes. "Raise the age" reforms in 10 states since 2010 have greatly reduced the volume of youth who enter the criminal justice system. By 2019, all but 3 states passed raise the age laws. Pending implementation of these changes, only Georgia, Texas and Wisconsin will prosecute law violations of a 17-year-old in criminal court, the same as an adult.

The third piece of the puzzle is to develop an estimate of the number of criminal court cases

involving 17-year-olds or 16- and 17-year-olds in those 8 states because states do not report statistics on such cases. How do we estimate the number of youth younger than 18 prosecuted in criminal court in these states? NCJJ uses delinquency petition rates—that is, the rates at which youth are formally processed in juvenile court. The resulting estimate is based on an assumption that criminal court decision-making/processing is similar to juvenile court decision-making/ processing.

Specifically, we develop national age/sex/race petition rates for delinquency cases based on estimates developed by the National Juvenile Court Data Archive. These rates are applied to corresponding age/sex/race population estimates for each of the 8 states that set the upper age of juvenile court jurisdiction at either 15 or 16 (at either the 16th or 17th birthday). The resulting counts for each state are summed to produce an estimate of the number of cases involving 16- and 17-year-olds subject to criminal court processing in these 8 states. Using population and delinquency case estimates, we estimate that 40,800 cases involving youth younger than 18 were subject to criminal court processing in 2019 in states with an upper age threshold younger than the 18th birthday.

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

When we consider how many youth are judicially waived to criminal court (3,300), along with the number of youth transferred to criminal court via other statutory provisions (4,900+4,000), and the estimated number of youth handled in criminal court based on lower juvenile jurisdiction age laws in 8 states (40,800), we estimate that 53,000 cases involving youth younger than age 18 were handled in criminal court in 2019.

Estimated number of cases involving youth	
<u>Type of transfer</u>	<u>Count</u>
Combined estimate	53,000
Estimated number of cases judicially waived to criminal court	3,300
Youth younger than age 18 prosecuted in criminal court in states with statutory exclusion or prosecutor discretion statutes	8,900
Reported data (11 states)	4,900
Estimate for 24 other states with statutory exclusion or prosecutor discretion statutes	4,000
Estimated number of cases involving 16- or 17-year olds handled in criminal court in states with upper age of 15 or 16	40,800