NO. 92605-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

ZYION HOUSTON-SCONIERS and TRESON LEE ROBERTS,
Petitioners

MEMORANDUM OF *AMICUS CURIAE* ON BEHALF OF THE WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

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INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys ("WAPA") represents the elected prosecuting attorneys of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes.

WAPA is interested in cases, such as this, that have wide-ranging impact on the criminal justice system. The automatic placement in adult court of juveniles who commit the most serious crimes where they can receive a sentence commensurate with their crimes is within the prerogative of the legislature and helps ensure the safety of the public.

ISSUE PRESENTED

Miller v. Alabama, expressly held that a life sentence could be imposed on a juvenile offender; it simply concluded, however, that judges must have the discretion to impose less than a life sentence. For decades, courts throughout the nation, including *In re Boot,* 130 Wn.2d 553, 925 P.2d 964 (1996), have consistently upheld as constitutionally permissible statutes that grant exclusive, original jurisdiction to adult courts over juveniles who commit the most serious crimes. Courts have held that such statutes neither impose "cruel and unusual punishment" nor violate the

procedural or substantive due process rights of juveniles. Should this Court reject the argument that these decisions were overruled *sub silentio* by *Miller*?

STATEMENT OF THE CASE

WAPA adopts the statement of the case provided by the State in its briefs.

ARGUMENT

This court upheld the constitutional validity of RCW 13.04.030 in *In re Boot,* 130 Wn.2d 553, 925 P.2d 964 (1996). In their efforts to cast doubt on the continuing viability of that case, petitioners and their amici have failed to address the doctrine of stare decisis. This court has always been and remains "mindful of stare decisis." *State v. Otton*, 185 Wn.2d 673, 678, 374 P.3d 1108 (2016). Adhering to precedent "promot[es] the evenhanded, predictable, and consistent development of legal principles, foster[es] reliance on judicial decisions, and contribut[es] to the actual and perceived integrity of the judicial process." *Id.* (internal quotation and citation omitted).

And while "[t]he doctrine of stare decisis should not keep this court from fully considering all United States Supreme Court guidance on

federal issues, even when the newer cases have not directly overruled or superseded prior cases" those occasions when a court should eschew precedent in deference to such intervening authority are "relatively rare." *W.G. Clark Const. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66, 322 P.3d 1207 (2014). If the precedent's legal underpinnings have "changed or disappeared altogether" then the intervening authority may require reexamination of the precedent. *Id.* Otherwise, the general rule of stare decisis applies—this court will not overturn prior precedent unless there has been "a clear showing that an established rule is incorrect and harmful." *Otton*, 185 Wn.2d at 678.

I. RCW 13.04.030, which provides exclusive, original jurisdiction to adult courts over juveniles who commit the most serious crimes, is not unconstitutional under the Eighth Amendment nor does it violate the due process rights of juveniles because jurisdiction in and of itself does not constitute punishment and juveniles do not have a constitutional or statutory right to a hearing before appearing in adult court when a statute provides for original jurisdiction in adult court.

The adult criminal court's exclusive, original jurisdiction over juveniles who commit certain felonies is in accordance with the State Constitution article IV, section 6. That section grants the superior courts original jurisdiction "in all criminal cases amounting to a felony" and "in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court. . ." *State v. Posey*, 174

Wn.2d 131, 135-36, 272 P.3d 840 (*Posey II*). As *Posey II* explains, the legislature's creation of the juvenile court was not the creation of a "separate court," but instead "a special session of the superior court" as the juvenile court is a separate division of the superior court. *Id.* at 136-37, 140-41; *Dillenburg v. Maxwell*, 70 Wn.2d 331, 352-53, 413 P.2d 940, 422 P.2d 783 (1966).

In relevant part, the challenged statute provides:

> (1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:
>
> . . .
>
> (e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:
>
> . . .
>
> (v) The juvenile is sixteen or seventeen years old on the date the alleged offense is committed and the alleged offense is:
>
> (A) A serious violent offense as defined in RCW 9.94A.030;
>
> (B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately;

> (C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;
>
> (D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or
>
> (E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.
>
> (I) In such a case *the adult criminal court shall have exclusive original jurisdiction*, except as provided in (e)(v)(E)(II) and (III) of this subsection.

RCW 13.04.030 (emphasis added). Pursuant to this statute, the adult criminal court has exclusive, original jurisdiction of juveniles of a certain age who have been alleged to have committed certain enumerated crimes. Thus, for example, when a juvenile is sixteen or seventeen years old and is alleged to have committed the crime of Robbery in the first degree, the adult criminal court has exclusive, original jurisdiction of that case—there is no hearing at which the juvenile division of the superior court declines its jurisdiction.

Our courts have recognized that this statute "furthers the legislative intent to punish with certainty and more severity those juvenile offenders who commit violent crimes rather than those youthful offenders who commit other crimes." *State v. Posey,* 161 Wn.2d 638, 644, 167 P.3d 560 (2007) (*Posey I*) (citing *State v. Mora*, 138 Wn.2d 43, 50, 977 P.2d 564

(1999)). Nonetheless, as is clear by its plain terms, RCW 13.04.030 is a jurisdictional statute and not a punitive one as it does not proscribe any punishment whatsoever. Instead, it declares what division of the superior court should have exclusive, original jurisdiction; the adult criminal court or the juvenile court.

Under this constitutional and statutory framework, this Court has had the occasion to reach two very important and clear conclusions regarding the rights of juveniles who are charged with crimes: 1) there is no constitutional right for a juvenile to be tried in juvenile court and 2) there is no statutory right to a decline hearing in all circumstances. Rather a juvenile can have a procedural due process right to a decline hearing *but only when* the statutes authorize the juvenile court to exercise discretion to determine juvenile or adult court jurisdiction. *State v. Maynard,* 183 Wn.3d 252, 259, 351 P.3d 159 (2015); *In re Pers. Restraint of Dalluge*, 152 Wn.2d 772, 784 FN 8, 100 P.3d 279 (2004); *State v. Salavea*, 151 Wn.2d 133, 140-41, 86 P.3d 125 (2004); *In re Boot,* 130 Wn.2d 553, 570-71, 925 P.2d 964 (1996); *State v. Dixon,* 114 Wn.2d 857, 860, 792 P.2d 137 (1990). More specifically, in *In Re Boot* this court rejected the same

Eighth Amendment and due process challenges to the statute[1] that are before it today. 130 Wn.2d at 568-72. *Boot* held that "adult court jurisdiction in and of itself" is not punishment, that the statute does not deprive juveniles "of any constitutionally protected right merely by conferring adult criminal court jurisdiction over them without a hearing," and that "trial in adult court d[id] not violate the substantive due process rights of the [juveniles]." 130 Wn.2d at 569-72.

These holdings were not undermined, let alone overruled, by *Miller v. Alabama*, --- U.S. ----, 132 S. Ct. 2455, 2469, 183 L. Ed. 2d 407 (2012), or its antecedents, *Graham v. Florida*, 560 U.S. 48, 67-75, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2011), and *Roper v. Simmons*, 543 U.S. 551, 568-575, 125 S. Ct. 1183, 161 L. Ed. 2d l (2005). *Miller* held that the "Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Graham* held that "the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender." *Roper* held that the Eighth Amendment forbids "the imposition of the death penalty on juvenile offenders under 18." All three cases applied the Eighth Amendment's ban on cruel and unusual punishment to juveniles sentenced

[1] The statute, like all others, is presumed constitutional, and the petitioners bear the heavy burden of proving its unconstitutionality beyond a reasonable doubt. *In the Matter of the Det. of M.W. & W.D.*, 185 Wn.2d 633, 647-48, 374 P.3d 1123 (2016); *State v. Coria*, 120 Wn.2d 156, 163, 839 P.2d 890(1992).

as adults to the most severe punishments. None of these cases assessed the constitutionality of the statutes by which the juveniles came to be sentenced as adults. Nor did they consider any due process arguments at all. In fact, while both *Miller* and *Graham* referenced the existence throughout the States of statutes providing for exclusive jurisdiction in adult courts over juveniles, neither suggested said statutes were constitutionally infirm. *Miller*, 132 S.Ct. at 2474-75 (noting that "many States use mandatory transfer systems: A juvenile of a certain age who has committed a specified offense will be tried in adult court, regardless of any individualized circumstances"); *Graham*, 560 U.S. at 66-67.

A. Due Process

To hold that *Miller* and its antecedents overruled *Boot* would transform those cases' holdings. Those cases mandate that age be considered at the time of sentencing. The petitioners would change this to a mandate that age be considered at the time of, or prior to, a jurisdictional decision. This transformation—or, likewise, the supposition that *Miller*'s Eighth Amendment jurisprudence prohibiting juveniles from being sentenced to mandatory life without the possibility of release has created procedural or substantive due process rights to decline hearings before an adult court could assume jurisdiction—is incorrect on its face. As the

Supreme Court of Illinois recently concluded when facing a similar challenge to its "automatic transfer statute":

> [D]efendant is attempting to support his due process argument by relying on the Supreme Court's eighth amendment analysis in *Roper*, *Graham*, and *Miller*. Defendant's constitutional argument is crafted from incongruous components. Although both the Supreme Court and defendant have emphasized the distinctive nature of juveniles, the applicable constitutional standards differ considerably between due process and eighth amendment analyses. A ruling on a specific flavor of constitutional claim may not justify a similar ruling brought pursuant to another constitutional provision. In other words, a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision.

People v. Patterson, 2014 IL 115102, 25 N.E.3d 526, 549 (2014) (citations omitted).

B. Eighth Amendment

Similarly, there is no support for a holding that *Miller* has changed the nature of the statute at issue from one providing for exclusive jurisdiction over a juvenile to one of punishment. Nothing in *Miller* suggests that a statute providing for exclusive, original jurisdiction in the adult courts is punishment in and of itself. As the Court of Appeals pointed out, "a successful Eighth Amendment challenge to the automatic decline statute still requires a defendant to show that this method of

asserting adult court jurisdiction, in and of itself, is punishment." *State v. Houston-Sconiers*, 191 Wn.App. 436, 443, 365 P.3d 177 (2015).

RCW 13.04.030, however, is jurisdictional and not punitive. It fixes no punishment. A juvenile who automatically ends up in adult court may actually face a *less punitive* sentence than one who remains under the jurisdiction of the juvenile court. This is possible in multiple ways as the Juvenile Justice Act allows for standard dispositions that can exceed the standard range sentence an adult would receive for the same offense, allows for departures from the standard disposition on grounds not available for adult offenders, and allows for community supervision, that is generally of longer duration and intensity then is imposed upon an adult who is convicted of the same offense. *See State v. Miller*, 54 Wn.App. 763, 776 P.2d 149 (1989); *State v. T.E.C.*, 122 Wn.App. 9, 92 P.3d 263, *review denied*, 152 Wn.2d 1012 (2004) (manifest injustice disposition justified by lack of parental control and need for treatment); *State v. S.S.*, 67 Wn.App. 800, 816-17, 840 P.2d 891 (1992) (manifest injustice sentence may be imposed due to the offender's high likelihood of reoffending); *Compare* RCW 13.40.020(4) and (19), *with* RCW 9.94A.030(1), RCW 9.94A.501 and RCW 9.94A.703. Furthermore, juveniles' prior misdemeanor and gross misdemeanor violations count as part of their offender score in the juvenile court, which can lead to larger

punishments than those imposed by the adult court. RCW 13.40.0357(1).[2] In fact, under RCW 13.40.110(1) a juvenile can request a transfer to the adult criminal court in order take advantage of its sentencing provisions or to avail himself or herself of a jury trial for which the juvenile court does not provide. As the Illinois Supreme Court stated:

> The mere possibility that a defendant may receive a potentially harsher sentence if he is convicted in [adult] criminal court logically cannot change the underlying nature of a statute delineating the legislature's determination that [adult] criminal court is the most appropriate trial setting in his case. We reject the connection between the transfer statute and the imposition of harsher punishment alleged by defendant as simply too attenuated to be persuasive. Therefore, in the absence of actual punishment imposed by the transfer statute, defendant's eighth amendment challenge cannot stand.

Patterson, 25 N.E.3d at 551. This Court should hold the same.

[2] For example, a juvenile convicted of an assault in the second degree whose criminal history consisted of one felony property crime and four misdemeanors would be facing a sentence of 52 – 65 weeks confinement in the juvenile court whereas if that juvenile was sentenced as an adult he or she would be facing a standard sentencing range of 3 – 9 months. RCW 9.94A.510; 9.94A.515; 9.94A.525.

II. The entirety of federal and state case law addressing jurisdictional statutes such as RCW 13.04.030, which provide exclusive, original jurisdiction to adult courts over juveniles who commit the most serious crimes, support the State's position that said statutes are not punishment and that juveniles have no constitutional or statutory right to a hearing before appearing in adult court in such situations.

Washington's statute that provides exclusive, original jurisdiction to adult courts over juveniles who commit the most serious crimes is not unique. At least 29 other states have statutes that grant exclusive, original jurisdiction to adult courts over juveniles without requiring a transfer or decline hearing.[3] *See* Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Statistical Briefing Book, online at http://www.ojjdp.gov/ojstatbb/structure_process/qa04112.asp?qaDate=2014 (as visited September 2, 2016 and attached as Appendix A). While similar in that respect the statutes vary considerably with respect to minimum age and offense criteria. *Id.* For example, in Washington the

[3] Ala.Code § 12–15–204(a); Ariz.Rev.Stat. Ann. §13–501(A); AS § 47.12.030(a); Cal. Welf. & Inst. Code § 602; Conn. Gen.Stat. § 46b–127 (2011); Del. Code Ann. tit. 10, § 1010(a)(1); I.C. § 16–1806A ; F.S.A. § 985.0301; Ga. Code Ann. § 15-11-560; Ill. Comp. Stat. ch. 705, §§ 405/5–130(1)(a); IC 31-30-1-4(a); La. Child. Code Ann., Art. 305(A), La.R.S. 13:1570 A(5); Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03; Mass. Gen. Laws, ch. 119, § 74; Mich. Comp. Laws Ann. § 712A.2(a); Minn.Stat. Ann. § 260B.0076(b) § 260B.101(2); Miss. Code Ann. § 43-21-151; Mo.Rev.Stat. §§ 211.021(1), (2) (2011); MCA 41-5-206; N.C. Gen.Stat. Ann. §§ 7B–1501(7), 7B–1601(a), 7B–2200; Nev. Rev. Stat. Ann. § 62B.390; N.M. Stat. Ann. § 32A-2-20; N.Y.C.P.L.R § 1.20; Ohio Rev.Code Ann. § 2152.12(A)(1)(a); Okla. Stat. Ann. tit. 10A, § 2-5-101; O.R.S. § 137.707; 42 Pa. Stat. and Cons. Stat. Ann. § 6322; S.C. Code Ann. § 63-19-1210; S.D. Codified Laws § 26-11-4; Utah Code Ann. § 78A-7-106; Vt. Stat. Ann. tit. 33, § 5204; Wis. Stat. Ann. § 938.183.

adult court criminal court can have exclusive, original jurisdiction over only 16 and 17 year old juveniles who commit certain person or property offenses. In contrast, New York's statutory analog allows for adult criminal courts to have original jurisdiction over 13 and 14 year old juveniles who commit certain person, property, or weapon offenses, and Alabama's allows for adult criminal courts to have original jurisdiction over 16 year old juveniles who commit certain drug offenses. *Id.*; RCW 13.04.030; N.Y.C.P.L.R § 1.20; Ala.Code § 12–15–204(a)(6). Furthermore, some states do not even provide for original jurisdiction in the juvenile courts in any instance for 16 or 17 year olds since 16 or 17 year olds are not considered "juveniles" in those states for the purposes of determining the proper jurisdiction. *See* Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Statistical Briefing Book, online at: http://www.ojjdp.gov/ojstatbb/structure_process/qa04101.asp?qaDate=2015 (as visited September 2, 2016 and attached as Appendix B).

Nonetheless, there does not appear to be even a single case that invalidated a statute providing for exclusive, original jurisdiction in an adult criminal court on Eighth Amendment or due process grounds since *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966) (holding that if a statute vests a juvenile with the right to juvenile status,

the juvenile is entitled to notice and a hearing before being deprived of that right). Instead, both state and federal courts have consistently rejected such challenges. *Manduley v. Superior Court*, 27 Cal.4th 537, 562-67, 41 P.3d 3 (2002) (rejecting due process challenge and claim a juvenile is entitled to a hearing prior to adult criminal court jurisdiction); *Pascarella v. State*, 294 Ga.App. 414, 416-17, 669 S.E.2d 216 (2008) (rejecting due process and cruel and unusual punishment challenges); *State v. Anderson*, 108 Idaho 454, 457-5, 700 P.2d 76 (1985); *State v. Pilcher*, 655 So.2d 636 (La.1995) (rejecting challenge on due process and cruel and unusual punishment grounds); *State v. Foley*, 456 So.2d 979 (La.1984) (holding that no hearing is required prior to juvenile appearing in adult court because the relevant statute automatically divested the jurisdiction of the juvenile court); *State v. Behl*, 564 N.W.2d 560, 566-57 (Minn. 1997) (holding that juvenile had no procedural due process right to a hearing or a substantive due process right to juvenile jurisdiction); *Foster v. State*, 639 So.2d 1263, 1295–96 (Miss. 1994) (noting that which "court has jurisdiction over a capital death case dealing with a seventeen year old cannot constitute cruel and inhuman punishment as the issue of which court has jurisdiction fails to constitute any punishment whatsoever"); *State v. Berard*, 121 R.I. 551, 401 A.2d 448 (1979) (rejecting notion that the "special treatment of juveniles . . . has ripened into a constitutional

right which the Legislature may no longer deny . . . without a due process hearing"); *United States v. Bland*, 153 U.S.App.D.C. 254, 472 F.2d 1329 (1972) (upholding the constitutionality of the provision in the District of Columbia Code which excluded from the jurisdiction of the juvenile court persons over 16 years of age who were charged with certain enumerated offenses, without the need for a waiver hearing); *Cox v. United States*, 473 F.2d 334 (4th Cir. 1973) (upholding federal statute allowing the charging of a 17 juvenile in adult court without a hearing); *Russell v. Parratt*, 543 F.2d 1214 (8th Cir. 1976); *United States v. Quinones*, 516 F.2d 1309 (1st Cir. 1975); *Woodard v. Wainwright*, 556 F.2d 781 (5th Cir. 1977); *Vega v. Bell*, 47 N.Y.2d 543, 550-51, 393 N.E.2d 450 (1979); *Andrews v. Willrich*, 200 Ariz. 533, 538-39, 29 P.3d 880 (2001).

The cases decided post *Miller*, *Graham*, or *Roper*, though admittedly few, have not resulted in different conclusions. As noted above, Illinois has rejected the arguments that *Miller*, *Graham*, and *Roper* have changed the constitutional analysis underlying these statutes. *Patterson*, 25 N.E.3d at 548-553; *People v. Harmon*, 26 N.E.3d 344, 356-61, 389 Ill.Dec. 254 (2013) (rejecting argument that *Miller*, *Graham*, or *Roper* invalidated exclusive-jurisdiction statute). Similarly, in *Gray v. State* the Alaska Court of Appeals rejected the defendant's argument that Alaska's "automatic waiver statute," by itself or in combination with adult

sentencing statutes, constituted cruel and unusual punishment under *Roper* and *Graham*. 267 P.3d 667, 670-72 (Alaska App. 2011).

Ultimately, this Court in *Boot et al*, the Federal Circuit Courts of Appeal, and other states have consistently and correctly come to the conclusion that jurisdictional statutes such as RCW 13.04.030, which provide exclusive, original jurisdiction to adult courts over juveniles who commit the most serious crimes, do not violate the Eighth Amendment. These statutes are not punishment. Juveniles have no constitutional or statutory right to a hearing before appearing in adult court in such situations.

CONCLUSION

For the reasons argued above, RCW 13.04.030, which grants exclusive, original jurisdiction to adult courts over juveniles who commit the most serious crimes, is constitutional.

DATED this 12th day of September 2016.

Respectfully submitted:

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APPENDIX A

Juveniles Tried as Adults

Q: How do statutory exclusion provisions vary by state?

A: Statutory exclusion provisions vary considerably with respect to minimum age and offense criteria.

Statutory exclusion offense and minimum age criteria, 2014

		Statutory exclusion offense and minimum age criteria							
State	Minimum age for statutory exclusion	Any criminal offense	Certain felonies	Capital crimes	Murder	Certain person offenses	Certain property offenses	Certain drug offenses	Certain weapon offenses
Alabama	16		16	16				16	
Alaska	16					16	16		
Arizona	15		15		15	15			
California	14				14	14			
Delaware	15		15						
Florida	NS				16	NS	16	16	
Georgia	13				13	13			
Idaho	14				14	14	14	14	
Illinois	13		15		13	15			15
Indiana	16				16	16			16
Iowa	16		16					16	16
Louisiana	15				15	15			
Maryland	14			14	16	16			16
Massachusetts	14				14				
Minnesota	16				16				
Mississippi	13		13	13					
Montana	17				17	17	17	17	17
Nevada	NS	NS	NS		16	16			
New Mexico	15				15				
New York	13				13	13	14		14
Oklahoma	13				13				
Oregon	15				15	15			
Pennsylvania	NS				NS	15			
South Carolina	16		16						
South Dakota	16		16						
Utah	16		16		16				
Vermont	14				14	14	14		
Washington	16				16	16	16		
Wisconsin	10				10	10			

Note: Ages in the minimum age column may not apply to all offense restrictions, but represent the youngest possible age at which a juvenile may be judicially waived to criminal court. "NS" indicates that no minimum age is specified.

* In Nevada, the exclusion applies to any juvenile with a previous felony adjudication, regardless of the current offense charged, if the current offense involves the use or threatened use of a firearm.

- All States have provisions for trying certain juveniles as adults in criminal court. This is known as *transfer to criminal court*. There are three basic transfer mechanisms: *judicial waiver*, *statutory exclusion*, and *concurrent jurisdiction*.
- Legislatures "transfer" large numbers of young offenders to criminal court by enacting statutes that exclude certain cases from juvenile court jurisdiction. As of the end of the 2014 legislative session, 29 states had statutory exclusion provisions.
- Under statutory (or legislative) exclusion provisions, State statutes exclude certain serious, violent, or repeat juvenile offenders from juvenile court jurisdiction. In most States, statutory exclusion provisions are limited by age, offense, and/or prior court history criteria.
- The offenses most often excluded are murder, capital crimes in general (offenses punishable by death or life imprisonment), and other serious offenses against persons.
- Some States (14) hold a hearing in juvenile court to determine if there is probable cause to believe the juvenile is of the required age and committed an offense targeted by the provision. Such provisions are referred to as *mandatory waiver* and were previously considered statutory exclusion.
- Minor offenses, such as traffic, watercraft, fish or game, and local ordinance violations, are also often excluded from juvenile court jurisdiction in States where they are not covered by concurrent jurisdiction provisions.
- Although not typically thought of as transfers, large numbers of youth younger than 18 are tried in criminal court in the 10 states where the upper age of juvenile court jurisdiction is set at 15 or 16. More than 2.5 million 16- and 17- year olds live in these 10 states. If these youth are referred to criminal court at the same rate that 16- and 17-year-olds elsewhere are referred to juvenile court, then a large number of youth younger than 18 face trial in criminal court because they are defined as adults under state laws.

Internet citation: *OJJDP Statistical Briefing Book*. Online. Available: http://www.ojjdp.gov/ojstatbb/structure_process/qa04112.asp?qaDate=2014. Released on October 01, 2015.

APPENDIX B

Jurisdictional Boundaries

Q: What is a

A: A juvenile is a youth at or below the upper age of original jurisdiction in a State.

Upper age of original juvenile court jurisdiction, 2015

State	Age 15	Age 16	Age 17
Number of states	2	7	42
Alabama			X
Alaska			X
Arizona			X
Arkansas			X
California			X
Colorado			X
Connecticut			X
Delaware			X
District of Columbia			X
Florida			X
Georgia		X	
Hawaii			X
Idaho			X
Illinois			X
Indiana			X
Iowa			X
Kansas			X
Kentucky			X
Louisiana		X	
Maine			X
Maryland			X
Massachusetts			X
Michigan		X	
Minnesota			X
Mississippi			X
Missouri		X	
Montana			X
Nebraska			X
Nevada			X
New Hampshire			X
New Jersey			X
New Mexico			X
New York	X		

North Carolina	X		
North Dakota			X
Ohio			X
Oklahoma			X
Oregon			X
Pennsylvania			X
Rhode Island			X
South Carolina		X	
South Dakota			X
Tennessee			X
Texas		X	
Utah			X
Vermont			X
Virginia			X
Washington			X
West Virginia			X
Wisconsin		X	
Wyoming			X

Note: Table information is as of the end of the 2015 legislative session.

- The upper age of jurisdiction is the oldest age at which a juvenile court has original jurisdiction over an individual for law violating behavior.
- State statutes define which youth are under the original jurisdiction of the juvenile court. These definitions are based primarily on age criteria. In most States, the juvenile court has original jurisdiction over all youth charged with a criminal law violation who were below the age of 18 at the time of the offense, arrest, or referral to court. Many States have higher upper ages of juvenile court jurisdiction in status offense, abuse, neglect, or dependency matters - often through age 20.
- Many States have statutory exceptions to basic age criteria. The exceptions, related to the youth's age, alleged offense, and/or prior court history, place certain youth under the original jurisdiction of the criminal court. This is known as *statutory exclusion*.
- In some States, a combination of the youth's age, offense, and prior record places the youth under the original jurisdiction of both the juvenile and criminal courts. In these situations where the courts have concurrent jurisdiction, the prosecutor is given the authority to decide which court will initially handle the case. This is known as *concurrent jurisdiction, prosecutor discretion*, or *direct filing*.
- Since 1975 eight states have changed their age criteria. Alabama raised its upper age from 15 to 16 in 1976 and from 16 to 17 in 1977; Wyoming lowered its upper age from 18 to 17 in 1993; New Hampshire and Wisconsin lowered their upper age from 17 to 16 in 1996; Rhode Island lowered its upper age from 17 to 16 and then raised it back to 17 again 4 months later in 2007; Connecticut passed a law in 2007 to raise its upper age from 15 to 17 gradually from 2010 to 2012; Illinois raised its upper age for misdemeanors from 16 to 17 in 2010; Massachusetts raised its upper age from 16 to 17 in 2013; Illinois raised its upper age for most felonies from 16 to 17 in 2014; and New Hampshire raised its upper age from 16 back to 17 in 2015.

Internet citation: *OJJDP Statistical Briefing Book*. Online. Available: http://www.ojjdp.gov/ojstatbb/structure_process/qa04101.asp?qaDate=2015. Released on April 29, 2016.