

EXPLAINER

When Do Kids Get Tried as Adults?

How to pull a child out of the juvenile justice system.

By Harlan J. Protass

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Last week, two 15-year-olds were arrested in connection with the [execution-style murders](#) of three college students in a Newark, N.J., schoolyard. Local authorities want to prosecute them as adults. Who decides which minors will be tried as adults?

Usually, a juvenile court judge does. "Judicial waiver" is the most widely used means for transferring a minor into the adult criminal justice system. Prosecutors frequently ask juvenile court judges to hold hearings about whether their exclusive jurisdiction may be waived so that minors may be tried as adults. Some states leave the decision entirely up to the judge, others impose a presumption in favor of waiver, and still others make judicial waiver mandatory for very serious crimes. The factors judges consider also vary by state, but based on the Supreme Court's direction in [Kent v. United States](#), they generally include the following: the nature and circumstances of the crime; whether the offense was committed in an aggressive, violent, or premeditated manner; the merit of the charges; the sophistication, maturity, and prior history of the minor; the need to protect the public; and the likelihood that the child can be treated and rehabilitated. Like all judicial findings, these decisions are subject to appeal.

Prosecutors can also be authorized to make the decision themselves. In some states, lawmakers give juvenile and adult criminal courts concurrent authority to hear cases involving certain crimes. Prosecutors can then unilaterally decide where to file charges against a minor. This decision is not subject to any review, as it falls within prosecutors' traditional discretionary powers.

Sometimes state legislatures decide the outcome. With a "statutory exclusion," lawmakers grant criminal (not juvenile) courts jurisdiction over whole classes of cases, such as those involving serious violent crimes or crimes committed by minors with a prior record. With statutory exclusion, lawmakers essentially predetermine that a minor will be treated as an adult and take the decision out of the hands of both the courts and the prosecutor.

In Newark, where the two 15-year-olds will be fighting for their freedom, juvenile courts have exclusive authority over all criminal cases involving individuals under the age of 18. But the judge may not have much of a choice in this case. New Jersey law requires juvenile court judges, if requested, to transfer the cases of minors over the age of 14 who are accused of, among other things, criminal homicide or possession of a firearm with intent to use it against another person—unless the minor shows promise of rehabilitation before the age of 19.

Got a question about today's news? [Ask the Explainer](#).

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