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“Kids You Throw Away”

New Jersey’s Indiscriminate Prosecution
of Children as Adults



“Kids You Throw Away”

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- Summary.....1**
- Recommendations 4**
 - To New Jersey Legislators4
 - To the New Jersey Governor4
 - To the New Jersey Attorney General.....5
 - To New Jersey Prosecutors.....5
 - To New Jersey Juvenile Court Judges.....5
 - To New Jersey Public Defenders5
 - To the Department of Corrections.....6
 - To the Juvenile Justice Commission.....6
- Methodology.....7**
- Background.....10**
 - What is Waiver? 10
 - New Jersey’s Waiver Statute 13
- How New Jersey’s Waiver Law Fails Its Children16**
 - The Problem with Prosecutorial Discretion 17
 - New Jersey’s Illusion of Judicial Oversight 17
 - Voluntary Waiver 21
 - Geographic Disparities in Waiver Decisions 22
 - Racial Disparities in Waiver Outcomes26
 - Systemic Failures in Protecting Youth.....29
 - Failure to Account for Developmental Differences and Trauma29
 - Missed Opportunities for Treatment, Education, and Rehabilitation 32
 - Youth’s Limited Comprehension of Legal Proceedings42
 - Youth with Disabilities44
- Why New Jersey Must Reform Its Approach to Waiver 46**
 - The High Stakes: Juvenile vs. Adult Court46

| | |
|--|-----------|
| Accountability Without Waiver: The Strengths of New Jersey’s Juvenile System | 48 |
| Lessons from the Past: The Racial Legacy of New Jersey’s Waiver Law..... | 50 |
| What Science Tells Us: The Unique Needs of Youth and Aging Out of Crime..... | 51 |
| The Human Cost of Prosecuting Youth as Adults | 52 |
| International Law | 54 |
| Essential Safeguards for Children in New Jersey | 57 |
| Judicial Decision-Making: Why Judicial Oversight is Essential..... | 57 |
| Key Safeguards for Protecting Youth | 57 |
| Amenability Hearings That Allow for Individualized Decisions..... | 57 |
| Evidence-Based Assessments and Expert Input..... | 58 |
| Conclusion | 59 |
| Acknowledgments..... | 60 |
| Appendix A: Kent Factors | 62 |
| Appendix B: Human Rights Watch Survey | 63 |

Summary



“You have to be careful on this idea that there exist kids you throw away. There's this idea that there are some kids that are worthy of throwing away that they have this irredeemable quality about themselves, ascribed to them by some person, some institution, some powerful prosecutor, or whatever the case may be. And when you look at some of our stories, what you'll find is they were wrong.”

Sammy Quiles

Waived to the adult system for a crime committed when he was 16, was released after spending 30 years in prison.

At first glance, Mikey and Jamie appear to be quite similar. They are just a year and a month apart in age. They share similar statures—about 6 feet tall each with strong but lean frames—and gentle demeanors. They’ve lived side by side in the same place for the past three years—laughing with the same people, eating the same food, going to the same school. They have even taken an entrepreneurship class together.

They also have something else in common. When they were 17 years old, both were arrested and charged with murder. And since their sentencing, both have been locked up in New Jersey’s juvenile prison system, the Juvenile Justice Commission (JJC).¹

But for all of their similarities, there is a world’s difference between the two.

In a few months, Mikey will be strip-searched, handcuffed, put into the back of a van, and transported to one of New Jersey’s adult maximum security prisons to spend the next 20 years of his life behind bars. Jamie, in contrast, will transition at some point to a living facility in the community where he will receive job support, counseling, and mentorship as he pursues his dream of becoming a blacksmith.

¹ The New Jersey Juvenile Justice Commission (JJC) is the state agency responsible for planning, policy development, and provision of services in the juvenile justice system. In addition to operating New Jersey’s youth prisons, it provides residential homes in the community, parole and transitional services, and other community-based programs and support.

The difference between Mikey and Jamie’s futures is not defined by their pasts or their potential but by a single decision: whether the state chose to remove them from juvenile court and prosecute them as adults in the criminal system, a decision referred to as “waiver.”

This decision is one of the most consequential choices made by the state about a young person’s life, determining not only how they are tried but also where they are incarcerated, the opportunities they will have for rehabilitation, and the path their lives will take after incarceration. In New Jersey, this important decision is made by prosecutors alone, with judges only empowered to intervene in cases where they find an abuse of that discretion. Because prosecutors vary by county and operate relatively autonomously, it also subjects youth to vastly different outcomes depending on the county where their case is heard.

This report examines the devastating impact of New Jersey’s waiver practices, a system that disproportionately harms youth of color, sidelines judicial oversight, and prioritizes punishment over rehabilitation. It explores the systemic failures that lead to the prosecution of children as adults, the profound human costs for the youth and their families, and the broader consequences for communities and public safety.²



The report also highlights opportunities for reform, offering a roadmap for creating a waiver process that aligns with developmental science, international human rights standards, and principles of fairness and equity. While New Jersey’s ultimate goal should be to eliminate the use of waiver entirely, any interim use must minimize harm to the rights and potential of children and maximize their protection.

Jamie’s story shows what is possible when the justice system invests in rehabilitation, while Mikey’s serves as a reminder of the irreparable harm caused when it does not. New Jersey is obliged to ensure that no child is subjected to the trauma and wasted potential that comes from being funneled into an adult system that was never designed for youth. This report calls for action to move toward a justice system that values fairness, rehabilitation, and the best interests of its children. One in which no child is thrown away.

² In this report, in line with international law, the terms “child” and “children” refer to a person or persons below the age of 18. We use the term “young person” to refer to those who were older than 18 but younger than 26 at the time of their interviews or correspondence with Human Rights Watch who had been prosecuted in adult criminal courts for crimes they committed as children.

Same Offense, Different Futures

Cases where one child was waived into the adult system and the other remained in the juvenile system

| | |
|--|--|
|  |  |
| Mikey | Jamie |
| Junior in high school when waived to adult system | In and out of 10 foster homes and remained in the juvenile system |
| County of New Jersey | |
| Atlantic | Hudson |
| Age at time of offense | |
| 17 years old | 17 years old |
| Offense | |
| Murder | Murder |
| Time in pre-trial detention | |
| 4 years | 1 year |
| Waived to Adult System? | |
| Yes | No |
| Term Length of Incarceration | |
| 30 years | 20 years |
| Will be transferred to adult prison? | |
| Yes | Maybe Under JJC regulations, some youth may qualify for early release, including transfer to a residential community program followed by parole, based on their progress in the JJC. |
| Adult Felony Record | |
| Yes | No |
| Post-Incarceration Support in the Community | |
| Parole overseen by Department of Corrections' State Parole Board with no services tailored to support people who were incarcerated as children. | Parole overseen by JJC with services such as case management, transitional programs, and access to independent living facilities if needed. |
| Dream | |
| To start a non-profit to support at-risk youth | To become a blacksmith |

Recommendations

To New Jersey Legislators

- Pass legislation that reduces and ultimately ends the prosecution of children in adult court.
- Ensure that viable alternatives to adult prosecution and incarceration continue to exist in the juvenile system.
- Until waiver is eliminated, pass legislation to restore judicial decision-making regarding waiver motions.
- Enact legislation requiring a hearing in which judges evaluate a youth's potential for rehabilitation within the juvenile system and requires prosecutors to present evidence showing that a child is not amenable to the rehabilitation offered in the juvenile system. This process should include input from all parties and a thorough consideration of evidence, including:
 - Adolescent brain development and the capacity for change;
 - Trauma history and other mitigating circumstances;
 - Existing educational and developmental records, such as individualized education programs (IEPs), 504 plans, and other relevant documentation;
 - Expert evaluations from mental health practitioners, educators, and social workers.
- Until waiver is eliminated, establish clear, evidence-based criteria for waiver eligibility that is consistent with developmental science and prioritizes rehabilitation over offense severity.

To the New Jersey Governor

- Call for, and when passed, sign legislation that reduces and ultimately eliminates the practice of waiving youth to the adult system.
- Until waiver is eliminated, call for and sign legislation that restores judicial decision-making regarding waiver motions, including requiring amenability hearings to assess the ability of youth to be rehabilitated in the juvenile system.

To the New Jersey Attorney General

- Develop and issue updated statewide guidelines to ensure the uniform application of waiver decisions across counties, emphasizing that retaining youth in the juvenile justice system should be the default approach.
- Develop and issue statewide guidelines for data collection on waiver decisions, including demographic information, charges, case outcomes, and whether waiver was ultimately pursued or resolved through plea agreements.
- Review and assume decision-making authority over waiver requests in counties that waive youth into the adult system at rates significantly higher than statewide norms.
- In consultation with the Juvenile Justice Commission, ensure timely publication of biennial reports on juvenile waiver practices, as mandated by law.

To New Jersey Prosecutors

- Commit to seeking waiver only as a last resort, prioritizing rehabilitation within the juvenile system.
- Ensure that waiver decisions are guided by clear, transparent criteria and that they consider a youth's developmental capacity, trauma history, disability status, and potential for rehabilitation.
- Undergo regular training on adolescent brain development and the effects of trauma on youth.

To New Jersey Juvenile Court Judges

- Require comprehensive, evidence-based assessments from experts when considering waiver cases.
- Undergo regular training on adolescent brain development and the effects of trauma on youth.

To New Jersey Public Defenders

- Continue undergoing regular training on adolescent brain development and the effects of trauma on youth.

- Enhance specialized training for defenders representing child clients, focusing on effective communication strategies to explain complex legal concepts in a child-friendly manner that also considers different education levels, backgrounds, and disability status. This training should aim to enhance understanding and promote informed decision-making by young clients.
- Continue engaging experts in adolescent brain development, mental health, and trauma to present individualized evidence during waiver proceedings.

To the Department of Corrections

- Delegate authority to the Juvenile Justice Commission (JJC) to oversee the parole of waived youth who are released from JJC facilities.

To the Juvenile Justice Commission

- In consultation with the Attorney General’s Office, ensure timely publication of biennial reports on juvenile waiver practices, as mandated by law.

Methodology

This report is based on research conducted from May 2024 to December 2024. Findings are based on over 80 interviews, 43 written correspondences, analysis of data from the Juvenile Justice Commission (JJC) and New Jersey Department of Corrections (DOC), examination of court records and case outcomes, and review of relevant laws, policies, and international standards.

Forty-seven interviews were conducted with criminal legal professionals, including judges, prosecutors, public defenders, private attorneys, academic experts, court administrators, policy analysts, youth intervention specialists, juvenile justice practitioners, and youth advocates.

Thirty-five interviews were conducted with individuals who had direct personal experience with waiver, including waived youth currently incarcerated in the JJC, committed youth in the JJC who had been threatened with waiver, people whose cases were waived and are currently or were formerly incarcerated in the DOC, and immediate family members of waived youth.

Human Rights Watch identified individuals waived to the adult system by submitting an Open Public Records Act (OPRA) request to the DOC for records of individuals currently in custody who were under the age of 18 at the time of their alleged offense. Individual names and contact information were obtained by cross-referencing admissions dates, facility locations, counties, and offenses listed in the New Jersey DOC's "Offender Search Web Page" database.³

We then sent a letter and questions, the templates of which are included in Appendix B of this report, to 149 incarcerated individuals believed to have been sentenced for crimes

³ State of New Jersey, Department of Corrections (DOC), "Offender Search Web Page," undated, https://www-doc.state.nj.us/DOC_Inmate/inmatefinder?i=I (accessed January 23, 2025).

committed prior to age 18. We received responses from 43 individuals. In total, the interviews and surveys cover experiences in 17 of New Jersey’s 21 counties.⁴

Due to the significant stigma associated with involvement in the criminal legal system, and the potential for some individuals to be involved in ongoing litigation about their case, we have chosen to use pseudonyms for all the children and young people interviewed for this report. We have also withheld the names of some lawyers who spoke about their clients to keep their clients’ identities hidden, and of criminal system professionals requesting anonymity allowing them to speak more candidly about the system and the actions or perspectives of their colleagues and superiors.

Human Rights Watch informed all interviewees of the nature and purpose of our research, and our intentions to publish a report with the information gathered. We informed each potential interviewee that they were under no obligation to speak with us, that Human Rights Watch does not provide humanitarian or legal services, and that they could stop speaking with us or decline to answer any question with no adverse consequences. We obtained oral consent for each interview, and interviewees did not receive any compensation for speaking with Human Rights Watch.

The statistics in this report are based on data from the JJC. Human Rights Watch submitted an Open Public Records Act (OPRA) request for average length of stay data in each of New Jersey’s youth detention centers and analyzed the JJC’s publicly available Juvenile Demographics and Statistics reports from 2011 to 2024.⁵ However, the JJC declined to provide certain key data points in response to one of these requests.⁶

Human Rights Watch filed OPRA requests for individual waiver briefs to prosecutors’ offices in various counties. Prosecutors’ offices declined to provide Human Rights Watch

⁴ These counties include Atlantic, Bergen, Burlington, Camden, Cumberland, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, and Union.

⁵ State of New Jersey, Juvenile Justice Commission, “Juvenile Demographics and Statistics,” <https://www.njoag.gov/about/divisions-and-offices/juvenile-justice-commission-home/juvenile-demographics-and-statistics/> (accessed January 23, 2025).

⁶ Under N.J.S.A. 2A:4A-26.1, the JJC is required to publish biennial reports summarizing data on juvenile waiver practices. The most recent report was published in July 2022, making the next report due by July 2024. However, as of February 2025, the report had not been made publicly available. Human Rights Watch filed an OPRA request seeking access to data from the report, but the JJC denied the request. The failure to publish these reports on time hinders meaningful oversight of waiver practices and raises concerns about compliance with statutory obligations.

access even to redacted briefs, asserting confidentiality protections under N.J.S.A. 2A:4A-60(a). This restricted our ability to analyze the rationale and patterns in specific prosecutorial decisions. We also attempted to speak with numerous juvenile unit prosecutors, repeatedly requesting interviews via email and phone but were either denied or received no response. Additionally, there is no consistent or standardized method for tracking how often the threat of waiver is employed in cases involving youth, making it challenging to comprehensively assess its true prevalence and impact. These gaps underscore the need for greater transparency and data collection within New Jersey's youth justice system to inform research and policy reform.

Background

What is Waiver?

“Waiver” refers to the legal process of removing a child from juvenile court jurisdiction (“waiving jurisdiction”) and prosecuting them as if they were an adult in criminal court. It is among the most extreme and severe decisions that a state can impose on a child, as it removes them from the protections and rehabilitative focus of the juvenile justice system and subjects them to the punitive measures, harsher sentencing, and potential lifelong consequences of being prosecuted in adult criminal courts. In many cases, its impact can be likened to throwing away the life of a child.

Nationally, children may be prosecuted as adults—or “waived” to the adult system—through four primary mechanisms, which vary by state and jurisdiction.⁷ These mechanisms include:⁸

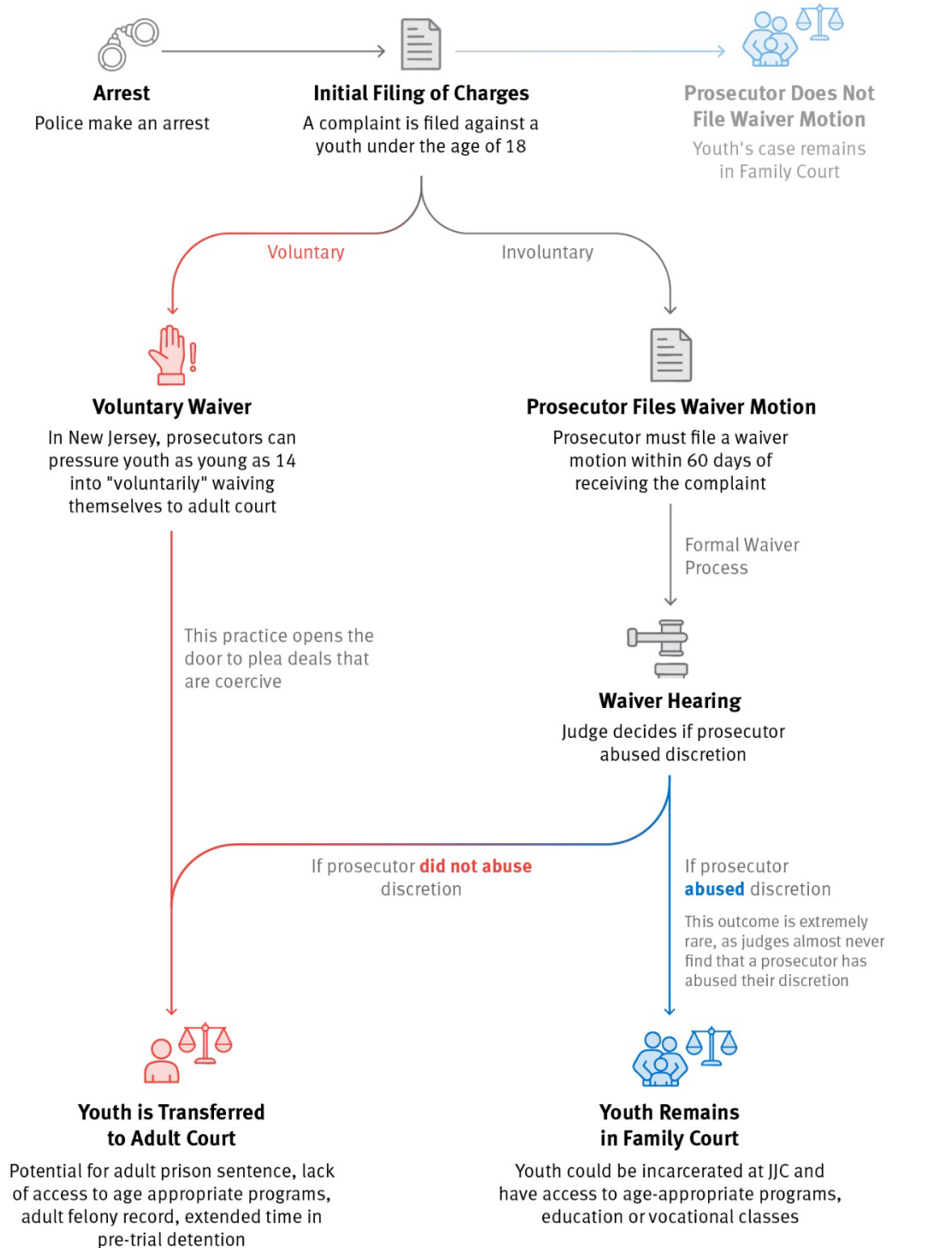
1. **Judicial Waiver:** In this process, a case originates in juvenile court, and the juvenile court judge has the authority to transfer the case to adult criminal court by “waiving” juvenile court jurisdiction. Typically, it is the prosecutor who makes a motion for the court to consider waiver.
2. **Prosecutorial Waiver:** This grants prosecutors the discretion to file charges against children directly in either juvenile or adult court, without judicial review or approval.
3. **Automatic or Statutory Exclusions:** These legislative provisions exclude certain children from juvenile jurisdiction entirely, requiring specific types of cases—typically depending on crime and age—to originate in adult criminal court.
4. **Age of Jurisdiction:** These laws define the age of adulthood for criminal responsibility, automatically excluding individuals above a certain age from juvenile court, regardless of their circumstances or the nature of the offense.

⁷ Patrick Griffin, Patricia Torbet, and Linda Szymanski, *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*, Office of Juvenile Justice and Delinquency Prevention, December 1998, <https://ojjdp.ojp.gov/library/publications/trying-juveniles-adults-criminal-court-analysis-state-transfer-provisions> (accessed December 8, 2025).

⁸ Other terms for waiver include “transfer,” “certification,” “direct file,” and “remand.”

The Waiver Process in New Jersey

During this process, youth are held in pre-trial detention



The mechanisms arose and expanded at varying rates following the establishment of juvenile courts. Juvenile courts in the United States originally emerged at the end of the 19th century with the creation of the first juvenile court in Cook County, Illinois.⁹ This marked the beginning of a separate justice system for youth, grounded in the notion that children are fundamentally different from adults, and that the state’s role should be to rehabilitate and care for them rather than simply punish them for illegal acts.¹⁰ At their inception over a hundred years ago, juvenile courts recognized the heightened ability of young people to grow, mature, and change their lives, and that the commission of a crime, even a serious one, was not determinative of their lives.¹¹

This model quickly gained traction, and by the mid-1920s, nearly every state had established a juvenile court system.¹² While these early courts always included mechanisms to transfer youth to adult court, such transfers were rare, as the courts heavily emphasized rehabilitation over punishment.¹³ Over time, the courts became more formalized in order to afford youth constitutional safeguards such as the right to counsel and the right against self-incrimination.¹⁴ These reforms led to important due process protections, and they also fundamentally altered the nature of juvenile courts.

The landmark Supreme Court case *Kent v. United States (1966)* marked a pivotal moment in this evolution. The Court held that youth are entitled to certain procedural protections when being considered for transfer to adult court, including a hearing, access to records, and a written statement of reasons for the transfer decision.¹⁵ The decision established the “Kent factors,” which provided criteria for judges to determine whether a transfer was

⁹ Jeffrey Fagan and Franklin E. Zimring, eds., *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court*, The John D. and Catherine T. MacArthur Foundation Series on Mental Health and Development, Research Network on Adolescent Development and Juvenile Justice (Chicago: University of Chicago Press, 2000).

¹⁰ Megan C. Kurlychek and Brian D. Johnson, “The Juvenile Penalty: A Comparison of Juvenile and Young Adult Sentencing Outcomes in Criminal Court,” *Criminology*, vol. 42, no. 2 (2004): 488, accessed December 10, 2025, <https://doi.org/10.1111/j.1745-9125.2004.tb00527.x>.

¹¹ Adrienne Volenik, “Right to Treatment: Case Developments in Juvenile Law,” *The Justice System Journal*, vol. 3, no. 3 (1978): 292–307, accessed December 10, 2025, <https://www.jstor.org/stable/23209472>.

¹² Juvenile Law Center, “Youth in the Justice System: An Overview,” undated, <https://jlc.org/youth-justice-system-overview> (accessed December 2, 2024).

¹³ Human Rights Watch, *Branded for Life: Florida’s Prosecution of Children as Adults under Its “Direct File” Statute* (New York: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/04/10/branded-life/floridas-prosecution-children-adults-under-its-direct-file-statute>.

¹⁴ *In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970).

¹⁵ *Kent v. United States*, 383 U.S. 541 (1966).

appropriate, such as the seriousness of the offense, the youth’s maturity, and their amenability to rehabilitation (See Appendix A).

Then, in the late 1980s and early 1990s, state legislators increasingly prioritized punishment in response to exaggerated fears of rising youth crime and moral panic largely resulting from the widely spread “superpredator” myth, which was amplified by elected officials from both parties and the media. This myth, which has since been thoroughly debunked,¹⁶ falsely suggested that a new generation of remorseless, violent youth posed an unprecedented threat to public safety.¹⁷ During this period, nearly every state, including New Jersey, enacted new waiver statutes making it easier to transfer children to the adult system.¹⁸

New Jersey’s Waiver Statute

Although New Jersey’s waiver statute nominally establishes a judicial waiver system, its structure and practical application grant so much discretion and power to prosecutors that it effectively functions as a prosecutorial waiver system. In other words, rather than judges having the authority to decide whether a child should remain in juvenile court based on the factors outlined in *Kent*, the prosecutor is vested with nearly unchecked discretion to make this determination. Judges are empowered only to review prosecutors’ decisions, and even that authority is sharply limited.

New Jersey Revised Statute § 2A:4A-26.1 governs the procedure and criteria for waiver of juvenile court jurisdiction in the state.¹⁹ The statute allows prosecutors to seek waiver for

¹⁶ Elizabeth Becker, “As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets,” *New York Times*, February 9, 2001, sec. U.S., <https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html> (accessed December 13, 2025).

¹⁷ John DiLulio, “The Coming of the Super-Predators,” *Weekly Standard*, November 27, 1995, <https://www.washingtonexaminer.com/magazine/1558817/the-coming-of-the-super-predators/> (accessed January 23, 2025).

¹⁸ Patricia Torbet et al., *State Responses to Serious and Violent Juvenile Crime* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1996), <https://ojjdp.ojp.gov/library/publications/state-responses-serious-and-violent-juvenile-crime> (accessed December 14, 2025); Melissa Sickmund, *Juveniles in Court* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 2003), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/juveniles-court> (accessed December 14, 2025), p. 7.

¹⁹ NJ Rev Stat § 2A:4A-26.1, Filing Motion Seeking Waiver of Jurisdiction; Hearing, <https://lis.njleg.state.nj.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=Publish:10.1048/Enu> (accessed November 12, 2025).

youth aged 15 or older who are accused of any of 15 enumerated offenses, including homicide, sexual assault, and certain drug or firearm-related crimes, among others.²⁰

Prosecutors must file a waiver motion within 60 days of receiving the complaint, accompanied by a written statement of reasons setting forth their assessment of a list of factors such as the child’s age, maturity, culpability, degree of criminal sophistication, and prior delinquency record. If there is probable cause to believe that the child committed one of the 15 enumerated offenses, then the court must grant the waiver. The only situation in which the court may deny the waiver is “if it is clearly convinced that the prosecutor abused his discretion in considering the ... factors.”²¹ Although the statute permits the Attorney General to develop and disseminate guidelines to ensure the uniform application of waiver across the state, the only existing guidelines are outdated, having been issued in a memorandum 25 years ago despite multiple changes to the waiver statute since then.²²

Once the state files the waiver motion, it is the responsibility of the defense to produce documentation and evidence to argue against the waiver.²³ This includes gathering school records, medical and psychological evaluations, mitigation reports, and Division of Child Protection and Permanency (DCPP) records. Obtaining these materials can take considerable time, as defense attorneys must subpoena records, coordinate with doctors and experts, and wait for the completion of evaluations and reports. Michelle Callari, New Jersey statewide director of youth defense, explained that this process places significant burdens on the defense to justify why the child should remain in the juvenile system.²⁴

After the defense submits its materials, the prosecutor is required to consider those materials in light of the statutory factors. If the prosecutor still wishes to pursue waiver, they must draft a statement of reasons outlining why they believe it is justified. If the judge

²⁰ The state legislature recently passed a bill adding two new offenses—home invasion burglary and residential burglary—to the list of waivable offenses. The bill was signed into law by Governor Phil Murphy on October 18, 2024.

²¹ N.J. Rev Stat § 2A:4A-26.1(c)(3).

²² John J. Farmer, Jr., Attorney General, “Attorney General Juvenile Waiver Guidelines,” unpublished memorandum on file with Human Rights Watch, March 14, 2000.

²³ This is an unusual procedural stance. Typically, the moving party—in this case, the prosecution—bears the burden of proof and must present evidence to support its case. Here, however, the defense is effectively tasked with disproving the prosecution’s claim that the child should be transferred to the adult criminal system. By statute, the defense must present evidence on certain factors, but the law does not specify whether or how this evidence should be submitted to the court. As a result, practices vary across counties.

²⁴ Human Rights Watch video interview with Michelle Callari, New Jersey statewide director of youth defense, May 29, 2024.

determines that the prosecutor did not abuse their discretion in this process, the child is waived to the adult system. This “abuse of discretion” standard makes it nearly impossible to challenge the prosecutor’s decision, leaving little opportunity to prevent the waiver even in cases where the child’s developmental capacity, trauma history, disability status, or potential for rehabilitation strongly weigh against it. One defense attorney observed, “As we’ve come to this reality of what the statute means and what it doesn’t mean, our prosecutors have realized that they have total discretion.”²⁵



“As we’ve come to this reality of what the statute means and what it doesn’t mean, our prosecutors have realized that they have total discretion.”

Anthony Previti
Atlantic County Public Defender

²⁵ Human Rights Watch video interview with Anthony Previti, Atlantic county public defender, November 21, 2024.

How New Jersey’s Waiver Law Fails Its Children

New Jersey’s waiver statute is harmful to children on multiple levels. At a procedural level, once a prosecutor decides to file a motion, it is nearly impossible to prevent a child from being transferred to adult court. New Jersey law denies youth critical protections because it drastically limits judicial oversight to the question of whether prosecutors have abused their otherwise unchecked discretion. This prosecutorial dominance creates an unbalanced system, with few checks, and results in inconsistent decisions that can perpetuate extreme racial and geographic disparities in waiver decisions and youth incarceration.

Beyond procedural flaws, the consequences of prosecuting children as adults are severe and well-documented. Research shows that waived youth—regardless of their sentence length—experience significantly higher rates of depression, suicidal ideation, and suicide than those adjudicated in the juvenile system.²⁶ They are also at greater risk of victimization while incarcerated and, in many cases, more likely to reoffend upon release.²⁷

Liz Ryan, who served as the presidential appointee leading the Office of Juvenile Justice and Delinquency Prevention during the Biden administration, has decades of experience working to improve the youth justice system. Drawing on her experience, she noted “I’ve seen firsthand the harm prosecuting children as adults causes.”²⁸



“Data and research show us that waiver doesn’t make communities safer. Instead, prosecuting youth as adults strips young people of hope and the opportunity to prove they’ve grown and matured. It also increases the likelihood that they’ll reoffend.”

Liz Ryan
Former Administrator of the Office of Juvenile Justice and
Delinquency Prevention

²⁶ Jennifer L. Woolard et al., “Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations,” *International Journal of Forensic Mental Health*, vol. 4, no. 1 (2005), accessed January 29, 2025, doi: 10.1080/14999013.2005.10471209

²⁷ Edward Mulvey and Carol Schubert, “Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court,” Office of Juvenile Justice and Delinquency Prevention, December 2012, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/232932.pdf> (accessed January 29, 2025).

²⁸ Human Rights Watch email correspondence with Liz Ryan, former administrator of the Office of Juvenile Justice and Delinquency Prevention, January 27, 2025. Ryan served as administrator from May 16, 2022 to January 20, 2025.

The statute and the system it gives rise to disregard brain science, developmental differences, disability status, and the profound impact of childhood trauma on youth in the criminal legal system, many of whom are already disproportionately affected by poverty, violence, systemic inequities, and limited access to mental health care and educational resources. Moreover, while many of the children transferred under the waiver statute are charged with serious offenses, research and landmark US Supreme Court cases such as *Miller v. Alabama* and *Graham v. Florida* underscore that even children who commit the most serious acts possess a unique capacity for change and rehabilitation.²⁹ These decisions, along with developmental science, affirm that the severity of a crime does not define who a young person will become, nor does it erase their potential for growth and positive transformation. Ultimately, New Jersey’s waiver law fails its children by prioritizing punishment over opportunities for growth, support, and second chances.

The Problem with Prosecutorial Discretion



“Prosecutors should not be making this decision, period. Prosecutors are 24/7 advocates—they get no special training in child development, trauma, or psychology. They don’t have the tools, the knowledge, and maybe most importantly, the mandate to assess whether a young person is amenable to rehabilitation. The job of a prosecutor is to prosecute, and they should be focused on that.”

Brian Gurwitz

Former Senior Deputy District Attorney in Orange County, California

New Jersey’s Illusion of Judicial Oversight

Because the decision to prosecute a child as an adult is so monumentally important, in most states with judicial waiver, judges consider or weigh several factors in determining whether to transfer a child to the adult system³⁰ (see Appendix A): How serious was the offense? Can the child be rehabilitated in the youth system? What was the child’s emotional maturity, home environment, and overall living situation like? What services and programs available in the juvenile system address this child’s needs? Based on these

²⁹ *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *State v. Zuber*, 227 N.J. (2017); and *State v. Comer*, 249 N.J. 359 (2022).

³⁰ Juvenile Law Center, unpublished research on file with Juvenile Law Center, September 2024.

individualized considerations, the judge then makes an informed decision about whether the child should remain in the youth system or be waived and prosecuted as an adult. In New Jersey, however, the process works quite differently. Judges are not tasked with considering whether a young person could be rehabilitated in the juvenile system or any factors pertaining to the crime, the child, and other circumstances. Instead, the prosecutor considers these factors and decides whether the case should remain in juvenile court or be sent to adult court. The role of the judge is limited to deciding whether the prosecutor abused their discretion when they considered these factors.

This process gives the illusion of judicial review, but in reality, the “abuse of discretion” standard renders the review nearly meaningless. Experts in youth justice law condemn this approach. Randy Hertz, a professor at the New York University School of Law explains, “The New Jersey waiver statute’s disturbingly narrow focus on the technical validity of the prosecutor’s exercise of discretion amounts to an abdication of judicial responsibility for safeguarding children from unjustified transfer to adult court.”³¹ Similarly, Brian Gurwitz, a former prosecutor from California, observes:

The criticism I have of New Jersey’s law is that judges are focused on the prosecutor’s conduct, not the juvenile or the facts of the case. Rather than the judge deciding what’s best for the juvenile and what is best for society, you have a situation where the judge is relegated to doing nothing more than saying, ‘Did the prosecutor misconduct himself?’ which is entirely the wrong focus.³²

Yale Law School professor James Forman points out that this structure ultimately ends up harming the child, who loses the benefit of a full judicial review: “Under [this] abuse of discretion standard, the loser in all of this is the child.”³³

This misplaced focus severely restricts judicial oversight. Judges are limited to determining whether a prosecutor’s actions are arbitrary or amount to a clear error in judgment.³⁴

³¹ Human Rights Watch email correspondence with Randy Hertz, New York University School of Law vice dean of curriculum and Fiorello LaGuardia professor of clinical law, December 6, 2024.

³² Human Rights Watch phone interview with Brian Gurwitz, former senior deputy district attorney in Orange county, California, December 13, 2024.

³³ Human Rights Watch video interview with James Forman, Yale Law School J. Skelly Wright professor of law, December 23, 2024.

³⁴ State in the Interest of V.A., 212 N.J. 1, 22 (2012).



“The loser in all of this is the child.”

James Forman
Yale Law School J. Skelly Wright Professor of Law

Honorio Forte, an attorney who has spent 31 years defending youth in New Jersey, observed, “I have never ever had a judge find that the prosecutor abused their discretion.”³⁵

This was a common experience among every attorney representing children who was interviewed for this report. Each attested to the near impossibility of preventing a child from being waived once a prosecutor filed a waiver motion and probable cause was established. In terms of how much discretion prosecutors have and how difficult it is to prevent a child being waived, another attorney likened trying to defend her clients to “fighting in a dark alley, with a blindfold, with hands tied behind your back.”³⁶

Anthony Previti, a public defender in Atlantic county, attested to the lack of fairness in the process:

There has to be a checks and balances system.... But in this case, one party significantly has power over the whole process, and it’s the prosecutor’s office. And when the judge has no power and the [defense] attorneys have no power, you [get] what you’re seeing now.³⁷

The waiver system’s lack of judicial authority means that even when a judge recognizes the potential for rehabilitation or sees mitigating factors in a child’s case, they are powerless to intervene unless the prosecutor’s actions are so extreme as to meet the exceptionally high abuse of discretion standard. Consequently, the judge’s role becomes an exercise in procedural formality, rather than a meaningful safeguard for youth.

As another attorney who represents children in New Jersey recounted, “Even the judge would tell me, ‘I don’t really agree with this. I wouldn’t do this. I wouldn’t waive this kid.

³⁵ Human Rights Watch video interview with Honorio Forte, Hudson county public defender, October 10, 2024.

³⁶ Human Rights Watch phone interview with Denise Thomas, Middlesex county public defender, October 10, 2024.

³⁷ Human Rights Watch video interview with Anthony Previti, Atlantic county public defender, November 21, 2024.

But ... [is the prosecutor] abusing their discretion? I can't say that.”³⁸ Another defender expounded:

I do think ... [New Jersey law] does not give enough discretion for the judges. I have situations where, if given discretion—real discretion—they would not waive these kids. But when you're asking them to find abuse of discretion for the prosecutor, they're not going to do it under any circumstances.³⁹

The US legal system is adversarial in nature, with clear roles for parties and an unbiased judiciary. Prosecutors have a responsibility to consider the interests of justice in deciding whether it is appropriate to prosecute a case and what charges they believe are warranted, but fundamentally, their role is centered on the zealous prosecution of criminal cases. Because their relationship to defense attorneys is inherently adversarial, it is untenable to grant prosecutors nearly unfettered authority to assess the defense's arguments against their own desire to waive a child's case.

Prosecutors are not trained to lead or even engage effectively with the nuanced, individualized evaluations necessary to assess whether a young person could be rehabilitated in the juvenile justice system. A prosecutor's focus is the crime, a fact that is evident in the language some prosecutors use to describe the youth they seek to waive.

For instance, Tanya G., who was waived to the adult system for a crime committed when she was 16 years old, recalls the prosecutor in her case pushing for a 25-year sentence and referring to her as “menace to society”: “He called me a ‘monster’ and said I was getting in trouble since 12, that I didn't have any care for humans.”

The prosecutor's words had a profound impact on her sense of self: “I actually thought that's what I was. Someone in a higher power saying these things about me made me think, ‘Oh, that [must be] what I really am.’”⁴⁰ Similarly, when asked if there was a specific

³⁸ Human Rights Watch video interview with public defender from unnamed county, November 2024.

³⁹ Human Rights Watch video interview with public defender from unnamed county, November 2024.

⁴⁰ Human Rights Watch interview with Tanya G., currently incarcerated waived youth, Bordentown, New Jersey, October 1, 2024.

memory or event in court that stood out to Miguel N., he responded: “The prosecutor for sure. She made me [out to be] a monster, yet this was my first time ever arrested.”⁴¹

The perspective that a youth is a “monster” because they are accused of committing a crime disregards their inherent capacity to change and grow, instead reducing them to what may have been the worst decision of their lives. As Mikey observed, “They don’t see you as someone who can change or with the potential to do better.”⁴²

New Jersey’s current law undermines the fundamental roles of both prosecutors and judges. It requires prosecutors to make complex assessments they are neither trained nor equipped to handle, while effectively stripping judges of their essential role in providing impartial oversight. Judicial oversight is essential to ensure fairness, consistency, and justice. To restore balance to the system, New Jersey should amend its laws to reinstate meaningful judicial authority in waiver decisions.

Voluntary Waiver

In New Jersey, youth as young as 14 can “voluntarily” waive themselves to adult court, relinquishing their right to challenge the waiver process and remain in the juvenile justice system. This happens because it is so rare for a child to win a waiver hearing. In such cases, children may agree to go to adult court in exchange for a more lenient sentence as part of a plea bargain. However, the “abuse of discretion” standard in New Jersey law—which makes it nearly impossible to win a waiver hearing—creates a coercive dynamic in these deals.

Typically, if the child agrees to voluntary waiver, they will receive a more lenient plea offer in adult court—such as a lesser charge, or a recommendation for a reduced sentence. However, if the child refuses the offer, prosecutors promise to pursue harsher penalties after an involuntary waiver process they are almost certain to win.⁴³

⁴¹ Human Rights Watch survey response from Miguel N., currently incarcerated waived youth, November 7, 2024.

⁴² Human Rights Watch interview with Mikey B., currently incarcerated waived youth, Jamesburg, New Jersey, October 2, 2024.

⁴³ Human Rights Watch phone interview with Laura Cohen, law professor, July 30, 2024; video interview with public defender from unnamed county, May 29, 2024; and video interview with public defender from unnamed county, November 12, 2024.

This dynamic underscores one of the problems of granting prosecutors unchecked discretion in waiver decisions. Knowing they hold the upper hand in waiver hearings, prosecutors use the threat of harsher punishment to pressure children into waiving their rights. As a result, youth are placed in an impossible position: accept adult prosecution or risk significantly harsher penalties after an almost inevitable transfer to the adult criminal courts if they choose to go through a waiver hearing.

Barry Albin, a former New Jersey Supreme Court justice who has authored more than 400 opinions, spoke with Human Rights Watch citing his unique perspective on waiver, shaped by his experience as a former judge, prosecutor, and defense attorney. He explained, “In its current form, New Jersey’s waiver law adds to the inherently coercive pressures of the plea-bargaining process, which can lead to people—and even some innocent people—pleading guilty to avoid the risk of harsher penalties.”⁴⁴ Albin’s critique underscores how the threat of harsher penalties in adult court can pressure children into waiver, regardless of guilt or innocence.

The practice highlights how the current legal framework can exploit children’s fear, vulnerability, and lack of understanding. To prevent these abuses, New Jersey should curtail prosecutorial discretion in the waiver process, eliminate the use of voluntary waiver, and implement stronger judicial oversight and safeguards to ensure decisions are transparent, fair, and focused on rehabilitation over punishment.

Geographic Disparities in Waiver Decisions

New Jersey has 21 counties, each of which has its own county prosecutor and corresponding prosecutor’s office. While the waiver statute is state law and governs every county, the application of the statute varies significantly depending on the policies and practices of each prosecutor’s office. This means that decisions about whether to waive a child to the adult system can be influenced by the priorities, political motives, interpretations, and discretion of individual prosecutors, rather than being uniformly applied across the state.⁴⁵

⁴⁴ Human Rights Watch video interviews with Barry Albin, former associate justice of the New Jersey Supreme Court, December 23 and 30, 2024.

⁴⁵ For instance, some counties employ more robust processes, considering mitigation materials thoroughly, while others appear to prioritize offense severity over developmental or rehabilitative factors. Some counties allow experts to testify in waiver hearings while others don’t.



“One problem with having prosecutors be the primary decision-maker in waiver cases is a lack of uniformity across the state.”

Barry Albin
Former New Jersey Supreme Court Associate Justice

As a result, two similarly-situated children charged with similar offenses in different counties could face vastly different outcomes—one remaining in the juvenile system and the other being tried as an adult. This creates a “justice by jurisdiction” effect, where geography and the individual approach of a county prosecutor play a substantial role in determining a child’s fate, raising concerns about fairness and consistency in the application of justice statewide. Former Supreme Court Justice Albin says this has the potential to undermine basic concepts of justice in New Jersey:

The question of uniformity in any system is important. It is a basic concept of justice that similarly situated people should be treated the same. One problem with having prosecutors be the primary decision-maker in waiver cases is a lack of uniformity across the state. You have 21 counties and 21 prosecutors, and they may have 21 different philosophies about how to prosecute waiver cases.⁴⁶

Many of the youth interviewed for the report described the unfair and seemingly arbitrary nature of the waiver process. Dylan S. was waived for a crime committed when he was 15 years old. When interviewed, he explained how haphazard the decision seemed, and from his perspective, unrelated to the crime:

Waiver seems random. Depending on your county, you might have different charges—someone accused of murder versus robbery, but both of them could get waived. Or maybe the robbery was waived but not the murder, which doesn’t make sense to me.⁴⁷

Peter L., another youth who was waived to the adult system, noted Middlesex’s reputation as a harsh county where the prosecutors are more aggressive. “Middlesex [county] is

⁴⁶ Human Rights Watch video interviews with Barry Albin, former associate justice of the New Jersey Supreme Court, December 23 and 30, 2024.

⁴⁷ Human Rights Watch interview with Dylan S., currently incarcerated waived youth, Bordentown, New Jersey, July 24, 2024.

known for waiving us. They like ‘roofin’ people—giving them the max, harshest sentence.”⁴⁸ Recent data on waived youth currently incarcerated in the JJC confirms this reputation.⁴⁹ According to the data, Middlesex and Passaic counties account for the highest proportion of waiver sentences, each responsible for nearly 25 percent of all waived youth in JJC.

Relative to the youth population size (aged 15 to 19), these counties also have some of the highest rates of waiver. Passaic county has an average rate of 4.7 waived youth per 10,000 youth living in the county. Comparatively, Union county, which has slightly more youth aged 15 to 19 than Passaic, used waiver at a rate that was seven times lower than Passaic.

Similar sentiment was echoed by all the attorneys who represent children interviewed for this report. Farah Rahaman, a public defender in Union county told us that when youth from different counties are housed in the same detention facilities, they struggle to understand the discrepancies in how their cases are handled: “Kids are hearing about what’s happening in other counties, and they’re coming back and not understanding why their cases are being handled differently.... [they ask], ‘Why am I still detained when somebody else with worse charges than me has been released?’”⁵⁰

In recent years, Hudson and Essex counties have had fewer waivers than other counties of similar size, density, and demographic diversity.⁵¹ One of the attorneys interviewed partially attributes the lower rates in Hudson to the fact that the supervisor for the Hudson County prosecutor’s office has a good understanding of child brain development, including impulsivity, the inability to perceive future consequences, and susceptibility to peer pressure.⁵²

⁴⁸ Human Rights Watch interview with Peter L., currently incarcerated waived youth, Bordentown, New Jersey, September 13, 2024.

⁴⁹ The New Jersey Juvenile Justice Commission provides public data on committed and waived youth, including general crime data and demographics. The data includes information on waived youth going back to 2018. The data is aggregated by week and does not include information about individuals and therefore cannot be summed to provide statistics about the numbers of individual youth committed or waived. There are several periods of missing data, due to detected errors, including the period between October 2020 and May 2022.

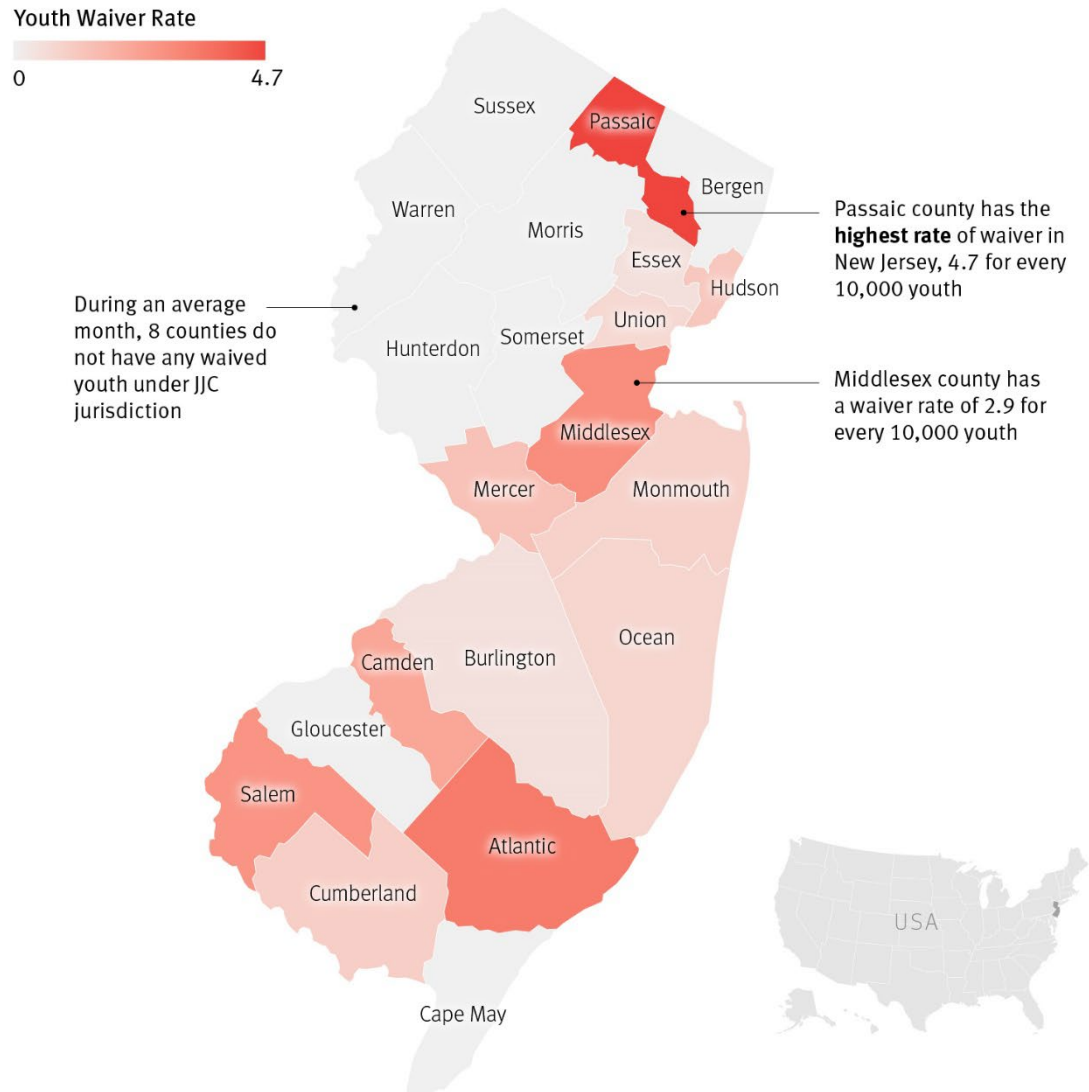
⁵⁰ Human Rights Watch video interview with Farah Rahaman, Union county public defender, November 19, 2024.

⁵¹ Hudson county is a densely populated and diverse area with significant urbanization. Despite being far more densely populated than Passaic and Middlesex counties, it has a lower waiver rate, averaging 1.2 waived youth per 10,000 youth living in the county. In comparison, Passaic and Middlesex, which have similar levels of diversity but much lower population densities, have waiver rates of 4.7 and 2.9 per 10,000 youth, respectively.

⁵² Human Rights Watch video interview with Honoria Forte, Hudson county public defender, October 10, 2024.

Youth's Future Dependent on County

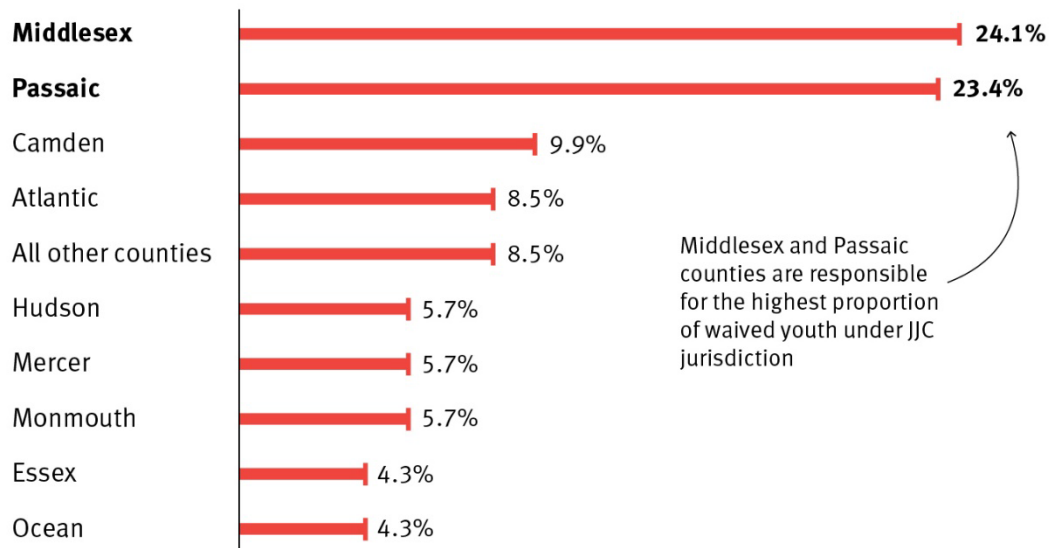
Average number of waived youth under JJC jurisdiction per 10,000 people aged 15-19 in New Jersey



Note: Data from October 2020–June 2022 is not available due to detected errors.
Source: Human Rights Watch analysis of New Jersey Juvenile Justice Commission data.

Counties in New Jersey with the Highest Youth Waiver Rates

Percentage of all waived youth under JJC Jurisdiction



Note: Average rates from July 2018–December 2024. Data from October 2020–June 2022 is not available due to detected errors. Source: Human Right Watch analysis of New Jersey Juvenile Justice Commission data, <https://www.njoag.gov/about/divisions-and-offices/juvenile-justice-commission-home/juvenile-demographics-and-statistics/>

The geographic disparities in waiver decisions also extend to the ways in which prosecutors in different counties handle their public disclosure practices. In an interview with a group of youth advocates, they highlighted that in one county, the prosecutor’s office publishes the names and pictures of young people waived to adult court, exposing them to lasting stigma and reputational harm—even if they are ultimately found not guilty.⁵³ While this practice may be part of a broader pattern of publicizing information about adults charged with crimes, it diverges sharply from juvenile court, where names and identifying information are not released to protect the privacy and identity of youth.

Racial Disparities in Waiver Outcomes

The geographic disparities in waiver decisions are deeply intertwined with extreme racial disparities. Waiver practices disproportionately impact children of color and result in

⁵³ Human Rights Watch video group interview with youth advocates, November 18, 2024.

disproportionate rates of adult incarceration.⁵⁴ James Forman, a professor at Yale Law School who studies race in justice-related institutions explains:

The thing that we know about race in the juvenile system is that basically at every stage you see heightened disparities. So, you see heightened disparities at the arrest stage, and then those disparities get even greater at the juvenile prosecution stage, and they get even greater at the stage at which a decision is being made about whether to [waive a youth to the adult system]. You just have this sort of ever-widening funnel dumping Black youth into the system.⁵⁵

New Jersey is notorious for having the highest rate of racial disparities in its prison population in the country.⁵⁶ Black residents are incarcerated at a rate 12.5 times higher than that of white residents and make up more than half of New Jersey’s prison population, despite comprising only 15.5 percent of the state’s overall population.⁵⁷

These disparities exist in New Jersey’s waiver of children to adult court as well. From 2018 to 2019, 61 percent of waiver requests were for Black youth, 23 percent for Latinx youth, and 14 percent for white youth.⁵⁸ This statewide racial disparity is reflected anecdotally among the waived individuals currently serving sentences in the New Jersey Department of Corrections who responded to Human Rights Watch’s survey.⁵⁹

⁵⁴ M.A. Bortner, Marjorie Zatz, and Darnell Hawkins, “Race and Transfer: Empirical Research and Social Context,” in *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court*, ed. Jeffrey Fagan and Franklin E. Zimring (Chicago: University of Chicago Press, 2000), pp. 277–320.

⁵⁵ Human Rights Watch video interview with James Forman, Yale Law School J. Skelly Wright professor of law, December 23, 2024.

⁵⁶ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Washington, DC: The Sentencing Project, 2021), <https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project/> (accessed January 23, 2025).

⁵⁷ “QuickFacts: New Jersey,” U.S. Census Bureau, July 2023, <https://www.census.gov/quickfacts/fact/table/NJ/RH1125223#RH1125223> (accessed January 23, 2025).

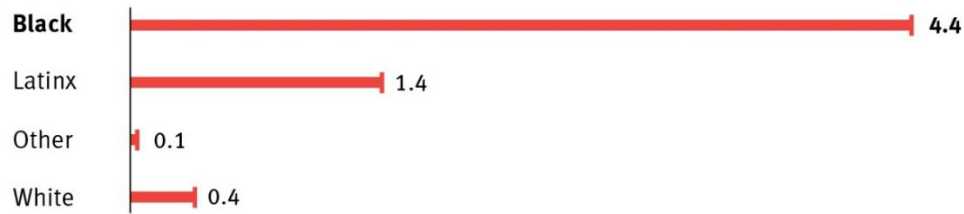
⁵⁸ State of New Jersey, Office of the Attorney General, Juvenile Justice Commission, *Juvenile Waiver Practice in New Jersey: An Analysis of Waivers Requested, Waivers Granted, and Waiver Cases Resolved in Criminal Court in 2018-2019*, July 2022, https://www.nj.gov/oag/jjc/2022-1214_Waiver_Report_2018-2019.pdf (accessed January 23, 2025).

⁵⁹ “New Jersey Waiver Survey Responses,” unpublished data on file with Human Rights Watch, December 2024.

Black children also enter JJC at higher levels than white or Latinx children. In the latest data available on December 14, 2024, there were 178 Black youth under JJC jurisdiction, including 55 who had been waived. This is compared to 17 white youth, 10 of whom were waived, and 46 Latinx youth, 22 of whom had been waived.

Racial Disparities in Number of Waived Youth in New Jersey

Median youth waiver rate per 10,000, age 15–19



Note: Data from July 2018–December 2024. Data from October 2020–June 2022 is not available due to detected errors. Source: Human Right Watch analysis of New Jersey Juvenile Justice Commission data, <https://www.njoag.gov/about/divisions-and-offices/juvenile-justice-commission-home/juvenile-demographics-and-statistics/>

Racial Disparities in New Jersey Youth in the Juvenile Justice System

Median percentage of New Jersey youth

| | New Jersey Population (age 15-19) | Waived Youth | Youth Committed to Juvenile Facilities | Youth Under JJC Jurisdiction |
|--------|-----------------------------------|--------------|--|------------------------------|
| Black | 11.4% | 51.5% | 75.0% | 68.6% |
| Latinx | 22.0% | 32.4% | 16.7% | 20.5% |
| Other | 28.2% | 1.5% | 0.7% | 0.9% |
| White | 38.4% | 14.7% | 7.6% | 10.0% |

Note: Data from July 2018–December 2024. Data from October 2020–June 2022 is not available due to detected errors. Source: Human Right Watch analysis of New Jersey Juvenile Justice Commission data, <https://www.njoag.gov/about/divisions-and-offices/juvenile-justice-commission-home/juvenile-demographics-and-statistics/>

Relative to population size, the disparities are massive. Per 10,000 youth aged 15 to 19 in New Jersey, there were 19 times more Black youth waived than white youth (7.1 per 10,000 youth versus 0.37 per 10,000). Latinx youth were waived at a rate relative to population size that was 3.8 times higher than white youth (1.4 per 10,000 versus 0.37 per 10,000). These disparities are present throughout the historical value, though the precise values change depending on date.

Georgetown Law professor Kris Henning, a leading expert in youth justice law and the author of a book on race in the juvenile system, commented on these staggering disparities: “New Jersey’s waiver law results in a disturbing treatment of Black children,” she said. “This data should serve as a wakeup call to policymakers: It is their responsibility to address the structural racism that permeates the youth legal system. In fact, this data may underrepresent the extent of disparities because it does not show how many youth were threatened with waiver and took a plea deal to avoid that possibility.”⁶⁰



“New Jersey’s waiver law results in a disturbing treatment of Black children. This data should serve as a wakeup call to policymakers.”

Kris Henning
Georgetown Law School Blume Professor of Law

Systemic Failures in Protecting Youth

Failure to Account for Developmental Differences and Trauma

The youth justice system was founded on the principle that, developmentally, children and adults are different “in ways that warrant their differential treatment under the law.”⁶¹

Many youth in the system also bear the weight of significant childhood trauma, including experiences of physical abuse, neglect, community violence, and systemic racism.⁶² In

⁶⁰ Human Rights Watch email correspondence with Kris Henning, Georgetown Law School Blume Professor of Law and Director of the Juvenile Justice Clinic and Initiative, January 23, 2025. See also, Kris Henning, *The Rage of Innocence, How America Criminalizes Black Youth* (city: Pantheon, 2021). New Jersey’s record on race and waiver is discussed in Chapter 10.

⁶¹ Laurence Steinberg and Elizabeth Cauffman, “A Developmental Perspective on Jurisdictional Boundary,” in *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court*, ed. Jeffrey Fagan and Franklin E. Zimring (Chicago: University of Chicago Press, 2000).

⁶² Phelan Wyrick and Kadee Atkinson, “Examining the Relationship Between Childhood Trauma and Involvement in the Justice System,” *National Institute of Justice Journal* 283 (2021), <https://nij.ojp.gov/topics/articles/examining-relationship-between-childhood-trauma-and-involvement-justice-system> (accessed January 23, 2025).

Kent v. United States (1966), the Supreme Court sought to integrate the principles that children should be treated differently from adults into transfer decisions by establishing factors that require courts to evaluate a youth’s maturity, potential for rehabilitation, and the context of their offense.⁶³ The landmark ruling aimed to ensure that decisions about transferring youth to adult court would not only reflect the seriousness of the crime but also consider their developmental differences and background, including the profound effects of trauma.⁶⁴

New Jersey’s current waiver system fails to live up to these principles, and one of its most pernicious aspects lies in the state’s decision to place waiver decision-making authority in the hands of prosecutors effectively with no impartial review by judges. Human Rights Watch spoke with youth defenders in many counties who attested to the fact that their prosecutor counterparts often prioritized the seriousness of the offense above all else. This elevation of seriousness of offense as a “superfactor” overlooks important factors such as the child’s maturity and potential for rehabilitation, as well as the underlying trauma and root issues that may have contributed to their behavior.

Whitney Young, a public defender in Passaic county, includes a section about trauma in every one of her response briefs, highlighting the pervasive and severe trauma experienced by the youth she represents. However, she notes that prosecutors often dismiss these sections or fail to engage with them meaningfully:

The prosecutor doesn’t really even respond to ... [my arguments about childhood trauma] in their reply briefs ... and because it is common for these kids to have trauma ... I feel like no one takes any of that stuff seriously. Instead of [recognizing], ‘yeah, that’s how these kids end up here,’ they just think, ‘well, it must not be a big deal. Nothing distinctive about this kid. They all have trauma.’⁶⁵

⁶³ See also Supreme Court cases such as *Roper v. Simmons* 543 U.S. 551 (2005) and *Miller v. Alabama*, 567 U.S. 460 (2012), which reinforced this principle by recognizing the diminished culpability of youth due to their developmental immaturity, greater capacity for change, and the significant impact of adverse experiences, including trauma, on their behavior.

⁶⁴ Robert Dawson, “Judicial Waiver in Theory and Practice,” in *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court*, ed. Jeffrey Fagan and Franklin E. Zimring (Chicago: University of Chicago Press, 2000), p. 56.

⁶⁵ Human Rights Watch video interview with Whitney Young, Passaic county public defender, November 12, 2024.

Similarly, Kimberly Schultz, a public defender from Cumberland county, described bringing in experts to testify on her clients' behalf, "and the experts talk about how terrible the youth's childhood was and how they were brought up in poverty with a father who was incarcerated, and everyone just gets immune to it."⁶⁶

This disregard for trauma as a factor in waiver decisions reflects a systemic failure to appreciate how adverse childhood experiences shape behavior and the capacity for rehabilitation, further compounding the injustice of New Jersey's current system.⁶⁷

Many of the youth with whom Human Rights Watch spoke referenced trauma they had grown up with, and the court's failure to take it into consideration. In a group interview, Preston V. commented that "no one is looking into what really psychologically affected us to take that step [to commit a crime].... Nine out of 10 of us suffer from psychological trauma." Nodding in agreement, Dylan S. chimed in "[the prosecutors] don't know us, our psychological traumas. I had history and was in the system since I was 13." "Yeah," Aaliyah W. added softly, with her face downcast, "you just don't know what we've been through ... we could've been [the ones] dead."⁶⁸

In addition to failures in considering trauma, the wide variation in waiver practices across New Jersey's counties create a patchwork system that lacks fairness or uniformity when considering brain science and the fundamental developmental differences of youth from adults. For example, as referenced above, a public defender from one county attributed their low waiver rate to the prosecutor's strong understanding of adolescent brain science, whereas a defender from a separate county questioned whether their prosecutor even believed in the brain science.⁶⁹

This failure of New Jersey's waiver system to carefully assess developmental differences and trauma highlights a profound disconnect between the original ideals of the youth justice system and its current practice. Given their role, it is natural for prosecutors to

⁶⁶ Human Rights Watch video interview with Kimberly Schultz, Cumberland county public defender, November 25, 2024.

⁶⁷ Trauma is an important consideration because it not only diminishes culpability by affecting decision-making and impulse control but also signals that the young person may require the age-appropriate, rehabilitative services that the juvenile justice system is uniquely designed to provide. Unlike the adult system, the juvenile system offers interventions tailored to address the effects of trauma and other hardships that are geared toward youth.

⁶⁸ Human Rights Watch group interview with currently incarcerated waived youth, Bordentown, New Jersey, July 24, 2024.

⁶⁹ Human Rights Watch video interview with public defender from unnamed county, November 2024.

focus on the seriousness of the crime when handling a juvenile case. However, New Jersey allows this focus to dominate the decision-making process. Instead, the system should rely on judicial evaluation that balances all relevant factors in an unbiased manner, including the young person’s circumstances, their capacity for rehabilitation, and the broader goal of protecting public safety, which is not synonymous with and is often undermined by harsh sanctions. Without such reforms, the waiver process will continue to fail New Jersey’s children and undermine the very principles of a justice system designed to rehabilitate and protect them.⁷⁰

Missed Opportunities for Treatment, Education, and Rehabilitation

Waiver strips youth of the treatment, education, and rehabilitation opportunities available in the juvenile justice system at every point of the process—during their time in pre-trial detention while their waiver hearings are pending, during incarceration in New Jersey prisons, and after release on adult parole supervision. Removing youth from the juvenile justice system—which in theory is specifically tailored to their needs at crucial developmental stages in their lives—and instead opting for the adult system—which is primarily designed for punishment—not only harms the growth and healing of individual youth, but it is poor policy that according to many studies is associated with increased recidivism.⁷¹

This is something the youth themselves seem to recognize. Take Stephen C., for example—a young person who faced the threat of waiver for attempted murder and armed robbery. Despite the gravity of his offense, he was ultimately able to remain within the youth system and received a 10-year disposition. This means that he is serving time in the Juvenile Justice Commission’s locked facilities, with opportunities for release contingent on his

⁷⁰ NJ Rev Stat § 2A:4A-21 (2023).

⁷¹ Richard Redding, “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?,” Office of Juvenile Justice and Delinquency Prevention, June 2010, <https://ojjdp.ojp.gov/library/publications/juvenile-transfer-laws-effective-deterrent-delinquency> (accessed January 23, 2025); Megan Bears Augustyn and Jean Marie McGloin, “Revisiting Juvenile Waiver: Integrating the Incapacitation Experience,” *Criminology*, vol. 56, no. 1 (2018): 154–90, accessed January 23, 2025, <https://doi.org/10.1111/1745-9125.12165>; Patrick Griffin et al., *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, Office of Juvenile Justice and Delinquency Prevention, September 2011, <https://www.ojp.gov/library/publications/trying-juveniles-adults-analysis-state-transfer-laws-and-reporting> (accessed January 23, 2025); Jeffrey Fagan, “The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism among Adolescent Felony Offenders,” *Law & Policy*, vol. 18, no. 1–2 (1996): 77–114, accessed January 23, 2025, <https://doi.org/10.1111/j.1467-9930.1996.tb00165.x>.

demonstrated progress and rehabilitation.⁷² He described his process of growth and maturity in the JJC, which he said would not have been possible if he'd been sentenced as an adult:

I changed a lot as time went on, being [in the JJC], in programs. I started maturing, caring for others. I feel remorseful to people, and I'm better now. If I'd gone to the adult system, I still wouldn't care. My mindset would've been worse.⁷³

Similarly, Jamie, who also was kept in the juvenile system and believes he has benefited from the treatment and programs there, noted:

It's sad to say, but I didn't really care about killing anyone back then. But now [in the JJC], I have the right support systems, and I don't want to hurt anything. The other day, I saw a cricket. And I looked at it, picked it up, and placed it outside so it would be safe. I just saw it as precious and didn't want it to get hurt.⁷⁴

Pre-Trial Detention

While youth await their waiver hearings, they often languish for excessively long periods in local youth detention facilities. These facilities are defined as providing short-term custody and are not intended to hold youth for long periods.⁷⁵ Children and youth facing waiver typically spend much longer in pre-trial detention than other youth in the juvenile system because the waiver hearing process can be lengthy, and once they are waived to adult court, the time period for the right to a speedy trial is reset, further prolonging their time in detention.⁷⁶ During this critical period of development, instead of addressing underlying

⁷² NJ Rev Stat § 2A:4A-44 (2023), § 25.d.(2).

⁷³ Human Rights Watch interview with Stephen C., currently incarcerated committed youth, Jamesburg, New Jersey, October 2, 2024.

⁷⁴ Human Rights Watch interview with Jamie T., currently incarcerated committed youth, Jamesburg, New Jersey, October 2, 2024.

⁷⁵ New Jersey Juvenile Justice Commission, "Title 13. Law and Public Safety - Chapter 92. Manual of Standards for Juvenile Detention Facilities," New Jersey Administrative Code 13:92 (2018), <https://www.nj.gov/oag/jjc/pdf/JDMU-1-N.J.A.C-13.92-Manual-of-Standards.pdf> (accessed January 23, 2025).

⁷⁶ NJ Rev Stat § 2A:4A-28; N.J. Ct. R. 3:4-1 (2023).

trauma and building skills for the future, youth are confined in environments that lack adequate resources for meaningful growth and rehabilitation.

New Jersey appears to be undergoing a pre-trial detention crisis of sorts. There are a total of seven county youth detention facilities in all of New Jersey. While there used to be more, some have shut down in recent years in response to low numbers of youth in pre-trial detention.⁷⁷ Those counties then contract with others to detain their youth when needed. While the current facilities have enough beds to accommodate detained youth, some of the facilities are understaffed and refuse to accept youth from other counties. As a result, youth awaiting placement are sometimes held in police stations for over 24 hours, chained to benches as police departments scramble to find a spot for them.⁷⁸ One public defender told Human Rights Watch that some youth have been sitting in police stations handcuffed for two to three days.⁷⁹ An attorney from another county described a case in which their 16-year-old client was placed overnight in a holding cell in an adult county jail.⁸⁰ In yet another case, an attorney has been in contact with a child who has been in an adult jail for almost a month.⁸¹

Once youth are placed in detention facilities, they often endure long stays. On average, detained youth awaiting waiver hearings spend an average of 521 days, or 1.4 years, moving through the court process.⁸² This is problematic for multiple reasons. First, because these facilities are designed for short-term stays, they may lack the resources and services necessary to meet the needs and well-being of youth. A recent lawsuit against

⁷⁷ Taylor Tiamoyo Harris, “With Fewer Youngsters to Detain, County Shuttters Its Juvie Detention Center,” *NJ.Com*, October 6, 2018, https://www.nj.com/union/2018/10/union_to_shut_down_juvenile_detention_center_and_p.html (accessed January 23, 2025); Suzanne Russell, “Union County Juvenile Detention Center Closes,” *My Central Jersey*, March 1, 2019, <https://www.mycentraljersey.com/story/news/local/union-county/2019/03/01/union-county-juvenile-detention-center-closes/3027177002/> (accessed January 23, 2025); Spencer Kent, “Shutdown of Cumberland County Juvenile Detention Center Expected This Summer, Officials Say,” *NJ.Com*, February 27, 2015, https://www.nj.com/cumberland/2015/02/cumberland_county_juvenile_detention_center_to_clo.html (accessed January 23, 2025).

⁷⁸ Matt Gray, “We Have Too Many Kids in Juvenile Detention and It’s Getting Dangerous, N.J. County Says,” *NJ.Com*, December 5, 2024, <https://www.nj.com/atlantic/2024/12/we-have-too-many-kids-in-juvenile-detention-and-its-getting-dangerous-nj-county-says.html> (accessed January 23, 2025).

⁷⁹ Human Rights Watch video interview with Anthony Previti, Atlantic county public defender, November 21, 2024.

⁸⁰ Human Rights Watch interview with public defender from unnamed county, November 25, 2024.

⁸¹ Human Rights Watch video interview with Alexander Shalom, Lowenstein Center for Public Interest chair, December 30, 2024.

⁸² State of New Jersey, Office of the Attorney General, Juvenile Justice Commission, Juvenile Waiver Practice in New Jersey: An Analysis of Waivers Requested, Waivers Granted, and Waiver Cases Resolved in Criminal Court in 2018-2019, July 2022, https://www.nj.gov/oag/jjc/2022-1214_Waiver_Report_2018-2019.pdf (accessed January 23, 2025).

Essex County Juvenile Detention Center, which houses youth from several counties, alleges grim conditions, including exposure to violence, inadequate access to mental health care, insufficient educational services, and isolation as an improper form of punishment.⁸³

Another issue is the detaining of youth in facilities far from their homes. Some youth are detained two to three hours away from their families, disrupting familial connections and support systems.⁸⁴ This separation can cause emotional distress for youth, and logistical and financial challenges for families attempting to visit.⁸⁵

Furthermore, youth endure difficult transportation experiences for court appearances. They can be shackled and transported for hours, with stops in other counties to pick up additional detained youth.⁸⁶ After long waits at the courthouse, cases are frequently postponed, requiring another grueling trip back to the distant detention



A cell in Essex County Juvenile Detention Center, Newark, New Jersey. © Disability Rights New Jersey is New Jersey’s designated protection and advocacy agency under federal law pursuant to 42 U.S.C. §§ 10801-10807, 42 U.S.C. §§ 15041-1545, and 29 U.S.C. § 794(e). As New Jersey’s protection and advocacy agency, Disability Rights NJ has the authority to access facilities where people with disabilities live and receive services, including detention centers. Disability Rights NJ obtained these photographs of the Essex County Youth Detention Center by way of that access authority.

⁸³ *Disability Rights New Jersey v. Todd Barcliff, Dennis Hughes, and Essex County Juvenile Detention Center*, No. Civil Action No. 24-08297 (United States District Court: District of New Jersey, August 6, 2024).

⁸⁴ Human Rights Watch phone interview with Denise Thomas, Middlesex county public defender, October 10, 2024.

⁸⁵ Research indicates that family engagement plays a crucial role in the rehabilitation of youth in detention. Involving families in the juvenile justice process has been associated with improved outcomes, including reduced recidivism and better behavioral health. See Alyssa Mikytuck, Jennifer L. Woolard, and Michael Umpierre, “Improving Engagement, Empowerment, and Support in Juvenile Corrections through Research,” *Translational Issues in Psychological Science*, vol. 5, no. 2 (2019): 182–92, accessed January 23, 2025, <https://doi.org/10.1037/tps0000190>.

⁸⁶ Human Rights Watch video interview with Kimberly Schultz, Cumberland county public defender, November 25, 2024.



A cell in Essex County Juvenile Detention Center, Newark, New Jersey. © Disability Rights New Jersey is New Jersey’s designated protection and advocacy agency under federal law pursuant to 42 U.S.C. §§ 10801-10807, 42 U.S.C. §§ 15041-1545, and 29 U.S.C. § 794(e). As New Jersey’s protection and advocacy agency, Disability Rights NJ has the authority to access facilities where people with disabilities live and receive services, including detention centers. Disability Rights NJ obtained these photographs of the Essex County Youth Detention Center by way of that access authority.

facility.⁸⁷ Youth who spoke with Human Rights Watch described this experience as harrowing. One youth said: “The worst feeling in the world is then they tell you ‘remanded’—that you have to go back to that [detention] cell until your next court appearance.”⁸⁸

While conditions in these facilities can vary widely—depending on factors such as staffing levels, resources, and the facility’s capacity to meet the needs of detained youth—the underlying issue remains the same. Instead of using this critical time to provide some of the state’s most vulnerable youth with the trauma-informed care, education, and support that could transform their lives, New Jersey’s waiver system consigns them to prolonged detention in facilities ill-suited for long-term stays. This failure not only inflicts unnecessary suffering but also squanders a chance to break the cycle of harm and create a pathway to rehabilitation and hope.

⁸⁷ Human Rights Watch video interviews with Dana Keane, Mercer county public defender, November 27, 2024; and Anthony Previti, Atlantic county public defender, November 21, 2024.

⁸⁸ Human Rights Watch interview with Dylan S., currently incarcerated waived youth, Bordentown, New Jersey, July 24, 2024.

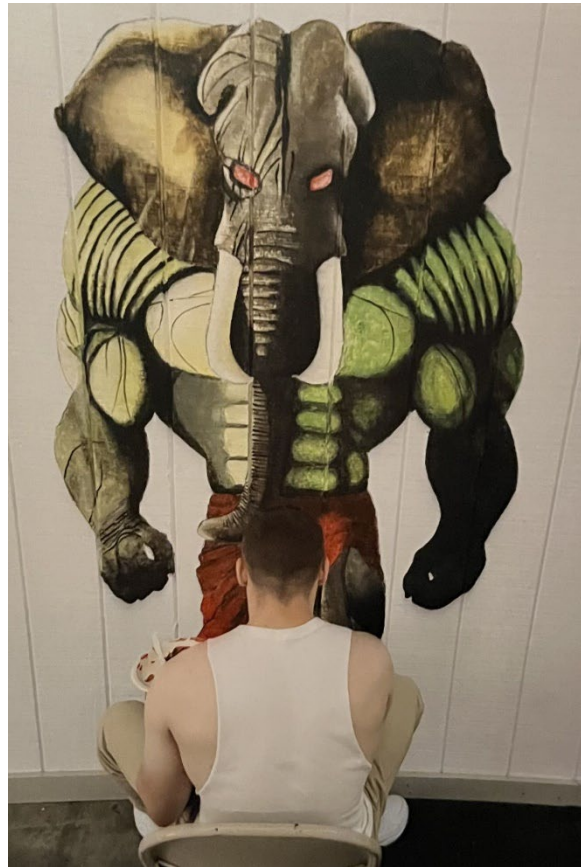


(Top): Cafeteria in Essex County Juvenile Detention Center, Newark, New Jersey. (Bottom): Residential unit common area in Essex County Juvenile Detention Center, Newark, New Jersey. © Disability Rights New Jersey is New Jersey's designated protection and advocacy agency under federal law pursuant to 42 U.S.C. §§ 10801-10807, 42 U.S.C. §§ 15041-1545, and 29 U.S.C. § 794(e). As New Jersey's protection and advocacy agency, Disability Rights NJ has the authority to access facilities where people with disabilities live and receive services, including detention centers. Disability Rights NJ obtained these photographs of the Essex County Youth Detention Center by way of that access authority.

Incarceration

Youth whose cases are waived also miss out on important opportunities for treatment, education, and rehabilitation when they are transferred from Juvenile Justice Commission facilities to adult prisons in New Jersey’s Department of Corrections (DOC).

In the JJC, youth are supposed to have access to age-appropriate educational programs, counseling, and support designed to foster growth and build life skills. Josiah P., a youth who was transferred to an adult prison when he aged out of the JJC at 25 years old, described his time in the JJC as an “absolute blessing,” and said: “It made me realize the potential that I have and showed me that I am a leader.” However, when speaking of his experience in prison, he painted a bleak picture: “[When I arrived,] all I saw was gates, wires, and mistreatment. Violations of our rights and terrible living conditions.”⁸⁹



Eli M. paints a mural in the JJC weight room © 2024
Photo courtesy of Eli M.’s family, provided to Human Rights Watch.

Similarly, when Eli M. was incarcerated in the JJC, staff allowed him to take the lead on painting four murals in one of the weight rooms that was being refurbished. Eli’s face lit up when describing his murals as “masterpieces.” However, immediately after his 25th birthday, he was transferred from the JJC to one of the adult prisons where he now spends 22 hours of each day locked in his cell:

In [the JJC], you see trees, you look down and see groundhogs, nice green grass, the sun is shining. And then here [DOC], the weather is always gray,

⁸⁹ Human Rights Watch survey response from Josiah P., currently incarcerated waived youth, November 20, 2024.

you barely get any time outside, and you're in your cell 22 hours a day. Cages and wires—those are our 'trees' here.⁹⁰

By contrast, the DOC offers fewer and less accessible rehabilitative opportunities for youth with multiple reports indicating that many incarcerated New Jerseyans are offered fewer than four hours out of their cells daily.⁹¹ Reflecting on the lack of educational resources in adult prisons, Isabella A., the mother of a waived youth, said: "They don't send them to school, they don't have programs for them, and if they have something, it's very minimal. A lot of kids over there want to study, they want to continue their education, but it's not [available]."⁹² Jermaine B., who spent his adolescence in Trenton State Prison, echoed this sentiment: "All the time I was a juvenile in Trenton State Prison, they never provided us with any programs or education....If a code goes off right now, we're locked down for the rest of the day. So, if you're locked in the unit all day, how are you going to be rehabilitated?"⁹³

This isolation and lack of access to programming creates a system that breaks young people entering prison down rather than building them up. Bryce L., another waived youth, compared the two systems: "In the JJC, I was in a better setting ... there's more opportunity, of course, in the juvenile system. It's important because you need to build some life skills. If you just go to DOC and then you're around jail politics all day, you're not really building any life skills. You're just becoming worse."⁹⁴

The adult prison system's focus on punishment rather than rehabilitation wastes the potential of those who could benefit from trauma-informed care, education, therapy, and life skills development. Instead, they are locked away in environments that perpetuate cycles of harm, exposing them to violence, neglect, and dehumanizing conditions.

⁹⁰ Human Rights Watch interview with Eli M., currently incarcerated waived youth, December 2024.

⁹¹ Sophie Nieto-Munoz, "N.J. Prisons Violate Law Restricting Solitary Confinement, Group Says," *New Jersey Monitor*, October 2, 2024, <https://newjerseymonitor.com/2024/10/02/n-j-prisons-violate-law-restricting-solitary-confinement-group-says/> (accessed January 23, 2025); Colleen O'Dea, "Watchdog Office Highlights Faults at NJ Prison," *NJ Spotlight News*, October 9, 2024, <https://www.njspotlightnews.org/2024/10/nj-corrections-ombudsperson-criticizes-disciplinary-unit-conditions-northern-state-prison-newark/> (accessed January 23, 2025).

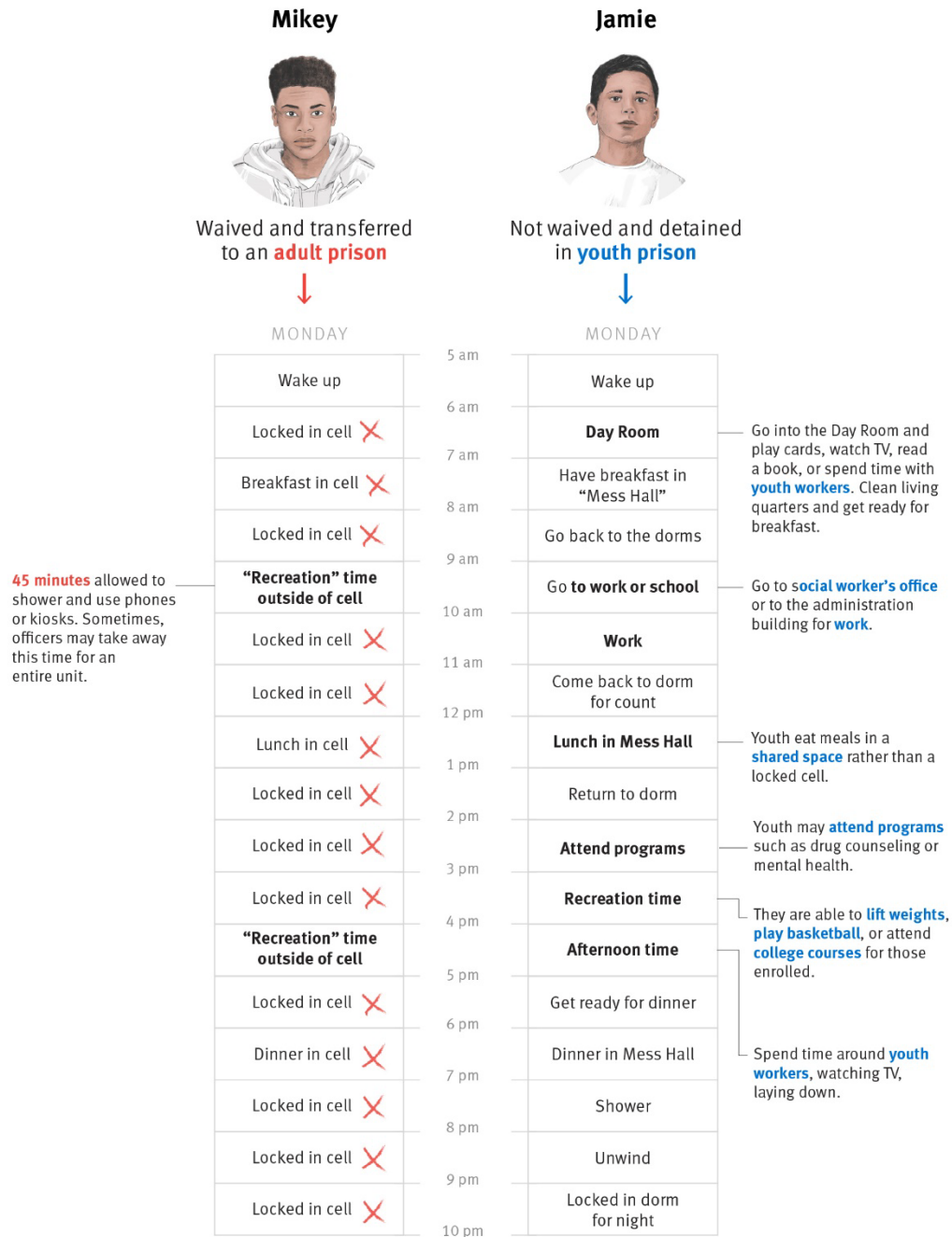
⁹² Human Rights Watch interview with Isabella A., mother of a currently incarcerated waived youth, Clifton, New Jersey, September 20, 2024.

⁹³ Human Rights Watch interview with Jermaine B., formerly incarcerated waived youth, Newark, New Jersey, December 5, 2024.

⁹⁴ Human Rights Watch phone interview with Bryce L, formerly incarcerated waived youth, December 6, 2024.

A Completely Different Day-to-Day

Schedules of a youth who remains in JJC versus youth who is waived and transferred to an adult prison



Note: Waived youth sentenced in adult criminal court are presumed to serve their sentence in a JJC-operated juvenile facility until age 21. After 21, they may remain in JJC facilities at the JJC's discretion and with the youth's consent, up to the age of 25. Beyond this age, they are transferred to the Department of Corrections (DOC).

Adult Parole Supervision

While the juvenile system is far from perfect and has its own set of challenges, it is designed with a rehabilitative framework that recognizes the unique needs of young people. Youth subjected to waiver also miss out on opportunities for growth and support during the transition back into society. When youth who remain in the juvenile system are released, their parole is overseen by the JJC, which aims to provide them with tailored support and resources to help their reintegration. This is meant to include case management, access to independent living facilities, and transitional programs like halfway houses that offer job training, education, and mental health services. While these supports are not without their limitations, they can play a vital role in helping youth navigate reentry and build stable, independent lives.

Conversely, youth who were prosecuted as adults are placed under adult parole supervision upon release. The adult parole system lacks infrastructure and staff with requisite expertise to support people who entered the system at a young age, leaving them without the resources needed to successfully reintegrate.⁹⁵ As one public defender explained, because the adult system is not prepared to address the special needs of parolees who entered the system at a young age, “it can really set them up to fail.”⁹⁶

Unlike the JJC, adult parole supervision may not even introduce parole officers to people before they return home, which can leave them disconnected and unsupported.⁹⁷ Alex Fields, a professor at Middlesex College who works directly with waived youth, described that at times, the experience can be a “reentry nightmare,” noting that waived youth can end up in shelters or halfway homes because adult parole doesn’t provide the independent living options available under juvenile parole.⁹⁸

As Bryce L., a youth who experienced adult parole, described: “I received no help from the [adult] office of parole. I didn’t even meet my parole officer until after release when I was

⁹⁵ Human Rights Watch phone interview with Bryan A., formerly incarcerated waived youth, December 30, 2024.

⁹⁶ Human Rights Watch video interview with Whitney Young, Passaic county public defender, November 12, 2024.

⁹⁷ Human Rights Watch video interview with Alexandra Fields, director of Middlesex College Center for Justice-Impacted Students, December 3, 2024.

⁹⁸ Ibid.

told to report to him in New Brunswick.”⁹⁹ In contrast, he highlighted the robust resources offered under juvenile parole:

Juvenile parole has a lot of resources in terms of reentry. They have access to mental health, substance abuse programs, or even a home to go to if you can’t live with your parents. They have an independent living home that’s strictly juvenile parole based.

The missed opportunities for waived youth are immense. While the JJC provides transitional programs that foster independence, job training, and personal growth, adult parole offers little more than oversight, leaving people to navigate the challenges of reentry largely on their own. By placing waived youth under adult parole supervision, New Jersey denies them the tailored support they need to rebuild their lives.

Youth’s Limited Comprehension of Legal Proceedings

Due process in a criminal case is a fundamental right under the US Constitution, and that right cannot be realized if the person being prosecuted does not understand the proceedings. In New Jersey, youth who had waiver hearings reported to Human Rights Watch that they lacked comprehension about the proceedings to a degree that they could not meaningfully participate in their defense. This gap in understanding undermines the fairness of the system and puts young people in the position of making life-altering decisions without fully grasping the ramifications.

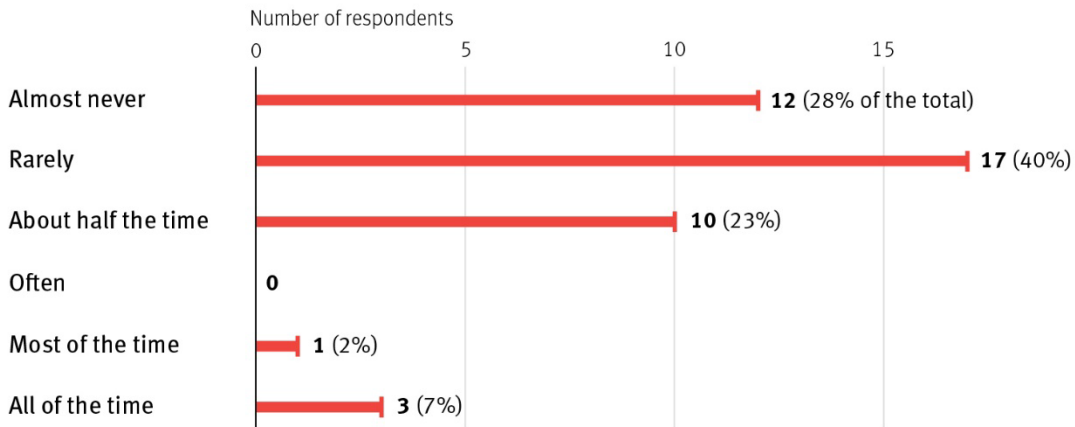
Every young person interviewed for this report indicated a lack of understanding of waiver and the court proceedings during their cases. One young man, Aaron P., remembered sitting at the counsel table in the courtroom: “At this point, they [were] just talking, and I have absolutely no idea what’s going on. My mind was not grasping [anything].” He recounted that his lawyer instructed him to agree to everything being said. Ultimately, Aaron P. agreed to voluntarily waive himself to the adult system without understanding the implications, a decision that profoundly impacted his future.¹⁰⁰

⁹⁹ Human Rights Watch phone interview with Bryce L., formerly incarcerated waived youth, December 6, 2024.

¹⁰⁰ Human Rights Watch interview with Aaron P., currently incarcerated waived youth, Bordentown, New Jersey, July 24, 2024.

How Much of the Time in Court Did You Understand What Was Happening?

Answers from a sample of 43 people currently incarcerated for offenses committed under the age of 18



Note: We sent surveys to all 149 people who the Department of Corrections indicates are currently incarcerated for offenses committed before the age of 18. Of this group, 43 people responded (response rate ~ 29 percent).
Source: Human Rights Watch survey.

According to the survey responses of waived individuals currently incarcerated in New Jersey’s Department of Corrections, 68 percent of respondents indicated understanding what was happening in court “rarely” or “almost never.” The remaining 23 percent understood “about half the time” while only 9 percent understood “most” or “all of the time.”¹⁰¹

Public defenders described the immense challenges of helping youth comprehend the gravity of waiver proceedings. Farah Rahaman explained, “They don’t understand any of it ... you can explain it to them multiple times, but they don’t understand what’s happening at all.”¹⁰² Many of the youth she represented were preoccupied with immediate, tangible concerns rather than grasping the life-altering legal stakes of their cases. Whitney Young highlighted the disconnect:

I don’t think a child can fully understand what they’re giving up, what it really means. We can go through it with them on the record and explain

¹⁰¹ “New Jersey Waiver Survey Responses,” unpublished data on file with Human Rights Watch, December 2024.

¹⁰² Human Rights Watch video interview with Farah Rahaman, Union county public defender, November 19, 2024.

you're giving up your rights to have this hearing ... and that means you're going to have a felony on your record. This is going to impact getting jobs. This is going to impact so much about your future.¹⁰³

Learning disabilities, which are prevalent among youth in the system,¹⁰⁴ can further compound the difficulty of understanding these proceedings.

Ensuring that youth understand waiver proceedings is not merely a procedural safeguard—it is a fundamental right. The youth court system is designed to be developmentally appropriate, with processes tailored to the comprehension and needs of young people. However, when youth are waived to adult court, they enter a system that lacks these safeguards. Adult court proceedings are not designed to provide explanations appropriate to the individual child's mental development, access to legal advocacy focused on ensuring understanding, or opportunities to pause and process information. Without these protections, young people are left vulnerable to making uninformed decisions in an intimidating and complex system, undermining their due process rights and disregarding their developmental needs.

Youth with Disabilities

New Jersey's waiver statute fails to account for the risks for youth with disabilities, who are disproportionately represented in the justice system. Studies estimate that as many as 65-70 percent of youth in the justice system have a disability,¹⁰⁵ a significant disparity compared to the 13 percent of students in the general school population who have individualized education programs (IEPs).¹⁰⁶ Yet, the system offers few safeguards to protect youth with disabilities from the profound consequences of waiver. In addition, the

¹⁰³ Human Rights Watch video interview with Whitney Young, Passaic county public defender, November 12, 2024.

¹⁰⁴ Jessica Snyderman, *Unlocking Futures: Youth with Learning Disabilities and the Juvenile Justice System* (Washington, DC: National Center for Learning Disabilities, 2022), <https://nclcd.org/wp-content/uploads/2023/08/NCLD-Unlocking-Futures-Final-7th-Dec-Updated-.pdf> (accessed January 23, 2025).

¹⁰⁵ The Arc's National Center on Criminal Justice and Disability, *Justice-Involved Youth with Intellectual and Developmental Disabilities: A Call to Action for the Juvenile Justice Community*, 2015, http://thearc.org/wp-content/uploads/2019/07/15-037-Juvenile-Justice-White-Paper_2016.pdf (accessed January 23, 2025).

¹⁰⁶ US Department of Education, Office of Special Education and Rehabilitative Services, *43rd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2021*, January 2022, <https://sites.ed.gov/idea/2021-individuals-with-disabilities-education-act-annual-report-to-congress/> (accessed January 23, 2025).

extended periods youth are housed in detention facilities while awaiting the outcome of waiver proceedings have disproportionate consequences for those with disabilities.

Detention facilities are ill-equipped to provide the educational and mental health services that youth with disabilities may require. According to interviews with youth advocates, some detention centers lack sufficient teachers qualified to teach special education, with certain facilities relying on a single special education teacher to serve an entire population.¹⁰⁷ This one-size-fits-all approach fails to provide the individualized supports mandated under federal law. Many youth with disabilities enter detention already performing far below grade level, with some reading and writing at an elementary school level or lower.¹⁰⁸ Being detained for a lengthy time in a facility without the necessary educational services and supports means that a young person is likely to fall further behind.

For youth with mental health conditions, a lack of services exacerbates these challenges.¹⁰⁹ Detention centers may fail to provide adequate counseling, therapeutic interventions, or medication management. What is available varies from facility to facility, said Michele Callari, whose experience as the statewide director of youth defense provides insight to practices in different counties. Some facilities may have services like group therapy, whereas others do not. Youth may also face disruption in the continuity of their community-based therapy when providers are not allowed to continue services once the youth is detained due to billing issues. “I think it is fair to say that the amount of services available to kids in detention is significantly smaller than those available outside,” Ms. Callari told us.¹¹⁰ This neglect can create an environment where youth with disabilities may struggle to cope and can lead to disproportionate disciplinary infractions and punitive measures rather than support or intervention.¹¹¹

¹⁰⁷ Human Rights Watch video group interview with Youth Justice Project attorneys at Disability Rights New Jersey, November 18, 2024.

¹⁰⁸ Ibid.

¹⁰⁹ Human Rights Watch phone interview with Dennis Febo, community-based service provider, November 8, 2024.

¹¹⁰ Human Rights Watch video interview with Michelle Callari, statewide director of youth defense, December 26, 2024.

¹¹¹ Human Rights Watch interview with currently incarcerated waived youth, Bordentown, New Jersey, December 11, 2024.

Why New Jersey Must Reform Its Approach to Waiver

The High Stakes: Juvenile vs. Adult Court

The decision to prosecute a child as an adult is arguably the most consequential decision the state can make in a young person’s life. It determines not only how they will be tried but also where they will be incarcerated, the type of support they will receive, and the very trajectory of their future. Unlike the juvenile system, which focuses on rehabilitation and development, the adult system prioritizes punishment and correction, offering few opportunities for growth and age-appropriate programming.

The contrasting experiences of youth interviewed for this report lay bare the drastic differences between the two systems. Stephen C., a young man who is currently incarcerated, summed up his perspective succinctly: “There’s no good rehabilitation in adult court, but in juvenile, they help you.”¹¹² This distinction is critical. In the juvenile system, youth are meant to have access to education, vocational training, therapy, and other programs aimed at addressing the root causes of their behavior and equipping them for successful reintegration into society. In contrast, the adult system can lack these supports and expose youth to harsher environments that stifle their growth.

Mikey B., a young man currently in the JJC but facing imminent transfer to an adult prison due to his waiver, described the personal progress he has made: “I was working on myself, taking advantage of programming. The juvenile system has better programming and resources, but soon I’ll be transferred to the DOC.”¹¹³ Removing youth like Mikey from a developmentally appropriate environment with opportunities for growth and placing them in one geared more toward punishment risks undoing their progress and potential.

Advocates and attorneys also highlight the age-appropriate programming of the juvenile system. One defense attorney shared the story of a client charged with homicide who received a 20-year sentence in juvenile court. Despite the severity of his crime, his

¹¹² Human Rights Watch interview with Stephen C., currently incarcerated committed youth, Jamesburg, New Jersey, October 2, 2024.

¹¹³ Human Rights Watch interview with Mikey B., currently incarcerated waived youth, Jamesburg, New Jersey, October 2, 2024.

placement in the JJC allowed him to access education, counseling, and vocational training, and according to his attorney, he is thriving:

He's gotten his high school degree. He's had some college classes, he's learning welding, and he's working in the administrative offices of the facility. He's seeing counselors and attending group sessions. The way he's treated is so much better than he would ever have gotten in the criminal division.¹¹⁴

The attorney believes that without these interventions and opportunities, her client might have gone on to commit more crimes.

Youth who are transferred to the DOC often spend their time in restrictive, punitive environments that lack accessible programming and support needed to address their developmental needs. This approach not only can stunt their growth but can also increase the likelihood of returning to the system.¹¹⁵

The impact of prosecuting a child as an adult extends far beyond incarceration. Youth prosecuted in adult court face lifelong consequences, including permanent criminal records that limit their opportunities for education, employment, and housing. The juvenile system, on the other hand, provides a pathway for youth to rebuild their lives without the burden of an adult conviction.

New Jersey's waiver system fundamentally undermines the purpose of the juvenile justice system: to rehabilitate, not punish. Reform is needed to ensure that decisions about waiver are guided by fairness, developmental science, and the recognition that youth deserve the chance to grow and change. Law professor Randy Hertz emphasizes the importance of aligning New Jersey's law with the value of prioritizing rehabilitation, stating: "There is an urgent need to change this standard so that it focuses, as other States do, on keeping children in juvenile court if they are amenable to rehabilitation."¹¹⁶

¹¹⁴ Human Rights Watch video interview with Honoria Forte, Hudson county public defender, October 10, 2024.

¹¹⁵ Donna Bishop and Charles Frazier, "Consequences of Transfer," in *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court*, ed. Jeffrey Fagan and Franklin E. Zimring (Chicago: University of Chicago Press, 2000).

¹¹⁶ Human Rights Watch email correspondence with Randy Hertz, New York University School of Law vice dean of curriculum and Fiorello LaGuardia professor of clinical law, December 6, 2024.

Accountability Without Waiver: The Strengths of New Jersey’s Juvenile System

New Jersey’s juvenile justice system, while not without flaws, provides a framework that can hold youth accountable for serious offenses while prioritizing their rehabilitation. It offers a middle ground that negates any perceived need to prosecute children as adults and deny them age-appropriate rehabilitative opportunities. “New Jersey gains no benefit from sending youth to the adult system,” Laura Cohen, a Rutgers law professor and youth justice expert told Human Rights Watch. “Waiver harms children in innumerable ways and undermines, rather than protects, public safety. The practices described in this report endanger our youth and our communities and must change.”¹¹⁷

Critics of abolishing waiver often argue that the juvenile system does not have sentences that are as long as those in the adult system, and that long periods of incarceration are needed to address serious crimes. However, unlike most states, New Jersey’s juvenile system has mechanisms that permit the imposition of significantly long sentences. For instance, a youth adjudicated in a New Jersey juvenile court for the crime of first-degree murder can be sentenced to 20 years. If warranted, the court may add an extended term of up to five years and impose sentences consecutively. All of this means that the length of incarceration in New Jersey’s juvenile system can be comparable to the 30-year sentence typically imposed in adult court for the same crime.¹¹⁸ The similarity in what sentences can be imposed challenges assumptions that the adult system is uniquely necessary to impose accountability.

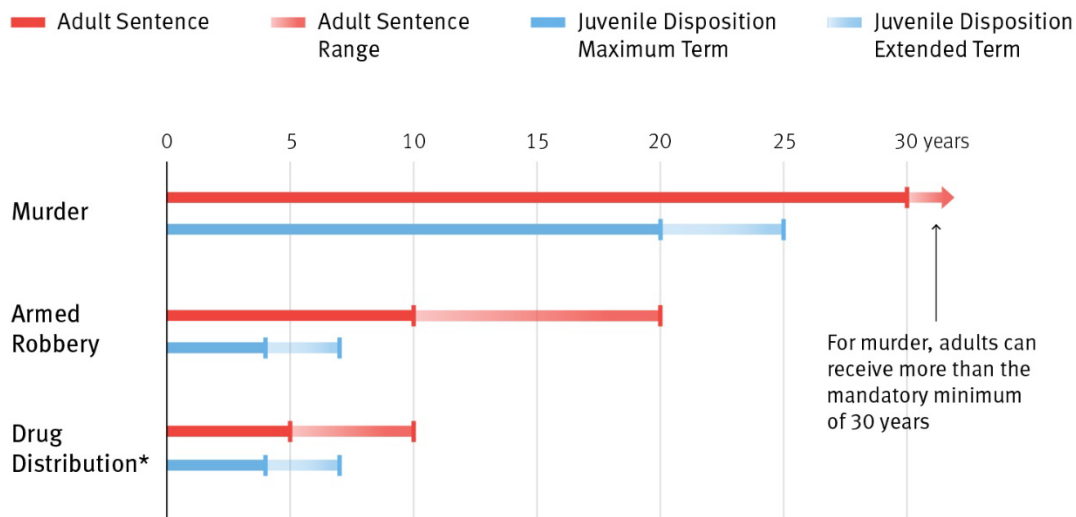
Moreover, New Jersey’s juvenile system provides flexibility important to public interests that its adult system lacks: the ability to incentivize rehabilitation. While youth in the juvenile system can face long sentences, the system incentivizes youth’s rehabilitation efforts with the possibility of earning earlier parole. Facilities under the state’s Juvenile Justice Commission are also specifically designed to meet the developmental needs of youth, providing educational programming, mental health care, and vocational training that aim to address the root causes of delinquent behavior.

¹¹⁷ Human Rights Watch phone interview with Laura Cohen, Rutgers School of Law vice dean of curriculum and Fiorello LaGuardia professor of clinical law, December 6, 2024.

¹¹⁸ NJ Rev Stat § 2A:4A-44 (2023). For example, Human Rights Watch spoke with a defense attorney whose client remained in the youth system and received a 40-year disposition, with consecutive sentences for two homicides.

Youth are Still Subject to Severe Sentences in the Juvenile System

Possible length of terms of incarceration in New Jersey’s adult and juvenile systems



*Second degree possession with intent to distribute.

Source: New Jersey Statutes NJ Rev Stat § 2A:4A-44 (2023), NJ Rev Stat § 2C:11-3 (2023), NJ Rev Stat § 2C:15-1 (2023), NJ Rev Stat § 2C:35-5 (2023).

Despite its strengths, New Jersey’s juvenile system is far from perfect. Serious allegations of abuse by corrections officers within the JJC highlight the need for continued oversight and reform. For example, a January 2024 lawsuit alleges rampant sexual abuse of youth by staff spanning decades from the 1970s to the 2010s.¹¹⁹ Even more recently, according to a separate complaint and affidavit of probable cause from August 2024, two senior corrections officers assigned to the JJC were charged with sexual assault and official misconduct against a young female resident.¹²⁰ Furthermore, interviews conducted by Human Rights Watch with waived youth who spent time in JJC facilities revealed a complex picture: While some praised certain aspects of the system, others described troubling

¹¹⁹ Mike Catalini, “A New Jersey Youth Detention Center Had ‘culture of Abuse,’ New LawsUIT Says,” *AP News*, January 17, 2024, <https://apnews.com/article/new-jersey-justice-youth-detention-sexual-abuse-75ef0e8bfdoa6f9b82497eb1aee7c9de> (accessed January 23, 2025).

¹²⁰ “Two Senior Corrections Officers Assigned to the Juvenile Justice Commission Charged with Sexual Assault and Official Misconduct,” New Jersey Office of Attorney General press release, October 29, 2024, <https://www.njoag.gov/two-senior-corrections-officers-assigned-to-the-juvenile-justice-commission-charged-with-sexual-assault-and-official-misconduct/> (accessed January 23, 2025).

conditions, including being subjected to frigid showers and enduring winters without adequate heating.¹²¹

These accounts underscore the necessity of ensuring that the juvenile system remains a safe environment for youth and that staff are held to the highest standards of conduct. While these allegations reveal significant shortcomings, they should not obscure the broader fact that the juvenile system is better suited than the adult system to meet the needs of youth. Addressing these abuses through stricter accountability measures and systemic reforms would further strengthen the juvenile system, making it an even more viable alternative to waiver.

Lessons from the Past: The Racial Legacy of New Jersey’s Waiver Law

Another compelling reason New Jersey should reform its waiver statute lies in its troubling association with the “superpredator” myth—a racially charged theory that originated in New Jersey itself. The term “superpredator” was coined in the 1990s by Princeton professor John J. DiIulio Jr., who inaccurately predicted a wave of “radically impulsive, brutally remorseless” youth—a description that became a racialized euphemism for Black and brown children—committing violent crimes.¹²² Although this prediction was later debunked, the moral panic it fueled led to a wave of harsh, punitive policies across the United States, including the proliferation of laws facilitating the transfer of children to adult courts.¹²³

The enduring legacy of this myth is evident in the appalling racial disparities in New Jersey’s youth justice system. Black youth in New Jersey are more than 28 times more likely than their white peers to be incarcerated—a disparity so severe that the state holds the grim distinction of having the second highest Black-white disparity in youth incarceration in the nation.¹²⁴ The continued prosecution of children in adult court perpetuates these

¹²¹ Human Rights Watch interview with Josiah P., currently incarcerated waived youth, New Jersey, December 2024.

¹²² William J. Bennett, John J. DiIulio, and John P. Walters, *Body Count: Moral Poverty...And How to Win America's War Against Crime and Drugs*, 1st Edition (New York: Simon & Schuster, 1996).

¹²³ Torbet et al., *State Responses to Serious and Violent Juvenile Crime*, <https://ojjdp.ojp.gov/library/publications/state-responses-serious-and-violent-juvenile-crime>.

¹²⁴ Joshua Rovner, “Black Disparities in Youth Incarceration,” The Sentencing Project, December 12, 2023, <https://www.sentencingproject.org/fact-sheet/black-disparities-in-youth-incarceration/> (accessed January 23, 2025). The state with the highest disparity is Connecticut.

harmful patterns, reinforcing systemic racism in a justice system that should instead strive for equity and fairness.

Despite overwhelming evidence that these laws are ineffective and deeply harmful,¹²⁵ the state has yet to reckon with the legacy of its home-grown theory. To truly address the injustices in its youth justice system, New Jersey must confront and dismantle the remnants of the superpredator myth that continue to shape its policies. Reforming its waiver statute is a necessary step toward breaking free from this legacy.

What Science Tells Us: The Unique Needs of Youth and Aging Out of Crime

In recent decades, advances in adolescent brain science have transformed our understanding of youth behavior, decision-making, and development. Scientific research consistently shows that the adolescent brain is fundamentally different from that of an adult.¹²⁶ Key areas of the brain, particularly those responsible for impulse control, risk assessment, and long-term planning, are not fully developed until the mid-20s. This explains why youth are more prone to impulsive decisions, peer influence, and short-sighted thinking.¹²⁷ However, these same developmental traits also mean that youth have an exceptional capacity for change, growth, and rehabilitation.¹²⁸

New Jersey youth in the JJC see this transformation in themselves. Jamie T., a young man currently in the JJC, described his personal growth:

I've matured a lot. When I first got locked up, I was a kid. I was dealing with so much pride, even in something as small as a basketball game, if something didn't go my way, I'd kick the ball. Now, as I'm getting older and

¹²⁵ Lawrence Winner et al., "The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term," *Crime & Delinquency*, vol. 43, no. 4 (1997): 548–63, accessed January 23, 2025, <https://doi.org/10.1177/0011128797043004009>; Donna M. Bishop et al., "The Transfer of Juveniles to Criminal Court: Does It Make a Difference?," *Crime & Delinquency*, vol. 42, no. 2 (1996): 171–91, accessed January 23, 2025, <https://doi.org/10.1177/0011128796042002001>; Richard Redding, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?" <https://ojjdp.ojp.gov/library/publications/juvenile-transfer-laws-effective-deterrent-delinquency>.

¹²⁶ Laurence Steinberg and Amanda Sheffield Morris, "Adolescent Development," *Annual Review of Psychology*, vol. 52 (2001): 83–110, accessed January 23, 2025, <https://doi.org/10.1146/annurev.psych.52.1.83>.

¹²⁷ Daniel Romer, "Adolescent Risk Taking, Impulsivity, and Brain Development: Implications for Prevention," *Developmental Psychobiology*, vol. 52, no. 3 (2010): 263–76, accessed January 23, 2025, <https://doi.org/10.1002/dev.20442>.

¹²⁸ Cara H. Drinan, *The War on Kids: How American Juvenile Justice Lost Its Way* (Oxford: Oxford University Press, 2017), p. 132.

having the right people around me—residents, staff, officers, the right programming—I’ve grown so much.¹²⁹

Similarly, Stephen C. reflected on the shift in his mindset: “I focused on the bad side growing up; now I’m focused on the good side and am more mature.”¹³⁰ These experiences align with research showing that most youth who engage in criminal activity naturally “age out” of crime as they mature, gaining impulse control and emotional stability over time.¹³¹

Prosecuting youth as adults disregards this scientific understanding and subjects them to environments that are counterproductive to their development. Josiah P., who was waived for a crime committed when he was 17 years old and subsequently sentenced to 16 years, reflected on his experience and who he is today: “It didn’t take me 13 years to change; it only took me five years. If I didn’t get waived, I would be home already advocating for other juveniles who are destroyed by this system.”¹³²

Understanding the unique needs of youth and the phenomenon of aging out of crime underscores the importance of treating young people as individuals with the capacity for growth. A justice system that aligns with this science would prioritize rehabilitation, offering youth the tools to succeed rather than consigning them to a punitive system that indiscriminately waives them and undermines their potential.

The Human Cost of Prosecuting Youth as Adults

The decision to prosecute a child in adult court carries devastating consequences—not only for the youth themselves but also for their families and communities.

For the youth who are waived, the adult system often subjects them to prolonged trauma, and lifelong barriers to employment, education, and housing. Efren Mercado, who spent decades incarcerated after being waived, reflected on the lasting toll: “I didn’t need 30

¹²⁹ Human Rights Watch interview with Jamie T., currently incarcerated waived youth, Jamesburg, New Jersey, October 2, 2024.

¹³⁰ Human Rights Watch interview with Stephen C., currently incarcerated committed youth, Jamesburg, New Jersey, October 2, 2024.

¹³¹ Rolf Loeber and David P. Farrington, eds., *From Juvenile Delinquency to Adult Crime: Criminal Careers, Justice Policy, and Prevention*, 1st edition (New York: Oxford University Press, 2012).

¹³² Human Rights Watch survey response from Josiah P., currently incarcerated waived youth, November 20, 2024.

years to be rehabilitated. I didn't need 30 years to learn my lessons. I still suffer from anxieties [from my time in prison] ... certain words can trigger something in me."¹³³ For many, the harsh realities of adult court extinguish hope and the possibility of rebuilding their lives. As described by Tanya G.—a 21-year-old waived for a crime committed when she was 16: “It felt like my life was over. I didn't think about a life or a future ... that this would prevent me from getting jobs later on.”¹³⁴

Many survivors of violent crime themselves also challenge the rationale behind waiving youth to adult court. In a national survey carried out by Survivors Speak, the majority of crime victims rejected long sentences as the best solution to crime. By a three-to-one margin, respondents believed that the most effective way to reduce crime is through creating more jobs and housing, not imposing harsher penalties. Furthermore, seven out of ten survivors preferred sentencing policies that allow for individualized consideration of the crime, the victim, and the defendant, rather than rigid, uniform sentencing requirements.¹³⁵

Communities bear the burden of increased recidivism and the economic costs of incarceration. Prosecuting youth as adults can exacerbate cycles of incarceration, as prioritizing punitive measures ignores the root causes of crime. Timothy B. was waived in 2018 when he was 15 years old. Reflecting on the structural inequities in his community, he explained:

When you come to our neighborhoods, you don't see buses and taxis.
There's garbage everywhere. The grass isn't cut. People are strung out.
People need help but aren't getting it. It's not right.¹³⁶

The decision to waive youth adds to that cycle, ignoring the potential of young people to grow, heal, and contribute meaningfully to their communities. Meanwhile, policymakers continue failing to address the root issues driving crime—poverty, systemic inequity, and

¹³³ Human Rights Watch video interview with Efen Mercado, formerly incarcerated waived youth, November 1, 2024.

¹³⁴ Human Rights Watch interview with Tanya G., currently incarcerated waived youth, Bordentown, New Jersey, October 1, 2024.

¹³⁵ Alliance for Safety and Justice, “Crime Survivors Speak 2024: A National Survey of Victims' Views on Safety and Justice,” September 2024, <https://asj.allianceforsafetyandjustice.org/crime-survivors-speak-2024/> (accessed January 23, 2025).

¹³⁶ Human Rights Watch interview with Timothy B., currently incarcerated waived youth, Bordentown, New Jersey, September 14, 2024.

lack of access to education and mental health services. Reforming New Jersey’s waiver statute could be one important step toward breaking these cycles of harm and ensuring a more just and effective approach to youth justice.

International Law

Under international human rights standards, children who are under age 18 at the time of their offense should be treated within a “child justice system” that prioritizes rehabilitation and reintegration over punishment.¹³⁷ It should also “provide ample opportunities to apply social and educational measures” and “strictly limit the use of deprivation of liberty.”¹³⁸ New Jersey’s waiver practices are at odds with these standards, particularly those outlined in the United Nations Convention on the Rights of the Child (CRC). The United States is the only UN member state that has not ratified the treaty. Nonetheless, the CRC’s principles provide a crucial framework for protecting the rights of children in the US justice system as elsewhere, and policymakers should look to it for guidance.

The Committee on the Rights of the Child, the UN body that interprets the convention, has stated that “the child justice system should apply to all children above the minimum age of criminal responsibility but below the age of 18 years at the time of the commission of the offense” and has called on states that try people under the age of 18 as adults to change their laws to end this practice.¹³⁹

The state of New Jersey’s waiver practices are at odds with several other important committee recommendations that elaborate essential elements of human rights protection for people under 18. These include the following:

- “Children with developmental delays or neurodevelopmental disorders or disabilities should not be in the justice system at all....If not automatically excluded, such children should be individually assessed.”¹⁴⁰ New Jersey’s waiver

¹³⁷ UN Committee on the Rights of the Child, General Comment No. 20 on the Implementation of the Rights of the Child during Adolescence, UN Doc. CRC/C/GC/20 (2016), para. 88. See also Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 40.

¹³⁸ UN Committee on the Rights of the Child, General Comment No. 24 on Children's Rights in the Child Justice System, UN Doc. CRC/C/GC/24 (2019), para. 19.

¹³⁹ *Ibid.*, para. 29.

¹⁴⁰ *Ibid.*, para. 28.

statute fails to make meaningful accommodations for children with disabilities, let alone exclude them entirely from the justice system.¹⁴¹

- “Safeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial, and discrimination against any group of children requires active redress.”¹⁴² The racially disparate impact of waiver on Black and Latinx youth implicates this recommendation and requires targeted action by the state to address it.¹⁴³
- “To effectively participate [in proceedings], a child needs to be supported by all practitioners to comprehend the charges and possible consequences and options....Proceedings should be conducted in an atmosphere of understanding to allow children to fully participate.”¹⁴⁴ Youth entangled in New Jersey waiver proceedings, as well as their attorneys, often report that the proceedings, as well as the potential consequences of waiver, are often not understandable and that proceedings are not conducted in a way that prioritizes making them meaningfully accessible.¹⁴⁵
- “The time between the commission of the offense and the conclusion of proceedings should be as short as possible.”¹⁴⁶ New Jersey youth often languish in pretrial detention for extended periods of time, and this problem is compounded by transfers into adult detention facilities following waiver proceedings.¹⁴⁷ The committee also states, “Children languishing in pretrial detention for months or years constitutes a grave violation of article 37(b) of the convention.”¹⁴⁸
- “There should be lifelong protection from publication regarding crimes committed by children,” since such publication “impedes the child’s reintegration and assumption of a constructive role in society.”¹⁴⁹ At least some New Jersey prosecutors regularly publish the names and likenesses of children waived into adult court.¹⁵⁰

¹⁴¹ See the Youth with Disabilities section, above.

¹⁴² Committee on the Rights of the Child, General Comment No. 24 on Children's Rights in the Child Justice System, para. 40.

¹⁴³ See the Racial Disparities in Waiver Outcomes section, above.

¹⁴⁴ Committee on the Rights of the Child, General Comment No. 24 on Children's Rights in the Child Justice System, para. 46.

¹⁴⁵ See the Youth’s Limited Comprehension of Legal Proceedings section, above.

¹⁴⁶ Committee on the Rights of the Child, General Comment No. 24 on Children's Rights in the Child Justice System, para. 54.

¹⁴⁷ See the Pre-Trial Detention section, above.

¹⁴⁸ Committee on the Rights of the Child, General Comment No. 24 on Children's Rights in the Child Justice System, para. 86.

¹⁴⁹ *Ibid.*, para. 70.

¹⁵⁰ See the Geographic Disparities in Waiver Decisions section, above.

- The reaction to an offense should always be proportionate not only to the circumstances and the gravity of the offense, but also to the personal circumstances (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child) ... a strictly punitive approach is not in accordance with the principles of child justice.¹⁵¹ Waiver into the adult system effectively precludes application of any of these principles, to the extent that New Jersey’s juvenile justice system attempts to do so.
- Mandatory minimum sentences are incompatible with the child justice principle of proportionality and with the requirement that detention is to be a measure of last resort and for the shortest appropriate period of time.¹⁵² In New Jersey, since 1979, adult courts have utilized mandatory minimum sentences.¹⁵³ Youth waived into the adult system can therefore be subject to mandatory minimums.
- “Every child in detention should be placed in a facility as close as possible to his or her family’s place of residence.”¹⁵⁴ Some New Jersey youth are detained two to three hours away from their families, disrupting familial connections and support systems.¹⁵⁵
- “Every child in detention has the right to education suited to his or her needs and abilities.”¹⁵⁶ Waiver into the adult system removes children from the efforts the child justice system makes in this direction. Many of the youth interviewed for this report described this as among the most punishing and painful consequences of waiver.¹⁵⁷

New Jersey’s waiver practices disregard these international standards that prioritize the developmental needs and rights of children. Reforming these practices is essential to align with global human rights norms and to ensure that the justice system protects and nurtures the potential of every child.

¹⁵¹ Committee on the Rights of the Child, General Comment No. 24 on Children's Rights in the Child Justice System, para. 76.

¹⁵² *Ibid.*, para. 77.

¹⁵³ New Jersey Department of Corrections, Office of Compliance and Strategic Planning, “Population Characteristics Report on January 1, 2024,” January 2024, https://www.nj.gov/corrections/pdf/offender_statistics/2024/Entire%20Population%20Characteristics%20Report_Final%20Draft.pdf (accessed January 23, 2025).

¹⁵⁴ Committee on the Rights of the Child, General Comment No. 24 on Children's Rights in the Child Justice System, para. 94.

¹⁵⁵ See the Pre-Trial Detention section, above.

¹⁵⁶ Committee on the Rights of the Child, General Comment No. 24 on Children's Rights in the Child Justice System, para. 95(c).

¹⁵⁷ See the Missed Opportunities for Treatment, Education and Rehabilitation section, above.

Essential Safeguards for Children in New Jersey

New Jersey should eliminate the use of waiver and ensure that every child remains in the juvenile system for crimes committed under age 18. However, while waiver remains a practice, the state should, in the interim, urgently put in place essential safeguards and protective measures. By implementing these protections, the state can reduce the harm caused by its waiver practices and move closer to a justice system that prioritizes fairness, rehabilitation, and the best interests of children.

Judicial Decision-Making: Why Judicial Oversight is Essential

Meaningful judicial oversight is essential to ensure fairness and impartiality in waiver decisions. Preston Shipp, a former prosecutor from Tennessee, told us that it is crucial for a judge, not a prosecutor, to be the one who decides the question of waiver: “It is a life-altering decision to try a child as an adult, and it should be made by a neutral party who can impartially and fully consider all of the factors particular to children.”¹⁵⁸

New Jersey’s waiver system should be fundamentally altered so that judges, rather than prosecutors, are its primary decision-makers. Judges, trained to weigh evidence and consider the unique circumstances of each case, are better equipped and positioned than prosecutors to evaluate factors like a youth’s developmental stage, potential for rehabilitation, and the mitigating circumstances of their offense. Judicial decision-making ensures that waiver decisions are guided by due process and individualized consideration, rather than prosecutorial discretion that can be influenced by bias, public pressure, or a singular focus on the severity of the offense.

Key Safeguards for Protecting Youth

Amenability Hearings That Allow for Individualized Decisions

Amenability hearings are a key safeguard that allow judges to evaluate whether a youth can be rehabilitated within the juvenile system, ensuring that waiver decisions are based

¹⁵⁸ Human Rights Watch email correspondence with Preston Ship, former assistant attorney general for the State of Tennessee, December 6, 2024.

on individualized assessments rather than blanket assumptions about offense severity. These hearings provide an opportunity to consider a child’s developmental capacity, history of trauma, disability status, and potential for growth, guided by expert evaluations and evidence.

Until such time as the use of waiver is abolished, reinstating amenability hearings in New Jersey would restore fairness to the waiver process, ensuring that decisions reflect the unique circumstances and rehabilitative needs of each youth rather than defaulting to the judgment of prosecutors.

Evidence-Based Assessments and Expert Input

Evidence-based assessments and expert input can contribute to more informed waiver decisions. Evaluations by psychologists, social workers, and other professionals trained in adolescent development provide insights into a youth’s maturity, mental health, and capacity for rehabilitation. These assessments help decision-makers understand the underlying factors that contributed to a youth’s behavior and identify the supports they need to grow and succeed. Incorporating expert input ensures that waiver decisions are rooted in science and individualized consideration, rather than bias or assumptions, fostering a more just and effective system.

Conclusion

New Jersey's current waiver practices fail to uphold the principles of fairness, rehabilitation, and justice that should define its approach to youth in conflict with the law. By placing unchecked power in the hands of prosecutors, disregarding the developmental differences and potential for growth of young people, and perpetuating systemic inequities, the state has created a system that prioritizes punishment over rehabilitation. These failures harm not only the youth directly impacted but also their families and communities.

This report has outlined the profound shortcomings of New Jersey's waiver statute, including the lack of judicial oversight, racial disparities, and the systemic barriers to rehabilitation faced by waived youth. It has also provided a roadmap for reform, emphasizing the need for safeguards, judicial involvement, evidence-based practices, and a focus on rehabilitation and equity.

Reforming New Jersey's waiver statute is not just a matter of aligning with constitutional principles and international human rights standards—it is an opportunity to create a justice system that truly values the potential of every child. By implementing these reforms, New Jersey can ensure that its justice system reflects fairness, protects the most vulnerable, and works toward a future where no child is treated as disposable. There should be no kids we throw away.

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Appendix A: Kent Factors

In its opinion in *Kent v. United States*, the Supreme Court noted several factors juvenile court judges should assess in making the transfer decision. These factors were:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment.
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults.
6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
7. The record and previous history of the juvenile, including previous contacts with ... law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation ... or prior commitments to juvenile institutions.
8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the juvenile court.

Appendix B: Human Rights Watch Survey

Background

1. Were you waived to the adult system for a crime that occurred when you were under the age 18
If your answer is "no," please do not complete this form.
 - Yes
 - No

2. Name: _____

3. SBI number: _____

4. Birthdate: _____

5. Race: Which of the following race classifications best describe you?
Select all that apply. For example, "Black or African American" and "White."
 - American Indian or Alaska Native
 - Asian
 - Black or African American
 - Middle Eastern or North African
 - Native Hawaiian or other Pacific Islander
 - White
 - Other _____
 - I prefer to not share my race

6. Ethnicity: How do you identify your ethnicity?
 - Hispanic
 - Not Hispanic
 - Other _____
 - I prefer to not share my ethnicity

7. Gender: How do you identify?
 - Woman
 - Man
 - Transgender
 - Non-binary/non-conforming
 - Other: _____
 - Prefer not to answer

8. How old were you at the time of the crime that resulted in the waiver? _____

9. What year did that crime happen? _____

10. How old were you when you were sentenced for the crime that resulted in waiver? _____

11. At the time of the crime that resulted in waiver, where were you living?
Select all that apply.
 - With my mother and/or father
 - With other family
 - In a foster home
 - In a group home
 - With other adults who were not my blood-relatives
 - With friends
 - Couch surfing from place to place
 - On the street or in shelters, etc.
 - In a juvenile hall or other locked facility
 - Other: _____
 - Any additional info: _____

12. Prior to the crime, had you ever been in foster care or unhoused / homeless?
 - Yes
 - No

If yes, please describe your experiences and list how old you were for each: _____

13. Prior to the crime that resulted in waiver, had you ever received counseling, therapy, or other services through the juvenile justice system, whether by probation, court-ordered, or otherwise?

- Yes
- No

If yes, was it helpful? And what happened with those services? _____

If no, do you feel you could have benefitted from services like that in the juvenile system? _____

14. Prior to the crime that resulted in waiver did you have any adjudications in juvenile court or adult convictions?

- Yes
- No, this case is the first time I was found guilty in juvenile or adult court.

If yes, what were the crimes, and what were your dispositions/sentences? _____

Court Process

15. What county were you prosecuted in? _____

16. What city, town, or neighborhood were you living in at the time? _____

17. What crime(s) were you convicted of that resulted in the waiver? _____

18. What is your sentence? _____

19. What was it like when you were first arrested? _____

20. Were you represented by a private attorney or a public defender?

- Private attorney
- Public defender
- I'm not sure
- Other: _____

21. Can you describe your relationship with your attorney? How often did you communicate with them? Do you feel they represented you effectively, especially given your age at the time?

22. What was your experience during court hearings? How did you feel during these hearings? Is there a specific memory or event in court that stands out to you? _____

23. Looking back, how much of the time in court did you understand what was happening?

- | | |
|--|--|
| <input type="checkbox"/> All of the time | <input type="checkbox"/> About half the time |
| <input type="checkbox"/> Most of the time (around 90%) | <input type="checkbox"/> Rarely (around 25%) |
| <input type="checkbox"/> Often (around 75%) | <input type="checkbox"/> Almost never |

24. Can you describe your feelings and thoughts when you first entered an adult courtroom? _____

25. Were you voluntarily waived or involuntarily waived?

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> Voluntarily waived | <input type="checkbox"/> I'm not sure |
| <input type="checkbox"/> Involuntarily waived | |

26. Do you remember how you felt or what you were thinking when you were waived? _____

27. Were you offered a plea agreement from the prosecuting attorney?

- Yes
- No
- I'm not sure

28. Did you plead guilty or go to trial?

- Pled guilty
- Went to trial
- I'm not sure

29. Do you have any thoughts you want to share about your plea or going to trial? _____

30. How did you decide what you wanted to do in your case (either plead or go to trial)? _____

31. Did you have a chance to consult with any family or trusted adults in your life, if you had any, about your case? _____

Factors Around Crime

32. If you were involved with the crime that resulted in waiver, why do you think you got involved?

33. If one of the crimes you were convicted of is murder, were you the person who physically killed the victim? (For example, if a gun killed the victim, were you the person who pulled the trigger? etc.)

Skip this question if you were not convicted of murder.

- Yes
- No
- Any additional info? _____

34. If one of the crimes you were convicted of was murder, was the victim accidentally or unexpectedly killed during the commission of another felony?

Skip this question if you were not convicted of murder.

- Yes
- No
- Any additional info? _____

35. Did you have co-defendants in this crime (even if they were not caught or convicted)?

- Yes
- No
- I am not sure

If yes, how many codefendants did you have, and what were their ages at the time of the crime?

Youthfulness

36. Did you spend any time in the JJC? What was that like? _____

37. How old were you when you went to adult prison? _____

38. What do you remember about entering prison? What did you see when you first arrived? Could you describe how you felt at the time, and tell us about any memory that sticks in your mind about coming to prison at a young age? _____

39. How do you think your life might have been different if your case had not been waived, and you remained in the juvenile system with access to things like good counseling and education?

40. If you were going to describe yourself to someone who doesn't know you, what would you say? Tell us what your personality is like. What interests do you have? How do you show up in a group? What kind of friend are you? Also, what pressures are you dealing with in life? _____

41. When you are released from prison, what do you hope to do? _____

Opinions

42. What do you think about waiver? _____

43. What are your thoughts about how waiver laws could be different in New Jersey? _____

44. Is there anything else you would like to tell us? _____

“Kids You Throw Away”

New Jersey’s Indiscriminate Prosecution of Children as Adults

Over the past decade, New Jersey has prosecuted hundreds of children as adults, subjecting them to lengthy stays in pre-trial detention, harsh sentences, and a future stripped of opportunity. While some youth remain in the state’s juvenile system—offered rehabilitation, education, and a chance to rebuild—others, often based on a single prosecutorial decision, are transferred to adult courts, where they may face decades of incarceration.

“Kids You Throw Away” examines the devastating impact of New Jersey’s waiver system, which allows prosecutors—without meaningful judicial oversight—to decide whether a child will be tried and sentenced as an adult. This decision disproportionately affects youth of color and can mean the difference between a future of support and second chances or one defined by punishment and despair.

Based on interviews with over 80 legal professionals, advocates, and individuals directly impacted by waiver—including young people currently incarcerated in both juvenile and adult prisons—the report provides a rare glimpse into the human toll of prosecuting children as adults. It also presents new findings from data analysis, court records, and case outcomes, illustrating the inequities and long-term consequences of the system.

Human Rights Watch concludes that prosecuting children as adults is a fundamentally unjust and harmful practice, violating international human rights standards and failing both youth and public safety. The report calls on New Jersey to end the use of waiver and move closer toward a justice system that prioritizes rehabilitation, fairness, and the rights of all children.



Young person in a detention facility in Olathe, Kansas. Human Rights Watch requested access to photograph inside New Jersey Juvenile Justice Commission facilities but was denied. © 2013 Richard Ross. Through his Juvenile-in-Justice project, Ross documents the experiences of incarcerated youth across the U.S., using photography as a tool for reform.