

# Transfer Cases at Juvenile Court

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# Juvenile Court -The Basics:

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## □ The Law:

### □ Tenn. Code Ann. § 37-1-101 et seq.

- “Consistent with the protection of the public interest, remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and substitute therefore a program of treatment, training and rehabilitation”
  - “Achieve the foregoing purposes in a family environment whenever possible, separating the child from such child’s parents only when necessary for such child’s welfare or in the interest of public safety”
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# Adult court

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- The only way for a youth to be tried at adult court in Tennessee is via the transfer process (TCA §37-1-134)
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# How a case starts - who can file?

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- Tenn. Code Ann. § 37-1-119 – “...any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believe they are true.”
  - Tenn. Code Ann. § 37-1-122 – A summons shall issue setting forth the charges, date and time for the appearance and directing the parent to bring the child to court.
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# Case filing for transfer cases:

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- Most transfer cases will be started by a Detective due to the severity of the charges rather than by a front desk complaint from a citizen.
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# What about detention?

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- For serious cases, law enforcement will either arrest or ask the court for an arrest order.
  - Tenn. Code Ann. § 37-1-113 – Taking into custody.
  - In accordance with the laws of arrest a child or youth may be taken into custody, but can they be kept in detention?
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# Detention:

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- Remember the purpose of Juvenile Court ...
    - Rights of the child/youth?
    - - essentially the same as an adult, but they do not have the right to a jury trial.  
*In re Gault - 387 U.S. 1 (1967) and Tenn. Code Ann. § 37-1-127.*
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# Transfer case on detention

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- ❑ Transfer cases will have a detention hearing first.
  - ❑ That will be the *first* PC (probable cause) hearing to determine if the state can make PC to keep them in detention.
  - ❑ Even if PC is not found, the case is not dismissed. The case still goes forward.
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# Transfer case decision point:

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- ❑ 37-1-134 requires that the Notice of Intent to Seek Transfer must be provided to the defense attorney within 90 days of the child being charged.
  - ❑ The cases that we usually put on the transfer list are ...
  - ❑ Meet with your elected DA to set your office's policy as to transfer cases.
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# State's Notice

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- ❑ Decision to seek transfer must be made within 90 days of charge and no less than 14 days prior to the transfer hearing.
  - ❑ Transfer cases in Tennessee are discretionary with the Judge.
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# Transfer decision tips – what to consider:

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- Does the offense meet the statute?
  - What is the youth's history
  - What is their age
  - How much treatment/custody have they had
  - Talk to the Victims – involve them
  - Talk to the Detective
  - Consider the Juvenile Court vs. Adult court options.
  - Be objective about your proof – often kids admit part of the offense, but is that enough?
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## PC found - Detained

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- ❑ Each youth will go to a pre-transfer brief hearing with the Judge.
  - ❑ If a youth is in detention, they will usually remain in detention until the transfer hearing.
  - ❑ Why does the elected judge hear the transfer case?
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# JCCOs

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- ❑ Each transfer case should have an evaluation.
  - ❑ This information is needed for the trial for competency and for any treatment recommendations.
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# Remember the other options.

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- What can we do other than transfer?
  - Those options remain on the table, but most likely the State will not be willing settle the case, but the defense attorneys will raise those issues.
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# Options – other than transfer:

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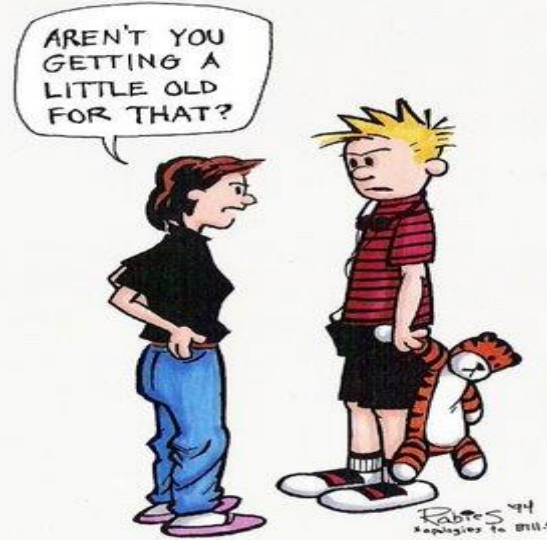
- Informal adjustment
- Pretrial diversion
- Judicial diversion
- Supervised probation
  - County vs. State
- Stay of DCS custody
- DCS custody – Indeterminate or Determinate.
  - Treatment
  - Foster care
  - YDC
  - All options available to all children in foster care. DCS controls placement pursuant to Tenn. Code Ann. § 37-1-129(c)(1), but the Court may hold a placement hearing pursuant to 37-1-129(c)(2).



What if these options are not appropriate due to the severity of the delinquent act or due to the youth's record or their age?

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- Then look at transferring the case to adult court pursuant to Tenn. Code Ann. § 37-1-134.





# Important Players

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- Get to know your law enforcement officers, DCS workers, DCS supervisors and DCS attorneys in addition to your YSOs and the local attorneys who take Juvenile Court appointments.
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# The transfer hearing

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- ❑ What does the State have to prove?
  - ❑ What points will the defense attorney want to make?
  - ❑ What cases qualify for a transfer to adult court. The statute defines that.
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# Tenn. Code Ann. § 37-1-134

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- Transfer from Juv. Ct.:
  - 1. If the youth is over the age of 17 at the time of the alleged conduct, then any charge can be transferred;
  - 2. 16 of age or more and they are charged with robbery or attempt to commit robbery; charged with escape from a YDC.
  - 3. If the youth was aged 14-17 and is alleged to have committed the following offenses:
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# Transfer - continued

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- 1st degree murder, 2nd degree murder, rape, agg. rape, rape of a child, agg. rape of a child, agg. robbery, esp. agg. robbery, Agg. Burglary, esp. agg. Burglary, kidnapping, agg. kidnapping, esp. agg. kidnapping, commission of an act of terrorism, carjacking, or an attempt to commit any such offenses.
  - 4. A youth less than 14 must be charged with 1<sup>st</sup> degree murder, 2<sup>nd</sup> degree murder or attempt in order to qualify for transfer.
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# Your Elected DA

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- Get with your elected DA to set the policy on transfers.
  - Each community will be different. Know what matters to the people you serve.
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# Important U.S. Supreme Court Cases

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- ❑ *In re Gault* (1967)– rights of juvenile offenders;
  - ❑ *Roper v. Simmons* (2005) – Juveniles cannot get the death penalty.
  - ❑ *Graham v. Florida* (2010) – No LWOP for a juvenile who is not charged with homicide.
  - ❑ U.S. Supreme Court in June ruled in *Miller v. Alabama*, 132 S. Ct. 2455 (2012) that **mandatory** life sentences for children also constituted cruel and unusual punishment;
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# Supreme Court Cases

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- Montgomery v. Louisiana (2016) – The Miller cases applies retroactively.
  
  - Jones v. Mississippi (2021)– The court supported all of the above findings, but stated that a youth does not have to be declared to be permanently incorrigible.
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# The Court and cognitive capacity.

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- *The Roper case started this discussion:*
  - *Roper v. Simmons*, 543 U.S. 551 (2005), have referenced the limited cognitive capacity and still developing moral compass of juveniles in limiting their sentences. Therefore, the death penalty cannot be applied to those who committed the offense as a juvenile.
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# What do you have to prove in a transfer hearing:

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- ❑ The Court must find that there are reasonable grounds to believe that:
    - ❑ -the child committed the delinquent act as alleged;
    - ❑ -the child is not committable to an institution for the developmentally disabled or mentally ill, and
    - ❑ - the interests of the community require that the child be put under legal restraint or discipline.
  - ❑ (37-1-134)
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# Part One

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- The Court must find that there are reasonable grounds to believe that:
    - the child committed the delinquent act as alleged;
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# Part Two

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- -the child is not committable to an institution for the developmentally disabled or mentally ill, and
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# Part Three

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- - the interests of the community require that the child be put under legal restraint or discipline.
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## What must the Court consider when deciding the transfer case:

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- (1) The extent and nature of the child's prior delinquency records;
  - (2) The nature of the past treatment efforts;
  - (3) Whether the offense was against a person or property;
  - (4) Whether the offense was committed in an aggressive and premeditated manner;
  - (5) The possible rehabilitation of the child;
  - (6) Whether the child's conduct was a gang offense as defined in 40-35-121.
  - (7) Whether the child has a history of trauma... or human trafficking as defined in 39-13-314.
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# DCS records – history is important.

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- DCS records are a wealth of information, so be sure to review those records along with the court file.
  - If you notice that the youth was in custody or even lived in another county, reach out to that ADA to get the history on that youth.
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# What happens after the transfer hearing:

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- If the transfer is granted, then the case is heard at adult court and if the youth is convicted, they will be treated as an adult for any future offenses;
  - It is possible for them to get life – that translates to 51 years in Tenn.
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# What happens after the transfer hearing:

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- If the transfer is not granted, then the case just proceeds as any other juvenile case would proceed.
  - The case is not dismissed.
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# Conclusion

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- Any Questions about what we have covered this morning?



# Thank you!

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If you have any questions in the future,  
please feel free to e-mail us at:

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