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## The Psycholegal Factors for Juvenile Transfer and Reverse Transfer Evaluations

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## RESEARCH ARTICLE

# The psycholegal factors for juvenile transfer and reverse transfer evaluations

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It remains unclear whether forensic mental health assessments for juvenile reverse transfer (to juvenile court) are distinct from those for juvenile transfer (to adult court). This survey consisted of an updated review of transfer and reverse transfer laws (in jurisdictions that have both mechanisms) in light of the generally accepted three-factor model of functional legal capacities involved in transfer evaluations (i.e., risk, sophistication–maturity, and treatment amenability). Results indicated that a majority of states' reverse transfer statutes refer explicitly or implicitly to the same three psycholegal constructs identified as central for transfer. Given the legal similarity between transfer and reverse transfer, potential practice implications and directions for future research are discussed.

## 1 | INTRODUCTION

While the “due process era” of juvenile justice flowed from acknowledgements of the similarities and parallels of the juvenile and adult courts, the “punitive” era was marked by jurisdictions strengthening the intersections between them (Grisso, 2003, 2013; Melton, Petrila, Poythress, & Slobogin, 2007). Various mechanisms were implemented by jurisdictions to facilitate processing some youths as adults in the criminal justice system rather than handling them in the juvenile justice system (Cheesman, 2011; Salekin, 2015). One is prosecutorial discretion (to choose whether to prosecute the case in juvenile court or adult court). Another is juvenile waiver (by a juvenile court judge to the criminal court in a case that began in the juvenile court). A third is statutory exclusion (in which a youth's case is automatically processed in the criminal justice system by virtue of combinatory thresholds involving age and offense type and severity). A fourth is reverse waiver (whereby a case automatically or discretionarily arriving in adult court is returned to juvenile court). The last is blended sentencing (in which juvenile court judges may be permitted to impose criminal sanctions or combined juvenile–adult dispositions, or judges in criminal court may be empowered to issue or remand for juvenile dispositions, or impose hybrid juvenile–adult sanctions). The first three mechanisms are often collectively referred to as *juvenile transfer*, though only juvenile waiver, specifically, would call for forensic mental health testimony. Reverse waiver is also called *reverse transfer* or *decertification*, and it too may give occasion for forensic mental health assessment, as might blended sentencing decisions.

More empirical and practice literature is amassing on the topic of forensic mental health assessment for juvenile transfer (Dattilio & Fromm, 2011; Grisso, 2013; Salekin, 2015). This includes published case studies (Heilbrun, DeMatteo, Brooks Holliday, & LaDuke, 2014; Witt, 2003), statutory reviews (Juvenile Justice Geography, Policy, Practice and Statistics, n.d.; Heilbrun, Leheny, Thomas, & Huneycutt, 1997), studies of judge and clinician beliefs

and decision-making (Brannen et al., 2006; Salekin, Rogers, & Ustad, 2001; Salekin, Yff, Neumann, Leistico, & Zalot, 2002), critical reviews (Grisso, 2010–2011; Harris, 2008; Kruh & Brodsky, 1997; Penney & Moretti, 2005), and the development and validation of a specialized forensic assessment instrument, the Risk–Sophistication–Treatment Inventory (RSTI; Salekin, 2004; see also Iselin & Salekin, 2008; Salekin, 2012). Moreover, the field has seemingly moved toward acceptance of a model in which three *psycholegal constructs* (used synonymously with *functional legal capacities*, and defined as psychological concepts that judges incorporate and balance in their legal decision-making) form the “core” of transfer evaluations—risk (public safety), sophistication–maturity, and amenability to (juvenile justice system) rehabilitation (Ewing, 1990; Grisso, 2010–2011; Grisso, 2013; Kruh & Brodsky, 1997; Heilbrun, DeMatteo, King, & Filone, 2017; Larson & Grisso, 2016; National Council of Juvenile and Family Court Judges, 2005; Penney & Moretti, 2005; Salekin, 2015; Salekin, Grimes, & Adams, 2016a).

## 1.1 | The three-factor model of transfer evaluations

The aforementioned three factors, among five others, were originally listed in *Kent v. United States* (1966). Besides a listing of some or all of the *Kent* criteria, Salekin et al. (2016a) noted three other standards that some states utilize alternatively to or in conjunction with listings of *Kent*-like criteria: (i) public safety, danger to others, danger to the public, protection of the community, and the like; (ii) amenability to rehabilitation, not a fit and proper subject, or similar phrasings; and (iii) best interests of the child and the community, or comparable language (i.e., a balance of public safety and the juvenile's interests).

In earlier chapters and journal articles in this area, Melton, Petrila, Poythress, and Slobogin (1987, 1997) regarded treatment amenability to be of primary importance, while Barnum (1987), Grisso, Tomkins, and Casey (1988), and Witt and Dyer (1997) focused on risk in addition to treatment amenability. However, Ewing (1990) early on described the aforementioned three-factor model, and Grisso (2010–2011) later endorsed it. Heilbrun et al. (1997) identified four relevant factors based on a systematic review of statutes for the 50 states, District of Columbia, and federal government: risk assessment, treatment needs and amenability, emotional and behavioral aspects of the offense, and intellectual disability or mental illness. Dattilio and Fromm (2011) similarly described a more expansive listing of relevant factors. While Loving and Patapis (2007) stressed treatment amenability, they conceptualized the factor broadly to also include risk and sophistication–maturity as relevant facets.

Salekin and colleagues (e.g., Salekin, 2015; Salekin et al., 2016a) have noted that issues such as intelligence, mental disorders, social and family circumstances, and offense characteristics can be incorporated into a more parsimonious three-factor model, and Heilbrun and colleagues have endorsed this view in recent writings (e.g., Heilbrun et al., 2017). The National Council of Juvenile and Family Court Judges (2005) has also endorsed this three-factor model. At the same time, Salekin (2015) and Salekin et al. (2016a) have also described a five- or six-factor evaluation model consisting of the three aforementioned psycholegal factors plus response style and personality functioning and psychopathology—presumably distinguishing the latter factors for clinical utility purposes (as they reason that they help examiners structure the evaluation and communicate results that are understandable to legal professionals) and not because they are thought to represent unique psycholegal factors for juvenile transfer.

Taking each of the three psycholegal factors in turn, and beginning with risk, commentators who have endorsed the three-factor model (Ewing, Grisso and colleagues, Heilbrun and colleagues, Kruh and Brodsky, and Penney and Moretti; see references provided *supra*) have unanimously recommended focusing on relevant and established risk factors. Most have also endorsed considering contextual factors and, correspondingly, offering several risk opinions in light of different dispositional possibilities. The importance of evaluator recognition and acknowledgement of the limitations of juvenile risk assessment research has also been widely endorsed by scholars. Recent commentaries have recommended considering juvenile delinquency pathways and utilizing validated actuarial and structured professional judgment juvenile risk assessment tools, and knowing the strengths and limitations of these respective tools. Several of the more recent commentaries have also recommended a more nuanced consideration of generally applicable “negative” (risk—static and dynamic, variable and casual; vulnerability; potentiating) and “positive” (promotive, protective,

strength, resiliency) factors and mechanisms, attending to case-specific risk-relevant factors, appreciating demographic nuances, and accurately and understandably communicating risk information.

Differences of opinion regarding risk pertain to the relevant target behavior(s)—ranging from (a) dangerousness—dangerous behavior, through (b) serious reoffending and (c) risk of harm to others and persistent offending into adulthood, to (d) violence, relevant outcome period(s), and utility of juvenile psychopathic traits. Also, some recent authors have focused more on interconnections among risk, personality, and mental disorders in the transfer context, while others have focused more on guidance offered by the Risk–Need–Responsivity model (e.g., Hoge, 2016). Finally, whereas recent commentators have often incorporated recommendations made by one another, each has advanced some unique practice recommendations flowing from their slightly distinct perspectives.

As for sophistication–maturity, the aforementioned commentaries (as well as Kemp et al., 2017, of which Heilbrun was a co-author, and Salekin, MacDougall, & Harrison, 2016b) have consistently endorsed the ability of forensic mental health professionals to assess this concept using a variety of assessment approaches and tools (e.g., clinical interviews, collateral information, intelligence tests, academic achievement tests, tests of adaptive functioning, neuropsychological tests, personality tests, self-report measures of different aspects of developmental maturity, and a forensic assessment instrument that includes attention to sophistication–maturity). All scholars have endorsed cognitive and emotional–moral facets of the construct, and most have also endorsed an autonomy–independent functioning facet. Some have also advanced that social maturity, practical knowledge, culpability, and competency to stand trial form part of the sophistication–maturity concept. Several have additionally noted the influence of neurobiology, psychopathology, and family–environmental factors. More recent commentators have sought to synthesize several different theoretical and empirical attempts to define developmental maturity, collectively yielding an extensive listing of factors that have been categorized in different ways under the umbrella category of developmental maturity or sophistication–maturity.

Notably, criminal sophistication has recently been distinguished from developmental maturity, with one scholar having defined the former as a trajectory of increasingly advanced criminal involvement, and another as developmental maturity influenced by criminogenic risk factors toward antisocial application. Developmental maturity, in contrast, has been defined as maturation over time regardless of a youth's justice involvement, and recent authors have noted that a youth can present as more and less developed in different domains of developmental maturity (and so these commentators have recommended against communicating about sophistication–maturity dichotomously and unidimensionally). As was the case with risk, there exist differences of opinion about the appropriate time focus or foci of sophistication–maturity assessments. In addition, each scholar has advanced several unique points about developmental maturity, or sophistication–maturity, stemming from their somewhat unique analyses of the theoretical and empirical literatures that inform an understanding of the constructs.

Turning to the remaining factor—treatment amenability—commentators have consistently noted that this psycholegal construct is, in one sense, narrower than the traditional psychological–clinical concept of amenability. That is, the former is limited by juvenile justice system intervention service options and time constraints, whereas the latter has been defined simply as the likelihood of someone responding positively to an intervention. However, it has also been advanced by several authors that treatment amenability in the transfer context is broader than readiness for a particular psychological intervention or modality, or psychotherapeutic interventions in general (e.g., it also includes amenability to educational, vocational, and social service interventions). It has also been distinguished by multiple commentators from amenability to traditional psychotherapy (e.g., the paramount focus is on risk reduction rather than mental health symptom reduction, within humane bounds). All scholars have endorsed consideration of evidence-based juvenile justice system services, and most have also endorsed consideration of personal and environment factors related to responsiveness to psychological interventions, and acknowledgment of the field's current limitations in this area (e.g., absence of validated youth–service matching tools). Several commentators have advanced that service availability should include consideration of local jurisdiction options and, if reasonable, extra-jurisdictional possibilities (and hence the need to have a grasp of the literature concerning

evidence-based services for justice-involved youths). More recent commentaries have also endorsed identifying criminogenic and non-criminogenic needs, and critically evaluating the reasons for poor response to prior treatments.

Furthermore, a few authors have cautioned, for a variety of reasons, against overly pessimistic prognoses about youths who present with psychopathic traits, while at the same time noting the relevance of personality factors. Likewise, a few scholars have recommended essentially assessing juvenile justice system services in terms of adherence to RNR model principles (e.g., general responsivity, criminogenic needs, program delivery, organizational). Several commentators have uniquely noted factors that contribute to the complexity of this construct (e.g., potential of external biasing pressures on evaluators, evaluators subscribing to different theoretical orientations concerning delinquency, different suggestions about the relevant or paramount outcomes, different suggestions about the necessary degree and type of improvements). So too have scholars each offered unique points (e.g., distinguishing among service availability and suitability, amenability, and amenability enhancement; the downward extension of adult motivation and treatment readiness measures; listings of relevant factors; legal trends of least restrictive alternatives and diversion; whether a comparison of amenability in the juvenile justice system versus criminal justice system is called for; focusing on guidance offered by principles from the RNR model; noting that guidance is offered by practice literature, statutory law, and case law).

In addition to discussing the three psycholegal factors individually, most commentators have also discussed the interplay among them. Questions about how forensic mental health and legal professionals conceptually integrate (often with reference to the RNR model) and weigh the three factors have been advanced by several authors. Multiple scholars have also suggested the influence of normative developmental forces, personality development, response style, environmental history, and current and future contexts on all three factors; endorsed the relevance of the three factors for both transfer and disposition decision-making (among other decisions along the juvenile justice system continuum); and noted the unique strength of the RSTI as the lone validated measure of all three factors. Several unique points have also been offered by individual commentators concerning issues that cut across the three factors (e.g., the relevance of index offense denial, the import of serial assessments, suggested possible demographic differences, influences on and the influence of neurological development and neuropsychological functioning) or pertain to paired combinations of them (i.e., risk and sophistication–maturity, risk and treatment amenability, and sophistication–maturity and treatment amenability). Issues of disagreement or distinction include the suggested temporal focus or foci of the evaluation (i.e., at the time of the evaluation and in everyday life, versus at the time of the evaluation and at the time of the alleged offense), suggestions about how the RNR model applies to the three factors, and proposed structural models about how the three factors interrelate with each other and other relevant variables in the transfer context.

In summary, multiple commentators have endorsed the three-factor model for transfer evaluations. There are several points of consensus (i.e., unanimous or near-unanimous agreement) concerning the three factors individually and collectively, and most commentators have incorporated others' thinking about the three factors in an iterative, complementary way over time. There are relatively few points about which commentators have disagreed wholly or in part, although a few such issues do exist.

## 1.2 | Reverse transfer

Nearly all of the advancements that have thus far been discussed pertain to the referral question of whether a youth should be transferred from juvenile court to adult court (Grisso, 2010–2011). Little attention has been paid to evaluations for the inverse situation (Burrow, 2008), in which a youth is being considered for transfer from criminal court to juvenile court following an earlier judicial waiver to adult court, “automatic transfer” on account of statutory exclusion from juvenile court, or a prosecutorial decision to file the case in criminal court rather than juvenile court (Salekin, 2015). To date, the comparability of transfer and reverse transfer evaluation has been assumed or described summarily (see Dattilio & Fromm, 2011; Salekin et al., 2016a). Moreover, the review by Heilbrun et al. (1997) of transfer and reverse transfer laws predated wider recognition and acceptance of the three-factor psycholegal model for transfer evaluations, and the number of states that have adopted the reverse transfer mechanism has risen

appreciably since the time of that review. Consequently, Grisso (2013) noted that “[t]here is no broad consensus concerning the criteria and procedures for these reverse waiver evaluations. In general, though, it appears that clinicians are applying the same concepts and methods to reverse waiver hearings... [that they are] for waiver evaluations in juvenile court” (p. 250).

The few available empirical studies on reverse transfer have examined the relationship between, or relationships among, a variety of variables and whether a youth is decertified or not. An early study of justice-involved youths in New York State in the 1970s and 1980s found that reverse transfer outcome was predicted by age, gender, delinquency history, and offense severity (Singer, 1996). The four other available studies were all conducted in Pennsylvania, using samples of justice-involved youths from the 1990s or 2000s. One reported that age, ethnicity, delinquency history, and firearm involvement (in the index offense) each appeared to be associated with decisions regarding reverse transfer (Snyder, Sickmund, & Poe-Yamagata, 2000). Another, the first to utilize multivariable analyses (i.e., to introduce statistical control), reported that delinquency history, culpability (primary versus secondary role in the offense), firearm involvement, and attorney type (public or private) were related to decertification decisions, while age, gender, and ethnicity were not (Jordan & Myers, 2007). A third found that a combination of forensically relevant instruments—Youth Level of Service/Case Management Inventory (Hoge & Andrews, 1994), Massachusetts Youth Screening Instrument (Grisso & Barnum, 1998), and Psychopathy Checklist: Youth Version (Forth, Kosson, & Hare, 1996)—was able to retrospectively predict the outcome of a reverse transfer hearing (Marczyk, Heilbrun, Lander, & DeMatteo, 2005). Age was also related to outcome in this study in a bivariate analysis. Finally, Riggs Romaine (2010) reported that age, delinquency history, offense severity, and forensic mental health information (degree of amenability and number and type of treatment recommendations) were all associated with decertification outcome in primary multivariable analyses. Other factors related to reverse-transfer outcome in exploratory bivariate or multivariable analyses included role in offense, evaluator-appraised risk, maturity, mental health treatment history, trauma history, substance use, and school involvement. Firearm use, while included in some prespecified models that evidenced overall predictive validity, was not itself significantly associated with reverse transfer outcome when examined via correlation and regression analyses. It was noted that the high rates (and hence limited variability) of weapon (96%) and firearm usage (68%) in the decertification hearing sample may have limited the ability to detect effects for these variables.

Collectively, the available empirical studies provide some evidence concerning factors that relate to judges' decisions in reverse transfer hearings. However, they offer only indirect evidence (indicators or proxies) regarding the central functional legal capacities for reverse transfer (e.g., delinquency history and actuarial risk assessment score as potentially related to risk; age and culpability as potentially related to sophistication–maturity; and psychopathy assessment results as potentially related to treatment amenability). A different yet complementary approach to help illuminate the key psycholegal constructs for reverse transfer is to turn to the law for guidance. Indeed, the law is fundamental to forensic mental health assessment (e.g., Salekin et al., 2016a). According to Heilbrun, Grisso, and Goldstein (2009),

*A major factor that sets FMHA practitioners apart from clinical psychologists and psychiatrists working as treatment and assessment professionals is the need to rely on the legal system—statutes, case law, and administrative code—in designing and structuring FMHA. This includes the methodology, content domains, and work products...*

*It is, therefore, imperative for an expert to possess a reasonable understanding of the appropriate statute and applicable case law that address the legal referral question because the information contained in these sources shapes the evaluation itself and structures the focus of the report and testimony (pp. 42–43).*

### 1.3 | Present review

One approach to begin to address the gap in the literature concerning the appropriate focus for reverse transfer evaluations is to systematically review state statutes concerning reverse transfer to determine whether the generally

accepted functional legal capacities for transfer—risk, sophistication—maturity, and treatment amenability—are also evident in a majority of reverse transfer laws. It was hypothesized that they would be, even though there is not a one-to-one relationship between legal standards and psychological concepts (Heilbrun et al., 2009) or even psycholegal constructs, for that matter (see, e.g., Salekin, 2015). This hypothesis was based on recognition of the (a) influence that the *Kent* decision (and the criteria listed therein, including risk, sophistication—maturity, and treatment amenability) has had on many jurisdictions' transfer laws (Salekin et al., 2016a), and (b) endorsement of the three-factor model by a major judicial organization (National Council of Juvenile and Family Court Judges, 2005). If results were consistent with this hypothesis, it would lend support to practitioners approaching the two referral questions similarly, at least with respect to the functional legal capacities to be assessed. Moreover, a state-by-state review that compiles and summarizes relevant statutory language by jurisdiction—which is not available elsewhere (e.g., the Juvenile Justice GPS website generally does not list the specific reverse transfer criteria in jurisdictions that have the mechanism)—offers a convenient and efficient reference resource for forensic mental health professionals practicing in different localities.

Although an earlier statutory review conducted by Heilbrun et al. (1997) examined reverse transfer provisions, the number of jurisdictions with such provisions has more than doubled since that time (see Juvenile Justice GPS, n.d.). In addition, Heilbrun et al. (1997) did not examine whether sophistication—maturity was a factor in transfer and reverse transfer provisions, at least as that factor is currently understood (see Salekin et al., 2016a). Nor did they attend to residual or catchall provisions. Thus, the present survey sought to both update and extend the 20-year-old prior review.

## 2 | METHOD

According to the Juvenile Justice GPS website (n.d.), 25 states had a reverse transfer statute as of 2015. The author located the relevant statutory provisions for each of these jurisdictions, aided by information reported by Griffin, Torbet, and Szymanski (1998), Heilbrun et al. (1997), and “State-by-State Summary of Transfer Laws” (2014). Upon initial review, one state had a very limited reverse transfer provision that did not involve any forensic mental health issues (Kentucky; Ky. Rev. Stat. Ann. § 640.010, 2016) and another's was reflective of a non-discretionary blended sentencing scheme (Oregon; Or. Rev. Stat. § 419C.349, 419C.361, 2016). These two states were therefore excluded from the review. The remaining reverse transfer laws each involved a discretionary reverse transfer procedure or appellate review procedure for an earlier transfer decision.

The author coded each statute or set of statutes bearing on transfer and reverse transfer for the 23 remaining states that have both mechanisms. To do so, verbatim language from the statutes was copied into an electronic data set. Categories were established iteratively as statutes were reviewed, and as new categories were derived previously sorted statutory language was reviewed for potential re-sorting. In addition, statutory language that was relevant to two or more categories was sorted into multiple categories. Legal issues such as burden of proof were not coded because they were considered extraneous to this review's focus on statutory provisions and the functional legal capacities hypothesized to be evident therein. Ultimately, 16 topical categories were identified.

1. A general or “umbrella” (i.e., other factors were organized subordinately to it) standard (e.g., “[T]he youth court may transfer jurisdiction of the alleged offense and the youth if the youth court finds by clear and convincing evidence that there are no reasonable prospects of rehabilitation within the juvenile justice system.... The factors which shall be considered by the youth court in determining the reasonable prospects of rehabilitation within the juvenile justice system are: ...”; Miss. Code Ann. § 43-21-157, 2016).
2. Risk related (e.g., “Whether the protection of the community requires transfer of jurisdiction”; Ga. Code Ann. § 1511562, 2016).
3. Maturity related (e.g., “The sophistication and maturity of the accused person and the capability of distinguishing right from wrong as determined by consideration of the person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living”; Okla. Stat. tit. 10A § 2-5-205, 2016).

4. Rehabilitation related (e.g., “[T]he likelihood of reasonable rehabilitation of the juvenile, if the juvenile is found to have committed the alleged felony offense, by the use of procedures, services, and facilities currently available to the juvenile court”; S.D. Codified Laws § 26-11-4, 2016).
5. Delinquency history (e.g., “[R]ecord and previous history of the juvenile, including previous contacts with the courts and law enforcement, previous periods of any court ordered probation and the results of that probation”; Ariz. Rev. Stat. § 13-504, 2016).
6. Biopsychosocial history–functioning (e.g., “Written reports and other materials relating to the juvenile’s mental, physical, educational, and social history”; Ark. Code Ann. § 9-27-318, 2016).
7. Not committable (e.g., “The child is not committable to an institution for the developmentally disabled or mentally ill”; Tenn. Code Ann. § 37-1-134, 2016).
8. Age (e.g., “[T]he age of the child”; Md. Code Ann., Crim. Pro. § 4-202, 2016).
9. Index offense–culpability (e.g., “Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner”; Wyo. Stat. Ann. § 14-6-237, 2016).
10. Punishment related (e.g., “[T]he purpose and effect of imposing upon the defendant a sentence authorized for the offense”; N.Y. Crim. Proc. Law § 210.43, 2016).
11. Competency (e.g., “The juvenile is competent to stand trial”; Va. Code Ann. § 16.1-269.1, 2016).
12. Prosecutive merit (e.g., “If the juvenile court determines that there is probable cause to believe that the person committed the delinquent act”; Nev. Rev. Stat. § 62B.335, 2016).
13. Co-defendants forum (e.g., “Whether other participants in the same offense are being tried as adult offenders”; Del. Code Ann. tit. 10, § 1010, 2016).
14. Victim related (e.g., “The impact of the offense on the victim”; Colo. Rev. Stat. § 19-2-518, 2016).
15. Public confidence (i.e., “[T]he impact of a removal of the case to the family court upon the confidence of the public in the criminal justice system”; N.Y. Crim. Proc. Law § 210.43, 2016).
16. Catchall–vague (e.g., “[S]uch other matters as the parties deem relevant to aid in the decision”; Neb. Rev. Stat. § 43-276, 2016).

Because this review focused on the three-factor model of transfer evaluations, categories were also further collapsed into explicit references to the three psycholegal factors; implicit references to risk (i.e., index offense–culpability), sophistication–maturity (i.e., index offense–culpability, age, competency), and treatment amenability (i.e., not committable, punishment-related); and implicit references to all three psycholegal factors (i.e., delinquency history, biopsychosocial functioning, and catchall–vague). These categorizations were based on the author’s review of commentary regarding facets of the three-factor model. For instance, commentators such as Salekin et al. (2016a) have suggested that sophistication–maturity includes dangerousness and criminal sophistication indicators such as planned criminal acts; thus, the common provision concerning an index offense that was “aggressive, violent, premeditated, or willful” was interpreted broadly as being indicative of the sophistication–maturity factor. Heilbrun et al. (1997) pointed out, however, that this sort of provision requires a more complex retrospective analysis compared with a present-time-focused provision (e.g., “psychological maturity”). For this reason, Salekin (2015) recommended assessing sophistication–maturity both at the time of the alleged offense and at the time of the evaluation.

### 3 | RESULTS

State-specific results are summarized in Tables 1 and 2, and raw data (i.e., verbatim statutory language sorted into categories) is available for review as an online supplement. As can be seen in the summary row in Table 2, 70% of



**TABLE 1** Juvenile transfer and reverse transfer statutory provisions

State	General ("umbrella") standard	Risk related	Maturity related	Rehabilitation related	Delinquency history	Biopsychosocial functioning	Not committable	Age
<i>Transfer</i>								
Total	17	16	15	21	20	13	2	8
1. Arizona	x	x		x	x	x		
2. Arkansas		x	x	x	x	x		
3. California	x	x	x	x	x	x		
4. Colorado	x	x	x	x	x	x		x
5. Connecticut	x			x	x	x		
6. Delaware	x		x	x	x			
7. Georgia		x	x	x	x			x
8. Iowa	x			x	x			x
9. Maryland	x	x		x		x		x
10. Mississippi	x	x	x	x	x	x		
11. Montana <sup>a</sup>					x			
12. Nebraska		x	x	x	x			x
13. Nevada	x	x	x	x	x	x		
14. New York <sup>b</sup>								
15. North Carolina	x	x	x	x	x	x		x
16. Oklahoma		x	x	x	x			
17. Pennsylvania	x	x	x	x	x	x		x
18. South Dakota	x	x		x		x		
19. Tennessee	x			x	x		x	
20. Vermont	x	x	x	x	x			
21. Virginia	x		x	x	x	x		x
22. Wisconsin	x	x	x	x	x	x		
23. Wyoming	x	x	x	x	x			
<i>Reverse transfer</i>								
Total	19	12	8	16	12	8	2	6
AZ	x	x		x	x	x		
AR		x	x	x	x	x		
CA	x		x	x	x	x		x

TABLE 1 (Continued)

State	Index offense-culpability	Punishment related	Competency	Prosecutive merit	Co-defendants forum	Victim related	Public confidence	Catchall-vague
<i>Transfer</i>								
Total	20	2	2	15	4	7	0	11
1. Arizona	×			×		×		
2. Arkansas	×							×
3. California	×							
4. Colorado	×	×		×		×		
5. Connecticut	×			×				
6. Delaware	×			×	×			×
7. Georgia	×					×		
8. Iowa	×			×				×
9. Maryland	×			×		×		
10. Mississippi	×			×				×
11. Montana <sup>a</sup>		×						×
12. Nebraska	×					×		×
13. Nevada	×		×	×		×		×
14. New York <sup>b</sup>								
15. North Carolina	×							
16. Oklahoma	×			×				
17. Pennsylvania	×			×		×		×
18. South Dakota	×			×	×			
19. Tennessee	×			×				×
20. Vermont	×			×				×
21. Virginia	×		×	×				×
22. Wisconsin	×			×	×			
23. Wyoming	×				×			
<i>Reverse transfer</i>								
Total	18	3	1	9	2	7	1	12
AZ	×					×		
AR	×							×
CA	×							

TABLE 1 (Continued)

State	General ("umbrella") standard	Risk related	Maturity related	Rehabilitation related	Delinquency history	Biopsychosocial functioning	Not committable	Age
CO	x	x	x	x	x	x		x
CT	x			x		x		
DE	x			x				
GA		x	x	x	x			x
IA	x			x	x			
MD	x	x		x		x		x
MS	x			x				
MT	x	x						
NE		x	x	x	x			x
NV	x							
NY	x	x			x			
NC <sup>c</sup>	x							
OK		x	x	x	x			
PA	x	x	x	x	x	x		x
SD	x	x		x		x		
TN	x			x	x			
VT	x							
VA <sup>d</sup>	x							
WI	x			x				
WY	x	x	x	x	x			x

Note: AZ: Ariz. Rev. Stat. § 8-327 (LexisNexis 2016), Ariz. Rev. Stat. § 13-504 (LexisNexis 2016); AR: Ark. Code Ann. § 9-27-318 (2016); CA: Cal. Penal Code § 1170.17 (West 2016), Cal. Penal Code § 1170.19 (West 2016), Cal. Welf. & Inst. Code § 707 (West 2016); CO: Colo. Rev. Stat. § 19-2-517 (2016), Colo. Rev. Stat. § 19-2-518 (2016); CT: Conn. Gen. Stat. § 46b-127 (2016); DE: Del. Code Ann. tit. 10, § 1010 (2016), Del. Code Ann. tit. 10, § 1011 (2016); GA: Ga. Code Ann. § 15-11-562 (2016); IA: Iowa Code § 232.45 (2016), Iowa Code § 232.8 (2016), Iowa Code § 803.6 (2016); MD: Md. Code Ann., Crim. Pro. § 4-202 (LexisNexis 2016), Md. Code Ann., Cts. & Jud. Proc. § 3-8A-06 (LexisNexis 2016); MS: Miss. Code Ann. § 43-21-157 (2016); MT: Mont. Code Ann. § 41-5-203 (2016), Mont. Code Ann. § 41-5-206 (2016); NE: Neb. Rev. Stat. § 43-276 (2016); NV: Nev. Rev. Stat. § 62B.335 (2016), Nev. Rev. Stat. § 62B.370 (2016), Nev. Rev. Stat. § 6355 (2016); NY: N.Y. Crim. Proc. Law § 180.75 (Consol. 2016), N.Y. Crim. Proc. Law § 210.43 (Consol. 2016); NC: N.C. Gen. Stat. § 7B-2203 (2016), N.C. Gen. Stat. § 7B-2603 (2016); OK: Okla. Stat. tit. 10A, § 2-5-101 (2016), Okla. Stat. tit. 10A § 2-5-205 (2016), Okla. Stat. tit. 10A § 2-5-206 (2016); PA: 42 Pa. Cons. Stat. § 6322 (2016), 42 Pa. Cons. Stat. § 6355 (2016); SD: S.D. Codified Laws § 26-11-3.1 (2016), S.D. Codified Laws § 26-11-4 (2016); TN: Tenn. Code Ann. § 37-1-134 (2016), Tenn. Code Ann. § 37-1-159 (2016); VT: Vt. Stat. Ann. tit. 33, § 5203 (2016), Vt. Stat. Ann. tit. 33, § 5204 (2016); VA: Va. Code Ann. § 16.1-269.1 (2016), Va. Code Ann. § 16.1-269.6 (2016); WI: Wis. Stat. § 938.18 (2016), Wis. Stat. § 938.183 (2016), Wis. Stat. § 970.032 (2016), Wis. Stat. § 971.31 (2016); WY: Wyo. Stat. Ann. § 14-6-237 (2016). The verbatim statutory language that was sorted into the various categories (i.e., the raw data) is available for review as an online supplement.

<sup>a</sup>Prosecutorial direct file (certain), judicial waiver-type of blended sentencing (certain), and judicial waiver (possible).

<sup>b</sup>Statutory exclusion.

<sup>c</sup>Appellate review.

<sup>d</sup>Appellate review.

TABLE 1 (Continued)

State	Index offense-culpability	Punishment related	Competency	Prosecutive merit	Co-defendants forum	Victim related	Public confidence	Catchall-vague
CO	x	x		x		x		
CT	x							x
DE	x							
GA	x					x		
IA	x							x
MID	x					x		
MS								x
MT	x			x				x
NE	x					x		x
NV								x
NY	x	x		x		x	x	x
NC <sup>c</sup>				x				
OK	x			x				
PA	x					x		x
SD	x			x	x			
TN	x			x				x
VT								x
VA <sup>d</sup>			x	x				x
WI	x	x		x				
WY	x				x			

**TABLE 2** Explicit and implicit statutory inclusion of risk, sophistication-maturity, and treatment amenability

State	Risk (explicit)	Risk (implicit) <sup>a</sup>	Maturity (explicit)	Maturity (implicit) <sup>b</sup>	Rehabilitation (explicit)	Rehabilitation (implicit) <sup>c</sup>	Risk, maturity, rehabilitation (implicit) <sup>d</sup>
Total	16	20	15	20	21	4	22
AZ	x	x		x	x		x
AR	x	x	x	x	x		x
CA	x	x	x	x	x		x
CO	x	x	x	x	x	x	x
CT					x		x
DE		x	x	x	x		x
GA	x	x	x	x	x		x
IA		x		x	x		x
MD	x	x		x	x		x
MS	x	x	x	x	x		x
MT						x	x
NE	x	x	x	x	x		x
NV	x	x	x	x	x		x
NY							
NC	x	x	x	x	x		x
OK	x	x	x	x	x		x
PA	x	x	x	x	x	x	x
SD	x	x		x	x		x
TN		x		x	x	x	x
VT	x	x	x	x	x		x
VA		x	x	x	x		x
WI	x	x	x	x	x		x
WY	x	x	x	x	x		x

Transfer

TABLE 2 (Continued)

State	Risk (explicit)	Risk (implicit)	Maturity (explicit)	Maturity (implicit)	Rehabilitation (explicit)	Rehabilitation (implicit)	Risk, maturity, rehabilitation (implicit)
Total	12	18	8	19	16	5	20
AZ	×	×		×	×		×
AR	×	×	×	×	×		×
CA		×	×	×	×		×
CO	×	×	×	×	×	×	×
CT		×		×	×		×
DE		×		×	×		
GA	×	×	×	×	×		×
IA		×		×	×		×
MD	×	×		×	×		×
MS							×
MT	×	×		×			×
NE	×	×	×	×	×		×
NV							×
NY	×	×		×		×	×
NC							
OK	×	×	×	×	×		×
PA	×	×	×	×	×	×	×
SD	×	×		×	×		×
TN		×		×	×	×	×
VT							×
VA				×			×
WI		×		×	×	×	×
WY	×	×	×	×	×		×

Reverse transfer

Note: The below categories from Table 1 were collapsed into the "implicit reference" categories reported in the body of this table. The selection of categories to collapse was based on the author's review of the available commentary regarding the three-factor model for transfer evaluations. The headers maturity and rehabilitation are used as abbreviated synonyms of sophistication-maturity and treatment amenability, respectively.

<sup>a</sup>Index offense-culpability.

<sup>b</sup>Index offense-culpability, age, competency.

<sup>c</sup>Not committable, punishment related.

<sup>d</sup>Delinquency history, biopsychosocial functioning, catchall-vague.

the 23 jurisdictions had transfer provisions that referred explicitly to risk, 65% to sophistication–maturity, and 91% to treatment amenability, whereas for reverse transfer 52% of jurisdictions referred explicitly to risk, 35% to sophistication–maturity, and 83% to treatment amenability. Other common explicit references were to index offense characteristics–culpability (87% and 78% for transfer and reverse transfer, respectively), delinquency history (87% and 52%), prosecutorial merit (65% and 39%), and biopsychosocial history and functioning (57% and 35%). A catchall or vague standard was also fairly commonplace (48% and 52%). When “implicit” references were also considered, all but one state—New York, which has a strict legislative transfer law—were read to incorporate risk, sophistication–maturity, and treatment amenability for transfer. Moreover, all but one jurisdiction—North Carolina, which utilizes a limited appellate procedure for reverse transfer—were construed as incorporating these three factors for reverse transfer. However, a criminal court judge in North Carolina, reviewing the juvenile court transfer for an abuse of discretion, would review the three psycholegal factors, as they are incorporated into North Carolina's transfer law.

## 4 | DISCUSSION

The present survey updates a 20-year-old review of reverse transfer laws (Heilbrun et al., 1997), both in terms of the number of jurisdictions reviewed and in light of a more contemporary conceptualization of the important functional legal capacities at the center of transfer evaluations (Salekin, 2015). Results were consistent with assertions by others that the majority of transfer laws reflect the three psycholegal constructs of risk, sophistication–maturity, and treatment amenability, factors that have seemingly reached the point of general acceptance among forensic mental health scholars for transfer evaluations. Moreover, with perhaps only one exception, states' reverse transfer provisions could also be construed as allowing for consideration of these factors—although notably fewer reverse transfer laws, relative to transfer laws, referred explicitly to them. As such, this review offers support for the practice of designing similar evaluations for both transfer and reverse transfer (Dattilio & Fromm, 2011; Grisso, 2013; Salekin, 2015).

### 4.1 | Future directions

That said, future directions include practitioner surveys and practice articles, as well as studies involving legal professionals. Such research and practice literature would help shed light on numerous outstanding questions. Do forensic mental health professionals approach reverse transfer evaluations in the same way as they do transfer evaluations? Do forensic clinicians who conduct reverse transfer evaluations differ in meaningful ways from those who tend to conduct transfer evaluations (e.g., amount of professional training and interest in developmental considerations; attitudes about the complexity and significance of transfer evaluations—either “up or down”—in general; Grisso, 2010–2011)? Do lawyers and judges in the juvenile justice system versus the criminal justice system show differential receptiveness to expert evidence concerning developmental issues (Grisso, 2010–2011)? Do judges in juvenile court versus adult court understand, envision, or weigh risk, sophistication–maturity, and treatment amenability factors differently (cf. Brannen et al., 2006; Salekin et al., 2001, 2002)?

The latter two questions may have particular relevance for reverse transfer evaluations. Regardless of the direction of transfer, the purpose of the forensic mental health assessment is to assist the court in determining whether a youth's risk can be adequately managed in the juvenile justice system, whether the youth can be expected to adequately respond to services available to the juvenile court, and whether the youth's sophistication–maturity points toward the appropriateness of handling the case at the juvenile level. The court then balances this information with other considerations it typically must take into account.

As such, the situs of interest in both transfer and reverse transfer is the juvenile justice system; the criminal justice system is the default alternative. Although conjecture at this point, it seems probable that judges in criminal court, seeking to balance other interests (e.g., culpability, offense severity), focus on more than just whether the juvenile justice system is an *adequate* option. For example, Arizona's reverse transfer statute tasks judges with deciding whether the "public safety and the rehabilitation of the juvenile, if adjudicated delinquent, would be *best* [emphasis added] served by transferring the prosecution to the juvenile court" (Ariz. Rev. Stat. § 13-504, 2016). To determine whether the juvenile court is a *sufficient* (i.e., better) alternative to retaining the case for criminal prosecution, judges in adult court likely also consider how well a youth's risk could be comparatively managed and rehabilitation facilitated, taking into account the youth's sophistication–maturity, in the system with which the judges are more familiar—the criminal justice system (cf. Grisso, 2013). Indeed, Wisconsin's reverse transfer law explicitly calls for this judgment ("That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system"; Wis. Stat. § 970.032, 2016). Thus, if this is often the reality legally or in practice, it may be desirable for forensic mental health practitioners to present evidence suggestive of the general superiority of the juvenile justice system for rehabilitating youths who can be appropriately managed within that system (Howell, Lipsey, & Wilson, 2014; Redding, 2010; Slobogin, 2013). Indeed, this may be especially important when communicating the results of a reverse transfer evaluation, a situation in which the legal professionals involved may be less savvy about developmental issues (Grisso, 2010–2011).

## 4.2 | Limitations and conclusion

The primary limitations of this survey flow from the narrow scope of the statutory review as well as the reliance on a single type of legal authority. Specifically, the review of statutes was limited to substantive law content; other issues (e.g., legal procedures) were not reviewed even though they are important to know about in conducting juvenile forensic mental health evaluations (Heilbrun et al., 2009). Additionally, potentially informative case law, administrative regulations, and sources of evidentiary law were not reviewed. Similarly to the available empirical studies on reverse transfer, case law may evidence how judges reason through reverse transfer decisions, and thus offer insights into how they construe the statutorily delineated factors. For example, what forensic mental health information do they mention in their discussion of the different factors that they are directed by statute to consider? Administrative regulations and evidence law may also offer some guidance about how to conduct reverse transfer evaluations and what information is appropriate for presentation in reports and testimony (Heilbrun et al., 2009). On the other hand, though, it seems unlikely that these sources of law, as specific to or relevant to reverse transfer, would differ much from the standards of care and practice available for forensic mental health assessment in general, and the standards of practice for transfer evaluations in particular—all of which developed with contributions from the law.

For now, the results from the present review bolster the practice of focusing on similar psycholegal factors, and hence utilizing similar methods, in both juvenile transfer and reverse transfer evaluations. As indicated above, future empirical and legal research concerning evaluators and evaluations, legal decision-making, and youth outcomes in the transfer and reverse transfer contexts is warranted.

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## SUPPORTING INFORMATION

Additional Supporting Information may be found online in the supporting information tab for this article.

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