



9-8-2023

## Put the Juvenile Back in Juvenile Court

Erin Fitzgerald

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>

 Part of the [Courts Commons](#), [Criminal Law Commons](#), [Criminal Procedure Commons](#), [Jurisdiction Commons](#), and the [Juvenile Law Commons](#)

---

### Recommended Citation

Erin Fitzgerald, *Put the Juvenile Back in Juvenile Court*, 68 Vill. L. Rev. 367 (2023).  
Available at: <https://digitalcommons.law.villanova.edu/vlr/vol68/iss3/1>

This Article is brought to you for free and open access by the Journals at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

---

---

# VILLANOVA LAW REVIEW

VOLUME 68

2023

NUMBER 3

---

---

## Articles

### PUT THE JUVENILE BACK IN JUVENILE COURT

ERIN FITZGERALD\*

#### ABSTRACT

At common law, the American criminal justice system made almost no distinction between child offenders and adult criminals. Like adults, children were arrested, indicted, tried by a jury, and, if convicted, sentenced to harsh punishment, including death. By the end of the nineteenth century, however, concerned with the harsh treatment of children, juvenile justice reformers advocated for a distinction between children and adults within the criminal justice system. Reformers believed that children, because of their youth, were less culpable than adult criminals and more deserving of rehabilitation than punishment.

The reformers' efforts were successful. In 1899, Illinois created the first juvenile court in the United States. The goal of the court was to rehabilitate juvenile offenders. Support for this specialized court grew quickly, and by 1945, every state in the nation had a juvenile court. Since its inception, the juvenile court system has experienced several transformative eras. Over time, the pendulum has swung from rehabilitation—the juvenile court system's original purpose—to retribution. Recently, however, the pendulum has swung again, returning the juvenile court to its rehabilitative roots.

Over the past two decades, juvenile justice advocates and scholars, as well as state legislatures, have successfully advanced significant reforms within the juvenile court system. Many reforms have increased access to the juvenile court system to allow more juvenile offenders to receive the protections and benefits of the juvenile court. For example, many states have recently passed laws that restrict the transfer of juvenile offenders to adult criminal court. Many states have also raised their age of majority,

---

\* Assistant Professor of Law, Elon University School of Law. J.D., New England Law | Boston; B.A., Stonehill College. My sincerest thanks to Professors Lawrence Friedman and Victor Hansen for their thoughtful comments on earlier drafts of this Article, and Beth Armstrong for her superb research assistance. Many thanks, also, to the student editors of the *Villanova Law Review* for their thoughtful edits and help on this Article.

allowing older teens and young adults to fall within the jurisdictional reach of the juvenile court. These reform efforts are certainly laudable. However, they overlook an area of the juvenile justice system that is in need of attention and reform: the method by which states determine the jurisdiction of juvenile courts.

Juvenile courts have jurisdiction over offenders who commit certain criminal offenses prior to a certain age, known as the “age of majority.” When an offender’s age equals or exceeds the age of majority, the juvenile court lacks jurisdiction. Some states use the juvenile offender’s age at the time of the offense to determine whether the juvenile court has jurisdiction. However, other states use the juvenile offender’s age at the time of legal proceedings, i.e., arrest, indictment, or trial, to determine jurisdiction. In such states, when a juvenile commits an offense while under the age of majority but is not proceeded against until after reaching the age of majority, the juvenile court lacks jurisdiction over the juvenile offender. In these states, the prosecution will proceed against the juvenile offender in adult criminal court, despite the fact that the offender was a juvenile at the time of the alleged offense and, therefore, was less culpable and more deserving of the rehabilitative nature of the juvenile court. In such cases, the juvenile offender loses all the protections and benefits of the juvenile court and is instead treated like an adult in adult criminal court.

Relying upon several policy-based rationales, this Article argues that all states should determine the jurisdiction of juvenile courts based upon a juvenile offender’s age at the time of the offense. This Article urges states that currently determine jurisdiction based upon the juvenile offender’s age at the time of legal proceedings to amend their jurisdictional statutes to confer jurisdiction based upon the offender’s age at the time of the offense. Such an approach ensures that all juvenile offenders, no matter when proceeded against, receive the protections and benefits of the juvenile court system that they deserve.

## CONTENTS

INTRODUCTION .....	370
I. THE CREATION AND EVOLUTION OF THE JUVENILE COURT SYSTEM .....	372
A. <i>The Common Law Era (Pre-1899)</i> .....	372
B. <i>The Progressive Era (1899–1965)</i> .....	373
C. <i>The Constitutional Era (1966–1979)</i> .....	375
D. <i>The Punitive Era (1980–1999)</i> .....	377
E. <i>The Rehabilitation Era (2000–Present)</i> .....	379
II. THE JURISDICTION OF JUVENILE COURTS .....	381
III. STATES SHOULD DETERMINE JURISDICTION OF JUVENILE COURTS BASED UPON AGE AT TIME OF OFFENSE .....	385
A. <i>Juvenile Offenders are Less Culpable than Adult Criminals</i> ..	386
B. <i>Ensures Fairness in the Criminal Justice System</i> .....	390
C. <i>Removes Incentive to Delay Proceedings Against Juvenile     Offenders</i> .....	392
D. <i>Reduces Recidivism Rates</i> .....	397
E. <i>Respects the National Trend to Expand the Jurisdictional     Reach of the Juvenile Court System</i> .....	399
IV. THE ARGUMENT AGAINST THE USE OF THE AGE OF THE JUVENILE OFFENDER AT THE TIME OF OFFENSE TO DETERMINE JURISDICTION .....	401
CONCLUSION .....	404

## INTRODUCTION

IN Oregon, a trial court concluded that Francis Watchman, when he was seventeen years old, provided drugs to another within the state.<sup>1</sup> Although he was a juvenile at the time of the offense, the prosecution did not proceed against him in juvenile court; instead, Francis was prosecuted in adult criminal court because he had turned eighteen—Oregon’s age of majority—prior to his indictment on the drug charge.<sup>2</sup> In other words, Francis was treated like an adult. He lost all of the benefits of the juvenile court system—rehabilitation,<sup>3</sup> confidentiality,<sup>4</sup> and adjudication as a “delinquent” rather than as a criminal<sup>5</sup>—and instead was tried and sentenced in adult criminal court.<sup>6</sup> Francis was denied access to the juvenile court because Oregon, like many states, determines the jurisdiction of the juvenile court based on the juvenile offender’s age at the time of the legal proceedings, not the time of the alleged offense.<sup>7</sup> If the jurisdictional

---

1. *State v. Watchman*, 533 P.2d 361, 362 (Or. Ct. App. 1975) (“The trial court necessarily found that defendant had furnished drugs to another . . .”).

2. *Id.* (“Defendant is subject to the jurisdiction of the circuit court, rather than the exclusive original jurisdiction of the juvenile court, for acts committed while he was seventeen when, as here, he was not indicted until after his eighteenth birthday.” (citation omitted)).

3. Gloria Danziger, *Delinquency Jurisdiction in a Unified Family Court: Balancing Intervention, Prevention, and Adjudication*, 37 *FAM. L.Q.* 381, 382–83 (2003) (“The mission of the juvenile courts was to rehabilitate delinquents and to make them productive citizens . . .”).

4. THOMAS A. JACOBS & NATALIE C. JACOBS, *CHILDREN AND THE LAW: RIGHTS & OBLIGATIONS* § 1:1, at 4 (Thomson Reuters, ed. 2023) (“The hearings were closed to the public and the juveniles’ records were declared confidential.”).

5. Mae C. Quinn & Levi T. Bradford, *Invisible Article III Delinquency: History, Mystery, and Concerns about “Federal Juvenile Courts”*, 27 *WASH. & LEE J. C.R. & SOC. JUST.* 71, 81 (2020) (“[H]earings in juvenile courts were considered civil rather than criminal, and children were declared ‘delinquent’ rather than ‘guilty,’ a judgment on status rather than culpability.”).

6. *See Watchman*, 533 P.2d at 361–62 (explaining details of trial court proceedings and remanding the case to the trial court for further proceedings and resentencing).

7. *Id.* at 362 (“Jurisdiction depends on the defendant’s age at the time judicial proceedings are initiated, not at the time of the alleged offense.”); *see also State v. Godines*, 236 P.3d 824, 829 (Or. Ct. App. 2010) (“[T]he jurisdiction of the juvenile court does not depend on the defendant’s age at the time the criminal act was committed, but [on] his age at the time judicial proceedings were initiated. In those cases [where the defendants were subject to adult court jurisdiction], the defendants had not been charged until after reaching the age of 18, although the acts were committed when they were 17.” (alterations in original) (citations omitted) (quoting *Delaney v. State*, 648 P.2d 1302, 1303 (Or. Ct. App. 1982))).

There are two methods states commonly employ when determining the jurisdiction of juvenile courts based upon a juvenile offender’s age at the time of proceedings. Under one method, if a juvenile offender has reached the age of majority by the time of proceedings, the juvenile court has no jurisdiction and the juvenile offender is proceeded against in adult criminal court. *E.g.*, *OR. REV. STAT. ANN.* § 419C.005(1) (West 2022) (“The juvenile court has exclusive original jurisdiction in any case involving a *person who is under 18 years of age* and who has committed an act that is a violation, or that if done by an adult would constitute a

question had hinged on Francis's age at the time of offense, he would have been subject to the jurisdiction of the juvenile court. This is just one example of a case in which an offender, despite being a juvenile at the time of offense, was treated like an adult and proceeded against in adult criminal court merely because they had reached the age of majority by the time of legal proceedings, but there are others.<sup>8</sup>

This Article argues that all states should determine the jurisdiction of juvenile courts based upon the juvenile offender's age at the time of offense. Such an approach ensures that all juvenile offenders receive the benefits and protections available in juvenile court. Part I provides an overview of the creation and evolution of the juvenile court system. Part II discusses the method by which juvenile court jurisdiction is determined

---

violation, of a law or ordinance of the United States or a state, county or city." (emphasis added)). Under the second method, if a juvenile offender is proceeded against after a certain period of time after reaching the age of majority, the juvenile court has no jurisdiction and the juvenile offender is proceeded against in adult criminal court. *E.g.*, N.H. REV. STAT. ANN. § 169-B:4 (2022) ("The [juvenile] court shall have jurisdiction over any minor with respect to whom a petition is filed under this chapter after the minor's eighteenth and *before the minor's nineteenth birthday* for an alleged delinquency offense committed before the minor's eighteenth birthday." (emphasis added)); W. VA. CODE ANN. § 49-4-701(b) (West 2022) ("If during a criminal proceeding in any court it is ascertained or appears that the defendant is *under the age of nineteen years* and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court." (emphasis added)). This Article focuses on the issues that arise when the jurisdiction of juvenile courts is determined based upon the juvenile offender's age at the time of proceedings regardless of any passage of time. However, the issues that arise under that method, *see infra* Part III, equally apply to states that proceed against juvenile offenders in adult criminal courts after a certain period of time has passed since they reached the age of majority. Thus, these states should likewise amend their jurisdictional statutes to remove any statutory language that prevents a juvenile offender from falling within the jurisdictional reach of the juvenile court because of their age at the time of proceeding. *See infra* p. 404.

8. *E.g.*, *Godines*, 236 P.3d at 825, 830 (holding adult criminal court had jurisdiction over juvenile offender who was over eighteen years of age when indicted, despite having been under fifteen years old at time of offenses); *State v. Salavea*, 86 P.3d 125, 126–27, 129 (Wash. 2004) (en banc) (holding adult criminal court had jurisdiction over juvenile offender who committed offenses when he was between ages of thirteen and fifteen years old, but was not charged until after he turned eighteen years old); *State v. Sanders*, 912 N.W.2d 16, 20 (Wis. 2018) (holding adult criminal court had jurisdiction over juvenile offender who was charged after reaching age of majority for conduct he committed before his tenth birthday because "defendant's age at the time he was charged, not his age at the time he committed the underlying conduct, determines whether" juvenile court has jurisdiction); *State v. Pauly*, 972 N.W.2d 907, 918 (Neb. 2022) (holding adult criminal court had jurisdiction over juvenile offender for offenses committed before reaching the age of majority because offender was no longer a juvenile at time he was charged); *Commonwealth v. Renninger*, 269 A.3d 548, 562 (Pa. Super. Ct. 2022) (holding juvenile offender who was thirty-three years old at time of proceedings was subject to adult criminal court because, despite having been under the age of eighteen at time of offenses, it is juvenile offender's age at time of proceedings that determines jurisdiction of juvenile court).

and further illustrates the jurisdictional issue that arises when a juvenile offender commits an offense prior to reaching the age of majority but is not proceeded against until they reach the age of majority. Part III sets out the policy-based reasons why states should determine the jurisdiction of juvenile courts based upon a juvenile offender's age at the time of offense, and not the time of proceedings. Part IV addresses the anticipated argument against using the age at the time of offense to determine the jurisdiction of juvenile courts. The Article concludes by urging states to amend their statutes granting jurisdiction to juvenile courts to confer jurisdiction based upon the offender's age at the time of offense.

### I. THE CREATION AND EVOLUTION OF THE JUVENILE COURT SYSTEM

There are five distinct eras of the American juvenile court system: the common law era (pre-1899), the progressive era (1899–1965), the constitutional era (1966–1979), the punitive era (1980–1999), and the rehabilitation era (2000–present). Each era features its own unique approach to addressing juvenile offenders within the juvenile court system, with the focus shifting from rehabilitation—the juvenile court system's original purpose—to retribution, and then back again.

#### A. *The Common Law Era (Pre-1899)*

At common law, with limited exceptions, the United States made no distinction between child offenders and adult criminals, treating them the same for purposes of the criminal justice system.<sup>9</sup> Like adults, children were arrested, indicted by a grand jury, tried by a petit jury, and, if found guilty, sentenced like adults.<sup>10</sup> Prior to the turn of the twentieth century, courts had the discretion to impose severe forms of punishment, which meant that it was not uncommon for child offenders to receive sentences involving lengthy terms of imprisonment or even death.<sup>11</sup>

---

9. Korine L. Larsen, *With Liberty and Juvenile Justice for All: Extending the Right to a Jury Trial to the Juvenile Courts*, 20 WM. MITCHELL L. REV. 835, 839–40 (1994) (“Prior to 1899, the American court system closely resembled the English court system. Although children under age seven were not prosecuted because they were considered incapable of forming criminal intent, children over the age of seven were subjected to the same process and punishment as adult offenders.” (footnote omitted)).

10. Emily R. Mowry, Note, *When Big Brother Becomes “Big Father”*: Examining the Continued Use of *Parens Patriae* in State Juvenile Delinquency Proceedings, 124 DICK. L. REV. 499, 505 (2020) (“The common-law courts employed a straightforward procedure: ‘[t]he child was arrested, put into prison, indicted by the grand jury, tried by a petit jury, under all the forms and technicalities of our criminal [common] law . . . .’” (alteration in original) (quoting Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 106 (1909))).

11. Larsen, *supra* note 9, at 840 (“Juvenile offenders were given long prison sentences, incarcerated with hardened criminals, and even executed.”).

B. *The Progressive Era (1899–1965)*

By the end of the nineteenth century, concerned with the harsh treatment of children within the criminal court system, juvenile justice reformers began to advocate for a distinction between child offenders and adult criminals.<sup>12</sup> Reformers believed that children, because of their youth, were fundamentally different from adults.<sup>13</sup> They argued that children, unlike adults, were “vulnerable, malleable, and in need of . . . guidance.”<sup>14</sup> Reformers believed these differences made child offenders less culpable than adult criminals and more deserving of rehabilitation than punishment.<sup>15</sup>

Recognizing the unique characteristics of child offenders, Illinois in 1899 created the first juvenile court in the United States.<sup>16</sup> Other states looked to Illinois as a model: “[s]upport for juvenile courts spread rapidly, and by 1945, all states had a juvenile court.”<sup>17</sup> These newly created juvenile courts had jurisdiction over cases of dependency, neglect, and delinquency.<sup>18</sup> In matters of delinquency, the goal of the juvenile court was to rehabilitate juvenile offenders and make them law-abiding citizens.<sup>19</sup>

---

12. Mowry, *supra* note 10, at 505–06 (“As the 20th Century approached, many social reformers became concerned with the courts’ treatment of children and began advocating for a procedural distinction between child offenders and adult criminals.”).

13. Madison C. Jaros, Note, *The Double-Edged Sword of Parens Patriae: Status Offenders and the Punitive Reach of the Juvenile Justice System*, 94 NOTRE DAME L. REV. 2189, 2191 (2019) (noting that “certain groups began championing the idea that adolescents were fundamentally different from adults”).

14. *Id.* (quoting Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1095 (1991)).

15. *Id.* (“These beliefs about adolescence ultimately formed the base rationale for the juvenile system: adolescents were less morally culpable than adults, and therefore required rehabilitation rather than punishment, in response to their wrongful acts.”).

16. Melissa D. Carter, *Bending the Arc Toward Justice: The Current Era of Juvenile Justice Reform in Georgia*, 54 GA. L. REV. 1133, 1140 (2020).

17. *Id.* at 1141.

18. See Lauren Knoke, Note, *See No Evil, Hear No Evil: Applying the Sight and Sound Separation Protection to All Youths Who are Tried as Adults in the Criminal Justice System*, 88 FORDHAM L. REV. 791, 797 (2019) (“In 1899, Illinois established the first state system of juvenile courts and granted these courts jurisdiction over ‘cases of dependency, neglect, and delinquency.’” (quoting William W. Booth, *History and Philosophy of the Juvenile Court*, in 1 FLORIDA JUVENILE LAW AND PRACTICE § 1.3 (15th ed. 2018))); see also Danziger, *supra* note 3, at 382 (“As some authors point out, the Pre-Gault court was ‘a kind of unified family court.’ These courts generally had jurisdiction over delinquency, dependency, and neglect cases . . . .” (quoting Anne H. Geraghty & Wallace J. Mlyniec, *Unified Family Courts: Tempering Enthusiasm with Caution*, 40(4) FAM. CT. REV. 435, 437 (2002))).

19. Danziger, *supra* note 3, at 382–83 (“The mission of the juvenile courts was to rehabilitate delinquents and to make them productive citizens . . . .”).



With rehabilitation as a goal, juvenile courts differed from adult criminal courts in many ways. Juvenile courts often functioned as civil, not criminal, tribunals;<sup>20</sup> their proceedings were informal and non-adversarial;<sup>21</sup> their proceedings were closed to the public;<sup>22</sup> their records were sealed and kept confidential;<sup>23</sup> and juvenile offenders, if determined to have committed the offense, were adjudicated “delinquent” rather than found “guilty.”<sup>24</sup> In addition, juvenile courts functioned under a *parens patriae* model of justice,<sup>25</sup> pursuant to which the judge, most often a male, served as a kind of father-figure, guiding the juvenile offender away from crime and toward a life of lawful conduct.<sup>26</sup>

Because of its informal nature, many of the procedural safeguards and constitutional rights traditionally afforded to adult criminal defendants were unavailable to juvenile offenders in the juvenile court system.<sup>27</sup> For example, at delinquency hearings, juvenile offenders were not entitled to juries, witnesses were not required to testify, and the burden of proof to find a juvenile “delinquent” was a mere preponderance of the evidence.<sup>28</sup>

---

20. Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 956–57 (2006) (“Most state statutes provided that juvenile courts would function as civil, rather than criminal, tribunals.”).

21. The Honorable Steven Teske, *Juvenile Justice Reform in Georgia: A Collective Decisionmaking Approach to De-Politicize Crime and Punishment*, 54 GA. L. REV. 1169, 1180–81 (2020) (explaining hearings in juvenile court “were informal, not adversarial like adult criminal courts”); Carter, *supra* note 16, at 1141 (“The relaxed setting and non-adversarial process was embraced as consistent with the court’s rehabilitative focus and the expression of the state’s *parens patriae* concerns.”).

22. JACOBS & JACOBS, *supra* note 4, § 1:1, at 4.

23. Robin Walker Sterling, “*Children are Different*: Implicit Bias, Rehabilitation, and the “New” Juvenile Jurisprudence, 46 LOY. L.A. L. REV. 1019, 1048 (2013) (“Records were sealed so that system-involved youths could avoid the stigma of a criminal conviction.”); JACOBS & JACOBS, *supra* note 4, § 1:1, at 4 (“The hearings were closed to the public and the juveniles’ records were declared confidential.”).

24. Quinn & Bradford, *supra* note 5, at 81 (“[H]earings in juvenile courts were considered civil rather than criminal, and children were declared ‘delinquent’ rather than ‘guilty,’ a judgment on status rather than culpability.”).

25. Filler & Smith, *supra* note 20, at 956 (“These courts operated on a paternalistic or *parens patriae* model of justice.”).

26. *Id.* at 957 (“The judge was to serve as a loving parent—in most cases, a father—providing the helpful discipline that would lead the child to a new, crime-free life.”).

27. Nicole Connell, Note, *A Defense of Senate Bill 1391: The California Law that Abolishes Transferring Juveniles under Sixteen to Criminal Court*, 51 SETON HALL L. REV. 875, 878–79 (2021) (“Because the judge was to act in the minor’s best interest, the procedural safeguards and due process rights traditionally afforded to criminal defendants were unavailable to juvenile offenders.”); *see also* Filler & Smith, *supra* note 20, at 957 (“Courts offered children few standard procedural protections.”); *Kent v. United States*, 383 U.S. 541, 555 (1966) (“Because the State is supposed to proceed in respect of the child as *parens patriae* and not as adversary, courts have relied on the premise that the proceedings are ‘civil’ in nature and not criminal, and have asserted that the child cannot complain of the deprivation of important rights available in criminal cases.”).

28. Filler & Smith, *supra* note 20, at 957 (“The judge alone would hear the facts, witnesses were not required to appear in person, defendants were not enti-

Juvenile offenders also had no right to counsel, no right against self-incrimination, and no right of confrontation in juvenile court.<sup>29</sup> If a judge found a juvenile offender delinquent, they could impose a wide range of sanctions at their complete discretion with no regard for the severity of the underlying crime.<sup>30</sup>

Over time, it became apparent that the lack of procedural and constitutional protections in the juvenile court system often had significant, negative consequences for juvenile offenders.<sup>31</sup> In some instances, under the unfettered discretion of juvenile court judges, juvenile offenders received significantly harsher sentences than they could have received in adult criminal court.<sup>32</sup> These consequences led juvenile justice advocates to seek more constitutional protections within the juvenile court system.

### C. *The Constitutional Era (1966–1979)*

The United States Supreme Court decided several cases in the 1960s and 1970s that changed the constitutional landscape of the juvenile court system. The first was in 1966. In *Kent v. United States*,<sup>33</sup> the Court held that a hearing is required before a juvenile court can waive its otherwise exclusive jurisdiction and transfer a juvenile offender to adult criminal court.<sup>34</sup> The Court reasoned that the waiver of the juvenile court's jurisdiction is a "critically important" question and thus demands procedural safeguards that "satisfy the basic requirements of due process and fairness."<sup>35</sup> Despite the narrow issue addressed in *Kent*—whether a juvenile is entitled to a hearing prior to the transfer to adult criminal court—the decision introduced procedural and constitutional protections into the juvenile court

---

led to juries, and in many jurisdictions, a judge could adjudicate a child delinquent—that is, find him guilty—on a mere preponderance of the evidence.”).

29. Larsen, *supra* note 9, at 843 (“The juvenile courts also applied relaxed procedural policies which provided no right to confrontation, no privilege against self-incrimination, and no right to representation by counsel.”).

30. Filler & Smith, *supra* note 20, at 957 (“If a judge found that a child had committed a legal transgression, he could impose a wide range of sanctions—some light, and others harsh—irrespective of the severity of the underlying offense.”).

31. *See* Mowry, *supra* note 10, at 509 (“As the ultimate decision-maker in the juvenile courts, the juvenile judges acted in whatever manner they deemed best for the child, regardless of the potential violation of constitutional rights. . . . [T]he role of most attorneys involved in juvenile courts was only to convince children to admit their ‘delinquent behavior’ and to assist the court in implementing appropriate consequences.”).

32. *See In re Gault*, 387 U.S. 1, 7–9, 29 (1967) (explaining Gerald Gault was found delinquent and sentenced to a maximum of six years of detention for lewd and indecent phone calls he and a friend made to their neighbor, but if he had been proceeded against in adult criminal court, maximum punishment would have been a fine of five to fifty dollars or imprisonment in jail for no more than two months).

33. 383 U.S. 541 (1966).

34. *See id.* at 552–54.

35. *Id.* at 553 (quoting *Black v. United States*, 355 F.2d 104, 105 (D.C. Cir. 1965)).

system and laid the foundation for more expansive constitutional guarantees.

One year later in *In re Gault*,<sup>36</sup> the Supreme Court extended four constitutional protections to juvenile offenders in the juvenile court system. Authorities arrested Gerald Gault and his friend for making lewd and indecent phone calls to their female neighbor.<sup>37</sup> Upon arrest, Gerald was immediately taken to a detention home without notice to his parents.<sup>38</sup> The delinquency petition filed against Gerald did not state the charges or any basis for charges against Gerald, nor was the petition provided to Gerald or his parents.<sup>39</sup> During two delinquency hearings, the complaining neighbor was not present, there was no sworn testimony, and Gerald was questioned without counsel.<sup>40</sup> Ultimately, the judge adjudicated fifteen-year-old Gerald a “delinquent” and committed him to a detention center until the age of twenty-one.<sup>41</sup>

Upon review, the Supreme Court held that “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.”<sup>42</sup> Rather, they are intended to apply equally to adults and juveniles. As a result, the Supreme Court granted juvenile offenders four constitutional rights afforded to adult defendants in the adult criminal court system: adequate written notice of the specific charge or factual allegations,<sup>43</sup> the right to counsel,<sup>44</sup> the right against self-incrimination,<sup>45</sup> and the right of confrontation.<sup>46</sup> The Court’s recognition of these constitutional protections had a

---

36. 387 U.S. 1 (1967).

37. *Id.* at 4 (“The police action on June 8 was taken as the result of a verbal complaint by a neighbor of the boys, Mrs. Cook, about a telephone call made to her in which the caller or callers made lewd or indecent remarks.”).

38. *Id.* at 5 (“No notice that Gerald was being taken into custody was left at the home. No other steps were taken to advise them that their son had, in effect, been arrested.”).

39. *Id.* (“[The petition] was not served on the Gaults. . . . [The petition] made no reference to any factual basis for the judicial action which it initiated. It recited only that ‘said minor is under the age of eighteen years, and is in need of the protection of this Honorable Court; [and that] said minor is a delinquent minor.’” (third alteration in original)).

40. *See id.* at 5–7.

41. *Id.* at 7–8 (“At the conclusion of the [second] hearing, the judge committed Gerald as a juvenile delinquent to the State Industrial School ‘for the period of his minority (that is, until 21), unless sooner discharged by due process of law.’”).

42. *Id.* at 13.

43. *Id.* at 31–34.

44. *Id.* at 41 (“We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile’s freedom is curtailed, the child and his parents must be notified of the child’s right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.”).

45. *Id.* at 55 (“We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults.”).

46. *Id.* at 57 (“We now hold that, absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sus-

profound impact on the juvenile court system. The once “unstructured nature of juvenile proceedings gave way to process and formality.”<sup>47</sup> *In re Gault* further established that constitutional guarantees could co-exist with the rehabilitative model of the juvenile court system.<sup>48</sup>

Three years later in *In re Winship*,<sup>49</sup> the Court held that juvenile offenders in juvenile court, like defendants in adult criminal court, are constitutionally entitled to proof beyond a reasonable doubt when charged with a criminal offense.<sup>50</sup> The Court reasoned that the “civil labels and good intentions” of juvenile courts “do not themselves obviate the need for criminal due process safeguards.”<sup>51</sup> As in *In re Gault*, the Court concluded that the application of the heightened burden of proof would not disrupt the rehabilitative benefits of juvenile courts.<sup>52</sup>

The *Kent*, *In re Gault*, and *In re Winship* trilogy provided juvenile offenders with important constitutional protections previously unavailable to them in the juvenile court system. These protections would become particularly important in the coming decades when the juvenile courts would shift away from a rehabilitative approach toward a more punitive orientation.

#### D. *The Punitive Era (1980–1999)*

Toward the end of the twentieth century, the commitment of juvenile courts systems to rehabilitation waned, giving way to a more punitive approach. Rising juvenile crime rates and frequent news reports about juveniles committing violent crimes “fueled the public perception that juveniles were not being punished enough and that the system was in fact

---

tained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements.”).

47. Alicia N. Harden, *Rethinking the Shame: The Intersection of Shaming Punishments and American Juvenile Justice*, 16 U.C. DAVIS J. JUV. L. & POL’Y 93, 107 (2012).

48. See *In re Gault*, 387 U.S. at 21 (“As we shall discuss, the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the juvenile process.”); Harden, *supra* note 47, at 107 (“Ultimately, *Gault* concluded that due process guarantees, so long as applied shrewdly and without ruthless administration, did not deny youths the benefits of juvenile courts.”).

49. 397 U.S. 358 (1970).

50. *Id.* at 368 (“In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in *Gault*—notice of charges, right to counsel, the rights of confrontation and examination, and the privilege against self-incrimination.”).

51. *Id.* at 365–66.

52. See *id.* at 367 (“We conclude, as we concluded regarding the essential due process safeguards applied in *Gault*, that the observance of the standard of proof beyond a reasonable doubt ‘will not compel the States to abandon or displace any of the substantive benefits of the juvenile process.’” (quoting *In re Gault*, 387 U.S. at 21)); Harden, *supra* note 47, at 107 (“The Court also found that applying the more stringent burden of proof did not disrupt the nature of juvenile delinquency proceedings.”).

coddling them.”<sup>53</sup> Professor John DiIulio, Jr.’s “superpredator” theory supported this societal belief.<sup>54</sup> Under his “superpredator” theory, Professor DiIulio cast juvenile offenders as brutal, remorseless youth who committed heinous crimes without fear of reprisal or the pang of guilt.<sup>55</sup>

In response, states enacted legislation that limited the jurisdictional reach of juvenile courts.<sup>56</sup> These laws often allowed the transfer of juvenile offenders to adult criminal court at younger ages and for less severe offenses than had previously been permitted.<sup>57</sup> “By 1999, all but one state had enacted laws allowing or making it easier for juvenile offenders to be transferred to criminal courts.”<sup>58</sup> These new laws sent thousands of juvenile offenders to adult criminal court.<sup>59</sup>

Juvenile offenders who remained within the juvenile court system did not escape the shift to a more punitive approach to juvenile crime. Instead of viewing juvenile offenders as individuals in need of rehabilitation, the juvenile court system became “increasingly concerned with the punishment of juveniles.”<sup>60</sup> As a result, juvenile offenders still under the jurisdiction of the juvenile courts received increasingly punitive sentences.<sup>61</sup>

---

53. Larry Cunningham, *Substantive Limitations on the Power of Family Courts to Commit Delinquent Juveniles to State Custody: Analysis and Critique*, 55 SYRACUSE L. REV. 87, 96 (2004); see also Knoke, *supra* note 18, at 796 (noting that rising juvenile crime rates during the late twentieth century was one factor in the shift to a more punitive approach in juvenile court systems).

54. See Knoke, *supra* note 18, at 796, 799 (explaining that the “superpredator” theory that became widespread during the late twentieth century was a factor in the shift to a more punitive approach in the juvenile court system).

55. *Id.* at 799 (explaining the “superpredator” theory warned of “radically impulsive, brutally remorseless youngsters . . . who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders . . . [without] fear [of] the stigma of arrest, the pains of imprisonment, or the pangs of conscience” (quoting WILLIAM J. BENNETT, JOHN J. DI IULIO, JR. & JOHN P. WATERS, *BODY COUNT: MORAL POVERTY . . . AND HOW TO WIN AMERICA’S WAR AGAINST CRIME AND DRUGS* 21 (1996))).

56. Cunningham, *supra* note 53, at 96 (“Legislatures reacted to a perceived increase in the frequency and violence of juvenile crime by passing ‘get-tough’ legislation.”).

57. *Id.* (“They enacted statutes that allowed juveniles to be certified for prosecution as adults at earlier ages and for more offenses.”).

58. Connell, *supra* note 27, at 879.

59. See Knoke, *supra* note 18, at 799–800 (“The superpredator theory played a considerable role in the ‘dismantling of transfer restrictions . . . and it threw thousands of children into an ill-suited and excessive punishment regime.’” (quoting *The Superpredator Myth, 20 Years Later*, EQUAL JUST. INITIATIVE (Apr. 7, 2014), <https://eji.org/news/superpredator-myth-20-years-later> [<https://perma.cc/CTL6-9FXK>])).

60. Jaros, *supra* note 13, at 2193.

61. Filler & Smith, *supra* note 20, at 953 (“For those children remaining in the juvenile system, judges exercised less individualized judgment and served up increasingly punitive sentences.”).

Although Professor DiIulio's child "superpredator" never materialized,<sup>62</sup> a more punitive juvenile court system certainly did.<sup>63</sup> With the increased threat of transfer to adult criminal court and the increased use of punitive sanctions within the juvenile court system, by the end of the twentieth century, juvenile offenders were experiencing a punitive regime traditionally reserved for adult criminals.

#### E. *The Rehabilitation Era (2000–Present)*

The beginning of the twenty-first century has seen a return to the juvenile court system's founding principle of rehabilitation.<sup>64</sup> This is largely due to recent developments in neuroscience.<sup>65</sup> These developments confirm what the original juvenile justice reformers instinctively suspected: children are different from adults and therefore less culpable and more deserving of rehabilitation.<sup>66</sup>

Over the last two decades, many state legislatures have taken steps to reverse the harsh laws enacted during the preceding punitive era.<sup>67</sup> Legislatures have passed laws that limit the transfer of juvenile offenders to

---

62. See Carter, *supra* note 16, at 1146 (noting the "super-predator" theory has been debunked).

63. Carly Loomis-Gustafson, Note, *Adjusting the Bright-Line Age of Accountability Within the Criminal Justice System: Raising the Age of Majority to Age 21 Based on the Conclusions of Scientific Studies Regarding Neurological Development and Culpability of Young-Adult Offenders*, 55 DUQ. L. REV. 221, 226 (2017) ("Though it is not evident that such superpredatory juveniles ever materialized, the move toward a more punitive juvenile system did, with the threat of transfer to the adult system being the ultimatum in the tug-of-war between juvenile and adult sanctions.").

64. Carter, *supra* note 16, at 1146 ("The rehabilitative ideal is reemerging from this dark chapter as the nation reforms its juvenile justice laws and practices . . ."); Colleen M. Berryessa & Jillian Reeves, *The Perceptions of Juvenile Judges Regarding Adolescent Development in Evaluating Juvenile Competency*, 110 J. CRIM. L. & CRIMINOLOGY 551, 559 (2020) ("In the last twenty years, there has been at least a partial return to the rehabilitative goal of juvenile court . . .").

65. See Berryessa & Reeves, *supra* note 64, at 559 (noting that return to rehabilitation is "due in large part to an increase in acceptance of research on adolescent development").

66. Josh Gupta-Kagan, *Beyond "Children Are Different": The Revolution in Juvenile Intake and Sentencing*, 96 WASH. L. REV. 425, 445 (2021) ("This era's reforms rest heavily on expanded neurological and psychological research which, as the Supreme Court found, 'reinforces the conventional wisdom that adolescents are different from adults in ways that affect their criminal conduct.' . . . [C]hildren under eighteen are categorically less culpable than adults who commit the same crimes because children are less mature, more impulsive, more susceptible to negative familial and peer pressure, and more amenable to rehabilitation." (quoting NAT'L RSCH. COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 32 (Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers & Julie A. Schuck eds., 2013))).

67. *Id.* at 444 ("States have also reversed some tough-on-crime era reforms, most prominently by raising the age of juvenile court jurisdiction and limiting waivers to criminal court.").

adult criminal court.<sup>68</sup> Additionally, several states have raised their age of majority, increasing the jurisdictional reach of the juvenile court system to include older teens and young adults.<sup>69</sup> States have also increased funding for community-based treatment and decreased the incarceration of juvenile offenders.<sup>70</sup> Some states have even created robust diversion programs, which allow prosecutors to divert rather than prosecute juvenile offenders.<sup>71</sup> “If the diversion is completed successfully, the juvenile [offender] never sees the inside of a courtroom.”<sup>72</sup>

The juvenile court system today, with its formalities and constitutional protections, more closely resembles the adult criminal court system than it did at its inception. However, recent legislative efforts to increase the jurisdictional reach of juvenile courts leave little doubt that the juvenile justice system has returned to its rehabilitative roots.

---

68. See Connell, *supra* note 27, at 876 (“Senate Bill 1391 bans the transfer of juveniles under the age of sixteen to criminal court, regardless of the alleged offense.”); see also Anne Teigen & Laura Carper, *Juvenile Justice 2020 Year-End Report*, NAT’L CONF. STATE LEGISLATURES, (URL unavailable) (last visited May 24, 2023) (“Additionally, Utah will have fewer young people tried in adult court because the state enacted legislation limiting the transfer of 16- and 17-year-olds to adult court to only the most serious offenses and only under a judge’s discretion.”).

69. See Mowry, *supra* note 10, at 520–21 (explaining Michigan recently raised the age of majority from seventeen years old to eighteen years old); Teigen & Carper, *supra* note 68 (noting Vermont raised age of majority to nineteen, so “most young people who are accused of committing criminal offenses at age 18 . . . will be prosecuted in juvenile court”); Lily Bohlke, *17-Year-Olds in MO Now Will be Treated as Juveniles, Not Adults*, KRCU PUB. RADIO (July 13, 2021, 10:12 AM), <https://www.krcu.org/crime-safety/2021-07-13/17-year-olds-in-mo-now-will-be-treated-as-juveniles-not-adults> [https://perma.cc/F6DZ-2PFK] (“In Missouri’s courts, 17-year-olds will now be automatically treated as juveniles rather than adults if they’re taken into custody.”).

70. See Gupta-Kagan, *supra* note 66, at 448 (noting that “eight states have enacted offense-based limits on when or for how long judges can incarcerate children”); *Juvenile Corrections Reform in California*, CTR. JUV. & CRIM. JUST., <http://www.cjg.org/Education1/California-s-Farrell-Litigation.html> [https://perma.cc/VZ2G-Q8AN] (last visited May 24, 2023) (“[Senate Bill 81] ushered in a new era of juvenile justice policy by limiting the types of offenders who could be committed to state youth correctional institutions and by providing funding to county probation systems to improve their capacity to handle higher end offenders. The bill resulted in a further decline in institutional commitments and spurred the development of innovative programs at the county level.”).

71. See *What is Diversion in Juvenile Justice?*, ANNIE E. CASEY FOUND. BLOG (Oct. 22, 2020), <https://www.aecf.org/blog/what-is-juvenile-diversion> [https://perma.cc/J8CC-KQZD] (“In 2018, 41% of juvenile referrals nationwide were diverted, according to the federal Office of Juvenile Justice Delinquency and Prevention.”).

72. Cunningham, *supra* note 53, at 97.

## II. THE JURISDICTION OF JUVENILE COURTS

Statutes generally establish the jurisdiction of juvenile courts.<sup>73</sup> Typically, juvenile courts have jurisdiction over offenders who commit certain criminal offenses prior to a certain age known as the “age of majority.”<sup>74</sup> Individual states set their own age of majority, with most states starting majority at or around the age of eighteen.<sup>75</sup> Where an offender’s age equals or exceeds the age of majority, the juvenile court lacks jurisdiction, and the offender is proceeded against in adult criminal court.<sup>76</sup>

The point at which the offender’s age matters for jurisdictional purposes is significant and of particular importance in situations where an offender commits an offense while under the age of majority but is not proceeded against until after reaching the age of majority. Some states determine jurisdiction based upon the age of the juvenile offender at the time of the alleged criminal offense.<sup>77</sup> In these states, even if the juvenile

---

73. 43 C. J. S. § 11 *Infants* (2022) (explaining juvenile court “is a tribunal created by a statute”); *E.g.*, N.H. REV. STAT. ANN. § 169-B:3 (2022) (“The court shall have exclusive original jurisdiction over all proceedings alleging delinquency.”); VT. STAT. ANN. tit. 33, § 5103(a) (West 2022) (“The Family Division of the Superior Court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child . . . .”); ALA. CODE § 12-15-114(a) (2022) (“A juvenile court shall exercise exclusive original jurisdiction of juvenile court proceedings in which a child is alleged to have committed a delinquent act . . . .”).

74. *See* JACOBS & JACOBS, *supra* note 4, § 8:4, at 104 (“Juvenile court frequently has limited, original, exclusive jurisdiction over juveniles within the delinquency age range.”); *E.g.*, WASH. REV. CODE ANN. §§ 13.04.030(1)(e), 13.04.011(5) (West 2022) (granting juvenile court exclusive, original jurisdiction over persons under age of eighteen who are alleged to have committed certain criminal offenses); NEB. REV. STAT. ANN. §§ 43-247(1)–(2) (West 2022) (granting juvenile court exclusive original jurisdiction of persons older than ten but younger than eighteen who are accused of committing criminal offenses); N.H. REV. STAT. ANN. §§ 169-B:2(IV), 169-B:3 (2022) (granting juvenile court exclusive original jurisdiction over delinquency proceedings against person under age of eighteen).

75. *See* Anne Teigen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT’L CONF. STATE LEGISLATURES (Apr. 8, 2021), <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx> [<https://perma.cc/HPR7-TG93>] (“In 47 states, the maximum age of juvenile court jurisdiction is age 17.”).

76. *See* 47 AM. JUR. 2D *Juvenile Courts, Etc.* § 11 (2022) (“Statutes pursuant to which an individual may be adjudged a delinquent . . . are limited to children within a specified age limit . . . .”).

77. *E.g.*, *People v. Ramirez*, 246 Cal. Rptr. 3d 897, 905 (Ct. App. 2019) (noting “juvenile court’s jurisdiction is based on age at the time of the violation of a criminal law or ordinance”); *In re S.C.Y.*, 736 P.2d 353, 354 (Alaska 1987) (“The [juvenile] court’s jurisdiction depends on the age of the minor at the time of the offense.”); *In re D.L.*, 492 S.E.2d 273, 274 (Ga. Ct. App. 1997) (“[T]he age of the child at the time the offense was committed . . . determines whether or not the juvenile court has jurisdiction.”); *Johnson v. Bishop*, 587 S.W.2d 284, 285 (Ky. Ct. App. 1979) (holding that jurisdictional statute “vests jurisdiction in the juvenile court over proceedings against an offender of any age who at the time of committing the offense charged was under the age of eighteen”); *State v. Doe*, 619 P.2d 192, 194 (N.M. Ct. App. 1980) (holding jurisdiction of juvenile court vests when



offender has reached the age of majority at the time of proceedings, they still fall within the jurisdictional reach of the juvenile court because they committed the offense when under the age of majority.<sup>78</sup> However, other states determine jurisdiction based upon the age of the juvenile offender at the time proceedings are instituted against the juvenile offender.<sup>79</sup> In

---

person under age of eighteen commits an offense, “regardless of their ages at the time the charges are filed”); *In re D.K.*, 47 A.3d 347, 353 (Vt. 2012) (“Hence, whether an individual is deemed to be a child subject to the jurisdiction of the [juvenile court] depends on the offender’s age at the time the delinquent act was committed, not at the time that the offender was charged with the delinquent act.”); JACOBS & JACOBS, *supra* note 4, § 8:5, at 115–16 (“In some states, juvenile court has jurisdiction over a person who was within the delinquency age range at the time of the commission of the offense.”).

78. See *Ramirez*, 246 Cal. Rptr. 3d at 905 (explaining “[b]ecause the juvenile court’s jurisdiction is based on age at the time of the violation of a criminal law or ordinance, ‘[i]t is therefore possible that a person might commit a murder at age 17, be apprehended 50 years later, and find himself subject to juvenile court jurisdiction at age 67’” (alteration in original) (quoting *Rucker v. Superior Ct.*, 141 Cal. Rptr. 900, 902 (Ct. App. 1977))); *Doe*, 619 P.2d at 192–94 (holding juvenile court still had jurisdiction over juvenile offenders who allegedly committed offenses while they were seventeen years old, even though they reached age eighteen before charges were filed); *Bishop*, 587 S.W.2d at 284–85 (holding adult criminal court had no jurisdiction to hear case where offenders were under eighteen years of age at time of offense, despite juvenile offenders having reached age of majority prior to indictment); *In re C.G.*, 662 S.E.2d 823, 824 n.2 (Ga. Ct. App. 2008) (juvenile court had jurisdiction over C.G., who was sixteen at time of offense, but eighteen at time grand jury indicted him because “the juvenile court has jurisdiction if the accused is under the age of seventeen at the time the offense is committed,” and offender’s “age at the time of his adjudicatory hearing is not determinative of the juvenile court’s jurisdiction over him” (citations omitted) (quoting *In re J.T.D.*, 529 S.E.2d 377 (Ga. Ct. App. 2000))); *In re M.C.*, 750 P.2d 69, 70 (Colo. App. 1987) (“In spite of the fact that M.C. was eighteen at the time of the dispositional hearing, he was only seventeen at the time he committed the act complained of and therefore was a child subject to the provisions of the Children’s Code. The age at which the acts were committed is the determinative factor, not the age at which disposition was imposed.” (citations omitted)); *B.A.M. v. State*, 528 P.2d 437, 438 (Alaska 1974) (“Since B.A.M. was under the age of eighteen at the time the acts of delinquency were committed, he is considered a minor for the purposes of adjudication and disposition.”).

79. *E.g.*, *State v. Godines*, 236 P.3d 824, 829 (Or. Ct. App. 2010) (“[T]he jurisdiction of the juvenile court does not depend on the defendant’s age at the time the criminal act was committed, but [on] his age at the time judicial proceedings were initiated.” (alterations in original) (quoting *Delaney v. State*, 648 P.2d 1302, 1303 (Or. Ct. App. 1982))); *State v. Dion*, 159 P.3d 404, 405 (Wash. 2007) (en banc) (“Whether a juvenile court has jurisdiction over a particular proceeding depends on when the State initiates proceedings against the offender, not when the juvenile commits the offense.”); *State v. Sanders*, 912 N.W.2d 16, 20 (Wis. 2018) (holding “[t]he defendant’s age at the time he was charged, not his age at the time he committed the underlying conduct, determines whether” juvenile court has jurisdiction); *State v. Pauly*, 972 N.W.2d 907, 918 (Neb. 2022) (“Put differently, whether the juvenile court has jurisdiction over a person is determined not by the person’s age at the time of the offense, but, rather, by the person’s age at the time he or she is charged for the offense.”); *Commonwealth v. Renninger*, 269 A.3d 548, 562 (Pa. Super. Ct. 2022) (“The Juvenile Act affords protections to a child . . . and, as such, the Juvenile Act expressly limits its jurisdiction to proceedings involv-

these states, the prosecution will proceed against a juvenile offender who has reached the age of majority by the time proceedings are initiated in adult criminal court, despite the fact that the offender was a juvenile at the time of the alleged offense.<sup>80</sup> In these states, juvenile offenders lose all the protections and benefits of the juvenile court system, despite having been a juvenile and therefore less culpable and more deserving of rehabilitation at the time of the alleged offense.

When deciding whether the juvenile offender's age at the time of offense or proceedings determines the jurisdiction of juvenile courts, courts most heavily rely upon the language of the statute that confers

---

ing a child, notwithstanding his or her age at the time the offense occurred.”); JACOBS & JACOBS, *supra* note 4, §§ 8:5–8:6, at 116–17 (“In other states, jurisdiction exists only if the juvenile is within the delinquency age range at the time of charging or trial.” (footnote omitted)).

80. *See* State *ex rel.* Juv. Dept. of Wash. Cnty. v. Fitch, 84 P.3d 190, 194 (Or. Ct. App. 2004) (“As a rule, if a person is over age 18 when he or she is charged with a criminal offense, that person will be tried as an adult. That is true even if the person committed the charged offense before he or she turned 18.” (citation omitted)); *Burrows v. State*, 297 P. 1029, 1034 (Ariz. 1931) (finding adult criminal court had jurisdiction over juvenile offender because he had turned eighteen years old prior to prosecution filing information); *Godines*, 236 P.3d at 825, 829–30 (holding adult criminal court had jurisdiction over juvenile offender who was over eighteen years of age when indicted, despite having been under fifteen years old at time of offenses); *State v. Salavea*, 86 P.3d 125, 129 (Wash. 2004) (en banc) (holding adult criminal court had jurisdiction over juvenile offender who committed offenses when he was between ages of thirteen and fifteen years old, but was not charged until after he turned eighteen years old); *Sanders*, 912 N.W.2d at 20 (holding adult criminal court had jurisdiction over juvenile offender who was charged after reaching age of majority for conduct he committed before his tenth birthday because “defendant’s age at the time he was charged, not his age at the time he committed the underlying conduct, determines whether” juvenile court has jurisdiction); *Pauly*, 972 N.W.2d at 918 (holding adult criminal court had jurisdiction over juvenile offender for offenses committed before reaching the age of majority because offender was no longer a juvenile at time he was charged); *Renninger*, 269 A.3d at 562 (holding juvenile offender who was thirty-three years old at time of proceedings was subject to adult criminal court because, despite having been under age of eighteen at time of offenses, it is the juvenile offender’s age at time of proceedings that determines jurisdiction of juvenile court).

jurisdiction to the juvenile court.<sup>81</sup> For example, in *J.O.N. v. Juvenile Officer*,<sup>82</sup> the Missouri Court of Appeals explained:

[The statute granting jurisdiction] provides that the juvenile court shall have “exclusive original jurisdiction in proceedings . . . (3) [i]nvolving any *child* who is alleged to have violated a state law or municipal ordinance, or any *person* who is alleged to have violated a state law or municipal ordinance prior to attaining the age of seventeen years . . .” (emphasis added). The legislature’s use of the word “person” in the foregoing excerpt is deliberate and significant. The statute intends to make it clear that the juvenile court has jurisdiction in proceedings involving a *child* (i.e., a person under 17 years of age, section 211.021(2), RSMo 1986), who is alleged to have violated a state law and also of a proceeding involving a *person*, regardless of age, who is alleged to have violated a state law prior to attaining the age of 17 years. The jurisdiction of the juvenile court depends only upon the occurrence of the law violation before the violator was 17.<sup>83</sup>

Likewise, in *Johnson v. Bishop*,<sup>84</sup> the Court of Appeals of Kentucky stated:

This subsection, as amended, reads as follows: (1) The juvenile session of the district court of each county shall have exclusive jurisdiction in proceedings concerning any child living, or found

---

81. See H.D. Warren & C.P. Jhong, Annotation, *Age of Child at Time of Alleged Offense or Delinquency, or at Time of Legal Proceedings, as Criterion of Jurisdiction of Juvenile Court*, 89 A.L.R.2d 506 § 1[a] (1963) (“The law of juvenile court jurisdiction is basically statutory, and the annotated question is generally controlled or affected by statutory provisions.”); see also *In re D.K.*, 47 A.3d at 353 (using statutory language to determine “the jurisdiction of the family division depends on the offender’s age at the time the delinquent act was committed, not at the time that the offender was charged with the delinquent act”); *In re J.T.D.*, 529 S.E.2d at 378 (relying upon statutory language to determine that offender’s age at time of his adjudicatory hearing is not determinative of juvenile court’s jurisdiction over him; rather, offender’s age at time of offense controls); *State v. Lemelin*, 144 A.2d 916, 917 (N.H. 1958) (holding, under former statute, “[i]t is apparent that the exclusive jurisdiction conferred upon [juvenile] courts by the applicable statute is limited to proceedings relating to children who are under eighteen years of age when the proceedings are brought”). In determining whether the jurisdiction of juvenile courts is based upon the juvenile offender’s age at the time of offense or the time of proceedings, courts also sometimes consider the purpose of the juvenile code in their state. *E.g.*, *Pauly*, 972 N.W.2d at 918 (noting the conclusion that juvenile court’s jurisdiction is determined based upon person’s age at time of charging, not at time of offense, “is consistent with the purpose of the juvenile code, which is to serve the best interests of the juveniles who fall within it”); *Ramirez*, 246 Cal. Rptr. 3d at 905 (noting, in matters of statutory interpretation, court’s “task is to determine the Legislature’s intent and give effect to the law’s purpose”).

82. 777 S.W.2d 633 (Mo. Ct. App. 1989).

83. *Id.* at 634 (second, third, and fourth alterations in original) (quoting Mo. REV. STAT. § 211.031 (1986)).

84. 587 S.W.2d 284 (Ky. Ct. App. 1979).

within the county who has not reached his eighteenth birthday [o]r of any person who at the time of committing a public offense was under the age of eighteen (18) years . . . . (emphasis added)[.] Prior to its amendment, this statute vested exclusive jurisdiction in the juvenile court only as to proceedings against an offender which were instituted before his eighteenth birthday. The amendment was obviously intended to, and plainly does, go a step farther and vests jurisdiction in the juvenile court over proceedings against an offender of any age who at the time of committing the offense charged was under the age of eighteen.<sup>85</sup>

By contrast, in *State v. Pauly*,<sup>86</sup> the Supreme Court of Nebraska held that the age of the offender at the time of proceedings determined whether the juvenile court had jurisdiction. The court stated:

Subsection (2) of § 43-247 grants jurisdiction to the juvenile court over any *juvenile* who committed a felonious act and who was 11 years of age or older at the time the act was committed. . . . For purposes of the Nebraska Juvenile Code, . . . “[j]uvenile means any person under the age of eighteen.” . . . Put differently, whether the juvenile court has jurisdiction over a person is determined not by the person’s age at the time of the offense, but, rather, by the person’s age at the time he or she is charged for the offense.<sup>87</sup>

These cases illustrate how important the statutory language that confers jurisdiction to juvenile courts is to the determination of whether it is the juvenile offender’s age at the time of offense or at the time of proceedings that will control the jurisdictional question.

### III. STATES SHOULD DETERMINE JURISDICTION OF JUVENILE COURTS BASED UPON AGE AT TIME OF OFFENSE

Juvenile offenders in states that determine the jurisdiction of juvenile courts based upon a juvenile offender’s age at the time of proceedings are at a significant disadvantage. Despite having been juveniles at the time of the offense, they lose all the benefits and protections of the juvenile court system if they reach the age of majority prior to the initiation of proceedings. They will be proceeded against in the retribution-oriented adult criminal court system where they are more likely to be incarcerated;<sup>88</sup>

---

85. *Id.* at 285 (second alteration in original) (citation omitted).

86. 972 N.W.2d 907 (Neb. 2022).

87. *Id.* at 918 (second alteration in original) (quoting NEB. REV. STAT. § 43-245(11) (2016)).

88. Knoke, *supra* note 18, at 800 (noting juveniles are “more likely to end up incarcerated after being tried and processed in the adult criminal justice system rather than through the juvenile justice system”).

have no protection of confidentiality;<sup>89</sup> have limited or no access to rehabilitative programming and treatment;<sup>90</sup> and, if determined to have committed the offense, will be found “guilty” of a crime rather than merely “delinquent.”<sup>91</sup> This Part explores the numerous policy-based reasons why the better approach to the determination of the jurisdiction of juvenile courts is to use the offender’s age at the time of offense.

A. *Juvenile Offenders are Less Culpable than Adult Criminals*

The notion that juvenile offenders are less culpable for their actions than adult criminals is not a new concept. Early juvenile justice reformers relied upon this lessened culpability to advocate for a distinction between juvenile offenders and adult criminals within the criminal justice system.<sup>92</sup> These early reformers understood that youth is not merely a chronological number,<sup>93</sup> but rather is a period of time when individuals are “less mature, more impulsive, more susceptible to negative familial and peer pressure, and more amenable to rehabilitation.”<sup>94</sup> Indeed, it was society’s acceptance that youth and its attendant circumstances make juvenile offenders

---

89. Shannon F. McLatchey, *Media Access to Juvenile Records: In Search of a Solution*, 16 GA. ST. U. L. REV. 337, 340 (1999) (noting that juvenile offenders transferred to adult criminal court “lose the confidentiality measures afforded in juvenile court”). Without the protection of confidentiality, the juvenile’s identity will be public and they will endure the long-lasting stigma of criminality for their adolescent conduct. See *In re Calvin S.*, 58 Cal. Rptr. 3d 559, 562 (Ct. App. 2007) (“We recognize the confidentiality of juvenile court proceedings protects the minor from the stigma of being labeled a ‘criminal,’ a label which could prevent the youth’s reintegration into the community. This stigma is inconsistent with the juvenile court’s goal of rehabilitation.” (citation omitted)).

90. Lilah Wolf, *Purgatorio: The Enduring Impact of Juvenile Incarceration and a Proposed Eighth Amendment Solution to Hell on Earth*, 14 STAN. J. CIV. RTS. & CIV. LIBERTIES 89, 96 (2018) (“Furthermore, adult facilities are not equipped to provide necessary education and rehabilitative programs for youths. In fact, forty percent of adult jails provide no educational services at all.”).

91. See Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference it Makes*, 68 B.U. L. REV. 821, 825 (1988) (noting, in juvenile court, “[t]o avoid stigmatizing a youth . . . children were found to be delinquent rather than guilty of committing a crime”). A criminal conviction carries significant collateral consequences, affecting immigration status, employment, housing, and the ability to secure student loans. *Collateral Consequences of Criminal Convictions: Judicial Bench Book*, AM. BAR ASS’N, (Mar. 2018), <https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf> [<https://perma.cc/P76A-RRHA>].

92. Sterling, *supra* note 23, at 1023–24 (“According to the oft-told narrative about the beginnings of juvenile court, in the late nineteenth century, the ‘Child Savers,’ a group of Progressive reformers, championed the establishment of separate juvenile courts based on the belief that children were less culpable and more amenable to rehabilitation than adults.” (footnote omitted)).

93. *Id.* at 1024 (“Like the Court, the Child Savers intuitively understood the common sense reality that ‘youth is more than a chronological fact.’” (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982))).

94. Gupta-Kagan, *supra* note 66, at 445.

less culpable and more deserving of rehabilitation that served as the impetus for the creation of juvenile court systems.<sup>95</sup>

Today, scientific studies confirm what early juvenile justice reformers believed: from a developmental perspective, juveniles are different from adults.<sup>96</sup> There are at least four developmental differences between an adolescent and adult brain significant to culpability.<sup>97</sup> First, during adolescence there is an increase in dopamine, a neurotransmitter associated with sensation-seeking and risk-taking.<sup>98</sup> The increased levels of dopamine often make risky behavior more appealing than safer choices.<sup>99</sup> Second, the prefrontal cortex is not fully developed during adolescence.<sup>100</sup> “The prefrontal cortex . . . is responsible for cognitive analysis, abstract thought, and the moderation of correct behavior in social situations.”<sup>101</sup> It provides an individual with “the capacity to exercise good judgment.”<sup>102</sup> Because the prefrontal cortex is not fully developed until adulthood, “adolescents have less control over the urge to seek a reward that may have negative effects,” which explains “why adolescents are prone to seek novelty and take risks.”<sup>103</sup> Third, “the brain goes through exten-

---

95. Sterling, *supra* note 23, at 1023 (“But the ‘children are different’ argument is old wine in new bottles. In fact, the juvenile justice system was founded on it.”).

96. See Sydney McGregor, *Missed the Mark by a Mile*, 46 W. ST. L. U. REV. 155, 162 (2019) (“Studies support the notion that children differ from adults in a manner that requires different treatment under the law. Children fundamentally contrast with adults both physiologically and psychologically, such that when they offend, while we must hold them accountable, this must be done in a developmentally appropriate manner.”).

97. See *id.* at 162–63 (“‘Developmental changes that occur during childhood and [continuing through] adolescence . . . are relevant to competence, culpability, and likely response to treatment.’ Four primary changes occur in the brain during adolescent development.” (alterations in original) (quoting Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 VICTIMS & OFFENDERS 428, 431 (2012))).

98. See *id.* at 163 (“Neurotransmitters, which serve as the messengers of neurological information between cells, like dopamine, develop during adolescence. Dopamine is directly linked to sensation-seeking and heightened risk-taking, which can be correlated to criminal risk-taking.”).

99. See Erin Walsh, *Dopamine and the Teenage Brain*, SPARK & STITCH INST. (Nov. 1, 2016), <https://sparkandstitchinstitute.com/dopamine-and-the-teenage-brain/> [<https://perma.cc/Z2X8-TCUR>] (“This hopped up reward system can drown out warning signals about risk. This doesn’t mean that young people don’t stop to think about the consequences . . . . It is just that there are times when the reward seems well worth it.”).

100. See McGregor, *supra* note 96, at 163.

101. *Id.* (quoting Mariam Arain, Maliha Haque, Lina Johal, Puja Mathur, Wynad Nel, Afsha Rais, Rabir Sandhu & Sushil Sharma, *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 453 (2013)) (“The prefrontal cortex is one of the last regions of the brain to reach maturation . . .”).

102. *Id.* (quoting Arain, Haque, Johal, Mathur, Nel, Rais, Sandhu & Sharma, *supra* note 101, at 453).

103. *Id.* at 163–64 (quoting INST. MED. (US) & NAT’L RSCH. COUNCIL (US) COMM. SCI. ADOLESCENCE, BIOBEHAVIORAL PROCESSES CURRENT NEUROLOGY &

sive myelination” during adolescence.<sup>104</sup> Myelination is the “process by which the myelin forms a casing around a nerve to allow speedier and more consistent neural transmissions.”<sup>105</sup> Until the myelinations process is complete, adolescents are unable to fully plan, weigh costs and benefits, and appropriately respond to inhibitions.<sup>106</sup> Finally, “neural connections between cortical and subcortical regions continue to grow into late adolescence.”<sup>107</sup> Without these fully formed connections, adolescents are unable to effectively regulate emotions and control emotional impulses.<sup>108</sup>

Recently, the U.S. Supreme Court has extended several constitutional protections to juvenile offenders because of these developmental deficiencies. In 2005, in *Roper v. Simmons*,<sup>109</sup> the Court held that imposition of the death penalty on offenders who were under the age of eighteen when their crimes were committed was unconstitutional.<sup>110</sup> Five years later, in 2010, in *Graham v. Florida*,<sup>111</sup> the Supreme Court held that “[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.”<sup>112</sup> In both cases, the Court relied upon science to reach its decision. In *Roper*, the Court “cited studies showing that ‘[o]nly a relatively small proportion of adolescents’ who engage in illegal activity ‘develop entrenched patterns of problem behavior.’”<sup>113</sup> Likewise, in *Graham*, the Court “noted that ‘developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds’” and “reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’”<sup>114</sup> Together, *Roper* and *Graham* establish that juveniles’ developmental deficiencies diminish their culpability and increase their prospect for reform, making them deserving of special treatment under the criminal justice system.

---

NEUROSCIENCE REP. 37 (2011), <https://www.ncbi.nlm.nih.gov/books/NBK53414/> [<https://perma.cc/6L99-J335>]).

104. *Id.* at 164.

105. *Id.*

106. *Id.*

107. *Id.* (quoting Cauffman & Steinberg, *supra* note 97, at 432).

108. *See id.* (noting that neural connections “lead[s] to improved emotional self-regulation, . . . [and] [helps] [individuals] exercise cognitive control over emotional impulses” (first, second, third, and fourth alterations in original) (quoting Cauffman & Steinberg, *supra* note 97, at 432)).

109. 543 U.S. 551 (2005).

110. *Id.* at 578.

111. 560 U.S. 48 (2010).

112. *Id.* at 82.

113. *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (alteration in original) (quoting *Roper*, 543 U.S. at 570).

114. *Id.* at 471–72 (quoting *Graham*, 560 U.S. at 68).

More recently, in 2012, in *Miller v. Alabama*,<sup>115</sup> the Court held that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment of the Federal Constitution.<sup>116</sup> Again, relying upon the developmental deficiencies of adolescence, the Court concluded that when imposing the harshest penalty against juvenile offenders—life without the possibility of parole—mandatory sentencing schemes ignore the unique circumstances of adolescence.<sup>117</sup> Specifically,

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.<sup>118</sup>

The developmental differences relied upon in *Roper* and its progeny to expand constitutional protections to juvenile offenders in the context of sentencing are equally applicable in the context of the jurisdictional reach of juvenile courts. An offender's level of culpability is generally determined by the facts and circumstances that exist at the time of the offense.<sup>119</sup> Thus, when a juvenile commits an offense, he or she does so

---

115. 567 U.S. 460 (2012).

116. *Id.* at 470 (“Here, the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment.”).

117. *Id.* at 477 (“So *Graham* and *Roper* and our individualized sentencing cases alike teach that in imposing a State’s harshest penalties, a sentencer misses too much if he treats every child as an adult.”).

118. *Id.* at 477–78 (citations omitted).

119. See *United States v. VanHoesen*, 450 F. App’x. 57, 61 (2d Cir. 2011) (“As the district court correctly observed, an insanity defense relates to a defendant’s culpability at the time he allegedly committed the offense, not at the time of trial.”); *Powers v. United States*, 305 F.2d 157, 158 (10th Cir. 1962) (“Lastly, the government psychiatric report which Appellant urges entitled him to a directed verdict of acquittal contains no stated conclusion or opinion as to his mental capacity, in terms of criminal culpability, as of the time the offense was committed.”); *State v. Du Bose*, No. 89-134-III, 1990 WL 113254, at \*1 (Tenn. Crim. App. Aug. 9, 1990) (noting defendant relied upon his stress at time of the offense to reduce his culpability).



with the developmental deficiencies recognized by early juvenile justice reformers, scientific researchers, and now the U.S. Supreme Court. The mere fact that the prosecution may not have initiated legal proceedings until after the juvenile offender reached the age of majority does not increase the offender's level of culpability at the time they committed the crime.<sup>120</sup> Rather, the criminal offense was committed during a period of diminished culpability due to the juvenile's lack of brain maturity and development.

### B. *Ensures Fairness in the Criminal Justice System*

As the U.S. Supreme Court has noted in multiple contexts, fairness is a hallmark feature of the American criminal justice system.<sup>121</sup> The fundamental right to fair treatment in the criminal justice system has served as an important rationale underlying the elaboration of many constitutional rights, including the right to counsel for indigent defendants,<sup>122</sup> the prohibition against the imposition of the death penalty on juveniles,<sup>123</sup> the prohibition against race-based jury selection,<sup>124</sup> and the right to a fair and

---

120. *State v. Jones*, 418 S.W.2d 769, 770–71 (Tenn. 1966) (“We do not think the mere fact proceedings were not instituted against him until after his eighteenth birthday deprived the Juvenile Court of its original jurisdiction, nor do we think this fact enlarged his act of delinquency into a criminal offense.”); *State v. Malone*, 100 So. 788, 789 (La. 1924) (“Hence the same act which constituted mere delinquency when done, cannot ripen into a crime merely because the child has since become a man.”).

121. See James M. Durant III, *Equal Protection: Access to Justice and Fairness in the American Criminal Justice System?*, 8 DEPAUL J. SOC. JUST. 175, 175 (2015) (“Access to justice and fairness in the criminal justice system are the hallmarks of American jurisprudence.”).

122. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) (“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”).

123. See *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (“The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.”).

124. *Batson v. Kentucky*, 476 U.S. 79, 87, 89 (1986) (“The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community. Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice. . . . [T]he Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant.”).

impartial jury.<sup>125</sup> Fairness also underlies the notion that similarly situated persons should be treated alike under the law.<sup>126</sup>

Fairness within the criminal justice system is also critical to the promotion of society's confidence in the justice system.<sup>127</sup> Commentators have noted that:

The public is much more likely to support and participate in the criminal justice process and support those officials who run it when the public believes that the process is run fairly. If the American public does not perceive its criminal justice system to be fair, negative consequences can result. Diminished public support for the criminal justice system, taken to the extreme, can lead to diminished respect for the law and, thereby, less compliance with the law.<sup>128</sup>

States that determine the jurisdiction of juvenile courts based upon a juvenile offender's age at the time of proceedings run afoul of this basic understanding of fairness. Using a juvenile offender's age at the time of proceedings to determine jurisdiction allows similarly situated juvenile offenders to be treated differently within the criminal justice system based upon when the prosecution proceeds against them.<sup>129</sup> Consider, for example, a seventeen-year-old individual who stole a pair of \$200 sneakers from a store in a state that set its age of majority at eighteen years old. If the juvenile is arrested and charged on the day of the offense, the juvenile court would have jurisdiction. Now imagine another seventeen-year-old stole a pair of \$200 sneakers from the same store, on the same day, but they were not proceeded against until one day after their eighteenth birthday. In the second scenario, the juvenile offender would be charged, tried, and sentenced in adult criminal court. This juvenile offender would lose all the benefits and protections of the juvenile court: confidentiality, rehabilitation, decreased reliance on incarceration, and adjudication as a

---

125. *Aldridge v. United States*, 283 U.S. 308, 310 (1931) (explaining the right to a fair and impartial jury is rooted in "the essential demands of fairness").

126. *See Mercer v. Champion*, 55 A.3d 772, 781 (Conn. App. Ct. 2012) ("The [e]qual [p]rotection [c]lause of the [f]ourteenth [a]mendment to the United States [c]onstitution is essentially a direction that all persons similarly situated should be treated alike." (alterations in original) (quoting *Brooks v. Sweeney*, 9 A.3d 347, 361 (Conn. 2010))).

127. Tracey L. Meares, *Everything Old is New Again: Fundamental Fairness and the Legitimacy of Criminal Justice*, 3 OHIO ST. J. CRIM. L. 105, 108 (2005) (explaining one benefit of fairness in the criminal justice system is public confidence).

128. *Id.*

129. *See Commonwealth v. Renninger*, 269 A.3d 548, 562 (Pa. Super. Ct. 2022) (explaining juvenile offender "asserts that he 'was deprived of equal treatment enjoyed by other juveniles and deprived of the benefits of the juvenile system'" because he was tried in adult criminal court because he was no longer a juvenile as defined under statute by time proceedings were instituted against him (quoting Brief of Appellant at 49, *Commonwealth v. Renninger*, 269 A.3d 548 (2022) (No. 1294 WDA 2019))).

“delinquent” rather than convicted of a crime. Instead, the prosecution would proceed against this juvenile in the adult criminal court with its punitive-oriented regime. This juvenile would be treated differently and would suffer significant consequences, despite committing the same offense, on the same day, in the same state, and at the same age as the juvenile in the first scenario.

Certainly, there are other instances of disparate treatment within the criminal justice system.<sup>130</sup> However, the disparate treatment that results when a state determines the jurisdiction of juvenile courts based on the offender’s age at the time of proceedings is particularly unfair because it has no connection to any perceived difference in culpability, severity of offense committed, or criminal history between the juvenile offenders. Rather, it is solely the result of the use of an arbitrary date—the date of legal proceedings—to determine the jurisdictional reach of juvenile courts. This unfair result would not—could not—occur in a state that determines jurisdiction based upon a juvenile offender’s age at the time of offense. Under such a scheme, both juvenile offenders in the above examples would fall within the jurisdictional reach of the juvenile court because they both committed the offenses while under the age of majority.

### C. *Removes Incentive to Delay Proceedings Against Juvenile Offenders*

A prosecutor’s primary obligation is to seek justice.<sup>131</sup> To fulfill this obligation, prosecutors are given broad discretion within the criminal justice system.<sup>132</sup> Prosecutors regularly exercise their discretion in the context of criminal investigations, charging decisions, plea bargaining, and sentencing recommendations.<sup>133</sup>

There are many benefits to broad prosecutorial discretion. First, given the abundance of criminal statutes today, discretion allows prosecutors to determine which “criminal law[s] are really worthy of criminal punishment.”<sup>134</sup> “[P]rosecutors are [likely] more suited than the legislature to adapt the criminal law to new circumstances and to identify when the

---

130. *E.g.*, *Sentencing: Disparity*, L. LIBR. – AM. L. & LEGAL INFO., <https://law.jrank.org/pages/2050/Sentencing-Disparity-Types-disparity.html> [<https://perma.cc/UWN4-CKN5>] (explaining both “intra- and inter-jurisdictional” sentencing disparities between judges) (last visited May 28, 2023); N.H. REV. STAT. ANN. §§ 637:11(I)–(III) (2022) (classifying theft offenses and penalties for theft offenses based on value of property or services stolen).

131. Leslie C. Griffin, *The Prudent Prosecutor*, 14 GEO. J. LEGAL ETHICS 259, 286 (2001) (“The prosecutor’s duty is to ‘seek justice.’” (quoting MODEL CODE EC 7-13 (1994))).

132. *See id.* at 263 (“Many commentators have concluded that the role of discretion in prosecution has expanded in recent years, as have the prosecutor’s powers in the criminal justice system.”).

133. *Id.* (“Discretion is employed, for example, in the investigation of cases, in charging decisions, in plea bargaining, and in sentencing.”).

134. *Id.* (quoting Gerard E. Lynch, *Our Administrative System of Criminal Justice*, 66 FORDHAM L. REV. 2117, 2136–37 (1998)).

prosecution of certain statutes would be anachronistic.”<sup>135</sup> Second, discretion allows prosecutors to focus financial resources and personnel on the criminal offenses most troubling to their community, rather than exhausting often limited resources attempting to punish all criminal conduct.<sup>136</sup> Finally, broad discretion is often necessary to reach just results.<sup>137</sup> Strict enforcement of the law is not always in the best interest of victims, society, or defendants.<sup>138</sup> Discretion allows prosecutors to assess individual cases when determining how to best obtain a fair and just result.

Unfortunately, despite the benefits of broad prosecutorial discretion, wherever discretion exists, so does the potential for abuse. For example, in 2007 then-District Attorney Mike Nifong of Durham, North Carolina, was disbarred for misconduct that occurred during a sex-crime prosecution of Duke University lacrosse players.<sup>139</sup> He was officially disbarred for “making false statements, withholding exculpatory evidence, and making impermissible statements to the press.”<sup>140</sup> However, the conduct that “most disturbed the public”—and likely the disciplinary agency—was that he abused his discretionary power “by continuing the prosecution after the evidence discredited the complaining witness and strongly suggested that the defendants were innocent.”<sup>141</sup>

It is well recognized that prosecutors have particularly broad discretion in the context of charging decisions.<sup>142</sup> They “determine whether to bring charges, what charges to bring, when to bring charges, and where to bring charges.”<sup>143</sup> Aside from the constitutional requirement that probable cause must support criminal charges, discretion in this area has little, if any other, constraints.<sup>144</sup> Therefore, it is not surprising that criminal justice scholars, advocates, and reformers regularly express concern about

---

135. *Id.* at 263–64.

136. *See id.* at 264 (“Prosecutors do not have the ability to punish all crimes. Their budgets constrain their capacity to try cases and force administrators to develop policies that allow prosecution of some crimes but not others. Police resources, court schedules, and prison capacity may impose similar constraints.”).

137. *See id.* at 265 (“There are times when a rigid application of the rules may not do justice and when ‘flexibility’ and ‘sensitivity’ are necessary to a just outcome.” (quoting Norman Abrams, *Internal Policy: Guiding the Exercise of Prosecutorial Discretion*, 19 UCLA L. REV. 1, 2, (1971))).

138. *See id.* at 264–65 (“Some prosecutions might cause undue harm to the offender. The harm to the victim may be corrected without prosecution, or victims may ask that offenders not be prosecuted.”).

139. Bruce A. Green & Samuel J. Levine, *Disciplinary Regulation of Prosecutors as a Remedy for Abuses of Prosecutorial Discretion: A Descriptive and Normative Analysis*, 14 OHIO ST. J. CRIM. L. 143, 157 (2016).

140. *Id.*

141. *Id.* at 158.

142. Griffin, *supra* note 131, at 268 (“Prosecutors also have vast discretion to charge.”).

143. *Id.* at 266 (quoting Michelle A. Gail, *Prosecutorial Discretion*, 85 GEO. L. J. 983, 983–85 (1997)).

144. *See* Green & Levine, *supra* note 139, at 152 (“Even Rule 3.8(a), the only provision that regulates prosecutors’ charging decisions, is essentially limited to

prosecutors abusing this extraordinary power.<sup>145</sup> While there is no consensus on how to best minimize prosecutorial abuse,<sup>146</sup> ensuring the procedures within the criminal justice system reduce rather than invite potential abuse is a good start.

Courts “have recognized that the jurisdictional limit of the juvenile court is susceptible to prosecutorial abuse.”<sup>147</sup> They have acknowledged that the use of the offender’s age at the time of proceedings raises the potential that prosecutors may delay proceedings until juvenile offenders reach the age of majority as a way to circumvent the juvenile court sys-

---

restating the constitutional minimum, merely prohibiting prosecutors from pursuing charges that are not supported by probable cause.” (footnotes omitted)).

145. *Id.* at 146 (“For many years, courts, scholars, bar associations, law reform organizations, and others have expressed concern about prosecutors’ abuse of this extraordinary power, documenting practices that appear to reflect political favoritism, personal self-interest, undercharging, overcharging, arbitrariness, or bias, among other possible deficiencies.” (footnotes omitted)).

146. *Id.* at 146–47 (noting there is no consensus regarding how to best regulate prosecutors’ exercise of discretion). Some commentators favor legislative oversight, while others seek more internal self-regulation, and still others urge for more judicial review. *Id.*

147. *State v. Annala*, 484 N.W.2d 138, 143 (Wis. 1992).

tem.<sup>148</sup> This concern is warranted.<sup>149</sup> In *Peterson v. State*,<sup>150</sup> despite ample time to proceed against a juvenile offender in juvenile court, the prosecutor waited until after the juvenile offender's eighteenth birthday to indict her in adult criminal court.<sup>151</sup> On appeal, the juvenile argued she should have been tried in juvenile court immediately upon her arrest.<sup>152</sup> The Texas Court of Criminal Appeals disagreed, explaining the prosecutor had

---

148. See *United States v. Fotto*, 103 F. Supp. 430, 431 (S.D.N.Y. 1952) (noting that the purpose of the Federal Juvenile Delinquency Act might possibly be nullified if the age of the offender at the time of proceedings controlled the jurisdictional question, because proceedings for an offense committed by a child under the statutory age limit might be delayed to prejudice an offender); *Annala*, 484 N.W.2d at 143 ("Therefore, to protect the interests of the child defendant and to preserve the important purposes of the Children's Code we have proclaimed that the state may not delay charging a child in order to avoid juvenile court jurisdiction."); *P.H. v. State*, 504 P.2d 837, 841-42 (Alaska 1972) (explaining "[t]o allow officials charged with the execution of the law to prosecute a child offender as a criminal merely by deferring action until the child's eighteenth birthday would frustrate" the purpose of juvenile court system); *Mattingly v. Commonwealth*, 188 S.W. 370, 371 (Ky. 1916) ("To hold that the officers charged with the execution of the law may defer action until the offending child has passed the age thus protected by the statute, and then prosecute him as a criminal, and not as a juvenile, would defeat the very purpose of the law, and cannot be sanctioned."); *State v. Dubray*, 250 P. 316, 320 (Kan. 1926) ("The juvenile court has exclusive jurisdiction over delinquencies and the juvenile court does not lose jurisdiction by delay in obtaining personal jurisdiction over the delinquent, whether the delay be occasioned by failure to discover the delinquency, neglect, or inability promptly to institute delinquency proceedings, or deliberate postponement of delinquency proceedings with a view of invoking the criminal law." (citation omitted)). *Contra State v. Lemelin*, 144 A.2d 916, 918 (N.H. 1958) ("While in borderline cases the institution of proceedings after the child has become eighteen arising out of acts done before that time, as in this case, will have the effect of denying him statutory benefits to which he might have been entitled earlier, we have no reason to suppose that prosecuting attorneys will deliberately delay prosecutions for that reason. If the statute should be thought to produce an undesirable result, the remedy lies with the Legislature.").

149. See *State v. Scurlock*, 593 P.2d 1159, 1160 (Or. 1979) (en banc) ("Defendant was involved in an automobile accident on November 11, 1976, three months after his 17th birthday. The driver of the other automobile was seriously injured and her condition did not stabilize for two months. After her condition stabilized, the district attorney waited until after defendant had turned 18 and then sought an indictment against defendant for assault in the first degree, ORS 163.185, the alleged dangerous weapon being the automobile. The State concedes the delay was intentional and solely for the purpose of avoiding a juvenile court remand proceeding under ORS 419.533(1), thus insuring adult criminal treatment for defendant.").

150. 235 S.W.2d 138 (Tex. Crim. App. 1950).

151. *Id.* at 138-39 (explaining after juvenile's arrest for murder in August 1949, she was transferred to another county and adjudicated as a juvenile on a different offense). She was then transferred back to the county where the homicide occurred, and remained in custody there until she was indicted in January 1950 after she had reached the age of eighteen. *Id.* at 139.

152. *Id.* ("The most serious question complains of the failure of the court to quash the indictment. This is based on the contention that defendant should have been tried as a juvenile immediately upon her arrest and being placed in jail . . . where she has been continuously kept.").

the right “to abide his time until [the juvenile] reached the age of eighteen years, when he could prosecute her and try her for her crime as an adult.”<sup>153</sup>

As *Peterson* illustrates, determining the jurisdiction of juvenile courts based upon an offender’s age at the time of proceedings invites potential prosecutorial abuse in the context of charging decisions. Under such a scheme, prosecutors may merely wait to proceed against a juvenile offender until the juvenile reaches the age of majority. The risk of such abuse is especially high in cases where the juvenile offender is close to the age of majority at the time he or she commits the alleged offense.

Moreover, in certain cases, there is significant incentive for prosecutors to delay proceedings. In cases where the juvenile committed an offense that is not eligible for transfer to adult criminal court, delaying proceedings until the juvenile offender reaches the age of majority allows a prosecutor to proceed against the juvenile offender in adult criminal court when the prosecutor would otherwise be unable to do so. Likewise, in cases where the prosecutor intends to seek a discretionary transfer from juvenile court to adult criminal court, a delay until the offender reaches the age of majority negates the need for an often laborious and time-consuming transfer hearing. Rather, the delay allows the prosecutor to proceed against the juvenile offender in adult criminal court.

Some states attempt to minimize the potential for this type of prosecutorial abuse by allowing a juvenile offender who has reached the age of majority to be charged in adult criminal court only in cases where the prosecutor did not intentionally delay proceedings to avoid the jurisdiction of the juvenile court.<sup>154</sup> However, while well meaning, this supposed “safeguard” falls short for several reasons. First, it often fails to protect juvenile offenders against negligent, rather than intentional, delays.<sup>155</sup> Second, there are an infinite number of investigatory tasks that

---

153. *Id.*

154. *E.g.*, *State v. Becker*, 247 N.W.2d 495, 497 (Wis. 1976) (“Nevertheless, we hold that, when the charging authorities have reason to believe that a child has committed an offense which, if committed by an adult, constitutes a crime, jurisdiction in a criminal court cannot be maintained on a charge brought after the child becomes eighteen, unless it is affirmatively shown that the delay was not for the purpose of manipulating the system to avoid juvenile court jurisdiction.”); *Elliott v. State*, 324 S.W.2d 218, 220 (Tex. Crim. App. 1959) (holding that a juvenile offender could be tried in adult criminal court where he was under the age of majority at time the offense was committed, but had reached age of majority by the time the indictment was returned because the lapse of time between the offense and the return of the indictment was reasonable); *State ex. rel. Juv. Dept. of Wash. Cnty. v. Fitch*, 84 P.3d 190, 194 n.3 (Or. Ct. App. 2004) (en banc) (noting that if a person is over the age of eighteen when he or she is charged, even if he or she committed the charged offense before the age of eighteen, that person will be tried as an adult, unless the state intentionally delays the prosecution to avoid juvenile court jurisdiction).

155. *State v. Montgomery*, 436 N.W.2d 303, 307 (Wis. 1989) (“We hold that it is not grounds for dismissal of a criminal complaint charging an offense committed by an adult while a juvenile if the State shows there was no manipulative in-

prosecutors can assert as a means to conceal an intentional delay of prosecution.<sup>156</sup> Finally, juvenile offenders are at a significant disadvantage in confronting a prosecutor's assertion that a delay in proceedings was unintentional. Such improper conduct is unlikely to be documented. Rather, the ill-motive likely may exist only in the mind of the prosecutor or in verbal conversations between prosecutors and law enforcement.

Determining jurisdiction based upon a juvenile offender's age at the time of offense removes any incentive to delay proceedings to circumvent the juvenile court system. Whether the offender is proceeded against a day, month, or year after the alleged offense is irrelevant under such a scheme.

#### D. *Reduces Recidivism Rates*

There are likely few things that undermine society's confidence in the criminal justice system more than recidivism. Recidivism exemplifies the criminal justice system's failure to rehabilitate and deter an offender's criminal behavior, as well as its inability to prevent crime and keep the public safe. Recidivism rates are so intertwined with the perceived success of the criminal justice system that they are considered the key measure of the system's performance,<sup>157</sup> with high rates of reoffending indicative of a failure in the system.

Studies show that juvenile offenders who are proceeded against in the adult criminal court system have higher rates of reoffending than those who remain in the juvenile court system.<sup>158</sup> While several factors likely

---

tent.”). *Contra* State v. Salavea, 86 P.3d 125, 129 (Wash. 2004) (en banc) (“Washington precedent supports the premise that absent intentional or negligent prosecutorial delay, ‘jurisdiction over offenses committed by a juvenile is to be determined at the time proceedings are instituted against the offender.’” (quoting State v. Calderon, 684 P.2d 1293, 1296 (Wash. 1984) (en banc))).

156. See SEYFARTH SHAW LLP, HARLAN GOTTLIEB & KEVIN L. PHELPS, THE GOVERNMENT CONTRACT COMPLIANCE HANDBOOK 95 (Thomson Reuters, 5th ed. 2014) (“The investigators have at their disposal a variety of investigative tools. The main goal of the investigator is to obtain information by a grand jury investigation, subpoenas, search warrants, wiretaps, and field interviews.”); Andre Belanger, *Six Major Types of Forensics/CSI Evidence Presented at Trial*, MANASSEH, GILL, KNIPE, BELANGER: L. BLOG (Apr. 3, 2020), <https://manassehandgill.com/2020/04/03/6-major-types-of-forensics-csi-evidence-presented-at-trial/> [https://perma.cc/YC9W-2KZ5] (noting criminal investigations often rely on fingerprint analysis, forensic DNA analysis, handwriting exemplars, blood splatter analysis, forensic pathology, and ballistics).

157. Nancy La Vigne & Ernesto Lopez, *Recidivism Rates: What You Need to Know*, COUNCIL CRIM. JUST. (Sept. 1, 2021), [https://counciloncj.org/recidivism\\_report/](https://counciloncj.org/recidivism_report/) [https://perma.cc/9L7U-QHYP] (“The rate at which people return to prison following release is a key measure of the performance of the nation's criminal justice system . . .”).

158. Loomis-Gustafson, *supra* note 63, at 238 (“In fact, studies focused on the effects of the transfer of juveniles to the criminal system report that transferred juveniles not only have higher rates of reoffending, but also committed more serious offenses than their peers who remained in the juvenile system.”); Knoke, *supra* note 18, at 802 (“In a 2005 Office of Juvenile Justice and Delinquency Prevention



contribute to this heightened rate, there is no denying that the adult criminal court's reliance upon incarceration is a significant factor.<sup>159</sup> Incarceration greatly increases the likelihood that juvenile offenders will recidivate upon release. "[O]ne study revealed that the odds of reoffending increased 13.5 times for youth with a prior detention,"<sup>160</sup> while another "found that detaining them increased their likelihood of recidivism after release by 22–26%."<sup>161</sup>

The connection between incarceration and recidivism by juvenile offenders should not be surprising. Incarcerated juveniles often experience physical and sexual abuse during detention,<sup>162</sup> they lack access to educational or rehabilitative services,<sup>163</sup> and they suffer higher rates of posttraumatic stress disorder and depression.<sup>164</sup> The impact of incarceration on juvenile offenders' physical and mental wellbeing undermines the potential for any meaningful rehabilitation.<sup>165</sup>

The correlation between incarceration and recidivism does not exist only among juveniles. Research shows that periods of incarceration also increase recidivism rates among adults. "[T]he experience of incarceration can be criminogenic, or likely to cause the very behavior it is punishing."<sup>166</sup> "The longer sentences people serve, the harder it is for them to reenter successfully into society. . . . One study using data from Texas

---

(OJJDP) study of young offenders, where half of the subjects were transferred to adult court and the other half remained under juvenile jurisdiction, the study found that 49 percent of the transferred youths recidivated compared to 35 percent of youths who remained within the juvenile system."); Connell, *supra* note 27, at 886 ("[A] 2010 analysis of all existing studies of juveniles in the criminal justice system done by the Department of Justice concluded that juvenile offenders that were transferred to criminal courts had higher recidivism rates than those offenders kept in the juvenile system.").

159. *See* Teske, *supra* note 21, at 1193 ("Our get-tough detention policy was another causal factor which explains the high recidivist rates because studies show that the most significant predictor of recidivism is prior detention.").

160. *Id.*

161. RACHEL BARKOW, PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION 44 (2019).

162. Wolf, *supra* note 90, at 96 ("Relative to their peers in juvenile facilities, young persons in adult jails are five times more likely to be sexually assaulted and fifty percent more likely to be attacked with a weapon. They are twice as likely to be beaten by staff, who are not trained to engage with youths and thus frequently view age as an aggravating rather than mitigating factor." (footnotes omitted)).

163. *See id.*

164. *See id.* at 96–97 ("A 2014 study found that, even controlling for child maltreatment prior to incarceration, abuse during incarceration was a significant predictor of posttraumatic stress disorder (PTSD) and depressive symptoms. The more frequently a youth experienced abuse during incarceration, the more likely he or she was to suffer PTSD and depression." (footnote omitted)).

165. *See id.* at 98 ("Incarceration conditions for juveniles are not only deplorable, but they also have lasting and often permanent impact on the juveniles who endure them, undermining any potential prospect of rehabilitation.").

166. BARKOW, *supra* note 161, at 44 (quoting Charles Colson Task Force on Federal Corrections, *Transforming Prisons, Restoring Lives* 2 (2016)).

found that each additional year of a prison sentence caused a 4–7% increase in an individual’s recidivism rate once he or she was released.”<sup>167</sup>

The justification for incarceration based upon the belief that time in prison reduces recidivism is not supported by data. Rather, research shows that incarceration actually *increases* crime. Because juvenile offenders who remain in the juvenile court system are less likely to be incarcerated and therefore less likely to recidivate, states seeking to reduce crime should implement procedures and laws that increase access to juvenile courts, not decrease it. Determining the jurisdiction of juvenile courts based upon a juvenile offender’s age at the time of offense does just that.

E. *Respects the National Trend to Expand the Jurisdictional Reach of the Juvenile Court System*

Studies show that juvenile offenders proceeded through the juvenile court system have more access to rehabilitative programming,<sup>168</sup> are less likely to be incarcerated,<sup>169</sup> and (as noted above) have lower rates of recidivism than those proceeded against in the adult criminal court system.<sup>170</sup> Recognizing the benefits of the juvenile court, many state legislatures have recently enacted laws to increase offenders’ access to the juvenile court system.

For example, many states have passed legislation limiting the ability to transfer juvenile offenders from juvenile court to adult criminal court. In 2020, Utah passed “legislation limiting the transfer of 16- and 17-year-olds to adult court to only the most serious offenses and only under a judge’s discretion.”<sup>171</sup> Likewise, Virginia raised the minimum age from fourteen to sixteen years old for juvenile offenders to be tried in adult criminal court for murder.<sup>172</sup> California went even further, banning “the transfer of juveniles under the age of sixteen to criminal court, regardless of the alleged offense.”<sup>173</sup> These legislative actions mean more juvenile offenders will remain within the juvenile court system instead of being removed to adult criminal court.

Likely even more meaningful, numerous states have recently raised their age of majority. In 2020, Vermont raised its age of majority to nineteen years old, becoming the first state in the nation to legally classify eighteen-year-olds as juveniles within the criminal justice system.<sup>174</sup> Simi-

---

167. *Id.*

168. See Wolf, *supra* note 90, at 96.

169. See Knoke, *supra* note 18, at 800.

170. See La Vigne & Lopez, *supra* note 157.

171. Teigen & Carper, *supra* note 68.

172. *Id.* (“Virginia increased from 14 years old to 16 years old the minimum for a young person to be tried as an adult for murder.”).

173. Connell, *supra* note 27, at 876.

174. Michael Albans & Bennington Banner, *Pause on Raise the Age Law Passes Senate*, BENNINGTON BANNER (Jan. 28, 2022), [https://www.benningtonbanner.com/local-news/pause-on-raise-the-age-law-passes-senate/article\\_60767220-807d-11ec-](https://www.benningtonbanner.com/local-news/pause-on-raise-the-age-law-passes-senate/article_60767220-807d-11ec-)

larly, New York, Michigan, and Missouri all recently raised their states' age of majority to eighteen years old.<sup>175</sup> In Missouri, proponents of the bill that raised the age explained:

[I]t makes sense to raise the age in Missouri, as you already have to be 18 to do a lot of things, like join the military or enter into a contract. The only place 17-year-olds are treated like adults is in the justice system. Children's brains are still developing at age 17, and they should not have opportunities cut off because of stupid decisions they make at that age. Raising the age will lead to a windfall of taxpayer savings. Additionally, those leaving the adult system are significantly more likely to re-offend than those leaving the juvenile system. This will improve the safety of our communities, and it will lead to a stronger workforce and economy. This will also help preserve parental rights. Also, the juvenile system does a better job at holding kids accountable and getting them back on track. They can get proper education and therapy tools better than they can in the adult system. Finally, juveniles housed in adult jails are more likely to commit suicide than those housed in juvenile facilities.<sup>176</sup>

Efforts to raise the age of majority are a sign that states want juvenile courts to be inclusive rather than exclusive tribunals.

These recent state actions confirm the current trend to expand rather than limit the jurisdictional reach of juvenile courts. Like laws that limit juvenile transfers to adult criminal court and raise the age of majority, determining the jurisdiction of juvenile courts based upon an offender's age at the time of offense will increase access to the juvenile court system. It will ensure that all juvenile offenders have access to the protections and benefits of the juvenile court system, not just those proceeded against prior to reaching the age of majority. Under such a scheme, more juvenile offenders will have access to the rehabilitative focus of the juvenile court system that has been proven to lower recidivism rates among offenders.<sup>177</sup>

---

b634-f7486a1d0528.html [https://perma.cc/6Z8C-GNLL] ("The Vermont Senate passed a change in Vermont's first-in-the-nation 'Raise the Age' law, which legally classifies 18-year-olds as juveniles in the criminal justice system . . .").

175. Mowry, *supra* note 10, at 520 (noting "Michigan recently enacted 'Raise-the-Age' legislation that changes the automatic age of adult criminal culpability to 18"); H.B. 1255, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018) ("This bill changes 'adult' to mean anyone 18 years old or older and 'child' to mean anyone under the age of 18."); Katie Dodds, *Why All States Should Embrace Vermont's Raise the Age Initiative*, COAL. JUV. JUST. (July 22, 2020), <https://www.juvjustice.org/blog/1174> [https://perma.cc/X6PT-CSYX] ("New York also raised its age to 18 . . .").

176. Mo. H.B. 1255.

177. Of note, several historically conservative "tough-on-crime" states determine the jurisdiction of their juvenile courts based on the juvenile offender's age at the time of the offense rather than at the time of proceedings. For example, appellate courts in Missouri, Georgia, and Kentucky have expressly held that the

IV. THE ARGUMENT AGAINST THE USE OF THE AGE OF THE JUVENILE OFFENDER AT THE TIME OF OFFENSE TO DETERMINE JURISDICTION

The most likely argument against determining the jurisdiction of juvenile courts based upon a juvenile offender's age at the time of offense is that the rehabilitative focus of the juvenile court system is no longer appropriate for individuals who have reached the age of majority.<sup>178</sup> Such an argument, however, is flawed for several reasons.

First, it is important to understand the age of the individuals most likely to benefit from the use of an offender's age at the time of offense to determine the jurisdiction of juvenile courts. Almost all criminal offenses must be brought within a statute of limitations period.<sup>179</sup> The limitations period represents the outer most time limit in which the state may bring a criminal charge against a person.<sup>180</sup> A charge not brought against an offender within the applicable time period is generally barred from future prosecution.<sup>181</sup>

---

statutory schemes of the juvenile codes in their states show a clear intent to vest jurisdiction in the juvenile courts based upon a juvenile offender's age at the time of the offense. *J.O.N. v. Juv. Officer*, 777 S.W.2d 633, 634 (Mo. Ct. App. 1989); *Johnson v. Bishop*, 587 S.W.2d 284, 285 (Ky. Ct. App. 1979); *In re D.L.*, 492 S.E.2d 273, 274 (Ga. Ct. App. 1997). Similarly, in Florida, the state's juvenile code grants jurisdiction to the juvenile court over any "child [who] is alleged to have committed: (a) A delinquent act or violation of law." FLA. STAT. ANN. § 985.0301(1)(a) (West 2022). In 2014, Florida amended the juvenile code's definition of "child" to include "any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years." FLA. STAT. ANN. § 985.03(7) (West 2022). These cases and statutes show that today even some traditionally conservative states recognize the benefits of an inclusive approach to determining the jurisdiction of juvenile courts.

178. See *In re Luis R.*, 924 N.E.2d 990, 996 (Ill. App. Ct. 2009), *rev'd on other grounds*, 941 N.E.2d 136 (2010) ("Moreover, for the most part, the types of sentences authorized under the Act are either inapplicable or ill-suited to a person 21 years of age or older."); *Arrandell v. State*, 131 S.W. 1096, 1097 (Tex. Crim. App. 1910) (holding that determinative age is the age at the time of proceedings, not offense, because to "hold otherwise, we would have the anomalous condition of sending a man to the juvenile court to be confined in the school for the training of children, and who at the time of the trial might be 40 or 50 years of age, on the ground that he was a juvenile at the time of the commission of the offense"); *State v. Lemelin*, 144 A.2d 916, 918 (N.H. 1958) (explaining "[t]he primary purpose of the Legislature was to shield children under eighteen from the environment surrounding adult offenders and inherent in the ordinary criminal process," however, such protection is unnecessary once an offender reaches the age of majority).

179. *Cynthia V. Ward, Restoring Fairness to Campus Sex Tribunals*, 85 TENN. L. REV. 1073, 1115 (2018) (noting "[s]tatutes of limitations, requir[e] that criminal prosecutions for most offenses be brought within a specified time period").

180. See *Jill Gustafson & Alys Masek*, 19 CAL. JUR. 3D CRIMINAL LAW: DEFENSES § 14 (2022 ed.) ("A statute of limitations represents an outside limit that recognizes staleness problem, requires that the crime must come to light and be investigated within a reasonable time, and represents the point after which society declares that it no longer has an interest in the prosecution and seeks repose.").

181. *Id.* ("Once the statute of limitations for an offense expires without the commencement of prosecution, prosecution for that offense is forever time-barred.").

Individual states set their own limitations periods.<sup>182</sup> However, most criminal offenses must be brought against an offender at some point within six years of the commission of the crime.<sup>183</sup> Therefore, if a seventeen-year-old juvenile offender committed an offense, in order to satisfy a six-year statute of limitations period, the proceedings against the juvenile would need to commence sometime before the offender's twenty-third birthday, or be forever barred. Thus, the application of statute of limitations makes it very unlikely that a person older than his or her early twenties will find themselves in juvenile court, even if the jurisdiction of the juvenile court was based upon the offender's age at the time of offense.

The contention that the rehabilitative nature of the juvenile court system is inappropriate for these young adults is simply wrong. “[N]eurological studies show that the area of the brain that allows adults to make responsible, rational decisions is not fully developed until early adulthood, usually around the twenty-two- to twenty-five-year-old age range.”<sup>184</sup> Likewise, “the area of the brain affecting impulse control, emotion regulation, delayed gratification, and the effect of peer influences continues to develop for several years after the age of eighteen.”<sup>185</sup> Because the brains of young adults are still developing, young adults, like juveniles, are more amenable to treatment and well-suited for the rehabilitative approach of the juvenile court system.<sup>186</sup>

---

182. *State by State Guide on Statutes of Limitations, RAPE, ABUSE & INCEST NAT'L NETWORK*, <https://www.rainn.org/state-state-guide-statutes-limitations> [https://perma.cc/2Z52-93Y4] (last visited May 28, 2023) (“The laws that determine this time frame are called criminal statutes of limitations—and they vary by state and situation.”).

183. *See* N.H. REV. STAT. ANN. § 625:8(I) (2022) (setting limitations for misdemeanor offenses at one year and felony-level offenses at six years); *People v. Norman*, 569 N.Y.S.2d 573, 574 (Crim. Ct. 1991) (noting a two-year statute of limitations for misdemeanors and a five-year statute of limitations for felonies); *Webber v. State*, 628 S.W.3d 766, 773 n.3 (Mo. Ct. App. 2021) (“Section 556.036.2, RSMo 1986, authorizes a three-year statute of limitations for any felony; a one-year statute of limitations for any misdemeanor; and a six-month statute of limitations for any infraction.”); *State v. Burns*, No. 28109, 2019 WL 1422867, at \*3 (Ohio Ct. App. Mar. 29, 2019) (noting “the six-year statute of limitations for commencing a prosecution for felony offenses and . . . the two-year statute of limitations for commencing a prosecution for misdemeanors”).

184. Loomis-Gustafson, *supra* note 63, at 223; *see also* Dodds, *supra* note 175 (“Neurobiologists have determined that ‘the critical parts of the brain involved in decision-making are not fully developed until . . . age 25’” (quoting Tony Cox, *Brain Maturity Extends Well Beyond Teen Years*, NAT'L PUB. RADIO (Oct. 10, 2011), <https://www.npr.org/templates/story/story.php?storyId=141164708> [https://perma.cc/E8DW-J92F])).

185. Loomis-Gustafson, *supra* note 63, at 228.

186. *See id.* at 233 (“This indicates that the deficiency in the youthful brain that makes a child more destructive also makes him or her more amenable to treatment, and possibly long-term behavioral change, which makes adolescence and young adulthood the ideal time for rehabilitation.”).

While statute of limitations periods will reduce the risk of significantly older adults being proceeded against in juvenile court, not all offenses have proscribed limitation periods. Some of the most severe crimes, such as rape and murder, often have long or no limitation periods.<sup>187</sup> This does not mean, however, that juvenile offenders who commit these crimes will find themselves in juvenile court long after the commission of the offense if jurisdiction is based upon the age of the offender at the time of offense. Almost all states have mechanisms for transferring juvenile offenders who commit serious offenses from juvenile court to adult criminal court.<sup>188</sup> Thus, juvenile offenders who commit the most serious offenses can be, and often are, transferred out of juvenile court and to adult criminal court.

The application of statutes of limitations and transfer mechanisms significantly decreases the chance that a juvenile offender will fall within the jurisdictional reach of the juvenile court after his or her early twenties, even if jurisdiction is based upon the offender's age at the time of offense. Consequently, the fear by opponents that the use of an offender's age at the time of offense to determine the jurisdiction of juvenile courts will result in older adults, who are purportedly ill-suited for rehabilitation, being subject to the juvenile court is largely unwarranted.<sup>189</sup> On balance, moreover, the slight risk of those rare cases arising is worth the significant benefits to the juvenile offenders who would otherwise be denied access to

---

187. *Statute of Limitations*, CORP. FIN. INST. (Jan. 16, 2023), <https://corporatefinanceinstitute.com/resources/knowledge/other/statute-of-limitations/> [<https://perma.cc/J2V6-PJNP>] (“However, serious criminal offenses, such as murder or sexual offenses, may not be subject to any statute of limitations.”); Christina Majaski, *Statute of Limitations: Definition, Types, and Example*, INVESTOPEDIA (Nov. 22, 2022), <https://www.investopedia.com/terms/s/statute-of-limitations.asp> [<https://perma.cc/BC8N-ECD7>] (“[H]owever, cases involving serious crimes, like murder, typically have no maximum period under a statute of limitations. In some states, sex offenses involving minors, or violent crimes like kidnapping or arson, have no statute of limitations.”).

188. Amanda M. Kellar, *They're Just Kids: Does Incarcerating Juveniles with Adults Violate the Eighth Amendment?*, 40 SUFFOLK U. L. REV. 155, 155–56 (2005) (noting that in 2005, every state had a transfer statute authorizing the transfer of juveniles to adult court who were accused of murder); Jarod K. Hofacket, *Justice or Vengeance: How Young is Too Young for a Child to be Tried and Punished as an Adult?*, 34 TEX. TECH. L. REV. 159, 168 (2002) (juveniles are transferred or waived into adult criminal court in three ways: judicial determination, statutory exclusion, or prosecutorial discretion); see also N.H. REV. STAT. ANN. § 169-B:24(I) (2022) (allowing all felony offenses committed by juveniles to be transferred to adult criminal court after hearing in juvenile court); MICH. COMP. LAWS ANN. § 712A.4(1) (West 2022) (permitting transfer to adult criminal court of juvenile offenders fourteen years or older that are accused of committing a felony-level offense).

189. See *United States v. Fotto*, 103 F. Supp. 430, 431 (S.D.N.Y. 1952) (“Moreover, the Federal Act excludes crimes involving capital punishment or life imprisonment. The great majority of the other offenses will be barred by the three year Statute of Limitation, 18 U.S.C.A. § 3282. Consequently, most, if not all, the extreme results feared by some of the state courts when a juvenile offender was not apprehended until many years later would not arise under the Federal Act.”).

juvenile courts as young adults merely because legal proceedings were instituted against them after they reached the age of majority.

#### CONCLUSION

Juvenile justice scholars, advocates, and stakeholders can no longer afford to ignore the patently unfair denial of juvenile offenders' access to the juvenile court system merely because they have reached the age of majority prior to the institution of legal proceedings. Today, it is universally accepted that juvenile offenders, because of their youth and its attendant circumstances, are developmentally different than adult criminals. Over the last two decades, the U.S. Supreme Court has repeatedly held that these developmental deficiencies make juvenile offenders less culpable and more deserving of special treatment under the law. Determining the jurisdiction of juvenile courts based upon the juvenile offender's age at the time of proceedings fails to recognize juvenile offenders' lessened culpability, as well as fails to ensure similarly situated juvenile offenders are treated alike, incentivizes the delay in the prosecution of juvenile offenders, increases recidivism, and fails to honor the national trend to increase offenders' access to the juvenile court system.

Fortunately, there is a simple solution. Because the jurisdiction of juvenile courts is conferred by statute, state legislatures have the power to change the jurisdictional statutes to address issues and inequities. Legislatures can simply amend the language of their states' jurisdictional statutes to make it clear that the jurisdiction of the juvenile court must be determined based upon a juvenile offender's age at the time of the alleged offense, not at the time of proceedings. While there are an infinite number of ways to convey this change, Missouri's and Kentucky's jurisdictional statutes serve as good examples.<sup>190</sup> Both states' statutes clearly depict the legislatures' intent that their juvenile courts have jurisdiction over all individuals alleged to have committed an offense prior to attaining the age of majority, regardless of their age at the time of proceedings.

Admittedly, such amendments to jurisdictional statutes will likely require additional reforms within states' juvenile justice systems, but that is a small price to pay to ensure that all juvenile offenders receive the protections and benefits of the juvenile court system that they deserve. Our laws, policies, and procedures must strive to protect, benefit, and rehabilitate the most vulnerable population within the criminal justice system—juvenile offenders.

---

190. See *supra* notes 82–85 and accompanying text.