SCHOOL SHOOTINGS AND THE OVER-RELIANCE UPON AGE IN CHOOSING CRIMINAL OR JUVENILE COURT

INTRODUCTION

It is not surprising to anyone who watches the nightly news that society is demanding changes in how we deal with juvenile crime. Only eight days into nineteen ninety-nine, a seventeen-year-old shot his fifteen-year-old girlfriend and then himself at a Georgia highschool.[1] On April 16, 1999, a sophomore opened fire in an Idaho highschool.[2] Four days later, in the "nation's worst incident of violence by and against students," two boys shot to death a teacher and twelve classmates and wounded eighteen more before they killed themselves at Columbine High School .[3] Exactly one month later, a fifteen-year-old injured six students at a Georgia high school with a .357 magnum.[4] A thirteen-year-old girl died when a fellow student shot her in the head at their New Mexico middle school.[5] On December 9, 1999, a thirteen-year-old Oklahoma student carried a 9mm handgun in his backpack and emptied a fifteen-round-clip wounding four middle school students.[6]

Nineteen ninety-eight unfolded similarly with the Jonesboro, Arkansas shootings, where two boys, ages eleven and thirteen, opened fire on a schoolyard, killing their teacher and four classmates.[7] In Edinboro, Pennsylvania, the police charged a fourteen-year-old with shooting and killing a middle school science teacher at a graduation dance.[8] An elementary school basketball game ended with two teen-age boys dead, a third wounded, and a fourteen-year-old charged.[9] Authorities took a seventeen-year-old Texas boy into custody for shooting a fifteen-year-old girl.[10] In Springfield, Oregon, a

---

1. *See School Shootings All Too Common*, Gannett News Service, Dec. 7, 1999, *available in* 1999 WL 6979477.

2. *See id.*

3. *Id.*

4. *See id. See also Judge: Suspect in Georgia school shooting should be tried as adult*, STAR-TRIBUNE (Minneapolis-St. Paul), August 12, 1999, *available in* 1999 WL 7507204 (reporting ruling that fifteen-year-old accused of shooting six high school students will be tried as an adult). This decision to transfer him to criminal court means he could face life in prison. Whereas if Georgia tried him as a juvenile, the maximum sentence available would have been 60 months.

5. *See School Shootings, supra* note 1.

6. *See* Derrick Z. Jackson, *Shy, Sweet, And Nearly Deadly*, BOSTON GLOBE, Dec. 10, 1999, *available at* 1999 WL 30399864.

7. *See* Julie Deardorff, *2 Young Jonesboro Killers Confined To Juvenile Center*, CHI. TRIB., Aug. 12, 1998, at 1, *available in* 1998 WL 2884793.

8. *See* Molly Swisher, *Deadly Schoolyards*, OREGONIAN (Portland), May 22, 1998, at A22, *available in* 1998 WL 4208300.

9. *See School Shootings, supra* note 1.

10. *See* Swisher, *supra* note 8, at A22. *See also Texas School Shooting Leaves Girl Wounded*, OREGONIAN (Portland), May 22, 1998, at A19, *available in* 1998 WL 4207801.

fifteen-year-old student killed his parents and then opened fire at his high school, killing two and injuring twenty-two.[11] These headlines go on and on.[12]

In the wake of such tragedies, citizens demand stiffer penalties for juveniles and support their demands by pointing to increasing juvenile violent crime rates during the late 1980s and early 1990s. In both 1991 and 1992, there was only one school shooting per year.[13] However, there were four shootings in 1996, six in 1997, and four just through May of 1998.[14] Violent crime arrests for juveniles under the age of twelve rose 91% from 1980 to 1995, while arrests for juveniles aged thirteen and fourteen rose 76%, and arrests for juveniles ages fifteen or older rose 56%.[15] In combination, these statistics and media reports of events, such as the incident in Jonesboro, have resulted in citizens demanding changes to the current juvenile justice system.

Citizens frequently blame these statistics on soft criminal laws for children, claiming that children should face adult sentences for adult crimes. Constituents demand changes in the juvenile court system which is criticized for its inability to detain children beyond the age of eighteen.[16] Legislators have begun to respond to these demands.

Since 1992, forty-eight states have strengthened their response to juvenile crime.[17] In some states, individual vignettes portraying single incidents served as the motivation for legislation.[18] The primary theme of these legislative changes reveals that states are increasing opportunities to punish, detain for longer periods, and even invoke the death penalty in response to youth violence.[19]

States have responded with increasing urgency, altering the way juvenile justice has historically been implemented.[20] More specifically, a recent trend has been to lower the age at which children enter the juvenile system, allowing juvenile courts to adjudicate younger offenders who previously would not enter the court system.[21] Many states have also lowered the age at which they

---

11. *See* Swisher, *supra* note 8, at A22.

12. *See generally id.* (describing 21 incidents of violent juvenile crime). *See also School Shootings, supra* note 1.

13. *See* Swisher *supra* note 8, at A22.

14. *See id.*

15. *See* Jeffrey A. Buts & Howard N. Snyder, *The Youngest Delinquents: Offenders Under Age 15*, JUV. JUST. BULL. (Office of Juvenile Justice and Delinquency Prevention), Sept. 1997, at 5, *available at* <http://www.ncjrs.org/pdffiles1/165256.pdf>.

16. *See infra* note 40.

17. *See* PATRICIA TORBET ET AL., U.S. DEP'T OF JUSTICE, STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME 5 (1996).

18. *See id.* at 59.

19. *See* Elisabeth Gasperini, *Juvenile Capital Punishment: A Spectacle of a Child's Injustice*, 49 S.C. L. REV. 1073 (1998). *See also infra* note 30.

20. *See infra* Part I.

21. *See* Linda Szymanski, *Lower Age of Juvenile Court Delinquency Jurisdiction*, SNAPSHOT

may transfer juveniles from juvenile court to criminal court.[22] This enables those states to detain older juveniles or those who have committed more serious crimes for longer periods of time beyond the traditional limit of eighteen years of age. These recent trends are indicative of how heavily states rely on age as a factor in determining their response to juvenile offenders.

This Note explores the difficulties resulting from the use of age as the primary factor to determine whether the courts should adjudicate a child in juvenile or criminal court. Unfortunately, the recent changes in the juvenile court system fail to adequately rehabilitate juveniles or to protect the public. Inevitably, a child just below the age of criminal court jurisdiction will commit a heinous crime, and the state will be unable to detain the child for more than a few years.[23] States can only prevent this reality by dispensing with statutory reliance on age limitations and instead taking into consideration a multitude of factors including the child's criminal history, his or her responsiveness to prior interventions, and the severity of the crime.

In conclusion, this Note proposes that age is too rigid a determinant and severely limits a state's ability to adequately protect the public or to rehabilitate the juvenile offender. Further, when the state uses age as a legal standard, it tends to oscillate over time because the ages chosen by legislatures are not based on empirical knowledge but rather vary with cultural trends. This Note proposes that legislatures should use a multi-factor approach to determine whether the state should adjudicate a juvenile in criminal or juvenile court.

I. THE BIRTH OF THE JUVENILE COURT

Originally, there was but one system of laws providing no distinction between the treatment of adolescents and adults. The concept of an independent juvenile court system did not come into existence until 1899.[24] In medieval Europe the idea of childhood was non-existent; the sole distinction between children and adults was at approximately seven years of

---

(Nat'l Ctr. for Juvenile Justice), 1997, at 2.

22. *See infra* app. B.

23. *See, e.g.*, State v. Hamlin III, 146 Vt. 97,100, 499 A.2d 45, 48 (1985) (Although his disposition is not public due to his age, we learn of Jamie Savage, the fifteen-year-old who by statute was subject to juvenile court, via his sixteen-year-old co-defendant's published court decision.); Ray Richard, *Once Quiet Neighborhood Breathes Easier, But Things Will Never Be the Same Again*, BOSTON GLOBE, Sept. 24, 1989, Metro/Region 77 [hereinafter Richard I] (explaining that juvenile, Craig Price, pled guilty to the murders of four of his neighbors and will be incarcerated until his 21st birthday, only five years away).

24. *See* Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructuring the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083, 1096 (1991).

age, when society believed physical dependency ceased.[25] The infancy defense became the legal representation of this concept, embodying the belief that persons under seven years of age were irrebuttably unable to form the requisite *mens rea* to be guilty of a criminal act.[26] "Beyond that age, they were subjected to arrest, trial, and in theory, to punishment like adult offenders."[27] Persons older than seven participated in adult activities, including working, tavern drinking, gambling, and sexual behavior.[28] No one believed that juveniles were innocent beings who required protection from the realities of the adult world.[29] In short, the young were fully integrated members of the community, assuming both adult responsibilities and the consequences for their behavior.[30]

In the late nineteenth century, studies of child behavior and development became prevalent and spawned the belief that childhood consists of stages, each with varying capacities and needs.[31] In contrast to the medieval construction was the view that children are essentially different from adults and that one element of that difference was their inherent malleability.[32] As concepts of childhood changed, society began to see children as requiring great guidance without which they could not be expected to understand nor be held responsible for their behavior.

To address this newly found view of children, Illinois passed the Juvenile Court Act in 1899.[33] Within twenty years, all but three states had created similar juvenile systems.[34] These juvenile systems recognized the incomplete development and malleability of adolescents and replaced ordinary retributive

---

25. *See id.* at 1093.

26. *See* Andrew Walkover, *The Infancy Defense in the New Juvenile Court*, 31 UCLA L. REV. 503, 510-11. (1984) (explaining that between the ages of seven and fourteen, the idea of inability to form criminal intent is rebuttable; one may bring forth evidence that a specific child was capable of forming the requisite intent).

27. *In re* Gault, 387 U.S. 1, 16 (1967).

28. *See* Ainsworth, *supra* note 24, at 1093.

29. *See id.*

30. *See id.* "[E]arly Massachusetts law even prescribed the death penalty for children who disobeyed their parents." Albert Drukteinis, *Criminal Responsibility of Juvenile Offenders*, 4 AM. J. OF FORENSIC PSYCHOL. 33, 35 (1986). "Juvenile executions began in the United States in Massachusetts' Plymouth Colony in 1642 when Thomas Graunger, 17, was executed for having sex with animals. Of the 19,200 executions held in the United States since 1608, 356 have been juvenile offenders." Stan Grossfeld, *U.S. Leads World In Sentencing Teens To Death Other Nations Say We Violate Three Treaties*, SEATTLE POST-INTELLIGENCER, December 6, 1999, *available in* 1999 WL 3055725. The United States is the only country where the death penalty is still used against juveniles. *See id.* In this decade, the United States, has executed 10 juveniles; however due to lengthy appeals, none were still minors when actually executed. *See id.*

31. *See* Ainsworth, *supra* note 24, at 1094.

32. *See id.*

33. *See id.*

34. *See id.* at 1096.

punishment with rehabilitation.[35] These new systems adjudicated children over the age of seven, yet under the age of majority, in juvenile court as juvenile delinquents.[36]

The status of being a juvenile delinquent offers many benefits over being a convicted criminal. An individual who is processed in juvenile court escapes being prosecuted as a criminal and found guilty, and instead faces a civil disposition of having engaged in delinquent conduct.[37] Accordingly, juvenile offenders do not plead guilty; rather, they stipulate to the evidence supporting the offense.[38] Government attorneys file a petition rather than charge a child, and children are committed, not sentenced.[39]

Although many of these benefits may appear to only have semantic value, they also have significant substantive benefits. In contrast to criminal convictions that remain a part of an individual's public record, states typically close juvenile proceedings and seal records allowing juveniles to enter adult life without a checkered past.[40] A juvenile delinquent does not have to reveal his "crime" on job applications or other forms that request disclosure of prior criminal convictions.[41] The purpose for this is to give children a second chance to conform to the relevant laws and to become contributing members of society. Also, states usually detain juveniles together rather than with adult criminals who may harm young inmates.[42]

Although the creation of an independent juvenile court system has seemingly resulted in some protections for juveniles, it has also removed some protections. For example, procedural protections such as jury trials and the rules of evidence[43] were considered unnecessary, given that the goals of this new system were to treat and protect children.[44] The state acting in its *parens*

---

35. *See* Eric K. Klein, Note, *Dennis the Menace or Billy the Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice*, 35 AM. CRIM. L. REV. 371, 376 (1998).

36. *See In re Gault*, 387 U.S. at 14.

37. *See* Judge Kent Ellis, *The Juvenile Justice System: Past and Present*, 33 HOUS. LAW. REV. 24, 25 (1995).

38. *See id.*

39. *See* Klein, *supra* note 35, at 377. For a discussion of status offenders see Jan C. Costello & Nancy L. Worthington, *Incarcerating Status Offenders: Attempts to Circumvent the Juvenile Justice and Delinquency Prevention Act*, 16 HARV. C.R.-C.L. L. REV. 41 (1981).

40. *See* Hon. Gordon A. Martin Jr., *The Delinquent and the Juvenile Court: Is There Still a Place for Rehabilitation?*, 25 CONN. L. REV. 57, 67 (1992).

41. *See id. See also* William H. Braun, *Under State's Law Convicted Juvenile is Free at Age 18*, BURLINGTON FREE PRESS, May 22, 1981, at 1A.

42. *See* Laureen D'Ambra, *A Legal Response to Juvenile Crime: Why Waiver of Juvenile Offenders is Not a Panacea*, 2 ROGER WILLIAMS U. L. REV. 277, 297 (1997) (explaining that dangers to youth go beyond turning them into a life of crime because they may end up victims of sexual predators, racial attacks, or other violence).

43. *See* Ainsworth, *supra* note 24, at 1100.

44. *See id.* at 1100 n.106, *citing* D. ROTHMAN, CONSCIENCE AND CONVENIENCE: THE ASYLUM AND ITS ALTERNATIVES IN PROGRESSIVE AMERICA 216 (1980).

patriae [45] capacity thought that such procedural protections would interfere with "the juvenile court's task of determining the 'needs' or 'best interests' of the child."[46]

In summary, the current view of children as inherently different from adults has not always been present. The recognition that children have different cognitive capabilities than adults has manifested itself in the creation of an independent juvenile court system. This system has replaced traditional procedural protections granted to adults with new protections, reflecting the view that children should have a chance at rehabilitation. This new juvenile system has met much criticism and become subject to many amendments over time.

II. THE CURRENT UNRAVELING OF THE JUVENILE COURT'S ORIGINAL DESIGN

Traditionally, the juvenile court maintained jurisdiction over children until they reached the age of majority.[47] As a result of the juvenile court's loss of jurisdiction over children upon their eighteenth birthday,[48] a child committing murder at age seventeen could be detained for less than one year.[49] In order to prevent this, states have created exceptions to juvenile court jurisdiction.[50] These exceptions are controversial because they call into question the juvenile court's effectiveness.[51]

---

45. *Parens patriae* "refers traditionally to role of state as sovereign and guardian of persons under legal disability, such as juveniles or the insane. . . it is the principle that the state must care for those who cannot care for themselves, such as minors who lack proper care and custody from their parents." BLACK'S LAW DICTIONARY 769 (abridged 6th ed. 1991).

46. Mabel Arteaga, *Juvenile Justice With A Future For Juveniles*, 2 CARDOZO WOMEN'S L.J. 215, 217 (1995). The U.S. Supreme Court has issued three major opinions reinstating procedural protections to juveniles: Kent v. United States, 383 U.S. 541 (1966) (holding that before a minor may be waived into adult court, a hearing must be held and the minor must be afforded effective assistance of counsel and a statement of reasons for the decision); *In re Gault*, 387 U.S. at 36-37, 57 (holding that juvenile has a right to counsel, confront and cross-examine witnesses, and to invoke the privilege against self-incrimination); *In re Winship*, 397 U.S. 358 (1970) (holding that juveniles, like adults, are constitutionally entitled to proof beyond a reasonable doubt when charged with a criminal violation). *See* Arteaga, *supra*, at 217-20.

47. Although the age of majority is usually set at 18, some states have extended juvenile court jurisdiction. See *infra* note 48 for examples.

48. Some courts have extended juvenile court jurisdiction beyond age eighteen. *See, e.g.*, CAL. WELF. & INST. CODE § 607(b) (West 1998) (stating that jurisdiction may be retained until age 25 in some cases). *See also* VT. STAT. ANN. tit. 33, § 5504 (b)(1997) (extending jurisdiction to the age of 21); later lowered to 19. *See id.* (1999).

49. *See* Martin, *supra* note 40, at 82 (describing the conviction of 17-year-old Michael Williams in the brutal rape and stabbing murder of Kimberly Rae Harbour and his 45 week sentence to Massachusetts' juvenile justice system).

50. *See id.* at 61.

51. *See, e.g.*, Kent v. United States, 383 U.S. 541, 556 (1966). The *Kent* Court believed that the original purpose of the juvenile court was not being realized. Consequently, a child in the juvenile system

States use two major methods to remove children from juvenile court jurisdiction.[52] The first is statutory exclusion, whereby children of a certain age, who have committed a certain offense, or both, are statutorily defined as beyond the reach of juvenile court jurisdiction.[53] Another method is judicial waiver, where the juvenile judge has the discretion to waive the child to criminal court based upon statutory guidelines.[54] A third, less-frequently used method is prosecutorial direct-file, where the criminal and juvenile courts have concurrent jurisdiction over the child and the prosecutor has discretion to file the case in either court.[55]

Statutory exclusion is the categorical inability of the juvenile court to exercise jurisdiction over a child. This is frequently accomplished by excluding from the juvenile court's jurisdiction children in certain age ranges who have committed offenses specifically enumerated in the statute.[56] Between 1992 and 1995, "[twenty-four] states added crimes to the list of excluded offenses, and [six] states lowered the age limit on some or all excluded offenses."[57] These amendments are the result of frustration with rigid age restrictions. However, the amendments are also evidence of states' continuing reliance upon age when deciding whether to try young offenders in criminal or juvenile court.

"receives the worst of both worlds. . .he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Id.*

52. Although there are many variations of these methods and additional methods such as prosecutorial waiver or direct file, this Note will focus on only the two most common methods— statutory exclusion and judicial waiver.

53. *See* Klein, *supra* note 35, at 390. *See, e.g.*, N.M. STAT. ANN. § 32A-2-3 (1999). New Mexico draws statutory distinctions between "delinquent offenders," who are children who have committed a delinquent act, and are subject only to juvenile adjudication and "youthful offenders" who may be subject to juvenile or adult sanctions and "serious youthful offenders" who are subject to adult sanctions. The latter category is statutorily excluded from juvenile court jurisdiction and includes children ages 15 to 18. *See id.*

54. *See* Klein, *supra* note 35, at 385. *See, e.g.*, ME. REV. STAT. ANN. tit. 15, § 3101(4)(A) (West 1999).

> When a petition alleges that a juvenile has committed an act which would be murder or a Class A, B, or C crime if committed by an adult, the court shall, upon request of the prosecuting attorney, continue the case for further investigation and for a bind-over hearing to determine whether the jurisdiction of the juvenile court over the juvenile should be waived.

Id.

55. *See* Klein, *supra* note 35, at 394. *See, e.g.*, NEB. REV. STAT. § 24-517(6) (1998).

56. *See, e.g.*, N.Y. PENAL LAW § 10.00(18) (McKinney 1998).

> 'Juvenile offender' means (1) a person thirteen years old who is criminally responsible for acts constituting murder in the second degree. . . and (2) a person fourteen or fifteen years old who is criminally responsible for acts constituting the crimes defined in subdivisions. . . .

Id.

57. TORBET, *supra* note 17, at xii. *See also* app. B.

A. Statutory Minimum Age of Criminal Court Jurisdiction

In 1992, thirty-five states set a statutory minimum age at which a child may be transferred to criminal court.[58] Among these states, Vermont enacted a statute giving juvenile judges the discretion to transfer a ten-year-old offender to criminal court under certain circumstances.[59] Montana allows transfers of children twelve and older, and Georgia, Illinois, and Mississippi have a minimum age of thirteen.[60] The majority of states allow for transfer at age fourteen, while eight states set the age at fifteen and four states set it at sixteen.[61] Thus, the divergence in age limits reflects the lack of consensus among states and the lack of foundation for the age limits.

B. Judicial Waiver

Judicial waiver is the most commonly used method to transfer juveniles to criminal court.[62] The United States Supreme Court expressed

---

58. *See* MELISSA SICKMUND, U.S. DEP'T OF JUSTICE, HOW JUVENILES GET TO CRIMINAL COURT 2 (Oct. 1994), *available at* <http://www.ncjrs.org/pdffiles/juvcr.pdf>. *See* app. A for table.

59. *See* VT. STAT. ANN. tit. 33, § 5506(a)(1-11)(1999).

> After a petition has been filed alleging delinquency, upon motion of the state's attorney and after hearing, the juvenile court may transfer jurisdiction of the proceeding to a court of criminal jurisdiction, if the child had attained the age of 10 but not the age of 14 at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:
>
> (1) arson causing death
> (2) assault and robbery with a dangerous weapon
> (3) assault and robbery causing bodily injury
> (4) aggravated assault
> (5) murder
> (6) manslaughter
> (7) kidnapping
> (8) unlawful restraint
> (9) maiming
> (10) sexual assault
> (11) aggravated sexual assault
> (12) burglary into an occupied dwelling

Id. (internal statutory references omitted); *See also* S.D. CODIFIED LAWS § 26-8C-2 (1999).

> [D]elinquent child, means any child ten years of age or older who, regardless of where the violation occurred, has violated any federal, state or local law or regulation for which there is a penalty of a criminal nature for an adult, except state or municipal hunting, fishing, boating, park, or traffic laws that are classified as misdemeanors, . . . or petty offenses.

Id.

60. *See* SICKMUND, *supra* note 58, at 2.

61. *Id.*

62. *See* TORBET, *supra* note 17, at 4.

eight determinative factors that judges should consider in exercising their discretion to waive a juvenile to criminal court.[63] They are:

> 1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
> 2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
> 3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
> 4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the United States Attorney).
> 5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in [criminal court]. . . .
> 6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
> 7. The record and previous history of the juvenile, including previous contacts with . . . law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.
> 8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.[64]

Most states have adopted these factors at least in part.[65] The creation of these methods of excluding children from juvenile court jurisdiction was largely a result of frustration caused by state reliance on age.

III. AGE IS AN INADEQUATE DETERMINANT

This section explores five reasons why it is problematic to rely upon age as a tool to determine whether to adjudicate a child in juvenile court or to prosecute the child in criminal court.

---

63. *See Kent*, 383 U.S. at 567 (1966).

64. *Id.* at 566-67.

65. *See generally* Robert O. Dawson, *An Empirical Study of Kent-Style Juvenile Transfers To Criminal Court*, 23 ST. MARY'S L.J., 975 (1992) (providing a survey of *Kent* guideline adoption and its effects).

A. Vermont Law Results In Drastically Different Treatment of Juveniles Due to Age

The safety Vermonters have traditionally felt being far from the big city was shattered in 1981 by news of the death of M.W.,[66] age twelve, and the severe wounding of M.O., also twelve.[67] The girls were attacked while walking home from school in the town of Essex Junction, Vermont.[68] The girls were both sexually assaulted and stabbed, and one was shot.[69] Although the girls were left for dead in the woods, one survived.[70] The news struck Vermonters with fear that they had never experienced; they began locking their doors and talking about purchasing guns.[71] Angered by this breach of their security, Vermonters called for immediate action: "I just hope this wakes people up. We have to have stricter laws."[72]

The police mobilized quickly, publishing sketches of the perpetrators in the paper only one day after the incident. A manhunt began, and the village of Essex Junction trustees offered a $10,000 reward, believed to be the largest amount ever offered in a Vermont criminal case, for information leading to the arrest and conviction of the perpetrators.[73] Several neighboring communities assisted Essex Junction police, who initiated a hotline to accept tips or information.[74] Vermonters were shocked and devastated when police discovered that the assailants were fifteen and sixteen-year-old boys.

The laws that were supposed to provide justice to Vermonters only devastated them further. Vermont law at the time protected children under sixteen from criminal prosecution and guaranteed juveniles freedom upon their eighteenth birthday.[75] Vermont courts could not try a youth under the age of sixteen as an adult nor could they jail the same youth regardless of the

---

66. This Notes' author chose not to use the victims' full names in order to protect the privacy of the survivor and both victims' families.

67. *See* Mike Donoghue, *Hamlin Denies Girls' Attack*, BURLINGTON FREE PRESS, May 29, 1981, at 1B. *Compare* State v. Hamlin, 146 Vt. 97, 99, 499 A.2d 45, 47 (1985) (listing M.O.'s age as thirteen).

68. *See* Mike Donoghue & Joe Mahoney, *Girl 12, Killed, Companion Hurt In Attack at Essex Jct. Play Area*, BURLINGTON FREE PRESS, May 16, 1981, at 1A [hereinafter Donoghue & Mahoney I].

69. *See* Sam Hemmingway, *This Can't Be Happening In Vermont*, BURLINGTON FREE PRESS, October 4, 1981, at 12.

70. *See id.*

71. *See* Donoghue & Mahoney I, *supra* note 68, at 14A.

72. *Id.*

73. *See* Mike Donoghue & Joe Mahoney, *Village Trustees Offer a Reward for Child Killers*, BURLINGTON FREE PRESS, May 18, 1981, at 1A [hereinafter Donoghue & Mahoney II].

74. *See* Joe Mahoney, *Men Had Confrontation With Girl*, BURLINGTON FREE PRESS, May 17, 1981, at 1A; Donoghue & Mahoney I, *supra* note 68, at 7A.

75. *See* VT. STAT. ANN. tit. 33, § 632(a)(1) (1981). "'Child' means an individual under the age of eighteen years. . .or an individual who has committed an act of delinquency after becoming ten years of age and prior to becoming sixteen years of age. . . ." *Id.*

nature and severity of the crime committed.[76] This law resulted in very different responses to the boys of fifteen and sixteen years, despite seemingly equal participation in the same crimes.[77] Both boys were charged with first degree murder among other charges. The sixteen-year-old was treated as an adult in criminal court, where first degree murder carries a mandatory life sentence. In contrast, the fifteen-year-old was adjudicated in juvenile court and faced a maximum commitment of two years and nine months, the time remaining until his eighteenth birthday.[78]

Faced with this outcome, Vermonters urged their legislature to immediately crack down on juvenile offenders.[79] The governor's consumer hotline received more than thirty telephone calls urging "that a special session of the legislature be called to toughen the law."[80] Within hours of the boys' arrests, Attorney General John Easton promised to vigorously work to change Vermont's juvenile justice laws.[81] However, any legislative changes could not be made retroactive and thus would not affect the perpetrators of the Essex Junction crimes.[82]

Ultimately, Vermont held a two-day special session to amend its juvenile justice system.[83] Despite Judiciary Chairman Norris Hoyt's vow not to let emotions interfere when legislators discussed amendments to Vermont's juvenile laws, "[a]n air of vengeance hung over the legislators as they debated the merits of the proposed law."[84] The General Assembly of the State of Vermont convened on July 15, 1981, and adjourned only one day later having passed a juvenile law that would change all future juvenile adjudivations in Vermont.

The 1981 Vermont legislative special session resulted in five significant changes to Vermont's juvenile justice laws. First, the legislature lowered the age at which a child becomes subject to juvenile court jurisdiction from twelve to ten, irrespective of the charged offense.[85] Second, "an individual who is alleged to have committed an act, before attaining the age of 10, which would be murder . . . if committed by an adult may be subject to delinquency

---

76. *See* Braun, *supra* note 41, at A1.

77. *See* Donoghue, *supra* note 67, at 1B.

78. *See id.*

79. *See* David Karvelas, *New Juvenile Law Likely*, BURLINGTON FREE PRESS, May 23, 1981, at 1A.

80. *Id.*

81. *See* Braun, *supra* note 41, at 9A. "Right now the juvenile who is treated in juvenile court and found delinquent, is literally out of the system at age 18. At age 18 the records are expunged, there is no record of the offense. . . ." *Id.*

82. *See* Karvelas, supra note 79, at A1.

83. *See* 1981 Vt. Acts & Resolves (Spec. Sess.) No. 1.

84. *See* Hemmingway, *supra* note 69, at 19.

85. *See* VT. STAT. ANN. tit. 33, § 632(a)(1)(1998) (Spec. Sess.). Previously a child under the age of 12 would not enter the court system upon commission of an offense.

proceedings."[86] Third, the legislature lowered to ten the age at which the court may transfer a juvenile to criminal court when that individual committed certain enumerated crimes.[87] Fourth, Vermont extended juvenile jurisdiction to the age of twenty-one.[88] Finally, the court must automatically charge in criminal court juveniles between the ages of fourteen and sixteen who commit certain enumerated crimes as in "cases commenced against adults, unless transferred to juvenile court."[89]

Although these amendments improved Vermont's ability to respond to crimes committed by younger children, the law is not without fault. The first two revisions failed to cure the state's inability to respond to a child under ten years of age who commits a crime other than murder. Hence, a nine-year-old who commits arson causing death or manslaughter cannot be adjudicated as the juvenile court does not have jurisdiction over the child.

There are two problems with this lack of juvenile court jurisdiction over offenders under the age of ten. First, the inability to adjudicate children below the age of ten results in the powerlessness of the state to intervene early in the child's criminal history. Without this early intervention, states may be losing the opportunity to rehabilitate children when they are most impressionable and amenable to rehabilitation. The second problem is the failure to provide redress to the offended community.

The third amendment to Vermont law lowered to ten the age at which authorities may transfer a juvenile to criminal court upon the commission of certain enumerated offenses.[90] This amendment creates the potential for a situation with the same inadequacies that resulted in the discrepancy between the sentences and treatment of the fifteen and sixteen-year-old boys described above.[91] Vermont probably accomplished a decrease in the frequency of such a result because there is likely to be less violent crime committed by children at the age of nine or ten. However, it is not unforeseeable that a nine or ten year old will engage in a joint crime or in similar crimes again. When this happens, the drastically different treatment those offenders will receive in juvenile court versus in adult criminal court will again anger and dismay Vermonters. Sealed records, closed hearings, and the status of being a juvenile delinquent, rather than a convicted criminal, are all protections afforded by the juvenile court and will protect the nine-year-old.[92] In contrast,

---

86. *Id.* § 632(a)(1)(C).

87. *See id.* § 632(a)(1)(A).

88. *See id.* § 634(b). "The juvenile court, in its discretion, may retain jurisdiction over a child up to twenty-one years of age if the child has been found to have committed a delinquent act." *Id.*

89. *Id.* § 632(a)(1)(B).

90. *See id.* § 632(a)(1)(A).

91. *See supra* Part III.A.

92. The historical practice of holding juvenile proceedings closed to the public is beginning to erode. *See* TORBET, *supra* note 17.

authorities will charge the ten-year-old , prosecute him at an open hearing, and he will have a criminal record for life. If there were some empirical evidence that demonstrated differences in the capacity of nine-year-olds and ten-year-olds, such a result might be justifiable and easier to accept. However, a survey of the legislative history behind Vermont's amendments reveals no such information.[93] The use of a rigid factor such as age will always inherently involve line drawing between children only one day apart in age. The only way to avoid this result is to cease relying on age.

The fourth Vermont amendment extended juvenile jurisdiction to the age of twenty-one.[94] This amendment results in the benefit of being able to detain children adjudicated in juvenile court for longer periods of time and thus provides the opportunity for longer term treatment when necessary. However, it also results in shorter terms of detention for children who are older when they commit the crime. Consequently, a nineteen-year-old who previously would have been adjudicated in criminal court, had a permanent record, and served a lengthy term, may only serve two years if adjudicated in juvenile court. This amendment most pointedly shows the yo-yo effect of these amendments; one change allows more young children to come under adult law while another allows other older children to come under juvenile law.

Finally, Vermont's fifth amendment subjects children between the ages of fourteen and sixteen who commit certain enumerated crimes to automatic prosecution in adult criminal court unless transferred to juvenile court.[95] Again, as is inherent in the rigid use of age, there will be drastically different results for a thirteen-year-old adjudicated in juvenile court and the fourteen-year-old who falls within this law and is charged in criminal court.[96] Further, this law involves two distinct procedural standards that exacerbate the degree of difference in the treatment of a thirteen-year-old versus that of a fourteen-year-old. More accurately, a transfer from juvenile court to adult criminal court involves a clearly written, strict standard, whereas the reverse transfer is void of standard and left to the discretion of the court.

The possibility of a child facing transfer to criminal court in Vermont begins with a petition alleging delinquency and a motion by the State's Attorney. After a hearing, the juvenile court may transfer jurisdiction of the proceeding to a court of criminal jurisdiction. This hearing requires the

---

93. *See generally Hearing on Proposed Legislation on Juvenile Detention Before the House Judiciary Comm.*, June 24, 1981, Spec. Sess. (Vt. 1981) (discussing Vermont's proposed juvenile detention legislation); *Hearing on Juvenile Justice System in the State of Vermont before the House Judiciary Comm.*, June 22, 1981, Spec. Sess. (Vt. 1981) (debating potential amendments to Vermont's juvenile justice system prompted by the crimes described *supra* Part III.A).

94. *See* VT. STAT. ANN. Tit. 33, § 634(b) (1998).

95. *See id.* § 632(a)(1)(B).

96. *See id.* § 632(a)(1)(A).

juvenile court judge to determine whether there is probable cause to believe that the child committed an enumerated act and whether juvenile court jurisdiction would serve the public safety and the interests of the community.[97] In making these determinations, the court may consider, among other matters:

> (1) the maturity of the child as determined by consideration of his age; home; environment; emotional, psychological and physical maturity, and relationship with and adjustment to school and the community;
> (2) the extent and nature of the child's prior record of delinquency;
> (3) the nature of past treatment efforts and the nature of the child's response to them;
> (4) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
> (5) the nature of any personal injuries resulting from or intended to be caused by the alleged act;
> (6) the prospects for rehabilitation of the child by use of procedures, services and facilities available through juvenile proceedings;
> (7) whether the protection of the community would be better served by transferring jurisdiction from the juvenile court to a court of criminal jurisdiction.[98]

In contrast to the strict, express considerations entailed in the above transfer to criminal court, the 1981 Vermont Special Session's fifth revision relating to a reverse transfer from criminal to juvenile court provides no such express guidance. It creates the presumption that authorities will adjudicate in criminal court, children between the ages of fourteen and sixteen who have committed certain enumerated acts, unless they are transferred to juvenile court.[99] "There are no specific standards that the trial court must follow when determining whether to grant or deny a motion to transfer. Rather, trial courts have the broadest possible discretion in ruling on transfer motions."[100] In *State v. Jacobs*, the court found it "clear, that had the Legislature ever intended [transfers to juvenile court,] to require anything other than a sound discretionary judgment by the trial court, it would have said so by providing standards as it did in the case of its twin [transfer to criminal court] statute."[101] The court will not reverse such discretionary decisions if there is "a

97. *See* VT. STAT. ANN. Tit.. 33, § 5506(c) (1998).
98. *Id.* § 5506(d).
99. *See id.* § 5505(b) (1999).
100. State v. Lafayette, 152 Vt. 108, 110, 564 A.2d 1068, 1069 (1989).
101. State v. Jacobs, 144 Vt. 70, 75, 472 A.2d 1247, 1250 (1984).

reasonable basis for the court's action."[102] These different standards increase the discrepancy between the treatment of children only days apart in age and are further evidence of the rigidity and inadequacy of reliance upon the age factor. In summary, Vermont's 1981 revisions expanded opportunities to bring younger children under the juvenile court's jurisdiction and to subject younger children to adult criminal courts with the capacity to order longer sentences. However, they failed to eliminate the disparity that remains between treatment of children who are only days apart in age.

B. Decreased Opportunity For Rehabilitation: Jonesboro Arkansas School Shootings

Seventeen years after the Vermont tragedy, in March 1998, Arkansas law was also unprepared for the massacre it faced. Two boys, ages eleven and thirteen, killed four female students and a teacher, and injured ten others.[103] A false fire alarm preceded the massacre; students and teachers innocently filed outside into twenty-seven gunshots.[104] Arkansas found the boys delinquent on five counts of murder and ten counts of battery.[105] The judge sentenced them to detainment in a juvenile center until their eighteenth birthdays.[106] However, if Arkansas constructs an adequate facility, they may be detained until they are twenty-one years of age.[107] Thus, the thirteen-year-old and eleven-year-old boys will serve four and less than seven years respectively for their crimes.

Under Arkansas law, authorities could not charge children under the age of fourteen as adults under any circumstance.[108] The boys' sentencing

---

102. State v. Willis, 145 Vt. 459, 470, 494 A.2d 108, 114 (1985).

103. *See* Deardorff, *supra* note 7, at 1.

104. *See id.*

105. *See id.*

106. *See id.*

107. *See* Joan I. Duffy & Bartholomew Sullivan, *Jonesboro Boys Go Before Judge on Tuesday*, COM. APPEAL (Memphis), Aug. 10, 1998, at A1, *available in* 1998 WL 13972237. At age 18, the boys will be too old for juvenile jail, but too young for adult prison. *See id.* Juvenile court judge Ralph Wilson ordered that if juvenile authorities decide to release the boys before they reach the age of twenty-one, they must serve 90 days in jail, the maximum Arkansas law allows. *See* Deardorff, *supra* note 7, at 1.

108. *See* ARK. CODE ANN. § 9-27-318 (1998).

> (a) A juvenile court has *exclusive jurisdiction* when a delinquency case involves a juvenile:
>
> (1) Less than fourteen (14) years old when the alleged delinquent act occurred;
>
> (2) Less than sixteen (16) years old:
>
> (A) When he engages in conduct that, if committed by an adult, would be any felony not listed in subdivision (b)(2) of this section or the offense in subdivision (b)(3) of this section; or
>
> (B) Who would not qualify as an habitual juvenile offender under the

sparked demands that the Arkansas legislature lower the age at which courts can try juveniles as adults. In time, we will see how the Arkansas legislature responds to this tragedy.[109]

This is an example of how use of the age factor can result in a decreased ability to rehabilitate children as well as leave the public feeling unsafe and overwhelmed by a sense that justice has failed. It also demonstrates Arkansas' resistance to abandoning the age factor despite its awareness of incidents like the one in Vermont.[110]

---

conditions prescribed by subdivision (b)(4) of this section;

(3) Less than eighteen (18) years old when he engages in conduct that, if committed by an adult, would be any misdemeanor.

(b) A circuit court and a juvenile court have *concurrent jurisdiction* and a prosecuting attorney may charge a juvenile in either court when a case involves a juvenile:

(1) At least sixteen (16) years old when he engages in conduct that, if committed by an adult, would be any felony;

(2) Fourteen (14) or fifteen (15) years old when he engages in conduct that, if committed by an adult, would be: (A) Capital murder, [etc.]

Id. (emphasis added).

109. Since the original writing of this note, Arkansas has amended its juvenile code. *See* ARK. CODE ANN. § 9-27-318 (1999). Arkansas amended its juvenile court's exclusive jurisdiction. As of 1999, there is exclusive juvenile court jurisdiction over delinquency cases involving juveniles 15 or younger when the act occurred. However there are exceptions. If the juvenile was 14 or 15 at the time of the act and if committed by an adult the act would be: capital murder, first degree murder, kidnapping, aggravated robbery, rape, first degree battery, or a terroristic act then there is concurrent jurisdiction with the criminal court. This amendment has expanded juvenile court jurisdiction. Previously, there was concurrent jurisdiction for juveniles of 14 or 15 years of age committing a larger group of offenses. *See supra* note 108. Prior to this 1999 amendment, exclusive jurisdiction did not exist over 15-year-olds. *See id.*

Concurrent jurisdiction remains over the most serious offenses as listed above, however there are many other serious offenses that now require a motion to either extend juvenile jurisdiction or transfer to criminal court, where previously jurisdiction was concurrent. These offenses include second degree murder, second degree battery, possession of a handgun on school property, aggravated assault, unlawful discharge of a firearm from a vehicle, any felony committed with a firearm, soliciting a minor to join a street gang, and criminal use of prohibited weapons. *See* ARK. CODE ANN. § 9-27-318 (b)(1)(A-J) (1999). Further, the attempt, solicitation or conspiracy to commit some serious, violent crimes are no longer subject to concurrent jurisdiction but rather require a motion to extend juvenile jurisdiction or transfer to criminal court. *See id.* § 9-27-318(b)(1)(K)(i-ix). These offenses include capital murder, first degree murder, second degree murder, kidnapping, aggravated robbery, rape, first degree battery, first degree escape, and second degree escape. *See id.*

As amended, the Arkansas statute requires written findings as to the decision to retain juvenile jurisdiction or to transfer. *See id.* § 9-27-318(g)(1). Arkansas also expanded its list of what a judge must consider when making this decision. The new considerations are in fact quite similar to those in the proposed statute in Appendix C.

110. Even after the tragic events in Jonesboro, the state has still insisted on relying upon the age factor. *See* ARK. CODE ANN. § 9-27-318 (1999). Although it has joined the trend of permitting criminal jurisdiction over younger offenders committing more serious crimes, it extended juvenile court jurisdiction over older juveniles committing less serious offense. *See supra* note 109. This amendment ignores the rehabilitative and deterrent effect of adjudicating juveniles before they graduate to more serious offenses; it declines a more proactive approach to juvenile crime. Arkansas has drafted the "Extended Juvenile Court Jurisdiction Act" that creates a presumption that juveniles under the age of 13 at the time of the commission

C. Case by Case Analyis Limited To Juveniles Over A Specified Age: Springfield Oregon School Shooting

Two months after the massacre in Jonesboro, a weapon wielding fifteen-year-old interrupted a cafeteria at Thurston High School in Springfield, Oregon with a volley of bullets.[111] He killed two students, injured twenty-one others, and as was later revealed during the investigation, murdered his parents.[112] Authorities found and had to neutralize bombs before they were able to reach Kinkle's parents' bodies.[113] In contrast to Arkansas law, Oregon law allowed authorities to charge Kipland Kinkle as an adult.

The Oregon statute allows for the waiver of juvenile court jurisdiction over children who are fifteen or older at the time of the offense, and committed murder or certain other felonies.[114] The court must further determine whether "[t]he youth at the time of the alleged offense was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved;" and:

> The juvenile court, after considering the following criteria, determines by a preponderance of the evidence that retaining jurisdiction will not serve the best interests of the youth and of society and therefore is not justified:
> (a) The amenability of the youth to treatment and rehabilitation given the techniques, facilities and personnel for rehabilitation available to the juvenile court and to the criminal court which would have jurisdiction after transfer;
> (b) The protection required by the community, given the seriousness of the offense alleged;
> (c) The aggressive, violent, premeditated or willful manner in which the offense was alleged to have been committed;
> (d) The previous history of the youth, including:
> (A) Prior treatment efforts and out-of-home placements;
> (B) The physical, emotional and mental health of the youth;
> (e) The youth's prior record of acts[,] which would be crimes if, committed by an adult;
> (f) The gravity of the loss, damage or injury caused or attempted during the offense;

---

of a capital or first degree murder, are presumed to be unfit to proceed and to lack capacity to possess the necessary mental state required for the offense, to conform their behavior to the law, and to appreciate the criminality of their conduct. *See* 1999 Ark. Acts 1192.

111. *See* Swisher, *supra* note 8, at A22.

112. *See id.*

113. *See Kinkle Home*, OREGONIAN (Portland), May 23, 1998, *available in* 1998 WL 4208213.

114. *See* OR. REV. STAT. § 419C.349(1-2) (1999).

> (g) The prosecutive merit of the case against the youth; and
> (h) The desirability of disposing of all cases in one trial if there were adult co-offenders.[115]

These considerations enable Oregon to examine each juvenile offender individually and decide whether the juvenile court system is the best method to rehabilitate the child and protect the public. If it determines that it is not, they can transfer a child of fifteen or older who committed an enumerated offense to adult court.[116] A minor who is transferred to adult court will still have the protection of not being detained with adult criminals while still a minor.

This method would more effectively meet the goals of protection and rehabilitation if it abandoned its reliance upon age. Oregon should consider these factors for every juvenile that comes before their courts, not just those over fifteen. In the event that Oregon insists on maintaining arbitrary age limitations on its courts' jurisdiction, it would be wise to create a catchall provision. A catchall provision void of age, would always consider whether the remaining juvenile court jurisdiction is sufficient to protect society and effect rehabilitation. If this question is answered in the negative, a child of any age may be transferred to a court with longer jurisdiction. The catchall provision could be triggered only when the default, age-based rules seem to fail in the particular circumstances. Thus, all juveniles receive an equal and individual analysis before they are shuffled into one court or another and the decision is calculated, not arbitrary.

Although Kinkle initially intended to put forth an insanity defense, he changed his plea to guilty, which triggered the possibility of parole.[117] However, that possibility vanished when Circuit Court Judge Jack Mattison sentenced Kinkle to 112 years.[118] On December 9, 1999, Kinkle's public defender attorney filed notice of an appeal arguing that the sentence constitutes cruel and unusual punishment.[119]

D. Age Restrictions Oscillate Due to Lack of Empirical Basis

The wide range of ages used by different states is evidence of the lack of a foundation for age restrictions in juvenile statutes. Part II.A of this Note and the chart in Appendix A demonstrate that thirty-five states use six

---

115. *Id.* § 419C.349(4)(a-j) (1999).

116. *See id.*

117. *See School Shooter To Appeal 112-Year Sentence*, SEATTLE POST-INTELLIGENCER, December 9, 1999, *available in* 1999 WL 30558597.

118. *See id.*

119. *See id.*

different ages to define the minimum age at which authorities may transfer a child to criminal court.[120] There is a seven-year difference between the youngest and oldest age used by these states.[121] It is common knowledge that there is an enormous amount of developmental change between a child of ten years and one of seventeen. It would be helpful to know what accounts for each particular state's employment of such different ages. Unfortunately, legislative debate does not answer this question. One might expect to see committees pouring over studies and articles on child development and cognitive capabilities but that has not been the case.[122] The ages seem to be arbitrary or a reaction to a particular crime in any given state, rather than the result of psychological or sociological research on children.

An examination of Vermont's juvenile justice statutory history reveals the oscillation of two major age restrictions. The minimum age at which children become subject to juvenile proceedings is a prime example. Vermont's 1973 Adjudicative Session raised the minimum age from ten to twelve, only to be reduced back to ten in Vermont's 1981 Special Session.[123] Unfortunately, legislative history is unavailable for the 1973 amendment.[124] However, such oscillation indicates a lack of foundation for minimum age determinations. For example, the legislature enacted the 1981 amendments at the impetus of a specific tragic criminal event.[125] Such an impetus has no basis in our knowledge of child development and moral reasoning.[126] There is no indication in the legislative history that these age determinations are grounded in knowledge of when children are capable of cognitively forming criminal intent or understanding the consequences of their behavior.[127] Consequently, there is no empirical or sociological foundation for the lines drawn on the basis of age. States should not continue to enforce statutes that have a

---

120. *See* SICKMUND, *supra* note 58, at 2.

121. *See id.*

122. An extensive survey of the legislative history behind each state is beyond the scope of this Note. These comments are based upon the legislative history behind the Vermont and Rhode Island amendments discussed in the Note.

123. *See supra* Part.III.A. and the annotated history of VT. STAT. ANN. tit. 33, § 5502(a)(1) (1997).

124. This Note's author attempted to obtain legislative history and was informed by the Office of the Vermont Legislative Council that it was missing.

125. *See Hearing on Proposed Legislation on Juvenile Detention Before the House Judiciary Comm.*, June 24, 1981, Spec. Sess. (Vt. 1981). Vermont State's Attorney Mark Keller speaks about the possibility of the "15 year old who killed [M.W.] getting out in three years." *Id.* at 14.

126. A survey of child development is beyond the scope of this Note. *See generally* Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137 (1997) (discussing child development and its impact on juvenile crime).

127. *See generally Hearings on the Juvenile Justice System Before the Vt. House Judiciary Comm.*, June 23, 1981, Spec. Sess. (Vt. 1981) (debating potential amendments to Vermont's juvenile justice system prompted by crime described *supra* Part III.A).

substantial impact on a child's life without providing a basis for the distinction.

E. Rhode Island's Use of Age Results in an Inadequate Sentence for a Child Murderer

Rhode Island's use of statutory age restrictions resulted in its inability to detain for longer than five years a juvenile who committed four gruesome murders.[128] In the fall of 1989, Warwick, Rhode Island experienced its second tragic murder incident in two years.[129] Police discovered Craig Price, the fifteen-year-old perpetrator, by his inconsistent lies about an injury that he sustained during the crime.[130] The ninth-grader admitted to the beating and stabbing deaths of Joan Heaton and her two daughters ages eight and ten.[131] Price also admitted to the 1987 murder of Rebecca Spencer, committed when Price was only thirteen years old.[132] Price was a neighbor of all four victims.[133] Rhode Islanders were angry that a child could commit murder and evade authorities for two years only to kill again. Like Vermonters, Rhode Islanders were particularly upset because authorities could only detain Price until his twenty-first birthday—a mere five years and twenty-one days.[134] As a result, Rhode Islanders perceived the state's juvenile justice laws as inadequate to handle violent criminals.[135] In response to their constituents' outrage, the legislature revised the state's waiver and certification laws.[136] The revisions allowed juvenile courts to waive children of any age to criminal court under the following circumstances: "If any child

---

128. *See* Matthew Brelis, *R.I. City Picks Up Pieces After Savage Killings: Anger Lingers that Confessed Killer of Four will be Released by State Law in Five Years*, BOSTON GLOBE, Sept. 24, 1989, at Metro/Region 77.

129. *See* Ray Richard, *R.I. Youth admits guilt in 4 deaths*, BOSTON GLOBE, Sept. 22, 1989, at Metro/Region 1 [hereinafter Richard II].

130. *See id.*

131. *See id.*

132. *See id.*

133. *See* Richard I, *supra* note 23, at Metro/Region 77.

134. *See* Richard II, *supra* note 129. The Ability to waive a child to criminal court was restricted to those over 16. Thus by exclusion, Price was subject to juvenile court, whose jurisdiction only extended until his 21st birthday. *See* R.I. GEN. LAWS § 14-1-7 (1981).

> If a child sixteen (16) years of age or older is charged with an offense which would render said person subject to indictment if he were an adult, a justice of the family court after full investigation, may waive jurisdiction and order such child held for trial under the regular procedure of the court which would have jurisdiction of such offense committed by an adult. . . .

Id.

135. This note's author is a Rhode Island resident who lived in Warwick and attended both middle school and high school with Craig Price until his arrest.

136. *See* D'Ambra, *supra* note 42, at 288.

is charged with an offense which would be punishable by life imprisonment if committed by an adult, that child, upon motion of the attorney general, shall be brought before the court and the court shall conduct a waiver hearing. . . ."[137]

Waiver hearings proceed as follows:

> (a) Upon a motion by the attorney general . . . the court shall conduct a hearing, at which it shall be the duty of the attorney general to produce evidence to enable the court to determine: (1) That probable cause exists to believe that the offense charged has been committed and that the child charged has committed it . . . (2) That the child's past history of offenses, history of treatment, or the heinous or premeditated nature of the offense is such that the court finds that the interests of society or the protection of the public necessitate the waiver of jurisdiction of the court over the child.[138]

Waiver is applied to both the offense upon which the motion is based and any pending or subsequent offenses.[139] Thus, once a juvenile is waived, the criminal court has exclusive jurisdiction over all future criminal acts by that child, even if committed years later.[140]

A certification hearing involves essentially the same determination as the waiver hearing except for one additional consideration. Certification determinations must include the finding that "[t]he jurisdiction of the court but for the exercise of certification is in all likelihood an insufficient period of time in which to accomplish a rehabilitation of the child."[141] Certification proceeds as follows: "[a]ny child who is charged with an offense which would constitute a felony if committed by an adult shall, upon motion of the attorney general, be brought before the court and the court shall conduct a certification hearing. . . ."[142] Upon compliance with the above hearing mandates, Rhode Island permits criminal court jurisdiction over a child of any age who commits a charge punishable by life imprisonment, and for any child charged with a felony offense.[143] Like waiver, certification is also applied to both the offenses upon which the certification hearing is held and all future offenses.[144]

---

137. R.I. GEN. LAWS § 14-1-7(a) (1998). Also, "[a]ny child sixteen years (16) of age or older who is charged with an offense which would constitute a felony if committed by an adult shall, upon motion of the attorney general, be brought before the court and the court shall conduct a waiver hearing. . . ." *Id.* § 14-1-7(b).

138. *Id.* § 14-1-7.1(a).

139. *See id.* § 14-1-7.1(c).

140. *See id.*

141. *Id.* § 14-1-7.2(a)(3).

142. *Id.* § 14-1-7(a)-(c).

143. *See id.* § 14-1-7(a)-(b).

144. *See id.* § 14-1-7.3(g)(1).

It is noteworthy that the Rhode Island revisions largely abandoned age as a determinate, thereby allowing greater flexibility in the disposition of juveniles. Judges are able to review cases individually, weighing relevant factors and the capabilities and limitations of each system. Such dispositions are based upon factors such as the child's criminal history, past treatment, the nature of the crime, and interests in protecting the public.[145]

Rhode Island avoids the difficulties that Vermont has, and that Rhode Island previously had, by relying on the severity of the offense rather than age. The only remaining age restriction in Rhode Island law results in the inability to treat as adults children under age sixteen who commit a crime other than a felony or that is not punishable by life imprisonment. Although still problematic, Rhode Island excludes a narrower pool of children from criminal court jurisdiction, particularly in comparison to Vermont.[146]

Finally, Rhode Island's 1990 amendment addressed a concern frequently raised regarding where to detain juveniles adjudicated in adult court. Rhode Island law allows the family court judge to sentence the juvenile to the maximum penalty for the offense. The offender will serve his sentence in the training school until he reaches the age of majority and thereafter will complete his sentence at an adult facility.[147] By reducing their reliance on the age factor, these amendments have alleviated Rhode Island's inability to detain criminals like Craig Price for a longer period of time.

IV. A MULTI-FACTOR APPROACH SHOULD BE USED TO RESPOND TO JUVENILE CRIME

In abandoning the problematic use of age restrictions, states should enumerate factors that a judge must weigh when deciding whether to transfer a child to criminal court. These factors should be the product of interdisciplinary experience with juvenile delinquents. It is unfortunate that legislatures continue to enact arbitrary age restrictions that are not founded on any research or knowledge about child development and behavior.

Determining which children fall into juvenile jurisdiction and which fall into adult criminal jurisdiction seems largely arbitrary. A multi-factor approach as advocated by this Note will make these decisions based upon the child's criminal history, the seriousness of their offense, their amenability to treatment in the past, and other related factors. Such an approach will

145. *See id.* § 14-1-7.1(a)(2).

146. *Compare id.* § 14-1-7(a)-(b), *with* VT. STAT. ANN. tit. 33, § 5502(a)(1) (1999).

147. *See* R.I. GEN. LAWS § 14-1-7.3(a)(2) (1997). "Training school" refers to a juvenile detention center in Rhode Island.

eradicate this yo-yo effect and inject the system and these decisions with validity.

"[T]he absolute age of full responsibility has not always been the same throughout history and, when the juvenile court extends the period of natural dependence and immaturity through the adolescent years, it does so arbitrarily."[148] Even in the early days of the establishment of the juvenile court, some children were beyond its jurisdiction.[149] "These children might not be helped by the proposed methods of guidance and rehabilitation. Therefore, all jurisdictions established some provisions for transferring these youths to the adult criminal court."[150]

If the juvenile court system were true to its original premises, it should only consider one question when determining whether or not to waive a child to criminal court: Is the child capable of forming criminal intent? However, most would reject such a simple approach because, in fact, the stronghold of the juvenile court is not truly based upon the facial notion of lacking criminal intent. Rather, it is based upon a more intuitive, emotive notion that the young deserve a second chance. Possibly even a feeling of responsibility on behalf of parents and government that "we" failed this child may occur. Why else would we remove responsibility from a child who was capable of forming intent and understood the consequences of his/her behavior and the difference between right and wrong?

In choosing to place less responsibility on the shoulders of the juvenile offender, we are placing the leftover responsibility upon ourselves. The question is whether this allocation of blame is serving the goals of both specific and general deterrence protecting society, and whether it is effecting rehabilitation. Scenarios such as Essex Junction, Vermont, and Jonesboro, Arkansas, indicate a negative answer.

CONCLUSION

In addition to considering the factors enumerated by the United States Supreme Court listed above in Part II.B., states should consider forming a task force to perform research on child development. Such information will aid them in determining the appropriate factors to respond to individual juvenile offenders.

Appendix C of this Note recommends a proposed statute enumerating factors that courts should consider when making transfer decisions. It alleviates the rigidity of relying on age and allows judges to take into

148. Drukteinis, *supra* note 30, at 40.
149. *See id.*
150. *Id.*

consideration each individual child offender and fashion a response that is in the best interest of the child and the community.

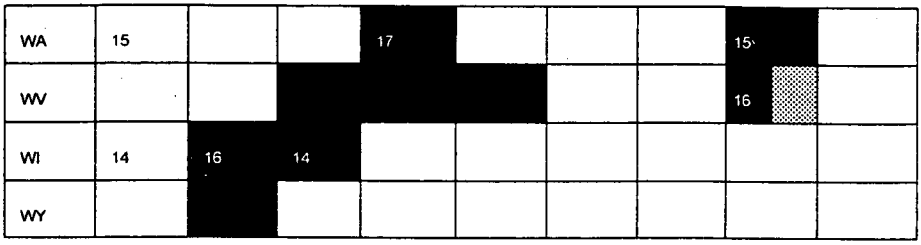
Lynn A. Foster

APPENDIX A

Statutorily Defined Age and Offense Provisions for Judicial Waiver of Juveniles to Criminal Court, 1992

State	Minimum Age	Any Criminal Offense	Murder Offenses	Person Offenses	Property Offenses	Offenses	Drug Capital Offenses	Weapons Offenses	Felony Crimes
AL	14	14							
AK									
AZ									
AR	14		14	14				16	14
CA	16	16							
CO	14							14	
CT	14							14	
DE	14	16					15		
DC		16a							
FL		14							
GA	13	15			17				13
HI	16							16	
ID	14	14							
IL	13	13							
IN		14	10					16	
IA	14	14							
KS	16	16						14	
KY	14							14	14
LA	15			15	15				
ME									

MD		15							
MA	14			14				14b	
MI	15							15	
MN	14	14							
MS	13	13							
MO	14							14	
MT	12		12	12	16	16	16		
NV	16							16	
NH									
NJ	14	14	14	14	14	14	14		
NM	15		15	16	16		16	16	
NC	14							14	
ND	14	16		14					
OH								15	
OK									
OR	15		15	15	15			15	
PA	14							14	
RI									
SC		16			14				
SD									
TN	14	16	14	14					
TX	15							15	
UT	14							14	
VT	10		10	10	10				
VA	15							15	



Legend: Solid cells represent provisions specifically mentioned in state's statute
Gray cells represent provisions that apply only if an additional condition is met. The additional conditions are either a delinquent or a criminal conviction (which is required varies by state).

Note: Ages in the minimum age column may not apply to all the restrictions indicated, but represent the youngest possible age at which a juvenile may be judicially waived to criminal court. For States with a blank minimum age cell, at least one of the offense restrictions indicated is not limited by age. When a provision is conditional on previous adjudications, those adjudications are often required to have been for the same offense type (e.g., class A felony) or a more serious offense.

a. Waiver conditional on the juvenile being under commitment for delinquency.
b. Waiver conditional on a previous commitment to the Department of Youth Services.

Table is adapted from Sickmund, *supra* note 8 (citing L. Szymanski *Waiver/transfer/certification of juveniles to criminal court: Age restrictions-crime restrictions,* 1992 UPDATE, (National Center for Juvenile Justice), 1993.

APPENDIX B

Changes in Transfer provisions from 1992-1995

Method	Change	State
Judicial Waiver	Added Crimes	AK,AR, CA, MO, NC, OH, OR, SC, TN, UT
	Lowered Age Limit	ID, MO, NV, NC, OH, OR, TN, TX, VA, WV, WI

Statutory Exclusion	Added Crimes	AL, CT, DE, GA, ID, IA, IL, IN, KS, KY, MD, MN, MS, NV, NH, NM, ND, OR, PA, RI, SC, UT, WA, WV
	Lowered Age Limit	MS, NV, OK, OR, SC, WI
Table adapted from U.S. DEP'T OF JUSTICE, STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (1996).		

APPENDIX C

Grounds for transferring juveniles to adult court.[151]

1. The juvenile court, after a hearing, may transfer a juvenile to adult criminal court, if the consideration of the following factors results in the determination that retaining jurisdiction over the youth will not serve the goals of rehabilitation, deterrence and societal protection:

   a. Whether the offense was committed in a violent, premeditated, or willful manner.

   b. The prior history of the juvenile, including previous contact with law enforcement agencies, social services, and any prior commitments to juvenile institutions.

   c. The juveniles past amenability to treatment or rehabilitation efforts.

   d. The likelihood that the child can be rehabilitated within the time remaining of juvenile court jurisdiction.

   e. The prospects for adequate protection of the public by the detainment and other capabilities of the juvenile system.

   f. The type of offense committed and the likelihood of recidivism.[152]

   g Whether the alleged offense was against persons or property, particular consideration being given to offenses against persons.

   h The juvenile's reactions after the crime, including but not limited to whether the juvenile evaded authorities, lied, sought or failed to seek medical attention for an injured victim, where applicable.

   i Any physical or psychological disabilities of the juvenile, including, learning, emotional and psychiatric disabilities.[153]

---

151. This statute relies heavily on factors set forth by Kent v. U.S., 383 U.S. 541, 566 (1996) as well as OR. REV. STAT. § 419C.349 (1999).

152. For example, sexual crimes are not likely to be one-time offenses but rather evidence of a pervasive condition.

153. For a discussion of how these factors influence juvenile offenders, see Maryann Zavez, *Kids and the Criminal Justice System: Questions of Capacity, Competence and Disability*, 24 VT. B. J. & L. DIG. 44 (No. 4 1998).